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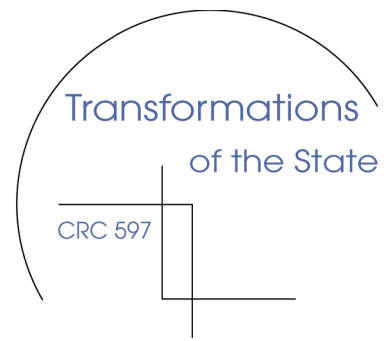
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TranState Working Papers

BETWEEN COLLABORATION
AND COMPETITION
GLOBAL PUBLIC-PRIVATE PARTNERSHIPS
AGAINST INTELLECTUAL PROPERTY CRIMES

CHRISTOPHER PAUN

No. 149

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Staatlichkeit im Wandel • Transformations of the State
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Between Collaboration and Competition Global Public-Private Partnerships against Intellectual Property Crimes

ABSTRACT

This paper explores the issue area of global public-private partnerships (PPPs) against intellectual property (IP) crimes. It is based on preliminary findings from a PhD research project that included interviews with more than 30 participants of such PPPs from different countries around the world. Key factors that influence the formation, maintenance, termination, and reform of such partnerships are identified by comparing more and less successful PPPs over a period of time.

First, the paper introduces the topic of IP crime, also known as counterfeiting and piracy. The paper then proposes a typology of different PPPs, as the term is used in very different ways in the literature. In the subsequent sections of the paper, empirical examples of global PPPs against IP crimes are analyzed, whose secretariats are hosted by three public international organizations: Interpol, the World Customs Organization (WCO), and the World Health Organization (WHO).

By comparing the different paths of these three international organizations and their PPPs, five key factors are identified that influence the formation, maintenance, termination, and reform of such PPPs: (1) common ground, (2) absolute and/or relative gains of resources, (3) the management of the PPP and its discretion, (4) the representation of stakeholders, and (5) the policy pursued by the PPP.

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CONTENTS

INTRODUCTION: LAW ENFORCEMENT GOES TRANSNATIONAL	1
WHAT ARE INTELLECTUAL PROPERTY CRIMES?	3
WHAT ARE PUBLIC-PRIVATE PARTNERSHIPS?.....	6
INTERPOL AND THE INTELLECTUAL PROPERTY CRIME ACTION GROUP	9
THE WORLD CUSTOMS ORGANIZATION (WCO) AND THE INTELLECTUAL PROPERTY RIGHTS STRATEGIC GROUP	12
THE WORLD HEALTH ORGANIZATION (WHO) AND THE INTERNATIONAL MEDICAL PRODUCTS ANTI-COUNTERFEITING TASKFORCE (IMPACT)	16
FINDINGS FROM A COMPARISON OF PPPs AGAINST IP CRIME	19
CONCLUSION	23
REFERENCES.....	24
BIOGRAPHICAL NOTE	30

Between Collaboration and Competition

Global Public-Private Partnerships against Intellectual Property Crimes

INTRODUCTION: LAW ENFORCEMENT GOES TRANSNATIONAL

The International Criminal Police Organization (Interpol) and the World Customs Organization (WCO) have declared October 5-12, 2010 the “Internet Week of Action” against counterfeit and illicit medicines. Unlike some other “weeks of” that are declared by international organizations, this week was not just a symbolic act. It demonstrated how police, customs, and drug regulatory agencies from different countries collaborate with each other, and with security professionals from the pharmaceutical industry and the payment service industry against illegal online pharmacies. As a result of this week, more than 11,000 packages have been seized, 297 websites have been taken down, and investigations against 87 individuals have been started around the globe. Forty-four countries participated in this operation, including Angola, Australia, Brazil, Canada, China, Cuba, Israel, Japan, Jordan, Mexico, Russia, South Africa, Thailand, the United States, and most member states of the European Union (AIFA 2011: 106).

This Internet Week of Action was part of Operation Pangea, which has been conducted annually since 2008 with an increasing number of participating countries, and has led to more and more seizures and arrests. The operation is named after the prehistoric supercontinent in order to symbolize the coming together of different parts of the world. However, Pangea is only one example of many transnational public-private partnerships (PPP) against illicit trade with counterfeit products. Some partnerships focus on one product category like medical products; others cover a wide range of counterfeit and pirated products, such as clothes, DVDs, cigarettes, agrochemicals, electric appliances, toys, car parts, and beverages.

Public international organizations¹ (IOs), such as Interpol, the World Customs Organization (WCO) or the World Health Organization (WHO), act as facilitators of such transnational public-private collaboration. These IOs are only composed of public sector members. However, for the purpose of collaboration, special transnational public-private partnerships have been established, where actors from the public and the private sector are both members. The purpose of this paper is to analyze three such PPPs: the Interpol Intellectual Property Crime Action Group (IIPCAG), the World Customs Organization Intellectual Property Rights Strategic Group (WCO IPR SG), and the World

¹ The term “public IO” denotes international organizations with public sector members only (as used by Amerasinghe 2005, Slaughter 2004, or Reinicke 1998). It is meant to include intergovernmental organizations and transgovernmental organizations (as used by Archer 2001 or Keohane and Nye 1974).

Health Organization International Medical Products Anti-Counterfeiting Taskforce (WHO IMPACT).

Transnational PPPs are increasingly being observed in many policy areas (Schäferhoff et al. 2009, Andonova 2006, Börzel and Risse 2005). However, law enforcement PPPs are surprising, because states are usually very reluctant to loosen their grip on the monopoly of the legitimate use of force (Jachtenfuchs 2005: 50). As this monopoly is considered to be the constituting characteristic of the modern nation state (Weber 1972: 29), global law enforcement PPPs can be considered a least-likely case for the creation and functioning of transnational PPPs in general. In the case of these law enforcement PPPs, the actual application of force is still done by national law enforcement agencies, but the entire decision-making process about when, where, why, and how to apply force is heavily influenced by partners from international organizations, from other countries, and from the private sector.

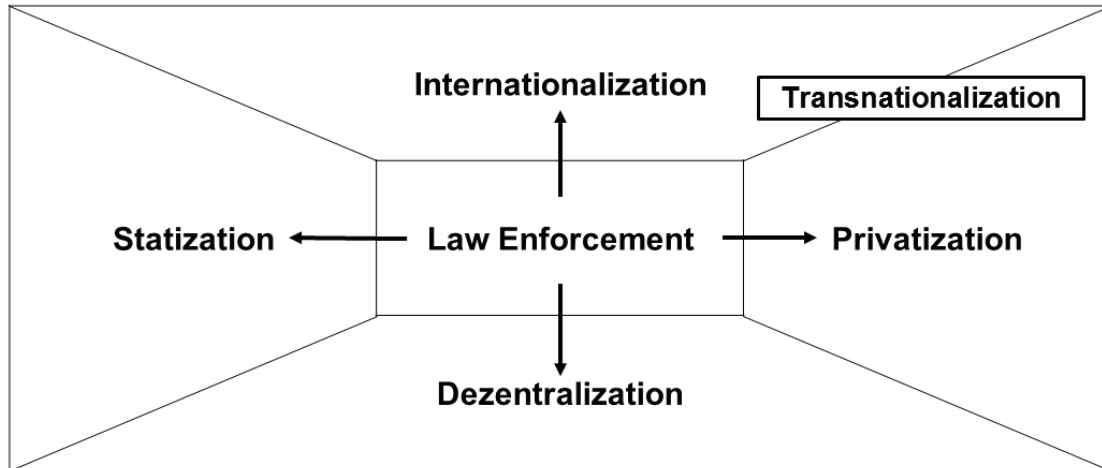
International law enforcement cooperation against transnational organized crime is often presented in media reports as a relationship between savvy criminals who exploit globalization and law enforcement officers who are limited by national borders, jurisdiction, and bureaucratic hurdles (e.g. Naím 2003). However, globalization not only affects the legal and illegal economy. Nation states and national law enforcement agencies have also adapted to it, as shown by research about international crime policies and international law enforcement cooperation (Andreas and Nadelmann 2006). This study contributes to this research area by showing that law enforcement agencies do not only collaborate internationally, but that simultaneous collaboration with the private sector results in transnational² law enforcement.

Thereby this study is also a contribution to research about the changing role of the modern territorial nation state (Leibfried and Zürn 2005). This change can take place in the dimension of internationalization, of decentralization, of privatization, and of statization (figure 1). Nation states can delegate or lose law enforcement competencies to the sub-national level, such as in community policing projects (Brogden and Nijhar 2005, Paun 2008), to the private sector (Jones and Newburn 2006), to the international level (Andreas and Nadelmann 2006), or to the European level (Jachtenfuchs 2005) – as a special form of internationalization. The statization of policing can be found in studies of the historical development of policing together with the rise of the modern nation state (Roberg et al. 2000: 32, Mawby 1999, Waddington 1999, Horton 1995: 7). When it comes to the combined effects of internationalization and privatization - the transna-

² The term “transnational relations” denotes interactions across national borders that involve at least one non-state actor (Risse 2002: 255).

tionalization of law enforcement - there is a gap in the current state of research, with only very few exceptions (e.g. Abrahamsen and Williams 2009, Johnston 2000).

Fig. 1: Changes to the Role of the Nation State for Law Enforcement



Source: own illustration inspired by Leibfried and Zürn 2005: 15

This study is meant to contribute its part to fill this gap of the current state of research with the example of transnational public-private partnerships against intellectual property crimes. All PPPs in this study have a global reach and fight against intellectual property crimes, be it in one product area or many. But these commonalities did not lead to the same results in terms of PPP structure, size, durability, and activities. While Interpol's PPP is constantly growing, the WCO's PPP was growing for several years before it was terminated in 2007 and a reformed PPP was set up, which was again terminated in 2009 and succeeded by another PPP in a political controversy. The WHO has seen initial growth of their PPP, but soon political controversies arose. An intergovernmental working group has to decide whether to terminate or reform this PPP. This paper analyzes and compares these different PPPs. Before proceeding to their analysis, two sections of this paper clarify what is meant by intellectual property crimes and what is meant by public-private partnerships. After the subsequent three sections about the case studies, a comparative section identifies factors that contributed to the formation, maintenance, termination, or reform of these PPPs.

WHAT ARE INTELLECTUAL PROPERTY CRIMES?

Intellectual property (IP) crimes are acts that violate criminal law and infringe IP rights, such as trademarks, copyrights, or patents. In many cases the infringement of IP rights constitutes a criminal act itself. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires member states of the World Trade Organization (WTO) to criminalize trademark counterfeiting and copyright piracy on a commercial

scale (TRIPS Art. 61). Therefore the fight against this “counterfeiting and piracy” is the focus of most activities against IP crime. However, some states have chosen to go beyond TRIPS requirements and also criminalize infringements of other IP rights, such as patents. IP infringing activities may also be considered criminal if they are committed in concurrence with other acts that are criminal, such as fraud or smuggling. If the use of dangerous counterfeit products results in deaths, it can also be addressed as negligent homicide. The director of the Nigerian Food and Drugs Administration even spoke of mass murder in the case of deadly counterfeit medicine (Akunyili 2007).

It is very difficult to quantify the overall effects of IP crime. The number of unreported cases can only be estimated, but it is expected to be much higher than the number of reported cases. It is also difficult to assess the rate in which IP infringing products substitute legal products in the market; and it is especially difficult to assess all the effects beyond the lost revenue from the legal products, such as health and safety risks, loss of brand value, or reduced incentives for research and innovation (GAO 2010). For a global assessment, the most frequently cited figure comes from the Organization for Economic Cooperation and Development. According to their study, “international trade in counterfeit and pirated goods could account for up to USD 200 billion in 2005.” (OECD 2008 :96) As this is a maximum figure within the OECD calculation model, the actual figure could be lower. But it could also be much higher, because the OECD study did not include domestic trade, the trade with intangible goods over the internet; and it did not include many other factors, such as loss of brand value, reduced incentives for research and innovation, or health and safety risks. Besides these negative effects, a comprehensive study on the effects of IP crime would also need to address the positive effects. While it is unpopular to speak about “positive effects of crime”, these effects can be an important factor in explaining the prevalence of IP crime and the difficulties to fight it. For example, factories that produce counterfeit products and businesses that trade with them can provide jobs and income for many people. And consumers may be able to save money with pirated music, movies or computer software.

However, due to the health and safety risks of many counterfeit products, IP crimes are increasingly seen not only as an economic issue but also as a threat to human security. For example, a plane flying from Norway to Germany in 1989 crashed due to the failure of a counterfeit spare part and killed 55 people (UNICRI 2007:55). 13 babies died in China in 2004 from being given counterfeit baby food (ICC 2008: 141). 23 people died in Turkey in 2005 due to drinking a counterfeit beverage (UNICRI 2007: 51). And 50,000 people received counterfeit meningitis vaccines in Niger in 1995 resulting in 2,500 deaths (WHO 2006: 2). Besides the specific risks for consumers of counterfeit products, intellectual property crimes can also be seen as a security risk for the general public, as proceeds of intellectual property crimes go to organized crime groups. The

common definitions of organized crime groups refer to the organizational duration of a group and their aim to generate profits from criminal activity (von Lampe 2010). Given these definitions, the industrial scale of most intellectual property crimes, and the transnational delivery chain of the products, there is no doubt that transnational organized crime groups are involved in this business. A number of infamous organized crime groups are reported to be active in the business of counterfeiting and piracy, such as the Chinese Triads, the Japanese Yakuza, the Russian Mafia, and the Neapolitan Camorra (UNICRI 2007: 118). Intellectual property crimes are appealing to these organizations, because the profits are similar to those of drug trafficking, sometimes even higher, but the risk is very low, as penalties are less severe and law enforcement agencies focus less on these crimes (UNICRI 2007: 106). The same reasons that make intellectual property crimes appealing to organized crime groups also make it an attractive criminal activity for the funding of militant political groups. For example, proceeds of intellectual property crimes in the tri-border area of Argentina, Brazil, and Paraguay have been reported to go to the Lebanese Hizballah (Arena 2006: 459). Also the Irish Republican Army (IRA) has reportedly funded their activities with the trade in pirated movies and software (Treverton 2009: 82).

When it comes to international law enforcement cooperation against IP crimes, it is important that the specific activities need to be considered illegal in all states that wish to cooperate. The international harmonization of laws against IP infringements started in the late 19th century with the 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Works. In 1967 the World Intellectual Property Organization (WIPO) was created as a specialized UN agency to oversee these and a number of other intellectual property rights treaties. A very important development was the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that established a minimum standard for IP rights in the member states of the World Trade Organization (WTO). Within this minimum standard is the requirement to criminalize trademark and copyright infringements of a commercial scale (TRIPS Art. 61). This criminalization requirement makes the TRIPS agreement the first global IP treaty that goes beyond private law and emphasizes the public interest through the use of criminal law. Therefore, TRIPS is not only a trade agreement, it is also the foundation of a prohibition regime (Andreas and Nadelmann 2006: 54).

International negotiations about IP rights continued after the TRIPS Agreement. Examples are the 2001 Doha Declaration on Public Health, several bilateral and regional agreements, and the recent negotiations about an Anti-Counterfeiting Trade Agreement (ACTA). Debated issues include the balance between private IP rights and the public interest, especially when it comes to patents on pharmaceuticals and life forms (Sell

2003: 139), fair use provisions for digital products (Mara 2008b), the liability of the internet industry for the exchange of digital products over the internet and the trade of tangible goods through internet trading platforms (Amazon.com et al. 2008), transshipment in cases where the IPR protection differs in the countries of origin, destination, and transshipment (New 2009a), and higher penalties for IP crimes (UNICRI 2007: 129). While these debates continue, the largest obstacle to IP protection today is not the law but a lack of law enforcement (OECD 2008: 187). IP crime is not a high priority for most law enforcement agencies around the world. As resources for specialized training or even specialized units are limited, most law enforcement agencies prioritize crimes that are considered more severe, such as drug trafficking, human trafficking, and terrorism.

WHAT ARE PUBLIC-PRIVATE PARTNERSHIPS?

It is important to clarify what is meant by the term “public-private partnership” (PPP). Unfortunately, there is no single authoritative definition of PPPs. Various authors use the term with different meanings (Weihe 2008, Klijn 2010, Hodge et al. 2010). For the purpose of this study, I propose the following definition and typology of PPPs: Public-private partnerships are forms of cooperation between actors from the public and the private sector³ that are set-up with the intention to continuously exist over a longer period of time⁴ and that are organized according to the characteristics of one of the following types⁵ of PPPs:

- *Collaborative PPP*: Collaborative provision of public services, or significant contribution thereto, where the private partners voluntarily invest significant resources beyond advice without being paid by the public partners.
- *Contractual PPP*: Private provision of public services, or significant contribution thereto beyond advice, based on a contract with public partners that ensures payments to the private partners in return for their investment.
- *Advisory PPP*: Public partners rely on non-paid advice from private partners for public policy decisions.

³ Public sector refers to governments, government agencies and public international organizations, and private sector refers to for-profit and not-for-profit non-governmental organizations.

⁴ What a “longer period of time” is may depend on the issue area, but single occurrences of cooperation are not considered as partnership.

⁵ This typology is partly based on a literature review by Guðrið Weihe (2008), who identifies four areas of literature with distinct PPP approaches and argues that an overall PPP definition is not possible.

- *Consulting PPP*: Public partners rely on paid consulting from private partners for public policy decisions.
- *PPP Network*: A network of PPPs that differ from each other through non-identical membership or different forms of organization, but that belong to each other by having the same management or by being a sub-group of a larger PPP or network.

Table 1: A Resource-Based Typology of Public-Private Partnerships

		Contract ensures payment of private partners for their invested resources	
		No	Yes
Kind of resources contributed by private partners	Beyond advice	Collaborative PPP	Contractual PPP
	Advice only	Advisory PPP	Consulting PPP

Source: Own account

While various forms of public-private cooperation have existed as long as the distinction between public and private has been used (Wettenhall 2010), the term public-private partnership was first established in the 1970s for business-community partnerships with the purpose of urban regeneration and development (Weihe 2008: 431). A prominent example is the New York City Partnership that started in the 1970s and organized different projects to deal with issues such as youth unemployment, education, transportation, housing, or crime and public safety – all with the aim “to make New York City a better place to live, to work and to conduct business” (NYT 1985). The private participants are often the driving force behind these partnerships and their voluntary contributions are often the main sources of funding for them (Weihe 2008: 431). I propose to describe these partnerships as collaborative PPPs, as their defining characteristic is the collaborative provision of public services.

In contrast, the contractual PPP resembles a buyer-seller relationship. This type of PPP is mostly used for infrastructure projects with a special type of participation by the private sector that involves private financing. It is a special type of procurement where the public partner does not pay the price of a project to the private partner at once, but instead enters a long-term contract, for example leasing a prison, or allowing the private partner to charge fees for a public service, as in the example of toll roads. Weihe (2008) uses the term “infrastructure approach” and Hodge et al. (2010) use the term “long-term infrastructure contract (LTIC)” to describe such partnerships. However, the term contractual PPP can be used for any outsourcing of public services to private partners, where the contract ensures payments to the private partners, either by the public partner or/and by the users of the public services provided. PPPs that charge a member fee, not

for profit but only as a means to pool resources, should be considered as collaborative, not contractual. Collaborative PPPs can also have a contract, but it does not reflect a buyer-seller relationship. What keeps collaborative PPPs together is not the monetary incentive from the partnership contract itself, but an interest in the public services provided or supported by the partnership. This interest can be self-seeking or altruistic.

Advisory PPPs and consulting PPPs are forms of public-private cooperation where public partners rely on non-paid advice or paid consulting from private partners for their public policy decisions. The advice may be based on research that required the investment of monetary resources by the private partners, but the resource that is transferred to the public partner is advice or consulting only. While the term public-private partnership is well established for collaborative and contractual PPPs, advisory and consulting PPPs are not always described as a PPP and it may be disputed whether it makes sense to describe such continuous consultation as a partnership. However, such relationships are described as PPPs by several authors, such as Börzel and Risse (2005: 199) in their co-optation PPP or Linder and Rosenau (2000: 5) in their definition of PPPs. For the purpose of this study it is useful to keep track of such PPPs, because they may evolve into other types of PPPs or vice versa.

A PPP network is a type of partnership that is not an exclusionary type besides the previous four types. It rather describes a network of several PPPs that differ from each other through non-identical membership or different forms of organization, but that belong to each other by having the same management or by being a sub-group of a larger PPP or network. Examples of this type of partnership are the Global Alliance for Improved Nutrition (GAIN 2010) and the Public-Private Partnership for the Urban Environment of the United Nations Development Programme (UNDP 2009, Weihe 2008). This type of PPP often functions as a platform for further partnerships that can be set-up as sub-groups or projects. Often an international organization acts as a facilitator, while PPPs within the network provide a public service in a specific region or in a specific issue area. This is also consistent with the concept of IOs as orchestrators (Abbott et al. 2010). A PPP network may consist of collaborative, contractual, advisory, and/or consulting PPPs. An accurate description of a PPP network therefore makes it necessary to describe the type of each PPP in the network.

This typology of PPPs provides a useful framework for the description of the partnership activities of Interpol, WCO and WHO in the following three sections of this paper. It is helpful to show the differences and similarities of the PPPs and how they change over time. Interpol started with an advisory PPP that evolved into a PPP network consisting of an advisory PPP and several collaborative PPPs. WCO had a collaborative PPP for several years, which was then aborted and replaced with a network of one advisory and several collaborative PPPs. During a second PPP reform at WCO, the advisory

PPP within the network was replaced with a new one, while the collaborative PPPs continued their work. WHO has started directly with a PPP network, consisting of several collaborative PPPs, and is currently struggling with the decision to reform this PPP.

INTERPOL AND THE INTELLECTUAL PROPERTY CRIME ACTION GROUP

The International Criminal Police Organization (Interpol) has a history of understanding itself as a non-political organization. From its beginnings it was intended to facilitate police cooperation even between states that have difficult political relations. Therefore regular diplomatic channels were avoided as far as possible. It was founded in 1923 as a nongovernmental organization similar to an international professional association of chiefs of police (Anderson 1989: 39). When it was re-established after World War II, it filed a request to the United Nations Economic and Social Council for recognition as a nongovernmental organization in 1947. This request was granted, but in 1971 the UN re-classified it as an intergovernmental organization (Anderson 1989: 69). Keohane and Nye explicitly mentioned Interpol as an example of what they call transgovernmental: interactions between "sub-units of governments on those occasions when they act relatively autonomously from higher political authority in international politics" (Keohane and Nye 1974: 41). The degree to which Interpol is a transgovernmental and non-political organization has decreased until today, especially since Interpol also deals with the very political crime of terrorism (Barnett and Coleman 2005: 611), but compared to other international organizations it is still very transgovernmental. When talking to Interpol employees, they mention quite frequently that they deal with non-political, technical matters (Reuland 2009, Newton 2009b, Plançon 2010).

In 2009 Interpol had 188 member states, a staff of 645 and an annual budget of 59 million Euro, of which more than 90% is contributed by the member states (Interpol 2010b). Interpol provides a wide variety of services to its member states in order to improve international police cooperation. Interpol facilitates personal contacts between law enforcement officers through a system of liaison officers and seconded officers. It maintains a global police communication system and several police databases, for example for the exchange of information about fugitives, stolen motor vehicles, stolen works of art, and lost and stolen travel documents. Interpol also analyzes the gathered information and provides information about transnational crime developments. Last but not least, Interpol offers assistance to member states with police capacity building measures and operational support through the 24/7 Command and Co-ordination Centre or through Interpol support teams who are sent on request to member states (Interpol 2010b). While some of this support infrastructure exists without being dedicated to a specific crime area, Interpol also focuses on a number of specific crimes, such as drugs, human trafficking, and intellectual property crime.

Interpol's concern about intellectual property crimes started in the late 1970s. After representatives from the film and music industry approached Interpol, the 1977 Interpol General Assembly passed a resolution encouraging member states to do more to combat piracy of movies and music (Sandhu 1999: 99). The issue resurfaced in 1994, the year when the TRIPS Agreement was passed. Interpol invited a public-private working party on the issue, which met with participants from companies, associations and law enforcement agencies from Europe and the United States. As a result of this meeting, the Interpol General Assembly passed another resolution in 1994, again asking member states to cooperate more closely on the issue (Sandhu 1999: 100). However, Interpol did not have any full-time staff working on the issue of IP crime until 2001. The General Secretariat acquired a mandate from the Interpol General Assembly in 2000 to create an IP crime program that works together with the international business community to raise awareness of the issue and actively combat this form of crime (Interpol 2000). John Newton, a British police officer who managed the IP crime program since 2003, described the motivation of the General Secretariat to seek this mandate as a response to a demand from the business community (Newton 2009b). The first manager of the IP crime program was the Danish police officer Erik Madsen. He established the Interpol IP Crime Action Group (IIPCAG) in 2002. It was set up as an advisory PPP with the purpose to give input to the new Interpol program. The core supporters of the group came from the music industry, represented by the International Federation of the Phonographic Industries, the movie industry, represented by the Motion Picture Association, the pharmaceutical industry, represented by the Pharmaceutical Security Institute, and the tobacco industry (Newton 2009b).

The group became increasingly a network with many collaborative sub-PPPs for specific activities, such as crime fighting operations, training seminars, conferences, and a database to exchange information. The private sector participants not only gave advice but invested significant resources into specific activities. In a 2007 brochure, IIPCAG presented itself as a PPP with several members from the public and the private sector (Table 2). This published list shows an emphasis on the membership of business associations instead of individual companies; but while the associations are the official members, many participants come from member-companies of those associations (Hardy 2009). The advisory PPP had approximately two to three meetings a year and there were additional meetings in the collaborative PPPs. The growth of the PPP network was paralleled with growth of the Interpol IP crime program. The number of staff grew from 1 in 2005 to 6 in 2010. Its funding comes about 50% from the public members and 50% from the private members. It receives requests from the members of the PPPs and reports back to them (Newton 2011, Newton 2009b). So while the Interpol General Secretariat as a whole acts as an agent for the Interpol member states, the IP

crime program within it effectively also acts as an agent for the private and public members of the PPP network.

Table 2: Interpol IP Crime Action Group (IIPCAG)

Founded 2002 Permanent secretariat hosted by Interpol Co-chairs: Interpol and International Federation of the Phonographic Industries (founding co-chair), Interpol and Underwriters Laboratories (since 2006)
<i>Public Sector Members:</i> Interpol, WCO, WIPO, Europol; Belgian National Police, Department of Public Security (PR China), Federal Bureau of Investigation (USA), Finland National Board of Customs, French National Police, Irish National Police (Garda Siochana), Italian National Police, Mexican Institute of Industrial Prop- erty, Mexican National Police, Police Service of Northern Ireland (UK), Public Prosecutor for Serious Economic Crime (Denmark), Royal Canadian Mounted Police, Spanish National Police (Guardia Civil and Policía Nacional), United Kingdom Intellectual Property Office
<i>Private Sector Members:</i> Coalition for Intellectual Property Rights (CIPR), Global Anti-Counterfeiting Group (GACG), Interna- tional Chamber of Commerce Business Action to Stop Counterfeiting and Piracy (ICC BASCAP)*, International Federation of the Phonographic Industry (IFPI), International Trademark Association (INTA), Motion Picture Association (MPA), Pharmaceutical Research and Manufacturers of America (PhRMA), Pharmaceutical Security Institute (PSI), Union des Fabricants (Unifab), United States Chamber of Commerce Coalition Against Counterfeiting and Piracy (USCC CACP); Microsoft Corpo- ration, Procter & Gamble, Underwriters Laboratories

Source: Own account based on IIPCAG 2007, Monks 2010, Grant 2011

*) In January 2007 BASCAP merged with the Global Business Leaders Alliance Against Counterfeiting (GBLAAC).
Until then GBLAAC was an independent member of IIPCAG (Dobson 2010).

One example of a regional collaborative PPP in the Interpol PPP network is operation Jupiter. It started in 2004 as a partnership between representatives from the pharmaceutical, recording, motion picture and tobacco industry, together with law enforcement agencies from Argentina, Brazil and Paraguay, in order to address IP crime in the tri-border area between these countries. Since then, the operation has been conducted almost annually and has included more industry sectors and more countries. Operation Jupiter V in 2009 and 2010 saw the participation of 13 countries and collaboration with the WCO (Interpol 2011a). Each year the operation consists of training seminars and subsequent raids in different locations of the participating countries. In these seminars the law enforcement officers learn about the method of operation of IP criminals and how to distinguish counterfeits from original products. As a result of the Jupiter operations about 1,700 people have been arrested and several tons of counterfeit and pirated products have been seized, including CDs, DVDs, toys, cigarettes, watches, clothes, medicine, agrochemicals, and processed food (Interpol 2011a, Interpol 2011b).

An example of a global collaborative PPP in the Interpol PPP network is the Interpol Database on International Intellectual Property (DIIP). This PPP started in 2006 with the purpose to gather information from public law enforcement agencies and from the

affected industries in order to provide Interpol with a global cross-industry picture of IP crime so that the organization can facilitate the fight against IP crime more effectively (Newton 2009b). The creation of the database was supported with 750,000 USD seed funding from the US Chamber of Commerce and additional 250,000 USD funding from the US Patent and Trademark Office (Huther 2010). Until 2009 the database contained information about products from 20 industry sectors (Newton 2009a). However, most of this information is related to Interpol-led operations like Jupiter. Support from the industry for this database was not as big as hoped. Many companies are afraid to jeopardize their investigations if they share their information with Interpol, or they do not see how they could benefit from the information sharing, as they have no access to Interpol data (Huther 2010, Dobson 2010, Newton 2009b).

Another example of a collaborative PPP in the Interpol PPP network is the Interpol IP Crime Investigators College. The main partners are Interpol and Underwriters Laboratories (UL). Interpol and UL have been organizing annual IP crime conferences since 2007. In order to have a more permanent and global resource of knowledge about IP Crimes, they created an online learning platform called Interpol IP Crime Investigators College. The website www.iipcic.org has been online since the 2011 Global Congress on Combating Counterfeiting and Piracy in Paris. So far, this project is mainly financed by UL, but UL intends to charge fees for the inclusion of training modules from additional partners (Newton 2009b, Monks 2010). For example, the section about optical disc piracy has been contributed by the Motion Picture Association (Buchan 2010). However, it remains to be seen how successful this online college will be.

THE WORLD CUSTOMS ORGANIZATION (WCO) AND THE INTELLECTUAL PROPERTY RIGHTS STRATEGIC GROUP

The World Customs Organization was founded in 1952 as the Customs Co-operation Council and aims to enhance the effectiveness and efficiency of customs administrations. WCO administers several customs conventions, such as the Convention on the Harmonized Commodity Description and Coding System or the Convention on the Simplification and Harmonization of Customs Procedures (UIA 2010). Insofar as the conventions are concerned, the WCO is an intergovernmental organization. However, WCO also facilitates cooperation between customs agencies and supports customs capacity building. In this respect, WCO is also involved in transgovernmental activities. In 2010 the WCO had 177 member states, a staff of 106 and an annual budget of 14 million Euro (Vorreux 2010a).

An important development for the relationship between customs agencies and IP rights owners was the 1994 TRIPS Agreement and its subsequent implementation until 1996 (for industrialized countries), 2000 (for countries in transition and developing

countries), and 2013 (for least developed countries). The articles 51-60 of the TRIPS Agreement require the customs agencies of the WTO member states to cooperate with IP rights owners for the seizure of IP infringing goods. The usual basis for such border measures is an application for action from the rights owner. In addition, customs agencies may also seize suspected IP infringing goods ex-officio. However, in practice, such seizures without application are less common (EU Com 2009: 6). The application for action is a civil law measure that can also be used for non-criminal IP infringements. Criminal procedures usually involve specialized customs investigation units or the police (Zimmermann 2009).

Closer cooperation between WCO and the international business community started in 1991, when the G7 recommended that the WCO should strengthen cooperation between customs agencies and carriers against drug trafficking. The resulting customs trade partnership was gradually extended to include other border-related crimes, such as IP rights violations (Robinson 1999). WCO developed an IPR working group since 1997 that brings together participants from customs agencies and the business community. This group produced IP training material and organized training seminars for customs officers. It was fully funded by the private sector partners of this group (Robinson 1999, Brohm 2010). However, WCO did not have any full-time staff for its IPR program at that time and therefore it became increasingly difficult for its secretariat to keep up with the increasing administrative workload for IP related activities. To solve this problem, the WCO secretariat made an agreement with the anti-counterfeiting business association SNB-REACT, which took over most secretariat tasks for the newly founded WCO IPR Strategic Group in 2000 (Brohm 2010, Zimmermann 2009).

SNB-REACT was founded in 1991 in Amsterdam as Stichting Namaakbestrijding (SNB, Dutch for Anti-Counterfeiting Foundation) by the Dutch lawyer and former Chamber of Commerce Amsterdam employee Ronald Brohm. This organization has pooled resources from several IP rights owners to conduct joint operations against IP crime. Since 1995 SNB has expanded across borders and supplemented its name with the acronym REACT (Réseau Européen Anti-Contrefaçon, French for European Anti-Counterfeiting Network). SNB-REACT has opened offices in several European countries and is also collaborating with independent anti-counterfeiting business associations across Europe as part of the REACT-Network (Brohm 2010). The management of the WCO IPR Strategic Group has put SNB-REACT in a unique position to offer privileged access to WCO for its member-companies. SNB-REACT charged a membership fee of 2000 Euro, which included membership in the WCO IPR Strategic Group (WCO IPR SG 2001). However, membership was not mandatory to participate in meetings as a guest or to participate in specific projects, such as the many training seminars that were

organized by the WCO IPR Strategic Group (Brohm 2010). Until 2007 the group has grown to more than 40 private sector members (Table 3).

Table 3: World Customs Organization IP Rights Strategic Group

<p>Founded 2000; Terminated: 2007</p> <p>Permanent secretariat hosted by SNB-REACT (business association) in cooperation with WCO</p> <p>Co-chairs: WCO and Société BIC (founding co-chair), WCO and Procter & Gamble (2003-2007)</p> <p>Successor Groups: IPR Business Partnership (private association) and WCO SECURE-Group (PPP)</p>
<p><i>Public Sector Members:</i></p> <p>WCO and customs agencies of Angola, Australia, Bangladesh, Belgium, Bhutan, Cambodia, Canada, China (PR), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, India, Indonesia, Iran, Italy, Japan, Korea (RoK), Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Maldives, Malta, Mauritius, Mongolia, Montenegro, Myanmar, Netherlands, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, UK, USA, and Vietnam</p>
<p><i>Private Sector Members:</i></p> <p>International Bureau of Mechanical Rights Societies (BIEM), International Federation of the Phonographic Industry (IFPI), Imaging Consumables Coalition of Europe (ICCE), Motion Picture Association of America (MPAA), Pharmaceutical Security Institute (PSI), Swiss Watch Federation (FHS), SNB-REACT; Abercrombie & Fitch, adidas, BBC, BIC, British American Tobacco, CHANEL, Daimler(Chrysler), Dolby Laboratories, Eli Lilly & Company, Epson, GM, Harley-Davidson, Hermes, Imperial Tobacco, Intel, Japan Tobacco, La Chemise Lacoste, LVMH Fashion Group, L'Oréal, Microsoft, MSD Merck Shape & Dohme, New Era Cap Company, Nike, Nokia, Pfizer, Philip Morris, Philips, Procter & Gamble, Reebok, Rouse & Co International, Samsung Electronics, Sanofi Aventis, Sara Lee, Sony, Sony Ericsson, Spirits International, Timberland, Tommy Hilfiger, Underwriters Laboratories, Unilever, V.F. Corporation</p>

Source: Own account based on WCO IPR SG 2007

The WCO IPR Strategic Group was organized as a collaborative PPP from the beginning, with about four meetings per year of the group and approximately eight training seminars around the world per year. The funding for training seminars came not only from the private sector but also from public sector organizations, such as the World Intellectual Property Organization (WIPO), the US Patent and Trademark Office (USPTO), the US Agency for International Development (USAID), and the European Union (EU). Communication with the customs agencies was managed by the WCO secretariat, while SNB-REACT managed communication with the private sector and all remaining administrative work, including finances (Brohm 2010). However, the work of the Strategic Group was not limited to the organization of seminars. It also lobbied for legislation. Most importantly, the group drafted a model law on IP enforcement that goes beyond the minimum standards required by the TRIPS-Agreement. The law was presented since 2003 as a legislative proposal to the WCO member countries (WCO IPR SG 2004). This legislative lobbying has drawn some critical attention to the group. It was criticized for going beyond TRIPS minimum standards and for being too driven by the private sector (Zimmermann 2009, Hardy 2009). In 2006 the WCO secretariat

devoted more resources to its IP rights activities and employed the first full-time staff for this issue. The French customs officer Christophe Zimmermann has been the WCO Coordinator for the Fight Against Counterfeiting and Piracy since then and has terminated the outsourcing of secretariat functions. The last meeting of the Strategic Group took place in 2007. The divorce of this partnership resulted in two successor groups: the IPR business partnership, which is a purely private sector association hosted by SNB-REACT, and the SECURE Working Group (Standards to be Employed by Customs for Uniform Rights Enforcement), which was an advisory PPP of the WCO (Zimmermann 2009, Brohm 2010, Heath 2010, Blakemore 2010).

In spite of this divorce, the cooperation between WCO and the private sector has continued. What has evolved since 2007 could be described as a PPP network, with the SECURE Working Group as an advisory PPP and several collaborative PPPs around customs training seminars. The political controversy around the advisory PPP intensified, as the SECURE Working Group continued to draft legislative proposals, without having agreed on terms of reference that define the relationship between the public and private sector participants. The group has been criticized by WCO delegates from Argentina, Brazil, China, Cuba, Ecuador, and Uruguay (Mara 2008a). As a result, the 2009 WCO Council terminated this group and replaced it with the CAP (Counterfeiting and Piracy) Group exclusively for public sector members with a mandate that excludes any legislative proposals or standard setting and is limited to capacity building and exchange of best practices (Zimmermann 2009, New 2009b). However, the collaborative PPPs around training seminars continue their work in spite of the political controversies at the advisory PPP (Zimmermann 2009). Advisory cooperation is also continuing cautiously. The WCO secretariat invited private sector representatives as guests to the CAP group and it initiated a new Rights Holders Consultative Group as an advisory PPP. This group only met twice in 2010 and it remains to be seen how this new PPP will do its work (Vorreux 2010a).

Another very new collaborative public-private partnership in the PPP network of the WCO is a database called IPM (Interface Public-Members). This database is designed as an interface, where private IP rights holders can submit information for the identification of genuine and counterfeit goods to one central point of reference for all participating customs agencies around the world. This database is financed through subscription fees from the private rights holders that range between 2,800 EUR and 8,800 EUR annually, depending on the rights holders' sales revenue. Participation is free of charge for the customs agencies. The database can also serve as a communication platform for other IP related information, such as the dates of planned collaborative training seminars. Thereby this PPP could serve as the partnership that ties all other PPPs in the WCO network together, if it is successful (Vorreux 2010a, Vorreux 2010b).

THE WORLD HEALTH ORGANIZATION (WHO) AND THE INTERNATIONAL MEDICAL PRODUCTS ANTI-COUNTERFEITING TASKFORCE (IMPACT)

The World Health Organization (WHO) was founded in 1946 and became a specialized organization in the United Nations (UN) system in 1948. It performs a wide variety of tasks related to public health: from proposing conventions with respect to international health matters, via developing international standards with respect to food, biological and pharmaceutical products, to technical assistance in emergencies and aid for developing countries. In 2009 the WHO had 193 member countries, a staff of 4,000 and a budget of 1,971 million USD (WHO 2010b, UIA 2010). It is difficult to classify the WHO as a whole. Some of its work is intergovernmental, some of its work is transgovernmental, and with many PPP projects, some of its work is also transnational. Up to 30% of the total WHO budget comes from the private sector, including foundations and NGOs⁶ (WHO 2010b).

WHO's concern with counterfeit medicines began in the 1980s. Its governing board, the World Health Assembly (WHA), passed a resolution in 1988 mandating the WHO to "initiate programmes for the prevention and detection of export, import and smuggling of falsely labeled, spurious, counterfeited or substandard pharmaceutical preparations" (Kopp 2010a). One example of such a program is a 1996 project on counterfeit drugs, financed by the government of Japan, which resulted in a study of the issue and guidelines on how to address it (Kopp 2010b). Such programs involved cooperation with pharmaceutical manufacturers, but no permanent PPP had been set up until 2006. The idea to do so was born in one of the transgovernmental bodies of the WHO: the International Conference of Drug Regulatory Authorities (ICDRA). In 2004 the ICDRA suggested that WHO should draft an international convention on counterfeit medicines. However, in informal negotiations it became clear that no consensus could be reached on such a convention (Kopp 2010b). As an alternative, the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) was founded in 2006 to pursue other ways to combat counterfeit medical products. This taskforce was designed from the beginning as a PPP network consisting of several collaborative PPPs with one steering PPP at the top. Its terms of reference clearly state that decisions should be made through a consensus-based approach, giving equal rights to members from the public and the private sector (WHO IMPACT 2009). The membership of IMPACT is comprised of public international organizations and government agencies from WHO member countries and of private sector associations. Five working groups have been established, as

⁶ The official WHO financial report shows private sector, NGOs, and foundations as separate categories of contributors. However, in line with the use of the term private sector in this study (for-profit and not-for-profit non-governmental organizations), most of these entities would be considered private sector.

sub-PPPs within the network (Table 4). While no individual companies are members of IMPACT, the member associations send individual experts from member-companies to the working groups. Therefore employees of many major research based pharmaceutical companies have been present at many IMPACT meetings (Int.17 2010, Int.08 2010).

IMPACT had a regular budget of 2.6 million USD during the period from 2006 to 2009, of which 28% came from the WHO and 68% came from voluntary contributions from the European Commission, Australia, Germany, Italy and the Netherlands (WHO 2010a). The funding from the private sector was rather limited compared to the PPPs at Interpol and WCO. The International Federation of Pharmaceutical and Manufacturers' Associations (IFPMA) supported IMPACT with 100,000 CHF (Int.17 2010). Additional contributions have been made directly to support meetings and specific activities. An example for this is the enforcement working group which has its own budget managed by Interpol. WHO and Interpol had already collaborated before IMPACT, for example in a 2005-2006 investigation of counterfeit malaria medicine in South East Asia (Newton et al. 2008). This collaboration has intensified since early 2008, when the French police officer Aline Plançon was sent from Interpol to WHO to manage the enforcement activities of IMPACT from the WHO secretariat. She organized training seminars and enforcement operations in several collaborative PPPs (Plançon 2010).

Table 4: WHO International Medical Products Anti-Counterfeiting Taskforce (IMPACT)

<p>Founded 2006 Chair: World Health Organization (WHO) Vice-Chairs: National Agency for Food and Drug Administration and Control NAFDAC(Nigeria)and Health Sciences Authority (Singapore) Permanent secretariat hosted by World Health Organization (WHO)2006-2010 Interim secretariat hosted by Agenzia Italiana del Farmaco (AIFA) since August 2010</p>
<p><i>Public Sector Members:</i> WHO, Interpol, WCO, WIPO, WTO, OECD, World Bank, European Commission, Council of Europe, Commonwealth, ASEAN, Permanent Forum on International Pharmaceutical Crime</p>
<p><i>Private Sector Members:</i> International Federation of Pharmaceutical and Manufacturers' Associations (IFPMA), International Generic Pharmaceuticals Alliance, World Self-medication Industry, Asociacion Latino Americana de Industrias Farmaceuticas, International Federation of Pharmaceutical Wholesalers, European Association of Pharmaceutical Full-line Wholesalers, International Pharmaceutical Federation, International Council of Nurses, World Medical Association, Pharmaciens sans frontiers, International Alliance of Patients Organizations, Partnership for Safe Medicines, Pharmaceutical Security Institute (PSI)</p>
<p><i>Working Groups (sub-PPPs):</i> – Legislative and Regulatory Infrastructure (Chaired by Federal Ministry of Health, Germany) – Regulatory Implementation (Chaired by Food and Drug Administration FDA, USA) – Enforcement (Chaired by Interpol and Therapeutic Goods Administration, Australia) – Technology (Chaired by International Federation of Pharmaceutical Manufacturers and Associations) – Communication (Chaired by International Pharmaceutical Federation)</p>

Source: Own account based on AIFA 2011, WHO IMPACT 2008b, WHO IMPACT 2008d

One example of such a collaborative sub-PPP within the enforcement group of IMPACT is operation Mamba. It started in 2008 as an operation in Tanzania and Uganda, where police, customs, and drug regulatory agencies have collaborated with the private sector against medicine counterfeiters. Kenya participates in Mamba since 2009 and Burundi and Rwanda joined in 2010. During operation Mamba III in 2010 about 10 tons of counterfeit and illicit medical products have been seized and more than 80 suspects have been arrested (Interpol 2010a, Interpol 2009). While operation Mamba took place under the umbrella of WHO IMPACT, it was mainly coordinated by Interpol and financed through the Interpol OASIS (Operational Assistance, Services and Infrastructure Support) program. And OASIS is funded with an annual budget of 4 million EUR by the German government to support law enforcement capacity building throughout Africa (Plançon 2010, Interpol 2010c, AA 2010).

As IMPACT has a public health focus rather than an IP focus, these PPPs are more driven by the public sector than the PPPs at Interpol or WCO (Plançon 2010). The main actors in IMPACT enforcement PPPs are police, customs, and drug regulatory agencies, supported by member companies of the Pharmaceutical Security Institute (PSI). PSI is an association of research-based pharmaceutical companies that focuses on anti-counterfeiting. It was first created in 1992 as an informal network, and then became more formal in 1997 when 12 member companies formed a consortium and set up a permanent office in Italy. In 2002 the PSI office moved to the Washington D.C. area, where PSI was incorporated and from where it has operated since. Today PSI has 25 member companies and an annual budget of nearly 1 million USD. It became the primary private sector partner of Interpol in the fight against counterfeit medicines and has also supported Interpol financially (Kubic 2010).

Interpol's role within WHO IMPACT has significantly increased over the years, while the role of WHO itself has declined. IMPACT started as a WHO led partnership in 2006 and the full-time executive secretary was the WHO employee Valerio Reggi. In 2008 the Interpol employee Aline Plançon was sent to the WHO headquarters to support IMPACT full-time for all matters related to Interpol. Since 2009, WHO does not dedicate any full-time staff to IMPACT. The new executive secretary was Sabine Kopp, who managed IMPACT ad interim besides other responsibilities (Kopp 2010b). In August 2010, the secretariat was transferred temporarily to the Italian drug regulatory agency Agenzia Italiana del Farmaco (AIFA 2011). This reduction of WHO resources in IMPACT is also the result of the political controversies around this PPP (Plançon 2010). While IMPACT was immediately welcomed by the transgovernmental ICDRA in 2006, and was also endorsed by the Interpol General Assembly in 2008, no such explicit endorsement has been achieved from the World Health Assembly (WHA). The basis for IMPACT from the WHA are rather general resolutions requesting actions

against counterfeit medicine (WHO 2010a). An attempt to get a more explicit endorsement was made at the WHA in 2008. A resolution from Nigeria received support from several African, European, East Asian and North American countries, but was blocked due to opposition from several Latin American, South Asian and South East Asian countries. When no consensus could be reached, the WHO Executive Board was asked to solve the issue (Reggi 2008).

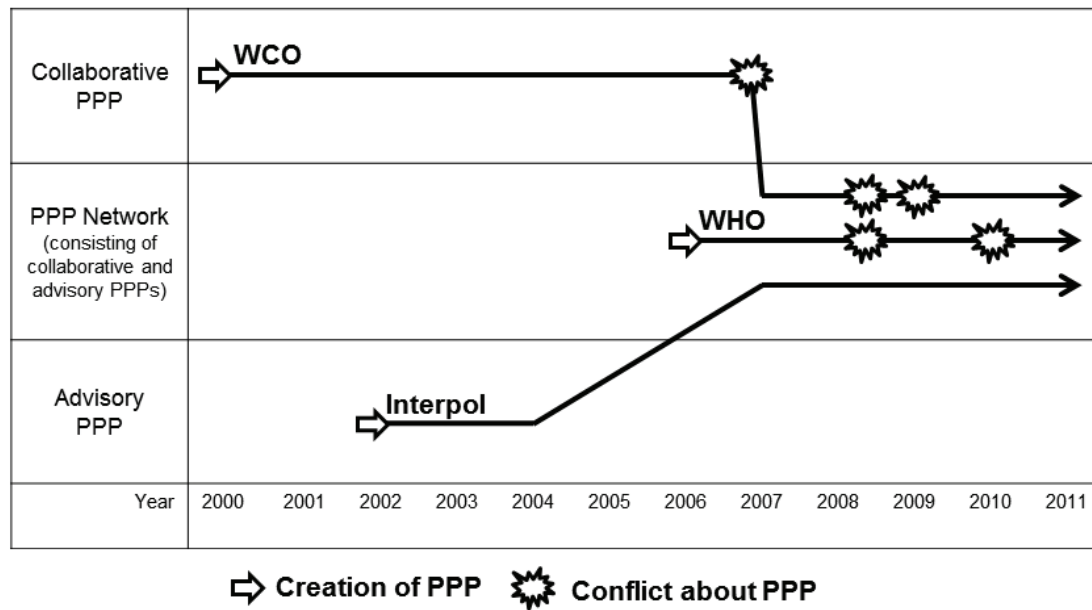
However, the issue has not been solved and erupted in a heated debate at the WHA in May 2010. The delegates from Brazil and India claimed that “WHO’s work against counterfeit and substandard medicines is being influenced by brand-name drug producers with an interest in undermining legitimate generic competition” (Mara 2010). At the intergovernmental level, delegates from Brazil suggested that WHO should seek a “divorce” from this partnership, while at the transgovernmental level, the Brazilian drug regulatory agency ANVISA (Agência Nacional de Vigilância Sanitária) supports IMPACT with their active participation (WHO IMPACT 2008c, Int.17 2010). However, the WHA decided to set up an intergovernmental working group without private sector participants to determine WHO’s relationship with IMPACT. A decision is not yet in sight, but one option on the table is that Interpol could take over the leadership of IMPACT from WHO, because Interpol is more supportive of IMPACT than WHO and the issue is less controversial there (Kopp 2010b, Plançon 2010, Int.17 2010).

FINDINGS FROM A COMPARISON OF PPPS AGAINST IP CRIME

The three international organizations and their PPP activities examined in this paper show some similarities, but also some differences in their development over time. None of the PPPs is of a contractual or consulting type. All the private sector partners were sufficiently interested in the subject of the PPP to participate without being paid by the public partners for their participation. The dominant type of PPP is that of a PPP network consisting of collaborative and advisory PPPs. Interpol started with an advisory PPP, which then evolved over time into a PPP network. WCO started with a collaborative PPP, which was replaced in a reform by a PPP network. And the WHO has chosen the PPP network type from the beginning (figure 2).

The voluntary nature of all PPPs, and the requirement to invest significant resources for a collaborative PPP, seems to make continuing global collaborative PPPs with a large number of partners less likely. Instead, many smaller collaborative PPPs are formed with those partners who are willing to support a specific activity. And a larger PPP network serves as a source of partners for collaboration in smaller groups.

Fig. 2: Paths of different PPPs against IP Crime



Source: own illustration

The least contentious and most durable PPP is Interpol's. It started with the Interpol IP Crime Action Group as an advisory PPP in 2002 and gradually evolved into a PPP network consisting of an advisory PPP and several collaborative PPPs. The transition phase went from about 2004, when the first Operation Jupiter was started, to about 2007, when the collaborative PPPs with Underwriters Laboratories and the US Chamber of Commerce showed effects on the Interpol IP crime program. Interpol avoided political controversies as much as possible by focusing on law enforcement as opposed to law making.

The World Customs Organization's IP Rights Strategic Group was set up as a collaborative PPP from its founding in 2000. The role of the private sector in this PPP was astonishingly high, as major secretariat functions were outsourced to the private sector. However, the strong role of the private sector in combination with legislative proposals coming from the group has led to controversies. WCO decided to devote more resources in-house to the issue of IP rights and stop the outsourcing, thereby also terminating the PPP. SECURE was set up as a new advisory PPP, while continuing collaboration in sub-PPPs, thereby creating a PPP network. However, the continuous drafting of legislative proposals led to increased controversy over the advisory PPP and resulted in another termination only two years later. The secretariat continued the collaborative sub-PPPs and set up the Rights Holder Consultative Group as a new advisory PPP.

The World Health Organization's International Medical Products Anti-Counterfeiting Taskforce (IMPACT) was set up as a PPP network with several collaborative sub-PPPs from the beginning. These sub-PPPs are not only about enforcement, but also, for example, about legislative guidelines. While the secretariat of this PPP was

initially hosted by the WHO, Interpol has evolved as an increasingly strong player, which is currently investing more resources in IMPACT than WHO. Due to controversies over IMPACT, a reform, a termination, or a change of leadership of this PPP appears to be imminent.

When analyzing the development of these PPPs over time and comparing them with each other, five major factors seem to influence their formation, maintenance, termination, and reform:

1) Common ground

Global partnerships involve participants from very diverse countries. As a basis for cooperation they need at least some common ground. For the case of enforcement of intellectual property, this common ground is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). While the public international organizations analyzed here were engaged in some public-private cooperation before the TRIPS agreement was reached, the PPPs against IP crime were all formed after it. The TRIPS agreement serves as a foundation for the PPPs in three ways: First, it provides the first international minimum standard for the protection of IP rights. Second, TRIPS requires at least some public-private cooperation, through its requirement for customs agencies to cooperate with rights holders. And third, the criminalization of IP infringements of a commercial scale demands activities from public law enforcement agencies.

2) Absolute and/or relative gains of resources

If public-private cooperation is necessary, then participation in PPPs, as a special kind of cooperation, is a way to institutionalize this cooperation with the intention to reduce transaction costs. And a reduction of transaction costs means an absolute gain of resources. As IP crimes are mostly transnational, global PPPs are especially attractive, because they allow institutionalized cooperation with a large number of relevant actors around the globe, thereby possibly increasing absolute gains even more.

Besides the reduction of transaction costs, there are further resources to be gained in a PPP. The many training seminars and conferences and also the exchange of information through databases are examples of how information is being transferred. Human resources were relevant for the decision of the WCO to enter a special partnership with SNB-REACT. And when the human resources were available in-house, this outsourcing through a PPP was terminated. Financial contributions can also be seen in all collaborative PPPs and are a factor that increases the attractiveness of PPPs for those actors who receive the funds. The most important resources invested by the private sector partners are information, human resources, and money. The public international organizations contribute the coordinating functions of a secretariat of the PPP, as well as their reputa-

tion, their credibility, and their access to government agencies around the world, which bring their legitimacy in their jurisdictions to the partnership.

While the absolute gains of resources are important, also the relative gains, compared to competitors, need to be considered. Companies protect their IP to advance their competitiveness. Cooperating with competitors in PPPs is sometimes difficult for them and limits the amount of information they are willing to share. Also business associations can improve their competitiveness through PPPs. This was most obvious in the example of SNB-REACT, which established a unique partnership with the WCO. Also other associations can offer additional benefits to their members by participating in PPPs. Competition can also be observed between public agencies. The relationship between police and customs is not always easy, especially if both sides want to claim the success of arresting dangerous criminals. Finally, competition can also exist between international organizations. One example is the way in which Interpol increasingly appears as a strong figure in IMPACT, though the leadership rested with WHO at the beginning.

Actors who participate in several PPPs may also influence this competition by shifting resources from one PPP to another, or by threatening to do so. Such strategies can also be described as forum-shopping or regime-shifting (Helfer 2009, Sell 2009). The overall finding that concerns with absolute and relative gains matter for PPPs, a special form of cooperation, is consistent with general cooperation theory (Taylor 1987) and is also a finding from studies about PPPs in other issue areas (Schäferhoff et al. 2009, Andonova 2006)

3) Management of the PPP and its discretion

The international organization that manages a PPP by performing functions of a secretariat needs either a mandate from its member states or some discretion to do so. Once the PPP is established, it may increase the discretion for the international organization, since resources for specific activities can be acquired from partners without the need to seek approval for budget increases from the member states. This was observable in the cases of Interpol and WCO and is also consistent with principal-agent theory (Hawkins and Jacoby 2006: 208).

4) Representation of stakeholders

Several stakeholders have an interest in IP policy. If they are not adequately represented, they may choose to oppose the PPP from the outside. However, it matters not only if they are represented, but also how. For example, states are not always uniform actors as assumed in realist IR theory. Different agencies in one state can have very different views on the same issue. While delegates from Argentina and Brazil opposed the PPP at the WCO, other delegates from the same countries did not oppose the PPP at Interpol, and Argentinian and Brazilian government agencies actively participate in the

Interpol led operation Jupiter. Within the WHO it becomes even more complicated: while the Brazilian drug regulatory agency ANVISA supports the IMPACT PPP, the Brazilian mission at the WHO headquarters in Geneva opposes it. This conflict can also be seen at the aggregate level: While the transgovernmental ICDRA expressed their support for the IMPACT PPP, the more intergovernmental WHA could not agree on an endorsement and is even considering termination.

5) PPP policy

Finally, different policies can lead to more or less political controversy. While all PPPs examined want to do something against IP crime, they have chosen different policies in pursuit of this aim. Legislative proposals and standard setting has led to controversies at the WCO, while policy making through the allocation of resources to training seminars is less controversial. In particular, the acquisition of voluntary funding seems to avoid discussion about the distribution of resources. Interpol has presented itself as an expert in avoiding political controversies. It stayed away from any drafting of legislative proposals or setting of standards. Interpol claims to be purely technical and non-political, but its activities have an effect on IP protection through allocation of resources to IP crime fighting.

CONCLUSION

Transgovernmental and transnational law enforcement cooperation culminates in the global public-private partnerships against intellectual property crimes analyzed in this paper. Five key factors can be identified that influence the formation, maintenance, termination, and reform of such PPPs: (1) common ground, (2) absolute and/or relative gains of resources, (3) the management of the PPP and its discretion, (4) the representation of stakeholders, and (5) the policy pursued by the PPP.

This study has been conducted in a very explorative way due to the lack of previous research in this area. Therefore the findings of this study are first and foremost applicable to the cases of Interpol, WCO and WHO presented in this paper and to the cases of WIPO, WTO and the Global Congress on Combating Counterfeiting and Piracy, which have also been covered by the overall research project this paper is based on. Nonetheless, the findings are also relevant for several broader issue areas:

Research about international crime policies and international law enforcement cooperation can benefit from studies about transnational cooperation. It would be useful to see if the findings of this study are also true for PPPs in other crime areas. Examples are partnerships with insurance companies against the theft of insured objects, partnerships with credit card companies against credit card fraud, or partnerships with internet service providers against cyber-crime.

As research about PPPs in general has failed to come up with a commonly agreed definition or typology of PPPs, the definition and typology provided for this paper is also a contribution to this debate. Also the factors relevant for partnerships observed here could be relevant for PPPs in other issue areas. However, none of the partnerships analyzed for this study falls into the categories of contractual or consulting PPPs. Therefore the findings are probably least applicable to such PPPs, where the monetary incentive could serve as a substitute for other factors.

Finally, research about the global intellectual property regime is mostly focused on intergovernmental agreements about new legislation. However, according to the OECD (2008: 187) the largest obstacle to IP protection is not the law but a lack of law enforcement. Therefore, the PPPs that focus on the enforcement of existing laws, rather than negotiating new ones, could be a lot more relevant than the highly controversial and much-discussed negotiations about an Anti-Counterfeiting Trade Agreement (ACTA).

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