**Technical Assistance as a Hedge to Intellectual Property Exclusivity**

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**1 Introduction**

In 2010, a leading observer of international IP law could not hide his dismay at the fact that it was possible to apply for a patent in Kiribati[[2]](#footnote-2) and that there were already about twenty or so, mainly pharmaceutical, patents registered in the patent office of that country.[[3]](#footnote-3) While debates about the technical feasibility and economic viability of establishing and sustaining an IP-right system in a country such as Kiribati is beyond this chapter, the above narrative makes one thing clearly apparent: IP is widely diffused. This diffusion has come about through the diverse processes and venues explored in the general introduction to this volume and through the operation of a powerful narrative that emphasises the importance of IP protection for national development. Thus, while the diffusion relates to increased globalisation, continuous trade liberalisation and foreign direct investment regimes, it also relates to an issue that has not always been highlighted – the process of neo-colonialism, or what some call neo-colonial constitutionalism.[[4]](#footnote-4) This chapter explores the connection between neo-colonialism and IP. An essential part of the process of neo-colonialism by economic means has been the establishment of a legal framework of IP that confers legally enforceable rights that support and safeguard economic penetration and control. This framework includes, in a similar way as in colonial times, a guarantee of protection of foreign property rights in developing countries.[[5]](#footnote-5) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and other hard norms, such as TRIPS-plus bilateral treaties concluded between the EU, the US and developing countries, further contribute towards such neo-colonial control. They promote a particular vision of economic ordering that seeks to increase the level of IP protection beyond that required by TRIPS.

Even so, an often overlooked, but important aspect of such control is that, once these treaties have been concluded, the EU, the US and other co-opted international organisations, such as the World Intellectual Property Organization (WIPO), actively offer technical assistance – the drafting of new laws, guidance on IP enforcement and capacity building (for example, training of judges and IP office staff). The policy of offering technical assistance has often been criticised for introducing levels of IP protection that are inappropriate for the social and economic development of developing countries.[[6]](#footnote-6) Indeed, one commentator has even argued that the provision of technical assistance to build capacity is itself part of the reproduction of the dominant Western-constituted view of IP rights and is, therefore, a political project rather than a mere technical provision or neutral measure.[[7]](#footnote-7) Using this argument as a starting point, this chapter will argue that technical assistance – as a third layer of norms, in addition to existing multilateral, mega-regional and bilateral agreements – has become the ‘new informality’ emphasised in the new constitutionalist literature.[[8]](#footnote-8) Technical assistance programmes further hedge IP exclusivity by creating an elite IP community in developing countries that sees things through the dominant industrialised-country approach, effectively leading to epistemic lock-in. Technical assistance, therefore, functions as a facilitator of the constitutionalisation of IP rights.

This chapter proceeds in seven Sections. As ‘technical assistance’ is not clearly defined in the literature, Section 2 considers definitions of the term and its legal basis. To provide the context and set the basis for the overall argument in this chapter, Section 3 briefly explores the ‘new informality’ under the discourse of new constitutionalism. Section 4 then follows with an analysis of the way in which the new informality was operationalised in the post-war era – even before the terminology had become mainstream – through the offer of technical assistance. Section 5 introduces the WIPO Development Agenda and the expansion of technical assistance in the 1990s. Section 6 focuses on demonstrating how WIPO technical assistance hedges IP exclusivity. It elaborates three key issues that potentially point to the latter: (1) the content of the WIPO technical assistance programme; (2) WIPO’s source of funding and treaty-making function and (3) the WIPO-WTO Agreement. The concluding section summarises the chapter’s findings and observations.

**2** **What is Technical Assistance?**

There is no generally-acknowledged legal definition of technical assistance (the treaties dealing directly or indirectly with IP rights do not attempt to define it). Scholars have therefore attempted to define the term as the support provided by a donor institution to build or enhance the capacity ‒ whether human, infrastructural or financial ‒ of the recipient to deal with a particular issue.[[9]](#footnote-9) In their recent review of the WIPO technical assistance programme, Carolyn Deere Birkbeck and Santiago Roca provided a structural definition of the term in a way that refers to all that WIPO does under its technical assistance programme.[[10]](#footnote-10) In the absence of a legal definition, TRIPS Art. 67 provides a legal basis for technical assistance, laying a foundation for the use of technical assistance in a broad range of areas of IP governance. It provides that:

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel*.*

The provision lays the conditions for technical assistance and describes the kind of assistance to be offered – categorically specifying that developed countries are to provide assistance in favour of developing and least developed countries (LDCs). One school of thought argues that this provision does not define the types of technical assistance to be offered in an exhaustive manner and that technical assistance can encompass other activities or fields where the recipients and providers feel a need.[[11]](#footnote-11) Alternatively, it has been argued that this is not a neutral or merely technical position but, rather, a normative position into which WTO members are to be socialised.[[12]](#footnote-12) Indeed, it should be remembered that the provision opens by restricting the scope of the kind of technical assistance that is to be offered – only activities that will facilitate implementation of the agreement. This suggests that topics and fields of IP that are of key importance to developing countries and LDCs – but which do not fall within the mandate of the TRIPS Agreement – may not necessarily be covered. For instance, developing countries are passionate about ‒ and are most likely to receive substantial benefits from ‒ protection of traditional knowledge, traditional cultural expressions and genetic resources. However, these may not necessarily be the subject of technical assistance based on the TRIPS model.

Duncan Matthews has noted that there are in-built limits to Art. 67 and that these limits have important consequences for the quantity and quality of technical assistance provided. First, by requiring developing countries to request assistance from developed countries, and by requiring the providers and recipients of technical assistance to mutually agree on terms and conditions, there is a risk that Art. 67 perpetuates a dependency culture, with developing countries required to ask developed countries for assistance in a manner that may be locally inappropriate. Second, by explicitly referring to the fact that technical assistance is to include protection and enforcement of IP rights, the provision fails to place an explicit obligation on developed nations to assist developing countries in utilising TRIPS flexibilities, such as those relating to compulsory licensing and parallel importation. As will be seen in subsequent sections of this chapter (for example, in Sections 5 and 6), the issues raised above align with some of the concerns raised about the nature of technical assistance.

**3 The New Informality as New Constitutionalism**

The importance of law and constitutionalism for the study of global political economy is emphasised in the new constitutionalism literature[[13]](#footnote-13) – even though, until recently, political economy and global constitutionalism have been considered to be disconnected.[[14]](#footnote-14) The idea of the ‘new informality’ is one of the new constitutionalist discourses that showcases the connection. It is a description of the proliferation of soft, self-regulatory and ‘flexible’ or ‘double’ legal standards.[[15]](#footnote-15) Technical assistance (or the social processes associated with professionalisation and technical expertise), among others, fit into this framework.[[16]](#footnote-16) While ‘informal’ or soft in approach, these processes advance and legitimise the new constitutionalism as a global rule of law – a form of agency that is intended to transform the legal orders of the global south to make them more consistent with the new constitutionalism.[[17]](#footnote-17) Leading commentators have tried to show the structural role that the rule of law plays in the governance of capitalism: from property rights to contract law, from the legal personality of corporations to the alienation of labour’s outputs, law underpins and facilitates the operation of capitalist markets.[[18]](#footnote-18) International organisations like the World Bank have sought to promote the forms of law that support capitalism and privilege certain (class) interests by depoliticising them as technologies of economic growth.[[19]](#footnote-19)

Christopher May has argued that ‘*if the new constitutionalism represents one part of the neo-liberalization of the global political economy, then this is founded on the establishment of the rule of law as (potentially) universal common sense*’.[[20]](#footnote-20) A political economy perspective on global constitutionalism, therefore, exposes the potential for naturalisation of its neo-liberal and neo-colonial features.[[21]](#footnote-21) Technical assistance (and professionalisation) is the means through which the rule of law and its neo-colonial elements are propagated in the field of IP. In this regard, Christopher May has argued that, since the legitimation of any specific legal system as a technology of governance cannot be achieved simply through coercion exercised by the governing class but must receive the consent of the governed, it is important to recognise that, in establishing and reproducing a particular form of the rule of law, the new constitutionalism is driven by a specific political project in IP: technical assistance and professionalisation.[[22]](#footnote-22) He further argues that this project is not accidental or organic but, rather, serves the particular interest of neo-colonialism and capitalist market forces, supported by recognisable actors (such as the World Bank, WTO and WIPO, among others). Technical assistance thus reflects the wider global political (and geopolitical) aims of the donor countries. These aims vary according to the target country, national commercial interest, past colonial ties and geographic proximity – hence, the criticism that technical assistance is narrow in approach and focuses only on compliance.

Although the new constitutionalism proceeds at the global level (in the form of rules-based constitutionalism or quasi-constitutional structures):

[r]ather than focusing on the rights and obligations of the global citizenry relating to a globalized governing body (or bodies), it is concerned with a much smaller group: global capital and its operating agents, corporations (both national and multinational).[[23]](#footnote-23)

Technical assistance serves as a fertile ground for nurturing such schemes. In this regard, technical assistance as a norm can be said to be an incubator through which the new constitutionalism is propagated. It seeks to establish and sustain an understanding of the rule of law largely by those it governs as uncontroversial and non-problematic: a self-evident foundation for the organisation and understanding of their everyday lives and more broadly for global politics.[[24]](#footnote-24) A good example is the current framework of the WIPO technical assistance programme, which is designed in such a way that it is based on a request from developing countries.[[25]](#footnote-25) This represents a subtle way of depoliticising it and amounts to saying ‘*if you have asked for it, then it must be beneficial for you*’. Yet it has been found that one of the factors that impeded development-oriented WIPO assistance – in a decade following the call for a Development Agenda – was inconsistent demand for development-oriented assistance by recipient countries.[[26]](#footnote-26) How can we account for a situation in which developing countries demand legal technical assistance that is inconsistent with their development needs when given the opportunity?

In what follows, the process through which technical assistance became a tool for the propagation of Western-style IP norms in the developing world will be explored in greater detail. Although multiple actors and donors are involved in the offer of technical assistance (multilateral, bilateral or unilateral), this chapter focuses on technical assistance provided by WIPO. The reason for this choice is that, for more than four decades, WIPO has provided technical assistance to its developing country members and, to date, remains the largest (and broadest in portfolio) provider of technical assistance and capacity building for developing countries.

**4 The Post-war Era, Neo-colonialism and the Emergence of Technical Assistance**

Technical assistance has roots in the project of development. In its original form, technical assistance was propagated as a form of aid to promote the development of less-developed countries post-independence. A notable example was US president Harry Truman’s Point Four Program,[[27]](#footnote-27) which is widely considered to mark the birth of the development paradigm in politics. In the aftermath of independence, development of the Third World was seen as crucial, and development was expected to occur via technological transfers.[[28]](#footnote-28) An explicit assumption of development theories of this period was that the US and Western European nations had achieved a high level of development because their IP systems fostered innovation. Therefore, what worked for the West should work for the rest.[[29]](#footnote-29) IP was thus initially pushed as an element of development for developing countries. Unsurprisingly, most of the developing world embraced it. As Antony Anghie puts it, ‘*development, just like good governance, has a very powerful and apparently universal appeal: all peoples and societies would surely seek good governance — in much the same way that all peoples and societies were seen as desiring development*’.[[30]](#footnote-30)

It may be recalled that even before the post-war era, Western European colonial powers had already widened their sphere of influence by extending their laws on IP, and the international conventions to which they were bound, to their colonies. For example, the Paris and the Berne Conventions ‒ European architecture in both instances ‒ contained provisions enabling European countries to incorporate their colonial territories into the new IP Unions as ‘*Countries of the Union*’ without being regarded as members thereof (the so-called Art. 26 countries in reference to the Berne Convention).[[31]](#footnote-31) This act of incorporating the colonies enabled right- holders from the Member Countries to enjoy protection not only within Member Countries of the Unions but in all overseas territories. The colonised peoples, on the other hand, were barred from obtaining copyright or patents.[[32]](#footnote-32) As such, the standards that were transplanted to colonial territories not only ignored local conditions but also hampered access to the information, knowledge and technology needed for competitiveness, internal growth and development.[[33]](#footnote-33) It is therefore not surprising to see continuing advocacy for such a system in the post-colonial era.

Various legal and political efforts were undertaken during the decolonisation period. First, the United International Bureaux for the Protection of Intellectual Property (BIRPI) – in charge of administering the Berne and Paris Conventions ‒ moved swiftly to facilitate a system whereby newly independent states in Africa and Asia that were no longer bound by Berne’s colonial clause could issue ‘*declarations of continued adherence*’.[[34]](#footnote-34) While the Paris and Berne Conventions did not contain any provision for ‘*declarations of continued adherence*’, it would appear that BIRPI initially devised a liberal construction of the texts to secure the so-called Art. 26 countries as contracting members. Once that was achieved, the texts of the treaty were interpreted strictly in defining their obligations to provide high protection.[[35]](#footnote-35) Many developing countries declared their adherence to or acceded to the Berne Convention.[[36]](#footnote-36) In 1964, in the area of patent law, BIRPI published a Model Law, which promoted inventions for developing countries.[[37]](#footnote-37) This model law had been drawn up in response to pressure from industrialised nations for developing countries to join the ‘*community of nations*’ in the Union. Just as in the case of copyright, many developing countries modelled their patent and design laws on the BIRPI Model Law. Alan H. Lazar has argued that BIRPI was complicit in neo-colonialism because its initial actions concerning the Paris and the Berne Conventions led to a lock-in situation for developing countries.[[38]](#footnote-38)

As a next step, the EU and the US forged a network of international organisations (WIPO, UCC, WTO, UNCTAD and UNDP) and donor agencies such as the World Bank and IMF which positioned IP rights as an essential policy tool to transform creativity and innovation into sustainable development.[[39]](#footnote-39) This happened through technical assistance in the form of seminars and workshops held in Africa, Asia and South America in the 1960s – facilitated by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), where the expansionist narrative was presented as advantageous to the newly independent countries.[[40]](#footnote-40) In the process, local IP elites (professionals) were generated. The members of these elites were more concerned with the development of the international IP system than with the development of their own countries.[[41]](#footnote-41) Christopher May has, for instance, noted that the move in global politics ‒ from discussions of power based on territory and/or resources to discussions of power based on knowledge and expertise ‒ is a form of professionalisation.[[42]](#footnote-42) It promotes a higher status for a particular profession in the socio-political order through control exercised over (re)definition of the field in which the professionals operate and, further, seeks to establish and maintain the scarcity (and thus the value) of their expertise.[[43]](#footnote-43)

The relationship that has developed over time between WIPO officials, IP office staff and diplomats in developing countries is of the same order. Increasingly, most national IP offices in the developing world rely heavily on WIPO and other developed country donors for technical, financial and in-kind assistance. In most cases, these IP offices are technical agencies at the domestic level and tend to attract little interest from their ministries or the relevant minister[[44]](#footnote-44) – except where the IP office forms part of a government ministry.[[45]](#footnote-45) This often leads to limited contact between IP officials and government departments, a situation that leads to a situation in which the policies of IP offices have few links to broader national development.[[46]](#footnote-46) While WIPO intervention can help build the professional capabilities, know-how and institutional knowledge necessary for developing countries, on the other hand, that very intervention lends WIPO and other donors the power to promote their particular perspectives on IP protection.[[47]](#footnote-47) It also fosters a transnational peer group of IP professionals who identify more closely with a network of international IP policy experts and officials – and with the objectives of WIPO – than with other colleagues within national governments or with national development objectives.[[48]](#footnote-48)

The story of Africa is a good example. Regional arrangements in the aftermath of independence facilitated the enduring influence of former colonial powers and WIPO on IP laws. Today the only continent to have two regional IP organisations is Africa. In 1962, the French National Patent Rights Institute and BIRPI assisted former French colonies to create the Organization Africaine de la Propriété Intellectuelle (OAPI), establishing a unified IP system with a central patent office for Francophone countries. Similarly, in 1976, WIPO and the United Nations Economic Commission for Africa (UNECA) facilitated the creation of the African Regional Intellectual Property Organization (ARIPO) for Anglophone countries and served jointly as the Secretariat of ARIPO until 1981, when the organisation established an independent Secretariat. Although the regional legal regimes and institutional framework for Anglophone and Francophone Africa differ in many respects, in both cases their members delegated significant responsibilities to their respective regional secretariat, with WIPO serving as their core source of financial, human, legal and organisational support.[[49]](#footnote-49) The WIPO Secretariat, for instance, hosts the website of both ARIPO and OAPI, has provided staff training, drafted legal texts for their respective conventions, and was involved in shaping their strategic direction through regular ‘tripartite meetings’ of the Secretariats.[[50]](#footnote-50) In the case of OAPI, legal and technical assistance from WIPO for its regional IP accord, the Bangui Agreement,[[51]](#footnote-51) ensured that this Agreement was one of the most ‘TRIPS-plus’ pieces of legislation among developing countries even though thirteen of its seventeen Members are LDCs.[[52]](#footnote-52) Governments within the region are still struggling to accumulate sufficient expertise and influence over the OAPI Secretariat to revise the Agreement to better take advantage of the TRIPS flexibilities.[[53]](#footnote-53)

Perhaps the key question, therefore, is whether IP-related technical assistance has the desired effect of generating economic development. How is it that the former European colonies in Africa, Asia and the Pacific account for virtually all of the states currently identified bythe UNDevelopment Programme(UNDP)as least developed?[[54]](#footnote-54) If anything, the number of LDCs has doubled since 1971.[[55]](#footnote-55) This has led one commentator to conclude that the economic situation of most LDCs in the 1800s (when the Paris and Berne Unions were formed) and even in 1948 (immediately preceding their independence) was better than it is today for most of them.[[56]](#footnote-56)

**5 The Formation of WIPO, the Development Agenda and Expansion of Technical Assistance**

In 1970, BIRPI became WIPO. This reform was necessary in order for the organisation to become what its leadership had aimed for – a United Nations (UN) specialised agency and the primary UN actor in the area of IP. This was achieved in 1974. Interestingly, however, while one of the objectives for opting to become a specialised UN agency was to attract more developing countries to the organisation, it would appear that the move had little to do with the development of these countries.[[57]](#footnote-57) Arpad Bogsch recounts how he and others took the view that:

What was of prime importance was that the developing countries should belong to the international intellectual property system so that the protection of intellectual property might extend all over the world, or at least to the great majority of the countries.[[58]](#footnote-58)

This objective found expression in the WIPO Convention.[[59]](#footnote-59) Indeed, technical assistance was one of the seven functions envisaged for the organisation in its founding Convention.[[60]](#footnote-60) Yet when the developing countries reiterated the need for development objectives to be central to WIPO’s mandate based on its 1974 Agreement with the UN, which assigned to WIPO the responsibility ‘*for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development’*,[[61]](#footnote-61) developed countries resisted. They argued that WIPO’s legal foundations and mandate for promoting and protecting IP, as found in the WIPO Convention and ratified by 191 Member States, had not been modified by the UN Agreement or the Development Agenda.[[62]](#footnote-62) The Development Agenda derived from decisions adopted by the WIPO General Assembly; they were not formal amendments to the organisation’s mandate as stated in the WIPO Convention, which would require a treaty amendment.[[63]](#footnote-63)

What this teaches us is that, clearly, the forces that support a reading of the WIPO mandate that privileges private rights are difficult to overcome. Repeatedly, debates on WIPO development cooperation activities occur amidst such power asymmetries and persistent pressure from private interest groups who favour stronger IP policy and rules globally.[[64]](#footnote-64) The developed nations ‒ with their greater economic power, technical/legal capacity and diplomatic resources than the developing countries across international IP relations ‒ have long dominated agenda-setting at WIPO.[[65]](#footnote-65)

The call for a Development Agenda (what some call the new development agenda)[[66]](#footnote-66) by the developing countries in 2004 was in part, a response to the failure of the ‘*old development agenda*’[[67]](#footnote-67) and increasing frustration experienced by developing countries in the aftermath of TRIPS. While working to implement the Agreement, developing countries faced mounting pressure in multiple international fora – at WIPO, the WTO, and in bilateral and mega-regional negotiations – to limit their use of TRIPS flexibilities and to further strengthen international and national IP rules beyond the TRIPS minimum standards. This mushrooming of IP treaties required major legislative, enforcement and administrative changes by the developing countries. The absence of sufficient internal capacity to deal with these issues coupled with the prospects of future sanctions required developing countries to accept technical assistance in implementing these measures.[[68]](#footnote-68) This forced them to rely on external financial, legal and technical assistance.

Thus, in their call for a Development Agenda, developing countries, among others, called for greater development-orientation in WIPO’s capacity building; separating the divisions of the Secretariat involved in the administration of WIPO’s capacity-building activities from those engaged in its norm-setting activities, and establishing principles and guidelines for WIPO technical assistance work and evaluation. In 2007, WIPO formally adopted the Development Agenda, which included forty-five recommendations (out of the 111 proposals submitted) for enhancing the development dimension of the organisation. Hailed in some quarters as a major success for developing countries because of its shift away from the simplistic one-size-fits-all or, more precisely, the super-size-fits-all approach that has dominated international IP law and policy in the past few decades,[[69]](#footnote-69) numerous scholars have nevertheless emphasised the importance of understanding the Development Agenda’s adoption as a negotiated outcome born of strategic compromise rather than a statement of political consensus.[[70]](#footnote-70)

Apparently, at the 2007 WIPO annual Assemblies, Member States were unable to agree upon the organisation’s programme and budget for the next biennium. Developing countries were determined to bury the push for substantive patent harmonisation. At the same time, there were growing allegations of misconduct and mismanagement on the part of the WIPO Director-General. ‘*When developed countries spearheaded a campaign to remove him, the besieged Director-General backed the Development Agenda as a way to secure developing country support*’.[[71]](#footnote-71) It has therefore been suggested that ‘*understanding the adoption of the WIPO Development Agenda as a political compromise, rather than a shared desire for a coherent or measurable agenda for action, helps explain its mixed bag of recommendations*’.[[72]](#footnote-72)

The Development Agenda is divided into six thematic clusters and has, as the title of its first cluster, ‘*technical assistance and capacity building*’. Recommendation one of the above cluster ‒ which was earmarked by the 2007 General Assembly for immediate implementation ‒ states that WIPO technical assistance ‘shall be’ development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States. It further asserts that the design, delivery and evaluation processes of technical assistance programmes should be country-specific.[[73]](#footnote-73) Peter K. Yu has stated that what this meant is that instead of taking a top-down approach, in trying to determine what IP issues will be important to promote development objectives, it is important to embrace a bottom-up approach that uses local needs, interests, conditions and priorities as the starting point.[[74]](#footnote-74) Mart Leesti and Tom Pengelly echoed similar sentiments when they intimated that ‘*assessment of technical assistance and capacity building requirements of a developing country should be based on what that country needs, rather than on what a donor country wants, or is able, to provide*’.[[75]](#footnote-75) However, it will appear that with regard to technical assistance from WIPO (and other bilateral donors such as the EU), the norm is what the donor wants, or is able to provide. This somehow affirms the claim that adoption of the Development Agenda should be seen as a political compromise rather than a shared action.

**6 How WIPO’s Technical Assistance Hedges IP Exclusivity**

Broadly, WIPO technical assistance activities generally fall within one of the following categories: (1) legislative and policy advice; (2) training and human resource development for administrating IP systems (courses, seminars, workshops and the like); (3) administrative and IT support to national governments (including automation and computerisation), or (4) institutional support for improved IP enforcement.[[76]](#footnote-76) These align with WIPO ‘development cooperation’ – comprising capacity building, legal assistance and training – key areas that developing countries have pointed to as problematic.[[77]](#footnote-77)

Some large developing countries have voiced concerns about the lack of transparency in WIPO development activities, bias in their content, and the background of the resource persons used for its assistance training. They argue that WIPO’s work favours developed countries and the commercial interests of IP right-holders. In addition, they complain that WIPO has not properly advised developing countries of the ‘flexibilities’ available when implementing international norms (such as the TRIPS Agreement) or adequately assisted them to tailor national IP systems to local development needs.[[78]](#footnote-78) The WIPO technical assistance programme has therefore been criticised as a direct effort to buy stronger IP administration in developing countries. Critics have warned against assumptions that WIPO’s assistance embodies the neutrality and development-orientation anticipated of UN agencies.[[79]](#footnote-79) Despite this, technical assistance has been (and continues to be) used extensively to establish the rule of law in developing countries. In what follows, three key issues are explored that illustrate how WIPO technical assistance might serve as a hedge rather than a developmental tool for developing countries: (1) the content of the WIPO technical assistance programme; (2) WIPO’s source of funding and treaty-making function and (3) the WIPO-WTO Agreement.

**6.1 Content of the WIPO technical assistance programme**

WIPO’s position as the largest provider of multilateral technical assistance has afforded the organisation an opportunity to nurture and legitimatise the constitutionalisation of IP norms globally. As noted earlier, a policy vacuum at the national level has meant that developing country governments have widely depended on external expertise, technical advice and capacity building, even to the extent of relying on advice on the type of technical assistance needed. This reliance has provided the space for the expectations, interests and priorities of trading partners, foreign companies and donors – and in particular, WIPO – to shape the purpose and content of the technical assistance and capacity-building provided.[[80]](#footnote-80)

An immediate catalyst for the above has been the enduring relationship that has built over time between the WIPO Secretariat and national and regional IP offices in the developing world – the consequence of which is the emergence of a professional elite in these countries whose incentives and priorities for negotiating with WIPO are usually inconsistent with national needs, including primarily the need to ensure national development.[[81]](#footnote-81) Accepting the idea that enhanced IP rules leads to development, IP officials (and offices) in developing countries tend to focus on modernising and making use of the IP system (in terms of regulation), believing that this will bring about development.[[82]](#footnote-82) That being the case, the emphasis has often been placed upon projects to modernise the infrastructure of their offices, for training opportunities (such as those available through the WIPO Academy), and drafting of laws. As explored earlier (and also below), questions arise concerning the kind of training provided and the laws that are drafted. Strong IP rights can hinder, rather than facilitate, technology transfer and indigenous learning in the early stage of industrialisation when learning takes place through reverse engineering and duplicative imitation of mature foreign products.[[83]](#footnote-83) It is only after countries have accumulated sufficient indigenous capability, with an extensive science and technology infrastructure sufficient to undertake creative imitation that IP rights become an important element in technology transfer and industrial activities.[[84]](#footnote-84)

Regarding infrastructure, the WIPO website highlights IP office business solutions as one of the areas in which it offers technical assistance to developing and LDC governments, enabling them to participate effectively in the global IP system.[[85]](#footnote-85) IP office business solutions aim to help IP offices deliver better services to their stakeholders through:

* efficient automated and standardised business processes for IP administration;
* online services, including search, registry and filing systems;
* integration into regional and international systems to enable the electronic exchange of data and documents.[[86]](#footnote-86)

Arguably, while such investment in IP infrastructure and administration of developing countries’ IP offices can help them exploit the IP system to the benefit of their innovators, this mechanism only serves to give the donors and WIPO the power to promote their particular vision of IP – in particular, in the areas of patent and trade marks – as these are areas where foreign companies most often seek protection in developing countries. In India, for example, IP is mainly leveraged by foreign entities and the data suggests that the local community of entrepreneurs and inventors has not yet fully grasped the economic opportunities of IP.[[87]](#footnote-87)

The WIPO Academy, a project under the WIPO technical assistance scheme that provides assistance to Member States to establish IP training institutes (IPTIs), and a series of seminars and training programmes in Geneva, initially offered a variety of distance learning courses that covered the fundamentals of the IP system – ranging from copyright to trade marks and from patents to trade secrets. The activities of the Academy were criticised as not necessarily beneficial to developing countries as they did not cover fields such as protection of traditional knowledge and cultural expression, geographical indications, utility models and industrial designs.[[88]](#footnote-88) In response, the WIPO recently added distance learning courses in the above fields (except for utility models) and especially, one on intellectual property, traditional knowledge and traditional cultural expressions to its Academy.[[89]](#footnote-89) While this is commendable, only the staff of IP offices and government officials in developing countries have free access to that particular course. Besides, compared to treatment of other areas of IP, it could be said that the course on IP and traditional knowledge is merely a patchwork, not to mention uninspiring. Considering that for seventeen years developed nations have succeeded in stalling the conclusion of an international treaty for the protection of traditional knowledge at WIPO,[[90]](#footnote-90) it is doubtful if such a course can be insulated from such political pressure.

Furthermore, WIPO, in particular, has funded a limited number of longer-term scholarships for developing country IP officials to attend postgraduate courses in IP subjects, typically at universities in Europe and North America.[[91]](#footnote-91) In addition, the organisation has instituted what it calls the ‘*policy training programme*’.[[92]](#footnote-92) This programme is designed to create an appropriate forum for the highest levels of policymakers such as finance ministers and technology and development ministers to discuss and learn about IP and the IP system, to deepen their understanding of the critical importance of IP to economic, social, cultural and technological growth and development, and to better understand the value and benefits all countries derive from the incentives and infrastructure which the IP system provides.[[93]](#footnote-93) In other words, the programme aims to show that the IP system is not a piece of bureaucracy that can be buried away and forgotten, but is one of the fundamental institutions required for a country’s economic growth.[[94]](#footnote-94) Similarly, a recent WIPO PCT working paper noted that developed countries ‘help’ developing countries build capacity by training their patent examiners, either at WIPO or by hosting trainees in their patent offices.[[95]](#footnote-95) As Peter Drahos has shown, either way, the training process socialises these IP officials and new examiners into the practices of high-protection countries and tends to bias their decision-making.[[96]](#footnote-96)

Another issue has to do with the background of consultants or technical experts who are contracted to deliver training for WIPO technical assistance. Evidence from a 2011 independent review of the WIPO technical assistance programme found that across WIPO’s broad array of global events and training, speakers remained predominantly from IP offices, IP right-holders, the IP legal community and other industry-related stakeholders.[[97]](#footnote-97) Also, WIPO technical assistance activities are often subcontracted to consultants known to be funded by ‒ or who conduct work primarily for the benefit of ‒ developed-nation industry clients.[[98]](#footnote-98) An example of this phenomenon is provided by the Washington DC-based International IP Institute.[[99]](#footnote-99) Besides offering training on issues that the donors require, these experts are usually not in a position to talk about issues such as traditional knowledge or compulsory licensing as they either do not have the expertise or are not interested in the subject. In recent times, WIPO has also used staff from developing countries. However, it is uncertain how this has changed the course of the assistance given (in terms of content and training) as these experts already belong to the professional network of elites discussed earlier.

Finally, it could be argued that the weakness in the delivery of WIPO technical assistance derives largely from the lack of a comprehensive programme or methodology for assisting developing countries to assess their development needs in order for them to ask for the appropriate technical assistance. Limited financial resources and constraints on technical capacity with respect to understanding the issues and analysing national interests and to poor communication between stakeholders in the field of IP, most developing countries are unable to participate effectively in this needs-definition process. As a consequence, they have to rely on WIPO. As noted above, assessment of IP technical assistance needs is generally carried out by technical experts, frequently a patent or trade mark specialist from developed country IP offices.[[100]](#footnote-100) This often results in the setting up or modernisation of policies, laws and institutions for the establishment, administration and enforcement of IP rights in developing countries that are based largely on developed-country models rather than on the actual clearly defined needs of stakeholders in beneficiary countries.[[101]](#footnote-101)

The example of Cambodia is telling. At the time that the country was preparing to join the WTO, Médecins Sans Frontières *(*MSF) reported that the draft patent law submitted by WIPO to the government did not take account of TRIPS flexibilities and that WIPO had not informed Cambodia of the effect of the Doha Declaration on the TRIPS Agreement and Public Health. Besides, the government was not made aware that, as an LDC at that point, it was not required to grant or enforce patents for pharmaceutical products until 2016[[102]](#footnote-102) (now 2033)[[103]](#footnote-103) or until it ceased to be an LDC. As a consequence of such failures, critics have called for technical assistance to be used to foster the ability for developing country governments to use the IP system for their national development. This can happen by focusing on elements such as institutions of technology transfer, compulsory licensing regimes (and parallel importation), limitations and exceptions and countering anti-competitive behaviour by IP right-holders.[[104]](#footnote-104) Evidence suggests that such imperatives are not always reflected in the kind of technical assistance offered by WIPO. The omission of these sets of issues is particularly disturbing as ‒ in the IP system ‒ limitations and exceptions are as important as rights.

Until 2016, when the Committee on Development and Intellectual Property (CDIP) requested the Secretariat to compile its existing practices, tools and methodologies for providing technical assistance,[[105]](#footnote-105) WIPO had not yet developed any comprehensive programme or methodology for assisting developing countries to assess their development needs, IP capabilities, or appropriate strategies to tackle those objectives.[[106]](#footnote-106) A 2018 document from WIPO fulfilling the above request mentions assessment of needs, planning and design, implementation and monitoring and evaluation as key steps guiding the processes of technical assistance.[[107]](#footnote-107) While this is a welcome development, these processes remain superficial as the document does not explicitly provide any ‘participatory checklist’ for assessing these needs as exemplified by the Needs Assessment Toolkit for IP-related financial assistance and technical assistance commissioned and applied by the International Centre for Trade and Sustainable Development (ICTSD),[[108]](#footnote-108) nor does it direct countries to utilise the Toolkit. Although the WIPO technical assistance programme has been seen as less biased than much of the bilateral assistance on offer from the EU and the US, the organisation’s assistance has been deemed an important target for reform given the organisation’s outsized influence on the socialisation of IP professionals in developing countries and on draft IP legislation.[[109]](#footnote-109)

**6.2 WIPO: source of funding and treaty-making function**

Nascent scholarship on WIPO technical assistance generally links WIPO’s pro-IP culture to its source of funding. This, commentators lament, also makes it difficult to insulate the organisation’s assistance programme from political pressure.[[110]](#footnote-110) WIPO is a relatively rich organisation financially and about 95 per cent of its funding comes from the private sector.[[111]](#footnote-111) From 2004 to 2015, the organisation raised between 89 per cent and 94 per cent of its income from fees paid by applicants in exchange for WIPO treaty-related services.[[112]](#footnote-112) These are the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks (the Madrid System) and the Hague Agreement for the International Deposit of Industrial Designs (the Hague System) – what the staff of WIPO call ‘*its business operations*’. For the 2018‑19 biennium, fee income from the PCT, Madrid and Hague registration systems represents 95 per cent of the organisation’s total income: PCT fee income alone represents 77 per cent.[[113]](#footnote-113) Notably, Member States contribute less than 5 per cent of WIPO’s annual budget (of which the contribution of most developing countries is a minor percentage and many have been in arrears for several years). As a consequence, Member States (especially developing country members) have long lacked a strong and direct financial stake in the way in which the organisation’s resources are spent.[[114]](#footnote-114)

Until 1995, the majority of WIPO technical assistance concerned the execution of projects funded by the United Nations Development Programme (UNDP), which was WIPO’s most significant partner within the UN family at that time. However, from 1995, following an increase in its revenues, the organisation began to devote its own funds to these programmes and expand them in order to meet growing needs by developing countries in connection with the implementation of the TRIPS Agreement. Thus, the scale of WIPO technical assistance in recent times has been linked to funding derived from the administration of its Global IP protection, which brings in the bulk of the organisation’s income and finances the majority of its technical assistance.[[115]](#footnote-115) Businesses, inventors and researchers from developed nations are the largest users of the WIPO treaty system. This is especially true of the Hague and Madrid Systems.[[116]](#footnote-116) The only exception is the PCT which, until the mid-1990s, saw Europe and North America together account for about 88 per cent of total filings.[[117]](#footnote-117) This changed last year as the latest report shows that more than half of total filings came from Asia.[[118]](#footnote-118) Despite this recent trend, the developed nations ‒ who have long established their grip over WIPO ‒ have often perceived the spending of their money to be ineffective and inefficient.[[119]](#footnote-119) Carolyn Deere Birkbeck recounts how, in numerous debates at WIPO, associations of private IP rights-holders have argued that, as the organisation’s core financiers, they deserve a say on how WIPO spends its resources, including on development activities.[[120]](#footnote-120)

These groups have established power and leverage more directly by threatening WIPO’s income stream and relevance.[[121]](#footnote-121) They have threatened to seek alternative institutional arrangements for delivery of IP protection services such as those provided by the PCT system and have lobbied Member States (and the Secretariat) on WIPO’s policy agenda and development cooperation activities.[[122]](#footnote-122) Against this background, developing countries complain that developed nations and industry groups act as if they ‘own’ WIPO and therefore have the right to determine the scale, distribution and focus of its technical assistance.[[123]](#footnote-123) Commentators worry that WIPO’s advocacy of the interests of developing countries is compromised by its heavy reliance on the management of the PCT as well as the Hague and the Madrid systems, which represent the greater part of its budget.

Funds-in-Trust (FITs) is another channel through which WIPO technical assistance is funded. FITs are contributions from donor countries to finance technical assistance and capacity-building in developing countries and countries with economies in transition. According to WIPO, a FIT is established based on an agreement with the donor, setting out clear objective(s), activities, a timeframe, reporting schedule and budget covering the cost of activities which support the achievement of WIPO’s Expected Results. The EU, the US, Japan, Korea, Finland and France are among the countries that currently provide FIT support.[[124]](#footnote-124) According to available data, it appears that donors mostly dedicate their resources to specific activities such as modernising IP offices; promoting the importance of IP protection and enforcement; facilitating university-industry partnerships; enabling better use of IP assets by SMEs; support for collective management of copyright; and boosting enforcement of IP rights.[[125]](#footnote-125) A key shortfall in the administration of FITs has been lack of transparency and scope for donor influence over the content and orientation of assistance without opportunities for input or review from WIPO’s wider membership or the country to be assisted.

Lastly, developing countries also complain about the inherent contradiction between WIPO’s technical assistance function and its norm-setting activities, which conflict with the organisation’s partial role of ensuring that the IP system serves a higher goal of development. WIPO has contributed significantly to expanding IP’s empire since its inception. It has gone from administering the Paris and Berne Conventions (and the drafts for revision of the then existing seven treaties) to administering twenty-six treaties (including the WIPO Convention). Broadly categorised into three groups, the first group of treaties (and the majority) are those that define internationally agreed basic standards of (substantive) IP protection in each country. The second group, known as global protection system treaties, ensures that one international registration or filing will be effective in any of the relevant signatory States. The third group is the classification treaties, which create classification systems that organise information concerning inventions, trade marks and industrial designs into indexed, manageable structures for easy retrieval.[[126]](#footnote-126)

WIPO provides technical and legal assistance to developing countries on the ratification and implementation of these treaties. This has led to the criticism that WIPO uses its technical assistance function to help promote uncritical ratification of existing international agreements and to further upward harmonisation of IP standards in ways that mitigate against the interest of developing countries.[[127]](#footnote-127) This is all the more so because, it is argued, the development implications of proposed treaties, treaty accessions or implementation options are not often explored.[[128]](#footnote-128) Failed attempts at negotiating a Substantive Patent Law Treaty (SPLT),[[129]](#footnote-129) which led to proposals for a Development Agenda, were in part a reaction to a perceived push by WIPO and the developed nations to ratchet up the scope and application of patent laws through substantive harmonisation. Earlier on – in the 1990s – the organisation had succeeded in negotiating similar treaties on copyright (known as the internet treaties), which showed the continued relevance of WIPO in IP norm-setting.[[130]](#footnote-130)

**6.3 WIPO-WTO Agreement**

Undoubtedly, WIPO’s current prominence in IP-related technical assistance and capacity building derives in part from agreements it has forged with the WTO. Contrary to initial fears that moving IP to the WTO would be the death-knell for WIPO, it turned out that the TRIPS Agreement was rather good for WIPO’s business.[[131]](#footnote-131) In 1995, the WIPO Secretariat reached an agreement with the WTO to assist developing countries in implementing the TRIPS Agreement.[[132]](#footnote-132) This was concretised in a 1998 joint technical cooperation agreement between both organisations aimed at helping developing countries to meet their 2000 TRIPS implementation deadline,[[133]](#footnote-133) and a second in 2001 to assist LDCs in meeting their 2006 deadline for conforming to the same Agreement.[[134]](#footnote-134) In this regard, the WIPO General Assembly agreed that the International Bureau should expand its existing development cooperation activities to cover the provisions of the TRIPS Agreement.[[135]](#footnote-135) The WIPO-WTO Agreement did two things for the globalisation of IP norms. First, WIPO and the WTO were to provide assistance to members of both organisations on the same basis that they did so for their own members. This meant that WIPO would give technical assistance to countries that were not WIPO members. Second, WIPO was to make its collection of laws available to the WTO and its Member States.[[136]](#footnote-136) Certainly, these had the potential of enhancing the accessibility and expansion of IP norms while nurturing their application.

Indeed, with the TRIPS Agreement, developing countries came to the realisation that to be part of the world trading system, they had to respect IP. The lack of cross-sectoral negotiating ability within WIPO – which is a pure IP institution dealing only with IP matters – had meant that there was no opportunity to trade market access, for example, for higher IP protection. This is exactly what TRIPS did. Being part of the TRIPS Agreement had meant bringing national laws into conformity with the treaty obligations by introducing, for example, tougher enforcement rules and being subject to the Dispute Settlement Understanding. For this reason, modernising IP systems and strengthening their legislative, administrative and enforcement infrastructures became policy priorities in many developing countries owing to their impending obligations under the Agreement. Yet, as explored above, due to institutional and technical weaknesses in IP law, developing countries had to rely on external assistance. The WIPO Secretariat was thus faced with increasing demands from its developing country members for assistance with implementing the TRIPS Agreement. In particular, they requested help with border measures, devising special programmes for judges, prosecutors, customs and police officials, attorneys and right-holders. Within WIPO, the feeling was that the more help available to countries in implementing their TRIPS obligations, the better.[[137]](#footnote-137)

For this, WIPO has been criticised for creating and expanding monopoly privileges in developing countries, often without regard to the consequences that may arise such as social and economic costs that hamper and threaten creativity and innovation instead of enhancing it.[[138]](#footnote-138) Clearly, the way to help these countries avoid the WTO dispute settlement system is to leverage faster compliance and higher standards than TRIPS requires.[[139]](#footnote-139) This puts WIPO in a compromising position. Even though members’ concerns may be heeded at WIPO, this can only take place within the constraints of the requirements of the TRIPS Agreement. Hence, if the TRIPS Agreement can be seen as an important dimension of the neo-liberal restructuring process observed in the global political economy over the last three decades, then the Agreement effectively locks in IP technical assistance (and developing countries) to its very agenda.

**7 Conclusion**

This chapter has explored the political economy aspects of IP technical assistance – specifically, the technical assistance provided by WIPO. It has asked, in particular, whether this process serves to hedge IP exclusivity. The evidence suggests that it does. The problem is clearly not limited to WIPO, as the organisation’s technical assistance programme has been seen as less biased than much of the bilateral assistance on offer from the EU and the US. Overall, most IP-related technical assistance has tended to focus on similar areas in most countries, and there appears to be little alignment between country needs and the direction of IP technical assistance. Such assistance usually tends to be more about what the donor wants, regardless of the development context of the country at the receiving end. In this regard, IP-related technical assistance has been exposed as a political project (rather than a merely technical or neutral measure) that has locked-in neo-colonialism and neo-liberalism (also embracing IP officials in developing countries within its grasp). These two compromising effects of global constitutionalism are often ignored. Raising this limitation for discussion is important as there has been little debate about the constitutionalising effects of technical assistance in the literature – not even in the framework of the new informality. At the same time, this is not to say that IP technical assistance is entirely bad. Scholarship has shown that IP technical assistance can be of great use if well targeted and aligned with the social and economic needs of recipient countries.[[140]](#footnote-140)

However, having tracked the historical evolution of IP technical assistance, we see that, for a long time, the nature and effects of WIPO’s IP-related technical assistance went unnoticed due to (1) its apolitical representation; (2) its roots in the project of development and (3) its somewhat blurry connection between the public and the private (in terms of its mandate as a specialised UN agency via-à-vis its source of funding and the type of subcontractors or experts it uses for the delivery of its technical assistance programme). It was not until recently that some large developing countries (and civil organisations) started to voice their concerns about the lack of transparency in WIPO’s technical assistance ‒ not to mention bias in their content ‒ that the phenomenon began to gain attention. While mechanisms already exist in international law (for example the TRIPS Agreement) that support developing countries’ ability to tailor the IP system to their level of development, the evidence shows that many developing countries are either not aware or are not taking advantage of these flexibilities. Either way, technical assistance plays a role in the latter outcome. As the above analysis shows, the content of the WIPO technical assistance scheme, the organisation’s source of income and treaty-making functions as well as its agreement with the WTO have all compromised the WIPO's partial role of ensuring that the IP system serves a higher goal of development.

This is so despite the fact that, in 2007, WIPO adopted a Development Agenda which sought to promote technical assistance, among other goals. The organisation has had, by the very design of its technical assistance, a long relationship with and focus on IP offices in the developing countries and, as a consequence, has created an elite (professional) class who mostly depend on WIPO for their IP-related capacity building in these countries. As a result, these elites are socialised into the Western conception of IP and see things through the WIPO or dominant industrial country approach. The case of the two regional IP organisations in Africa is an example. They rely on WIPO as a source of authority and ‘neutral’ expertise on IP laws and of resources for building institutional capacity and improving staff expertise. This, in turn, reinforces WIPO’s dominant technical position. Technical assistance, in the form discussed above, functions to hedge IP exclusivity and does so by creating a Trojan Horse IP approach.

The above claim is corroborated by one of the factors identified as impeding the realisation of a more development-oriented technical assistance from WIPO: inconsistent demand for development-oriented technical assistance by recipient countries. The elite (professionalisation) argument is particularly telling here. If this were not the case, it would be difficult to understand why developing countries, when given an opportunity to request assistance, would require schemes that are not in line with their development needs. Since this demand comes from recipient countries, it conceals the politics behind the offer of technical assistance.

1. \* Postdoctoral Researcher, Turku Institute for Advanced Studies, Faculty of Law, University of Turku. [↑](#footnote-ref-1)
2. According to an internet source, Kiribati is a sovereign state in Micronesia in the Central Pacific Ocean with a permanent population of just over 110,000. It is one of the world’s most vulnerable nations to the effects of global warming such as sea levels rising. See <https://www.britannica.com/place/Kiribati> accessed 19 November 2020. [↑](#footnote-ref-2)
3. Peter Drahos, *The Governance of Knowledge: Patent Offices and Their Clients* (Cambridge University Press 2010). [↑](#footnote-ref-3)
4. Christine Schwöbel-Patel, ‘The Political Economy of Global Constitutionalism’ in Anthony Lang and Antje Wiender (eds), *Handbook on Global Constitutionalism* (Edward Elgar 2017) 407 (hereafter Schwöbel-Patel, ‘The Political Economy’). [↑](#footnote-ref-4)
5. Andreas Rahmatian, ‘Neo-Colonial Aspects of Global Intellectual Property Protection’ (2009) 12 Journal of World Intellectual Property 1, 40. For the sake of convenience, I will use the term ‘developing countries’ to signify both larger and smaller developing countries, as well as the Least Developed Countries (LDCs), unless otherwise stated. [↑](#footnote-ref-5)
6. Health Action International (HAI) and Médecins Sans Frontières (MSF), ‘Empty gestures: The EU’s commitments to safeguard access to medicines: Review of the European Union’s Trade & Investment Policy’ (2015) 6 <https://haiweb.org/publication/empty-gestures-the-eus-commitments-to-safeguard-access-to-medicines/> accessed 3 November 2020. [↑](#footnote-ref-6)
7. Christopher May, ‘Capacity Building and the (Re)production of Intellectual Property Rights’ (2004) 25 Third World Quarterly 5 (hereafter May, ‘Capacity Building’). [↑](#footnote-ref-7)
8. Stephen Gill and A. Claire Cutler, ‘New Constitutionalism and World Order: General Introduction’ in Stephen Gill and A Claire Cutler (eds), *New Constitutionalism and World Order* (Cambridge University Press 2014) 7 (hereafter Gill and Gutler, ‘New Constitutionalism’). [↑](#footnote-ref-8)
9. Rajesh Sugar, ‘Identifying Models of Best Practices in the Provision of Technical Assistance to Facilitate the Implementation of the TRIPS Agreement’ (2006) European Commission IPDEV, Work Programme 4 Report, [Working Papers](https://ideas.repec.org/s/ess/wpaper.html) id:848, eSocialSciences, 7 <https://ideas.repec.org/p/ess/wpaper/id848.html> accessed 5 November 2020 (hereafter Sugar, ‘Identifying Models of Best Practices’). [↑](#footnote-ref-9)
10. Carolyn Deere Birkbeck and Santiago Roca, ‘An External Review of WIPO Technical Assistance in the Area of Cooperation for Development’, Final report submitted on 31 August 2011 (WIPO, Geneva, 2011) I–II, <https://www.wipo.int/edocs/mdocs/mdocs/en/cdip\_8/cdip\_8\_inf\_1-annex1.pdf> accessed 12 November 2020 (hereafter Deere Birkbeck and Roca, ‘An External Review of WIPO Technical Assistance’). [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. May, ‘Capacity Building’ (n 6) 825. [↑](#footnote-ref-12)
13. Gill and Cutler, ‘New Constitutionalism’ (n 7) 13‒14. [↑](#footnote-ref-13)
14. Schwöbel-Patel, ‘The Political Economy’ (n 3) 407. [↑](#footnote-ref-14)
15. Gill and Cutler, ‘New Constitutionalism’ (n 7) 7. [↑](#footnote-ref-15)
16. Christopher May, ‘The Rule of Law as the *Grundnorm* of the New Constitutionalism’ in Stephen Gill and A. Claire Cutler (eds), *New Constitutionalism and World Order* (Cambridge University Press 2014) 63 ff (hereafter May, ‘The Rule of Law’). [↑](#footnote-ref-16)
17. Gill and Cutler, ‘New Constitutionalism’ (n 7) 17. [↑](#footnote-ref-17)
18. May, ‘The Rule of Law’ (n 15) 66. [↑](#footnote-ref-18)
19. Ibrahim Shihata, ‘The World Bank and “Governance” Issues in its Borrowing Members’ in Franziska Tschofen and Antonio R. Parra (eds), *The World Bank in a Changing World: Selected Essays, Volume 1* (Dordrecht: Martinus Nijhoff Publishers 1991) 53–96. [↑](#footnote-ref-19)
20. May, ‘The Rule of Law’ (n 15) 63. [↑](#footnote-ref-20)
21. Schwöbel-Patel, ‘The Political Economy’ (n 3). [↑](#footnote-ref-21)
22. May, ‘The Rule of Law’ (n 15) 70. [↑](#footnote-ref-22)
23. Ibid, 64. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. See Art. 4(v) of the Convention Establishing the World Intellectual Property Organization (WIPO) (opened for signature 14 July 1967, entered into force 26 April 1970, and as amended 28 September 1979) 828 UNTS 11846 <https://wipolex.wipo.int/en/text/283833> accessed 26 November 2020 (hereafter Convention Establishing the WIPO). [↑](#footnote-ref-25)
26. Carolyn Deere Birkbeck, ‘WIPO’s Development Agenda and the Push for Development-oriented Capacitybuilding on Intellectual Property: How Poor Governance, Weak Management, and Inconsistent Demand Hindered Progress’ (2016) Oxford University Global Economic Governance Programme Working Paper 105, 1, <https://www.geg.ox.ac.uk/publication/geg-wp-2015105-wipos-development-agenda-and-push-development-oriented-capacitybuilding> accessed 6 November 2020 (hereafter Deere Birkbeck ‘WIPO’s Development Agenda’). [↑](#footnote-ref-26)
27. The Point Four Program was a US policy of technical assistance and economic aid to underdeveloped countries. It was so named because it was the fourth point of President [Harry S. Truman’s](https://academic.eb.com/levels/collegiate/article/Harry-S-Truman/73545) 1949 inaugural address. Some technical assistance was furnished through specialised UN agencies, but most was provided initially mainly by the US and, on a bilateral basis, frequently through contracts with US business and educational organisations. Eventually several new national and international organisations were created to contribute to various aspects of development – such as the [International Finance Corporation](https://academic.eb.com/levels/collegiate/article/International-Finance-Corporation/42586), the Development Loan Fund, and the [Inter-American Development Bank](https://academic.eb.com/levels/collegiate/article/Inter-American-Development-Bank/42536), the Export-Import Bank, the World Bank, and the International Monetary Fund <https://academic.eb.com/levels/collegiate/article/Inter-American-Development-Bank/42536> accessed 11 November 2020. [↑](#footnote-ref-27)
28. Keith Aoki, ‘Neocolonialism, Anticommons Property, and Biopiracy in the (not-so-brave) New World Order of International Intellectual Property Protection’ (1998) 6 Indiana Journal of Global Legal Studies 11, 18. [↑](#footnote-ref-28)
29. Richard Warren Perry, ‘Rethinking the Right to Development: After the Critique of Development, After the Critique of Rights’ (1996)18 Law and Policy 225, 237‒38. [↑](#footnote-ref-29)
30. Antony Anghie, ‘Civilization and Commerce: The Concept of Governance in Historical Perspective’ (2000) 45 Villanova Law Review, 887. [↑](#footnote-ref-30)
31. See Art. 19 of the original text of Berne Convention for the Protection of Literary and Artistic Works (opened for signature 9 September 1886, entered into force 5 December 1887, as last revised at Paris 24 July 1971, and amended 28 September 1979) 1161 UNTS 30 (hereafter Berne Convention), and Art. 26 of the Act of Berlin of 13 November 9108. For the Paris Convention for the Protection of Industrial Property (opened for signature 14 July 1967, entered into force 26 April 1970, as last revised at Stockholm 14 July 1967, and amended 28 September 1979) 828 UNTS 305 (hereafter Paris Convention), see Art. 16bis (1)-(2) of the London Act of 1934 and the Lisbon Act of 1958. Also see Tshimanga Kongolo, ‘Historical Evolution of Copyright Legislation in Africa’ (2014) 5 WIPO Journal2, 165 ff (hereafter Kongolo, ‘Historical Evolution’). [↑](#footnote-ref-31)
32. Alexander Peukert, ‘The Colonial Legacy of the International Copyright System’ in Mamadou Diawara and Ute Röschenthaler (eds), *Staging the Immaterial. Rights, Style and Performance in Sub-Saharan Africa* (Sean Kingston Publishing 2012). (hereafter Peukert, ‘The Colonial Legacy’). [↑](#footnote-ref-32)
33. Peter K. Yu, ‘A Tale of Two Development Agendas’ (2009)35 Ohio Northern University Law Review 469‒70 (hereafter Yu, ‘A Tale of Two’). [↑](#footnote-ref-33)
34. Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986* (London: Kluwer Centre for Commercial Law Studies 1987), 799‒806. [↑](#footnote-ref-34)
35. Alan H. Lazar, ‘Developing Countries and Authors' Rights in International Copyright’ (1969) 19 Copyright Law Symposium 1, 23 (hereafter Lazar, ‘Developing Countries’). [↑](#footnote-ref-35)
36. Peukert, ‘The Colonial Legacy’ (n 31); Caroline B. Ncube, *Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-regional Co-operation* (Routledge, Oxon 2016) 3; Carolyn Deere Birkbeck, *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford University Press 2009); Kongolo, ‘Historical Evolution’ (n 30). [↑](#footnote-ref-36)
37. United International Bureaux for the Protection of Intellectual Property (BIRPI), Model Law for Developing Countries on Inventions, BIRPI Pub*.* No. 801(E) (1965); Suzanne F. Greenberg, ‘The WIPO Model Laws for the Protection of Unpatented Know-How: A Comparative Analysis’ (1985) 3 International Tax and Business Law 52, 54. [↑](#footnote-ref-37)
38. See Lazar, ‘Developing Countries’ (n 34) 18. [↑](#footnote-ref-38)
39. Miranda Forsyth, ‘Making the case for a pluralistic approach to intellectual property regulation in developing countries’ (2016) 6 Queen Mary Journal of Intellectual Property 1; Peukert, ‘The Colonial Legacy’ (n 31). [↑](#footnote-ref-39)
40. Alexander Peukert, ‘Intellectual Property and Development – Narratives and their Empirical Validity’ (2017) 20 Journal of World Intellectual Property 1‒2. [↑](#footnote-ref-40)
41. Ruth L. Okediji, ‘The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System’ (2003) Singapore Journal of International & Comparative Law7. [↑](#footnote-ref-41)
42. May, ‘The Rule of Law’ (n 15) 71. [↑](#footnote-ref-42)
43. Ibid. [↑](#footnote-ref-43)
44. Carolyn Deere Birkbeck and Ron Marchant, ‘The Technical Assistance Principles of the WIPO Development Agenda and their Practical Implementation, ICTSD Programme on IPRs and Sustainable Development’ (2010) Issue Paper No. 28, International Centre for Trade and Sustainable Development, Geneva, Switzerland, 8, <https://www.ictsd.org/sites/default/files/research/2011/12/the-technical-assistance-principles-of-the-wipo-development-agenda-and-their-practical-implementation.pdf> accessed 22 November 2020 (hereafter Deere Birkbeck and Marchant, ‘The Technical Assistance Principles’). [↑](#footnote-ref-44)
45. For example, Botswana whose competent authority – the Companies and Intellectual Property Authority (CIPA), formerly the Registrar of Companies and Intellectual Property (ROCIP) is located in the Ministry of Trade and Industry. See <https://www.cipa.co.bw/#> accessed 19 April 2021. [↑](#footnote-ref-45)
46. Deere Birkbeck and Marchant, ‘The Technical Assistance Principles’ (n 43) 8. [↑](#footnote-ref-46)
47. Ibid. [↑](#footnote-ref-47)
48. Ibid. [↑](#footnote-ref-48)
49. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 63. [↑](#footnote-ref-49)
50. Ibid. [↑](#footnote-ref-50)
51. See Agreement Revising the Bangui Agreement of 2 March 1977, on the Creation of an African Intellectual Property Organization (OAPI) (Bangui (Central African Republic) 24 February 1999) <https://wipolex.wipo.int/en/text/181151> accessed 16 November 2020. [↑](#footnote-ref-51)
52. Of the 17 Members, only Cameroon, Cote d’Ivoire, Equatorial Guinea and Gabon are not LDCs. See <https://wipolex.wipo.int/en/treaties/parties/227> accessed 8 November 2020. [↑](#footnote-ref-52)
53. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 63. [↑](#footnote-ref-53)
54. United Nations, ‘Development Policy and Analysis Division, List of Least Developed Countries (2018)’ <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc\_list.pdf> accessed 16 November 2020. [↑](#footnote-ref-54)
55. Paul Salmon, ‘Cooperation between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO)’ (2003) 17 Journal of Civil Rights and Economic Development 3, 439. (Citing a WIPO document that indicated that the number of least developed countries has risen from twenty-four in 1971 to forty-nine in 2001. At present, there are forty-seven of them) (hereafter Salmon,’Cooperation between WIPO and WTO’). [↑](#footnote-ref-55)
56. Lazar, ‘Developing Countries’ (n 34) 36. [↑](#footnote-ref-56)
57. Arpad Bogsch, ‘Brief History of the First Twenty Five Years of the World Property Organization’ (1992) (WIPO Publication No. 882 (E)), 8, <https://www.wipo.int/edocs/pubdocs/en/wipo\_pub\_882.pdf> accessed 8 November 2020. (Noting some of the reasons as: (i) the fact that dealing with IP was the prerogative and the task of WIPO would receive worldwide recognition and (ii) WIPO would have more or less the same members as the UN, and in particular, many developing countries would join WIPO (only very few of them belonged to BIRPI)). [↑](#footnote-ref-57)
58. Ibid, 19. [↑](#footnote-ref-58)
59. See Arts. 3(i) and 4(i) of the Convention Establishing the WIPO (n 24). Art. 3(i) states that the objective of WIPO is to ‘to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organisation’. Art. 4(i) further adds that in order to obtain the following objective, ‘shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonise national legislation in this field’. [↑](#footnote-ref-59)
60. See Art. 4(v) Convention Establishing the WIPO (n 24). [↑](#footnote-ref-60)
61. Art. 1 of the Agreement between the United Nations and the World Intellectual Property Organization (adopted 7 December 1974) WIPO Publication 111(WIPO 1975). [↑](#footnote-ref-61)
62. Carolyn Deere Birkbeck, ‘Intellectual Property, Development, and Access to Knowledge’ in Rochelle C. Drefuss and Justine Pila (eds), *The Oxford Handbook of Intellectual Property Law* (Oxford University Press 2018) 824 (hereafter Deere Birkbeck, ‘Intellectual Property’). [↑](#footnote-ref-62)
63. Ibid. [↑](#footnote-ref-63)
64. Deere Birkbeck, ‘WIPO’s Development Agenda’ n (25) 32. [↑](#footnote-ref-64)
65. Ibid. [↑](#footnote-ref-65)
66. Yu, ‘A Tale of Two’ (n 32) 468 ff. [↑](#footnote-ref-66)
67. Ibid. Noting that the old development agenda included the 1967 Stockholm Revision of the Berne Convention Protocol Regarding Developing Countries, the formation of WIPO as a specialised agency of the United Nations, the development of the draft International Code of Conduct on the Transfer of Technology under the auspices of UNCTAD, and negotiations concerning the revision of the Paris Convention. The term ‘old development agenda’ is used not to indicate the obsolescence of the earlier agenda, which remains highly relevant today. Rather, the term is used to in a way remind readers that the present development agenda, despite its broad coverage and widespread support, represents an ongoing struggle by less developed countries to develop an innovative system that responds to their needs, concerns and local conditions. [↑](#footnote-ref-67)
68. Sugar, ‘Identifying Models of Best Practices’ (n 8) 8. [↑](#footnote-ref-68)
69. Yu, ‘A Tale of Two’ (n 32) 468 ff. [↑](#footnote-ref-69)
70. Deere Birkbeck, ‘Intellectual Property’ (n 63) 823; Susan K. Sell, ‘Everything Old is New Again: The Development Agenda Now and Then’ (2011) 3 WIPO Journal 17; Christopher May, *The World Intellectual Property Organization: Resurgence and the Development Agenda* (Routledge 2006). [↑](#footnote-ref-70)
71. Deere Birkbeck, ‘Intellectual Property’ (n 61) 823. [↑](#footnote-ref-71)
72. Ibid. [↑](#footnote-ref-72)
73. See e.g. WIPO, ‘The 45 Adopted Recommendations under the WIPO Development Agenda’ <http://www.wipo.int/ip-development/en/agenda/recommendations.html> accessed 1 December 2020. Emphasis added. [↑](#footnote-ref-73)
74. Peter K. Yu, ‘Intellectual Property Training and Education for Development’ (2012) 28 American University International Law Review 311, 319 (hereafter Yu, ‘Intellectual Property Training’). [↑](#footnote-ref-74)
75. Mart Leesti and Tom Pengelly, ‘Assessing Technical Assistance Needs for Implementing the TRIPS Agreement in LDCs, ICTSD Programme on Intellectual Property Rights and Sustainable Development’ (2007) International Centre for Trade and Sustainable Development and Saana Consulting (hereafter Leesti and Pengelly, ‘Assessing Technical Assistance Needs’). [↑](#footnote-ref-75)
76. Leesti and Pengelly, ‘Assessing Technical Assistance Needs’(n 74); Deere Birkbeck and Marchant, ‘The Technical Assistance Principles’ (n 43). [↑](#footnote-ref-76)
77. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 4. [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. Deere Birkbeck, ‘Intellectual Property’ (n 61) 821. [↑](#footnote-ref-79)
80. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 65. [↑](#footnote-ref-80)
81. Ibid, 64. [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. Kim Linsu, ‘Technology Transfer & Intellectual Property Rights: The Korean Experience’ (2003) UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 2, < <https://unctad.org/en/PublicationsLibrary/ictsd2003ipd2\_en.pdf> accessed 17 November 2020. [↑](#footnote-ref-83)
84. Ibid. [↑](#footnote-ref-84)
85. See e.g. WIPO, ‘IP Offices Business Solutions’ <https://www.wipo.int/global\_ip/en/activities/ip\_office\_business\_solutions/> accessed 11 November 2020. [↑](#footnote-ref-85)
86. Ibid. [↑](#footnote-ref-86)
87. Roya Ghafele and Jakob Engel, ‘Intellectual Property Related Development Aid: Is Supply Aligned with Demand?’ (2011) MPRA Paper No 36584, 7, <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.689.3333> accessed 20 November 2020 (hereafter Ghafele and Engel, ‘Intellectual Property Related Development Aid’). [↑](#footnote-ref-87)
88. Yu, ’Intellectual Property Training’ (n 73) 320. [↑](#footnote-ref-88)
89. WIPO Academy, '[DL] Distance Learning Program’ <https://welc.wipo.int/acc/index.jsf?page=courseCatalog.xhtml&lang=en&cc=DL203E#plus\_DL203E> accessed 20 November 2020. [↑](#footnote-ref-89)
90. Chidi Oguamanam, ‘Wandering footloose: Traditional knowledge and the “Public Domain” revisited’ (2018) Journal of World Intellectual Property 1–20. For the treaty, see WIPO, ‘Intergovernmental Committee (IGC)’ <https://www.wipo.int/tk/en/igc/> accessed 19 November 2020. [↑](#footnote-ref-90)
91. Tom Pengelly, ‘Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies’ (2005) ICTSD’s programme on intellectual property and Sustainable Development, Issue Paper No. 11, 9 (hereafter Pengelly, ‘Technical Assistance for the Formulation and Implementation’). [↑](#footnote-ref-91)
92. See The WIPO Worldwide Academy, ‘Igniting the power of the human intellect: general information’ WIPO Publication No. 466(E) <http://www.wipo.int/edocs/pubdocs/en/training/466/wipo\_pub\_466.pdf> accessed 2 November. [↑](#footnote-ref-92)
93. Ibid. [↑](#footnote-ref-93)
94. Salmon, ‘Cooperation between WIPO and WTO’ (n 54) 439. [↑](#footnote-ref-94)
95. WIPO, Patent Cooperation Treaty (PCT) Working Group, Training of Examiners, PCT/WG/9/18 (April 26, 2016); Rochelle C. Dreyfus, ‘Harmonization: Top Down, Bottom Up – and Now Sideways? The Impact of the IP Provisions of Megaregional Agreements on Third Party States’ in Benedict Kingsbury, David Malone, Richard B. Stewart and Atsushi Sunami (eds), *Contested Megaregulation: Global Economic Ordering After TPP* (Oxford University Press 2019); Peter Drahos, *The Global Governance of Knowledge: Patent Offices and their Clients* (Cambridge University Press 2010). [↑](#footnote-ref-95)
96. Peter Drahos, ‘Trust Me: Patent Offices in Developing Countries’ (2008) 34 American Journal of Law & Medicine, 151‒74. [↑](#footnote-ref-96)
97. Deere Birkbeck and Roca, ‘An External Review of WIPO Technical Assistance’ (n 9). [↑](#footnote-ref-97)
98. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 26. [↑](#footnote-ref-98)
99. Ibid. [↑](#footnote-ref-99)
100. Leesti and Pengelly, ‘Assessing Technical Assistance Needs’ (n 74) 2. [↑](#footnote-ref-100)
101. Ibid. [↑](#footnote-ref-101)
102. Médecins Sans Frontières, ‘Doha derailed: A Progressive Report on TRIPS and Access to Medicines’ (2005) 5 <https://msfaccess.org/doha-derailed-progress-report-trips-and-access-medicines> accessed 1 November 2020 (hereafter MSF, ‘Progressive Report on TRIPS’). [↑](#footnote-ref-102)
103. LDCs were initially granted an extension until 2006, a timeframe that was subsequently extended until 2013, then 2021, and in the case of patents for pharmaceutical products until 2033. See WTO, ‘WTO members agree to extend drug patent exemption for poorest members’ (November 2015) <https://www.wto.org/english/news\_e/news15\_e/trip\_06nov15\_e.htm> accessed 18 November 2020. [↑](#footnote-ref-103)
104. Deere Birkbeck and Roca, ‘An External Review of WIPO Technical Assistance’ (n 9) 6. Emphasis added. [↑](#footnote-ref-104)
105. Appendix I of the Summary by the Chair of the seventeenth session of the Committee on Development and Intellectual Property (CDIP) <<http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=335277>> accessed 19 November 2020. [↑](#footnote-ref-105)
106. Deere Birkbeck and Roca, ‘An External Review of WIPO Technical Assistance’ (n 9) 7. [↑](#footnote-ref-106)
107. Committee on Development and Intellectual Property, ‘Compilation of WIPO’s Existing Practices, Methodologies and Tools for Providing Technical Assistance (prepared by the Secretariat)’ CDIP/21/4, March 15 2018 <https://www.wipo.int/edocs/mdocs/mdocs/en/cdip\_21/cdip\_21\_4.pdf> accessed 24 November 2020. [↑](#footnote-ref-107)
108. Leesti and Pengelly, ‘Assessing Technical Assistance Needs’ (n 74). [↑](#footnote-ref-108)
109. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 13. [↑](#footnote-ref-109)
110. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-110)
111. WIPO, ‘Program and Budget for the 2018/19 Biennium’ 8 <https://www.wipo.int/about-wipo/en/budget/> accessed 13 November 2020. [↑](#footnote-ref-111)
112. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 38. [↑](#footnote-ref-112)
113. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-113)
114. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 38. [↑](#footnote-ref-114)
115. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-115)
116. See WIPO, *Hague Yearly Review 2019: International Registration of Industrial Designs* (Geneva: WIPO 2019); WIPO, *Madrid Yearly Review 2019: International Registration of Marks* (Geneva: WIPO 2019). [↑](#footnote-ref-116)
117. See WIPO, *Patent Cooperation Treaty Yearly Review 2019: The International Patent System* (Geneva: WIPO 2019). [↑](#footnote-ref-117)
118. Ibid. [↑](#footnote-ref-118)
119. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-119)
120. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 39. [↑](#footnote-ref-120)
121. Ibid. [↑](#footnote-ref-121)
122. Ibid. [↑](#footnote-ref-122)
123. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-123)
124. For details, see WIPO, ‘Funds-In-Trust’ <https://www.wipo.int/cooperation/en/funds\_in\_trust/> accessed 16 November 2020. [↑](#footnote-ref-124)
125. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 45. [↑](#footnote-ref-125)
126. For details, see WIPO, ‘WIPO-Administered Treaties’ <https://www.wipo.int/treaties/en/> accessed 3 November 2020. [↑](#footnote-ref-126)
127. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 8. [↑](#footnote-ref-127)
128. Deere Birkbeck, ‘WIPO’s Development Agenda’ (n 25) 25. [↑](#footnote-ref-128)
129. For details, see WIPO, ‘Draft Substantive Patent Law Treaty’ <https://www.wipo.int/patent-law/en/draft\_splt.htm> accessed 9 November 2020. [↑](#footnote-ref-129)
130. WIPO administers the WIPO Copyright Treaty (opened for signature 20 December 1996, entered into force 6 March 2002) 2186 UNTS 121 and the WIPO Performances and Phonograms Treaty (opened for signature 20 December 1996, entered into force 20 May 2002) 2186 UNTS 203 known together as the ‘Internet Treaties’, which set down international norms aimed at preventing unauthorised access to and use of creative works on the Internet or other digital networks. [↑](#footnote-ref-130)
131. See Salmon, ‘Cooperation between WIPO and WTO’ (n 54) 434. (Arguing that membership of WIPO’s international treaties increased, for instance, the Paris Convention and the Berne Convention. The TRIPS Agreement also changed the dynamics within WIPO as that in a way facilitated the conclusion of the WIPO Internet Treaties). [↑](#footnote-ref-131)
132. See WIPO General Assembly, Twenty-Fourth (14th Ordinary) Session (Geneva, 20 to 29 September 1999) –WO/GA/24/5 Rev. [↑](#footnote-ref-132)
133. See MSF, ‘Progressive Report on TRIPS’ (n 103). [↑](#footnote-ref-133)
134. Deere Birkbeck and Marchant, ‘The Technical Assistance’ (n 43) 3. [↑](#footnote-ref-134)
135. See WIPO General Assembly, Sixteenth (12th Ordinary) Session (Geneva, 25 September – 3 October 1995) – WO/GA/XVI/7, para 24. [↑](#footnote-ref-135)
136. Salmon, Cooperation between WIPO and WTO’ (n 54) 436. [↑](#footnote-ref-136)
137. Ibid, 435. [↑](#footnote-ref-137)
138. Consumer Project on Technology (now Knowledge Ecology International), ‘The Geneva Declaration on the Future the World Intellectual Property Organization’ (October 2000) <http://www.cptech.org/ip/wipo/futureofwipodeclaration.pdf> accessed 6 December 2020; seealso the Geneva Declaration on the Future of WIPO; Michael Blakeney and Getachew Mengistie, ‘Intellectual Property and Economic Development in Sub-Saharan Africa’ (2011) 14 Journal of World Intellectual Property, 238, 247. [↑](#footnote-ref-138)
139. Peter Drahos, ‘Trust Me: Patent Offices in Developing Countries’ (2008) 34 American Journal of Law & Medicine 151–74. [↑](#footnote-ref-139)
140. Pengelly, ‘Technical Assistance for the Formulation and Implementation’ (n 90); Ghafele and Engel, ‘Intellectual Property Related Development Aid’ (n 86). [↑](#footnote-ref-140)