

THE ROLE OF INTERNATIONAL NGOS IN THE INTELLECTUAL  
PROPERTY POLICY-MAKING AND NORM-SETTING ACTIVITIES  
OF MULTILATERAL INSTITUTIONS

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INTRODUCTION

Having recently completed a research project on non-governmental organizations (“NGOs”), intellectual property rights, and multilateral institutions (“the IP-NGOs project”),<sup>1</sup> I have a number of comments to make about the role of international NGOs in shaping the debate on intellectual property, trade, and development. Before setting out the main findings of the IP-NGOs project in terms of the role that international NGOs play in intellectual property policy-making and norm-setting activities, I will first set out some background.

The IP-NGOs project looked at the role of NGOs in relation to two sets of issues: first, public health and access to essential medicines; and second, agriculture, genetic resources, and traditional knowledge. In the context of these two sets of issues, the research sought to identify patterns in recent activity by international NGOs in relation to intellectual property policy-making and norm-setting in the World Trade Organization (“WTO”)<sup>2</sup>; the World Intellectual Property Organization (“WIPO”)<sup>3</sup>; the

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1. The research project on NGOs, Intellectual Property Rights, and Multilateral Institutions (the IP-NGOs project) commenced in October 2005 and ended in December 2006. The IP-NGOs project was directed by Duncan Matthews. Viviana Munoz Tellez was the full-time Research Assistant. The UK Economic and Social Research Council (“ESRC”) generously funded the IP-NGOs project (award no. RES-155-25-0038). The IP-NGOs project was part of the wider ESRC Non-Governmental Public Action (“NGPA”) Programme. For further information about the IP-NGOs project please visit Queen Mary Intellectual Prop. Research Inst., NGOs, Intellectual Property Rights and Multilateral Institutions, <http://www.ipngos.org> (last visited Feb. 13, 2007). For further information about the NGPA Programme, please visit the London Sch. of Econ. & Political Sci. Non-Governmental Pub. Action Programme, Non-Governmental Public Action, <http://www.lse.ac.uk/collections/NGPA/> (last visited Feb. 13, 2007).

2. World Trade Org., Welcome to the WTO Website, <http://www.wto.org/> (last visited Feb. 13, 2007).

3. World Intellectual Property Organization, <http://www.wipo.int/> (last visited Feb. 13, 2007).

World Health Organization (“WHO”)<sup>4</sup>; the Convention on Biological Diversity Conference of the Parties (“CBD-COP”)<sup>5</sup>; and the Food and Agriculture Organization (“FAO”) of the United Nations.<sup>6</sup>

The project involved over sixty face-to-face interviews with representatives of NGOs, developing country governments, and multilateral institutions, augmented by further interviews with representatives from academia, industry associations, and rights-holder groups. The interviews, which commenced in late November 2005 and ended in early June 2006, were conducted in Switzerland, South Africa, Brazil, India, and the UK. A small number of additional interviews were conducted by telephone and some written responses were also received. A report, setting out the findings of the IP-NGOs project, was published in December 2006.<sup>7</sup> This article sets out the main findings concerning one aspect of the project, namely the role played by international NGOs in shaping debate on intellectual property rights in multilateral forums.

#### I. ENHANCING THE CAPACITY OF DEVELOPING COUNTRY DELEGATES TO NEGOTIATE

Given the intergovernmental nature of the Member-driven multilateral institutions in which intellectual property issues are discussed and negotiated, international NGOs, such as the Center for International Environmental Law (“CIEL”),<sup>8</sup> CPTech,<sup>9</sup> the International Centre for Sustainable Trade and Development (“ICTSD”),<sup>10</sup> Médecins Sans Frontières (“MSF”),<sup>11</sup> Oxfam,<sup>12</sup> the Quaker United Nations Office (“QUNO”),<sup>13</sup> and

4. World Health Organization, <http://www.who.int/en/> (last visited Feb. 13, 2007).

5. Convention on Biological Diversity, Conference of the Parties—COP: Background and Status, <http://www.biodiv.org/convention/cops.asp> (last visited Feb. 13, 2007).

6. Food and Agriculture Organization of the United Nations, <http://www.fao.org/> (last visited Feb. 13, 2007).

7. DUNCAN MATTHEWS, NGOS, INTELLECTUAL PROPERTY RIGHTS AND MULTILATERAL INSTITUTIONS: REPORT OF THE IP-NGOS PROJECT (2006), available at <http://www.ipngos.org/Report/IP-NGOs%20final%20report%20December%202006.pdf>. The discussion, *infra*, comes from this report.

8. The Center for International Environmental Law, <http://www.ciel.org/> (last visited Feb. 13, 2007).

9. Consumer Project on Tech., CPTech Homepage, <http://www.cptech.org/> (last visited Feb. 13, 2007).

10. The International Centre for Trade and Sustainable Development, <http://www.ictsd.org/> (last visited Feb. 13, 2007).

11. Médecins Sans Frontières, MSF International Website, <http://www.msf.org/> (last visited Feb. 13, 2007).

12. Oxfam International, <http://www.oxfam.org/> (last visited Feb. 13, 2007).

13. Quaker United Nations Office, Home: QUNO, <http://www.quno.org/> (last visited Feb. 13, 2007).

Third World Network (“TWN”),<sup>14</sup> are not the primary actors and do not see themselves as such. International NGOs readily acknowledge that they lack the legitimacy to speak on behalf of particular constituencies and do not claim to do so. Consequently, international NGOs tend not to engage in conventional forms of advocacy and lobbying of delegates to multilateral institutions from developing country governments. Instead, a key objective is enhancing the capacity of these delegates to negotiate.

In this respect, an important distinction can be drawn between those developed (and larger developing) countries, whose delegations to multilateral institutions are supported by intellectual property experts from national government departments based in the capital cities of developing countries (generally referred to as capital level), and developing and least-developed countries that do not receive detailed advice, support, or feedback from capital level. For this second group, where delegates often cover a range of trade issues and are unlikely to be experts on intellectual property rights, it is impossible to cover all the issues that they have within their portfolio. Delegates are nevertheless under pressure to understand and engage with intellectual property issues and need information. International NGOs meet this need by first raising awareness of the significance of intellectual property issues and by then providing advice and technical expertise to keep delegates informed.

## II. RAISING AWARENESS

Moreover, because delegations to multilateral institutions change regularly, there is a constant need for international NGOs to renew their links with delegates and keep awareness of intellectual property issues at the fore. The constantly changing delegations have an impact on the relationships between international NGOs and delegates in the sense that when the delegate changes there is no guarantee that the new incumbent will retain that delegation’s interests in intellectual property issues because a delegate’s personal interest can drive a particular delegation’s engagement with intellectual property issues. Some coherence is sought by international NGOs that organize meetings and seminars to orientate new delegates. In Geneva, for many delegates, seminars organized by international NGOs are the main orientation mechanisms on intellectual property issues when they first arrive at their Missions. Delegates appreciate this support, but the reality is that international NGOs provide this support, and find delegates re-

14. Third World Network, Welcome to Third World Network, <http://www.twinside.org.sg/> (last visited Feb. 13, 2007).

ceptive to it, because multilateral institutions are not perceived by delegates to fulfill this need in a systematic way.

### III. ACHIEVING COHERENCE IN DIFFERENT MULTILATERAL FORUMS

Difficulties in achieving coherence on policy positions in different multilateral forums are exacerbated by the differing relationships between the multilateral institutions themselves. This fragmentation does not help when seeking to achieve policy coherence. On disclosure of origin of genetic resources, for instance, the prospects of deliberations in different multilateral forums are made more uncertain by the fact that the CBD Secretariat has not been granted observer status in the TRIPS Council.<sup>15</sup>

### IV. INTERNATIONAL NGOS AS FACILITATORS

Typically, international NGOs are facilitators. They try to increase coordination and interaction between NGOs and developing countries because they believe that dialogue is useful and worth promoting and because developing countries' negotiating positions are often not being articulated fully at capital level, and delegates are determining the positions taken without adequate support from their governments, so international NGOs have sought to facilitate equitable outcomes to negotiations on intellectual property issues in multilateral forums. They do so by providing delegates with information and technical knowledge and, in this process, two factors are crucial: timing and trust.

### V. TIMING

Timing is important because representatives of international NGOs need to be on hand and ready to respond to the information needs of delegates. This means that in relation to the WTO, WIPO, and WHO, for example, it is often not sufficient for representatives of NGOs to travel to Geneva for key meetings. Effective engagement on a day-to-day basis often involves a permanent presence in Geneva that allows representatives of international NGOs to establish and maintain relationships with delegates. In relation to the CBD-COP and FAO, the absence of a permanent fixed location for the delegate community creates a different dynamic, with international NGOs holding seminars and meetings before negotiations take

15. DISCLOSURE REQUIREMENTS: ENSURING MUTUAL SUPPORTIVENESS BETWEEN THE WTO TRIPS AGREEMENT AND THE CBD (Martha Chouchena-Rojas, Manuel Ruiz Muller, David Vivas & Sebastian Winkler eds., 2005).

place at periodic intergovernmental meetings and maintaining a dialogue with delegates based at capital level through regular correspondence and briefing papers.

## VI. TRUST

Trust is important because delegates are more likely to respond to an individual from an international NGO with whom they have an established and positive relationship. A relationship of trust must exist before delegates feel sufficiently comfortable with international NGOs to ask for advice and technical expertise. Delegates and representatives of international NGOs interact in formal and informal settings where they exchange information and share ideas and expertise. Within this process of interaction, a great deal depends on personal relationships and building trust over relatively long periods of time so, as with timing, permanent representation or at least maintaining dialogue and establishing long-term relationships is important.

## VII. CROSS-FERTILIZATION OF IDEAS

When good relationships are formed, a two-way process of information exchange and discussion between delegates and international NGOs can occur, but the main role of NGOs in the process remains that of providing information and support. This cross-fertilization of ideas also allows NGOs to learn, adapt, and evolve their positions depending on the information needs of developing country delegates and the information that delegates can supply to international NGOs when they receive inputs from capital.

There is evidence that international NGOs listen to what they hear from delegates and respond accordingly. However, some delegates that were interviewed for the IP-NGOs project were concerned that NGOs have difficulty evolving because they are driven by the demands of their donors. International NGOs must be aware that delegates sometimes harbor these concerns. Nevertheless, international NGOs have worked hard to build a reputation of trustworthiness, and in general, delegates have good working relationships with them. Delegates have the confidence to approach international NGOs knowing that they can work with these groups in a way that is helpful to them. Nonetheless, the relationship between international NGOs and delegations on intellectual property issues can be improved further. The existing relationships are based mainly on contacts at the personal level. Contacts and relationships are not yet at an institutional level and this can undermine continuity when, for example, an individual work-

ing for an NGO leaves their post and is replaced by a new incumbent not known to, or trusted by, delegates.

#### VIII. TEMPORARY AND ISSUE-SPECIFIC RELATIONSHIPS BETWEEN INTERNATIONAL NGOS AND DELEGATES

The extent to which international NGOs provide advice and technical expertise to support developing countries during policy-making and norm-setting activities in multilateral institutions differs, depending on the issue concerned. In part this is because some developing countries have strong views on a particular issue, so the degree of interaction between international NGOs and delegates from developing countries tends to be temporary and issue-based in these instances. However, other developing countries, such as some large, middle-income developing countries, follow a broader range of intellectual property issues closely. In these latter cases, the relationship between international NGOs and delegations may be of longer duration and cut across a range of issues.

Whether linkages between NGOs and delegates are short-term and issue-specific or of longer duration and cutting across a range issues also depends on the particular international NGO involved. Some NGOs deal with a range of intellectual property issues while others deal with specific topics such as access to medicines, farmers' rights, genetic resources and traditional knowledge. It is also the case that some international NGOs have engaged with intellectual property issues for relatively short and defined periods of time, have dropped out of the intellectual property debate once a decision is made in a multilateral forum, and have moved on to other issues and do not maintain their relationships with delegates in the long-term. This was the case in relation to the Doha Declaration to the TRIPS Agreement and Public Health.<sup>16</sup>

Relationships between international NGOs and delegates also change depending on the intellectual property issues involved because different NGOs follow different issues in different forums, for example the CBD, the FAO International Treaty on Plant Genetic Resources for Food and Agriculture,<sup>17</sup> and the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

16. World Trade Org., Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/2, 41 I.L.M. 755 (2002).

17. International Treaty on Plant Genetic Resources for Food & Agriculture, Nov. 3, 2001, available at <http://www.fao.org/AG/cgrfa/itpgr.htm>.

(“IGC”).<sup>18</sup> International NGOs involved with the WIPO Development Agenda may also differ from the groups involved with public health and access to medicines that were discussed in the WTO TRIPS Council because different NGOs prioritize different concerns. Institutional arrangements also matter with WIPO, for example, operating with country groupings that are not present in the WTO context and with international NGOs not able to participate to the same extent in the latter policy-making and norm-setting process.

#### IX. RELATIONSHIPS BETWEEN INTERNATIONAL NGOS AND DELEGATES IN DIFFERENT MULTILATERAL FORUMS

In many instances, the relationship between international NGOs and developing country delegations is further complicated by the fact that there are also different delegates acting as negotiators in different multilateral forums. A developing country, for instance, may well have one negotiator for the TRIPS Council and another for WIPO. There is a danger that this results in contradictory positions from the same country in different forums. The risks associated with this are particularly salient in relation to disclosure of origin issues, where the WTO, WIPO, and the CBD-COP all play a role. This itself emphasizes the coordinating role that NGOs play in bringing coherence within delegations. Where possible, continuity within delegations, for example with the same delegates attending TRIPS Council and WIPO meetings, would assist in ensuring policy coherence without the need for the current level of assistance provided by international NGOs in this respect. Presently, however, international NGOs perform a useful role in facilitating improved policy coherence by developing countries on intellectual property issues by drawing together what is happening in various forums and by drawing in government officials based in capital. In the latter respect, delegates frequently send briefing papers prepared by international NGOs back to capital, where they inform the policy debate at national level. The very fact that briefing papers prepared by international NGOs are sent back to capital in this way may indicate that international NGOs could engage more directly with capitals to assist government officials dealing with intellectual property issues in various policy-making contexts and to better inform the national policy process.

18. World Intellectual Prop. Org., *Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore*, <http://www.wipo.int/tk/en/> (last visited Feb. 13, 2007).

## X. DONORS AND INTERNATIONAL NGOS

The funded activities agreed with donors can also have an impact on the relationships that international NGOs have with delegates to multilateral institutions. Some international NGOs are funded on the basis that their primary function is to support developing countries. As such, these international NGOs are more inclined to be responsive to what developing countries say they want to work on. Other international NGOs are more independent and are much less reliant on developing countries' agendas. The degree of influence that developing countries have over the work undertaken by international NGOs depends therefore on the focus of a particular organization, what their core activity is, and if they perceive themselves as primarily providing support to developing countries.

## XI. ROLE OF EXPERTS

It is impossible for international NGOs to have all the expertise that developing country delegates require in-house. A mixture of in-house and external expertise tends to be the norm. External experts, normally from academia, are often invited by international NGOs to provide policy advice by participating in workshops with delegates, to prepare briefing papers, or to offer advice on an ad hoc basis and at specific events such as a WTO Ministerial Conference or the CBD-COP. These external experts are seen as adding value because NGOs often lack specialist expertise, or because what expertise international NGOs do possess is not of sufficient depth on particular issues. In this respect, experts are used by international NGOs because they provide technical advice and facilitate the process of information exchange and a greater understanding of the intellectual property issues. In terms of allocating resources, it is efficient also for international NGOs to use the expertise of academics to provide in-depth studies that can inform discussions on intellectual property issues. Experts, normally from academia, provide a constant informal exchange of ideas and are perceived as acting in a similar way to experts at capital level who delegates might contact to ask a very specific question in order to be better prepared for a particular negotiation, the expert then responding with advice. Experts are frequently brought in by international NGOs but are not owned by any particular international NGO or even by the NGO community more widely—they are also consulted directly by delegates and the secretariats of multilateral institutions.



## XII. RECEPTIVENESS OF DEVELOPING COUNTRY DELEGATES TO INTERNATIONAL NGOS

The degree to which developing country delegates are receptive to international NGOs also varies depending on the extent that a particular developing country feels that it needs this input. However, even large, middle-income developing countries that receive substantial backup from capital are well aware that international NGOs can be useful because the NGOs can often articulate viewpoints that it would be politically or diplomatically unacceptable for developing country governments themselves to make. In this respect, even developing countries that do not depend on international NGOs can find these groups helpful to their interests, particularly because of the influence that these groups can have in the developed world in terms of public opinion and political agendas.

Overall, although the relationship between international NGOs and delegates varies from case to case, with the informal nature of these linkages making it extremely difficult to accurately evaluate their impact, international NGOs have helped developing countries in thinking about the issues and by allowing them to utilize the expertise that international NGOs can provide. Delegates readily acknowledge the assistance they have received in this respect.

Specific examples of instances where international NGOs have provided advice and technical expertise to support delegates in their negotiations are the Doha Declaration on the TRIPS Agreement and Public Health; the TRIPS Council deliberations on disclosure of origin of genetic resources;<sup>19</sup> the WIPO IGC process;<sup>20</sup> the CBD-COP consideration of disclosure of origin of genetic resources;<sup>21</sup> the FAO International Undertaking on Plant Genetic Resources for Food and Agriculture;<sup>22</sup> the World Health

19. William New, *Biggest Developing Countries Present TRIPS Amendment Proposal*, IP-WATCH, June 7, 2006, available at <http://www.ip-watch.org/weblog/index.php?p=326&res=1024&print=0>.

20. William New, *WIPO Committee To Increase Focus On Genetic Resources*, IP-WATCH, Dec. 16, 2006, available at <http://www.ip-watch.org/weblog/index.php?p=491&res=1024&print=0>

21. Tove Iren S. Gerhardsen, *UN Meeting Adopts Draft Global Regime on Use Of Genetic Resources*, IP-WATCH, Feb. 3, 2006, available at <http://www.ip-watch.org/weblog/index.php?p=213&res=1024&print=0>.

22. Food & Agric. Org. of the United Nations, Comm'n on Genetic Res. for Food and Agric., *International Undertaking on Plant Genetic Resources for Food and Agriculture*, <http://www.fao.org/ag/cgrfa/IU.htm> (last visited Feb. 13, 2007).

Assembly Research & Development Treaty proposals;<sup>23</sup> and the WIPO Development Agenda.<sup>24</sup>

### XIII. NEED FOR AN INCLUSIVE APPROACH

However, international NGOs must avoid being perceived as excluding smaller developing delegations if they work predominantly with large, middle-income developing countries. Some delegates that were interviewed for the IP-NGOs project sensed that international NGOs were not including all delegations in their activities and were focusing instead on the larger delegations that the NGOs perceived as being more influential. An inclusive approach on the part of NGOs is important to ensure that delegations from smaller developing and least-developed countries are also involved in the networking activities of international NGOs. One type of coordination activity that delegates interviewed for the IP-NGOs project suggested in this respect was that international NGOs could meet regularly with groups of delegates, such as with the Asian Group, the Group of Latin American Countries (“GRULAC”), or least-developed countries (“LDCs”). Some delegates also felt that international NGOs should play a greater coordinating role among delegations in different multilateral institutions, engaging in more outreach to delegates that are not the principal players in order to make them aware of the importance of the issues and build a wider basis of support for policy proposals. The need for NGOs to make other delegations aware of developments in the negotiations and to broaden the discussion was raised by most of the delegates interviewed for the IP-NGOs project. Furthermore, while delegates valued the briefing documents they received from international NGOs, when interviewed for the IP-NGOs project they often felt that they had insufficient time to read all the briefings and that these documents could usefully be augmented by regular meetings and workshops and seminars organized to summarize the main findings and recommendations of these briefing documents.

23. Tove Iren S. Gerhardsen, *World Health Assembly Adopts Milestone R&D Resolution*, IP-WATCH, May 27, 2006, available at <http://www.ip-watch.org/weblog/index.php?p=320&res=1024&print=0>.

24. William New, *Agreement Reached On WIPO Development Agenda, Patents; No Broadcasting Yet*, IP-WATCH, Sept. 30, 2006, available at <http://www.ip-watch.org/weblog/index.php?p=410&res=1024&print=0>.

#### XIV. DIFFERING RELATIONSHIPS BETWEEN INTERNATIONAL NGOS AND DEVELOPING COUNTRIES: INTELLECTUAL PROPERTY AND OTHER ISSUES

It is also the case that international NGOs have established close links with developing country delegates in a way that has not been seen in the context of other issues, such as environmental issues or human rights, where international NGOs have historically been perceived as critical of developing countries. In this sense, the work of international NGOs on intellectual property issues has had wider implications because it has led to less suspicion on the part of developing countries about international NGOs and has contributed to improved relationships. The intergovernmental organization South Centre<sup>25</sup> has also played an important role in bringing international NGOs and developing country delegates together.

#### XV. PREPARING SUBSTANTIVE POLICY INPUTS

Typically, developing country proposals are prepared in consultation with international NGOs, and individuals representing NGOs are close to, or depending on the multilateral institution concerned, even inside the negotiating room. These international NGOs help delegates with strategic planning and analysis. This support helps delegates to make informed decisions. It improves the quality of delegates' positions; it increases the confidence of developing country delegations to oppose or support certain issues by showing that credible alternatives are available. It also makes developing countries more assertive in their views. However, international NGOs are not a substitute for intergovernmental decision-making. Some delegates interviewed for the IP-NGOs project felt that, on occasion, they have difficulty in getting neutral answers from international NGOs and that sometimes NGOs lose sight of their role and overestimate what they can achieve. Where international NGOs try to play a more overtly political role, going beyond the provision of advice and technical expertise and advocating particular approaches too forcefully, it was not appreciated by delegates and was felt to be a reason why international NGOs might lose credibility in the future if they are not mindful of the need to be sufficiently evenhanded in the ways that they present information to developing country delegates. Evenhandedness will also allow delegates to be aware of counterarguments as well as the preferred policy positions of the international NGOs themselves.

25. South Centre, Homepage, <http://www.southcentre.org/> (last visited Feb. 20, 2007).

Although there have been some anecdotal reports from those skeptical of the role of public interest NGOs suggesting that this type of international NGO writes proposals for delegates without the delegates fully understanding what the proposal involves in policy terms, which leads to a hiatus in the policy-making process because delegates cannot then sustain an argument in support of the proposals, the validity of this suggestion cannot be confirmed in the absence of substantive evidence that this actually occurs. Certainly, developing country delegates can be very receptive to advice and technical expertise from international NGOs and have come to view international NGOs as important sources of information on intellectual property issues, but developing country delegates are also pragmatic and view international NGOs as only one group of stakeholders that can be listened to and whose views should be taken into account.

#### XVI. INTERNATIONAL NGOS, INDUSTRY ASSOCIATIONS, AND RIGHTS-HOLDER GROUPS

Industry associations and rights-holder groups, such as the International Federation of Pharmaceutical Manufacturers and Associations (“IFPMA”)<sup>26</sup> and the American BioIndustry Alliance (“ABIA”),<sup>27</sup> are also considered important sources of information and are listened to by developing country delegates. However, industry associations and rights-holder groups were considered by delegates interviewed for the IP-NGOs project to be different from public action NGOs because the latter take into account human and societal considerations in a different way. In general, however, industry associations, rights-holder groups, and public action NGOs are all considered by delegates to be stakeholders. They differ to the extent that they have different perspectives on intellectual property.

Developing country delegates collect different inputs from different sources and there is careful thinking before decisions are made on what position to adopt, and in many respects, international NGOs have been able to provide a counterweight to industry associations and rights-holder groups that have had a traditionally stronger voice in, for example, the WIPO context. In this respect, the more recent engagement of international NGOs with intellectual property issues has played a significant role in helping delegates achieve a more balanced view in complex multilateral negotiations.

26. International Federation of Pharmaceutical Manufacturers and Associations, <http://www.ifpma.org/> (last visited Feb. 20, 2007).

27. American BioIndustry Alliance, <http://www.abialliance.com/> (last visited Feb. 20, 2007).

## XVII. PARTICIPATION OF INTERNATIONAL NGOS DURING MEETINGS IN MULTILATERAL INSTITUTIONS

Delegates interviewed for the IP-NGOs project felt that international NGOs can often provide concrete evidence, for example, on differential drug pricing or cases of alleged “biopiracy,” and in this respect, NGOs are helping developing country delegates to advance policy debates. Statements made by international NGOs at WIPO meetings are also considered by delegates to be useful, provided these NGOs do not abuse their position and seek to use the opportunity to publicize their own NGO activities instead of offering substantive inputs for the policy debate. However, whether the participation of international NGOs in multilateral forums influences policy outcomes is questionable. Some delegates interviewed for the IP-NGOs project felt that international NGOs should be trained in making interventions in multilateral forums because they miss opportunities to communicate their positions as effectively as industry associations and rights-holder groups, which tend to bring convincing arguments rather than simply opposing proposals in a general way.

## XVIII. LIMITS TO THE RELATIONSHIP BETWEEN INTERNATIONAL NGOS AND DEVELOPING COUNTRY DELEGATES

Developing country delegates use different advice and technical expertise from different international NGOs and are pragmatic about what advice and technical expertise they find useful at particular moments in time. If the work of international NGOs is useful to delegates, they will use the advice and technical expertise made available to them, either on their own initiative or, where links with capital are well established and coherent, by sending information provided by international NGOs back to capital where it can be considered and acted upon.

If there are differences between the positions being taken by international NGOs and by developing countries, there will be limits to the extent that delegates and capitals will follow the advice given by international NGOs. This is illustrated by the fact that, despite the close relationship that existed between international NGOs and developing country delegates on negotiations leading to the Doha Declaration on the TRIPS Agreement and Public Health on November 14, 2001, developing country delegates did not follow the advice and technical expertise offered by international NGOs during negotiations leading to the August 30, 2003, WTO Decision and the

subsequent December 6, 2005, agreement to amend the TRIPS Agreement in respect of public health imperatives.<sup>28</sup>

But while developing country delegates value having multiple sources of information that provide systematic analysis of the issues, it is not necessarily the role of international NGOs to be the main providers of this information, as is often the case at present. Multilateral institutions themselves could do more to build capacity amongst delegations and to ensure the flow of information to developing country delegates and to government officials at capital level.

One particular issue of concern for some developing country delegates is that international NGOs focus on a limited range of issues, whereas governments must address and balance a range of interests and policy perspectives. But the relationship between international NGOs and delegates is still at an early stage and the relationship can and will evolve in the longer term. In particular, some delegates interviewed for the IP-NGOs project felt that, while NGOs have done good work on particular issues, such as public health and access to medicines or agriculture, genetic resources and traditional knowledge, more technical but equally important issues, such as Patent Cooperation Treaty ("PCT") reform,<sup>29</sup> attract relatively little attention from international NGOs.

#### XIX. INTERNATIONAL NGOS AND DEVELOPING COUNTRY GOVERNMENTS AT CAPITAL LEVEL

At the national level within developing countries, it is often more difficult for governments and NGOs to work together constructively than it is for delegates to work with international NGOs. When international NGOs engage with government officials at capital level, some government ministries are more receptive than others to the advice and technical expertise made available by international NGOs. At capital level the Ministry of Trade, for example, may have different policy priorities than the Ministry of Health. There may even be more than one point of view within the same Ministry. In this context it is instructive to note the issue-specificity of negotiations that take place at the CBD-COP or in the FAO process. Nego-

28. For a detailed account of negotiations on the TRIPS Agreement, public health, and access to medicines, see Duncan Matthews, *WTO Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health: A Solution to the Access to Essential Medicines Problem?*, 7 J. INT'L ECON. L. 73 (2004); Duncan Matthews, *From the August 30, 2003 WTO Decision to the December 6, 2005 Agreement on an Amendment to TRIPS: Improving Access to Medicines in Developing Countries?*, 10 INTELL. PROP. Q. 91 (2006).

29. World Intellectual Prop. Org., PCT Reform Welcome Page, <http://www.wipo.int/pct/reform/en/> (last visited Feb. 20, 2007).

tiations in these forums are limited to specific policy issues. This may account for the fact that some international NGOs perceive it as easier to liaise with developing country delegations there because wider trade issues (and hence government ministries driven by wider trade issues) do not predominate. Of course, national governments also change, so the relationship that developing countries have with international NGOs will always be in a state of flux.

For some developing countries, there is a disconnection between what is happening in multilateral institutions and what is happening in capital. There is a need for international NGOs to organize meetings and workshops at capital level to sensitize government ministers to the implications of intellectual property rights for development policy. Rather than organizing these events on a piecemeal basis, serious consideration should be given to the prospects for international NGOs to enhance their engagement with the intellectual property policy debate by establishing a greater number of national or regional offices in developing countries to link up delegates to multilateral institutions with officials in capital.

For developing countries, bilateral pressures and competing domestic interests need to be taken into account and international NGOs must remain mindful of the extent to which the advice and technical expertise they provide must be considered alongside other factors that may limit the extent that delegates are responsive to them. It is important that international NGOs recognize the pressures that delegates are under and respect their role as providers of advice and technical expertise in the intergovernmental process.

An ideal scenario would be one in which developing country governments undertake national consultations with different stakeholders in society (including NGOs, industry associations, intellectual property rights holders, trade unions, and consumers). The outcome of those consultations could then provide input into the policy process so that governments can make informed decisions on intellectual property issues, and those decisions can then be fed from capital level to delegates representing developing countries in multilateral institutions.

So far, international NGOs have had greater impact in terms of providing advice and technical expertise to delegates than to capital. The process of intellectual property policy-making and norm-setting would be enhanced if capital officials in a greater number of developing countries engaged more actively in policy-making and norm-setting activities that take place in multilateral institutions. It is a matter of some concern that, on occasion, delegates to multilateral institutions participate in intellectual

property policy-making and norm-setting without sufficient input being provided from capital.

An important step towards remedying this dislocation between delegates and capital could be taken if international NGOs that have engaged so successfully in raising awareness of intellectual property issues amongst delegates to multilateral institutions, and subsequently provided advice and technical expertise, were to repeat this at capital level. Appropriate channels for the transfer of information from delegations to capitals may not be in place, so international NGOs could usefully fulfill this role in ensuring that information transfer takes place.

A related problem is how best to translate the agreements reached in multilateral institutions (such as the issuance of compulsory licenses under the August 30, 2003, WTO Decision) into action at the national level. Government officials in capital may well already have been exposed to traditional technical assistance providers from developed country governments, industry associations, and rights-holder groups. International NGOs would be well placed to provide officials in capital with different options and to increase the range of options to which officials in capital are exposed. This would facilitate informed decision making on intellectual property policy in developing countries.

In recent years, a number of international NGOs have begun to play a more technical role at capital level than they did previously, and have provided technical assistance to developing country officials in capital. International NGOs such as CPTech, TWN, and Public Interest Intellectual Property Advisors ("PIIPA")<sup>30</sup> have undertaken work of this type, advising developing countries on technical matters at the domestic level, such as how to issue compulsory licenses, while ICTSD has organized and participated in regional dialogues to disseminate policy-oriented research in developing countries and to inform and promote dialogue. However, the role of international NGOs in providing technical advice and expertise in capitals has not been as prominent as the role of industry associations or rights-holder groups that have frequently carried out capacity building activities focusing on implementation and enforcement of intellectual property rights. Undertaking more sustained work on the provision of advice and technical assistance at capital level should therefore be considered as a core activity by a greater number of international NGOs.

30. Public Interest Intellectual Property Advisors, Inc., <http://www.piipa.org/> (last visited Feb. 20, 2007).



## XX. COORDINATION OF INTERNATIONAL NGOS

International NGOs in multilateral forums liaise in an attempt to avoid undue duplication of their activities. In Geneva, for example, IP coordination meetings have in the past been held every two or three months so that decisions can be made on where to divide activities depending on the mandates of different NGOs. The IP coordination meetings are considered important in Geneva because each NGO has different strengths, and if one NGO does not have the spare capacity or the expertise to pick up a particular issue, others will do so. CIEL, ICTSD, CPTech, QUNO, TWN, and 3D<sup>31</sup> attend these meetings. Although not NGOs, the intergovernmental organizations South Centre and the United Nations Conference on Trade and Development (“UNCTAD”)<sup>32</sup> have in the past also attended these meetings.

At the time of writing, no IP coordination meeting of the NGO community in Geneva has taken place for over six months. One possible reason for this recent relative absence of formal coordination activities amongst Geneva-based international NGO representatives is that donors funding international NGOs are increasingly targeting resources to activities with measurable outcomes. It is regrettable that formal coordination activities are becoming less frequent in the Geneva-based international NGO community at a time when a number of delegates interviewed for the IP-NGOs project indicated that they sensed a lack of coordination amongst the international NGOs and suggested that improved coordination would be welcomed, particularly if this reduced duplication and unnecessary overlaps when international NGOs engage with developing country delegates.

## XXI. RAISING PUBLIC AWARENESS

International NGOs have also played an important role in raising public awareness of intellectual property issues. NGOs have helped the public to understand that intellectual property rights are important for health, education, food, and human rights. Their methods include campaigning websites, newsletters, media and email alerts, sign-on declarations and letters circulated on the internet, and profile-raising awareness events. However, although valuable work to raise public awareness of intellectual property issues has been undertaken by international NGOs over the past five years,

31. 3D: Trade-Human Rights-Equitable Economy, 3D News, <http://www.3dthree.org/> (last visited Feb. 20, 2007).

32. United Nations Conference on Trade and Development, Home, <http://www.unctad.org/Templates/StartPage.asp?intItemID=2068> (last visited Feb. 20, 2007).

more awareness-raising work is needed to highlight the continued significance of intellectual property rights for development policy. Delegates to multilateral institutions change frequently, so there is a constant need for renewal of intellectual property awareness amongst new incumbents. Public engagement on the part of electorates in developed countries can help to ensure that the debate on intellectual property rights and development policy remains high on the political agenda in those countries. In developed countries, international NGOs have helped ensure that the public, politicians, and government officials are now more aware of the impact of intellectual property rights on development policy. Similarly, greater awareness amongst the electorates of developing countries can help to ensure that developing country governments remain focused on the impact of intellectual property rights, for example, when negotiating the intellectual property provisions of free trade agreements.<sup>33</sup>

As a result of the awareness-raising work that international NGOs have undertaken, particularly over the past five years, politicians, policy makers, and the public are now more aware of issues related to intellectual property rights and their impact on developing countries. This is an important addition to the debate and acts as a counterbalance to the interests of producers and intellectual property rights holders. However, there is limited capacity among the international NGOs to take on issues and also limited capacity for the media and the public to take in new issues highlighted by international NGOs.

#### CONCLUSION

Relative to the resources available, international NGOs have had a considerable impact, enriching the debate on intellectual property rights and development policy. However, international NGOs must remain vigilant to ensure that they do not become donor driven, either explicitly or implicitly. Donor dependence can lead to pressures for international NGOs to champion particular issues or to switch attention away from intellectual property rights and towards more tangible issues of immediate concern. Engaging with intellectual property issues requires long-term strategies on the part of international NGOs. This must be underscored by long-term commitment on the part of donors. Over time, the significance of contributions that international NGOs have made to intellectual property policy-

33. Bryan Christopher Mercurio, *TRIPS-Plus Provisions in FTAs: Recent Trends*, in REGIONAL TRADE AGREEMENTS AND THE WTO LEGAL SYSTEM 215 (Lorand Bartels & Federico Ortino eds., 2006), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=947767](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=947767).

2007]

*THE ROLE OF INTERNATIONAL NGOS*

1387

making and norm-setting activities in multilateral institutions will become more apparent, but this is not a short-term process.