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Special Union for the International Deposit of Industrial Designs (Hague Union)

Assembly

Forty-Fourth (20th Extraordinary) Session
Geneva, July 9 to 17, 2024

DRAFT REPORT

prepared by the Secretariat

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/65/1): 1, 2, 3, 4, 6, 8(ii), 9, 13, 18, 21, and 22.

2. The reports on the said items, with the exception of item 13, are contained in the draft General Report (document A/65/11 Prov.).

3. The report on item 13 is contained in the present document.

4. Mr. Pascal Faure (France), Chair of the Hague Union Assembly, presided over the meeting.

ITEM 13 OF THE CONSOLIDATED AGENDA

HAGUE SYSTEM

5. Discussions were based on documents H/A/44/1 and H/A/44/2.

6. The Secretariat explained that document H/A/44/1 contained a proposal to freeze the application of the Hague Act (1960) (hereinafter referred to as the "1960 Act"), and a consequential proposal to amend the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the "Common Regulations"). The Secretariat recalled that the Hague Agreement was signed on November 6, 1925, and would celebrate its 100th anniversary on November 6, 2025. The Secretariat pointed out that successive Acts had been adopted over the years, and that three different Acts applied in parallel for some time, namely the London Act (1934) (hereinafter referred to as the "1934 Act"), the 1960 Act and the Geneva Act (1999) (hereinafter referred to as the "1999 Act"). The Secretariat explained that the 1934 Act was frozen in 2010, but that the Hague System still operated under the 1960 Act and the 1999 Act, which made the Hague System for the International Registration of Industrial Designs (hereinafter referred to as the "Hague System") complex to users, Member State Offices and the International Bureau. The Secretariat noted that the Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as the "Working Group") had been carefully monitoring that situation over the last decade, and, noticing that the 1960 Act had fallen into practical disuse, recommended at its last session in 2023 that the Assembly of the Hague Union freeze its application. In that context, the Working Group also recommended that the Assembly of the Hague Union amend the Common Regulations to reflect the freeze by deleting all operational provisions relating to the 1960 Act while providing for a safeguard of existing registrations recorded under that Act through transitional provisions. The Secretariat noted that the proposed date of entry into force was January 1, 2025. The Secretariat concluded that the adoption of that proposal would be a major milestone in the history of the Hague System as its operations would finally be based on a single, modern Act, namely the 1999 Act. In relation to document H/A/44/2, the Secretariat explained that it was a proposal to amend Rule 14 of the Common Regulations, with a consequential proposal to amend the Schedule of Fees. Furthermore, document H/A/44/2, was prepared at the request of the Working Group, and sought to introduce a relief measure for applicants who missed the time limit to correct irregularities. The new relief measure would allow applicants to request an extension of time within two months from the expiry of the initial time limit. The related proposed amendments to the Schedule of Fees aimed to introduce an administrative fee for that new type of request. Moreover, the opportunity was seized to formalize, in Rule 14 of the Common Regulations, the practice of allowing an applicant to withdraw an international application prior to the international registration. The Secretariat noted that the proposed date of entry into force be decided by the International Bureau, as its implementation required some modifications to the IT system and examination procedures of the International Bureau.

7. The Delegation of Ukraine shared significant concerns regarding the technical and financial implications associated with the introduction of new languages into the Hague System. While the Delegation did not express its opposition to the idea of introducing new languages, it reiterated its strong objection to the introduction of the Russian language into the Hague System. The Delegation believed that the introduction of any new language should be carefully evaluated, taking into account the specific needs and challenges faced by users. The Delegation added that Member States could observe that the Russian language ranked low in most of the objective criteria, the exclusive application of which was a key indicator for consideration of that subject. Moreover, the Delegation did not find it appropriate to discuss the introduction of the language of a country that had unleashed a war of aggression against Ukraine, bombed children's hospitals and repeatedly committed acts of violation of intellectual

property rights (IP rights) of IP holders from WIPO Member States. The Delegation urged the Member States of the Hague Union and the Secretariat to carefully consider the arguments presented to the Working Group and to prioritize the effective and targeted support of users of the Hague System.

8. The Delegation of Spain thanked the International Bureau and the member States of the Hague Union for the work carried out in the Working Group that aimed to develop and simplify the Hague System. Regarding document H/A/44/1, the Delegation supported the freeze of the 1960 Act, thus moving towards a single act, the 1999 Act, which would facilitate the use of the system by applicants. In relation to document H/A/44/2, the Delegation added that the proposed amendments would strengthen the legal certainty of the system and would avoid any undesired losses of international applications.

9. The Delegation of Saudi Arabia stated that, in May 2024, Saudi Arabia had submitted a document to the International Bureau regarding its intention to join the 1999 Act, and that it would deposit its instrument of accession in the near future. In that regard, the Delegation reaffirmed the importance of introducing Arabic, which was one of the official languages of the United Nations (UN), as an official language into the Hague System as that would be an impetus for further use of the Hague System by the right holders of the Arab speaking countries.

10. The Delegation of Greece supported the proposal to freeze the application of the 1960 Act that was consistent with the Vienna Convention on the Law of Treaties. The Delegation stated that the freeze would reduce the complexity of the Hague System and would have no impact on active international registrations and designations recorded in the International Register prior to the effective date of the freeze. The Delegation shared that Greece ratified the 1999 Act in November 2023 and was currently bound by it, allowing Greek applicants to seek design protection in a larger spectrum of Member States. The Delegation also endorsed the proposed date of entry into force as well as the consequential amendments proposed to the Common Regulations.

11. The Delegation of the Russian Federation noted, regarding document H/A/44/1, that the simultaneous existence of the 1960 Act and the 1999 Act complicated the Hague System. It acknowledged that international applications could currently be subject to different requirements depending on the applicable Act, which resulted in negative impact for applicants and created legal and procedural uncertainty. In that regard, the Delegation believed that the proposed freeze of the application of the 1960 Act would make the Hague System more transparent, predictable and inclusive. The Delegation further hoped to see more active engagement of the Secretariat in the expansion of the language regime of the Hague System, with the inclusion of the Russian and Chinese languages as working languages. The Delegation indicated that it was committed to the principle of multilingualism and believed it necessary to continue working to modernize and enhance the Hague System, including through the expansion of its language regime. The Delegation believed that increasing the number of languages would lead to an increase in users of the Hague System, which, in turn, would have positive impact on the income of the Hague Union, as more holders would be able to file applications and manage registrations using their national languages. In addition, the Delegation was interested in a multilateral and effective development of the Hague System. In that respect, the Delegation emphasized that it was important to do a comprehensive analysis and evaluation of the various aspects of the functioning of the system, including financial aspects related to its activities, the fees, the convenience, and the efficiency of the current language regime for users. The Delegation stated that it was prepared to engage in a constructive dialogue in order to further improve the Hague System in the interest of all of its users. In addition to that, the Delegation reiterated that it was seriously concerned by, and firmly condemned, the destructive actions of the European Union regarding the registration and protection of industrial design rights of Russian applicants and rights holders, which were, in its view, contrary to international IP law. The Delegation believed that such steps were absolutely unacceptable and impermissible, and

would have unpredictable negative consequences for the entire Hague System. Finally, the Delegation noted that it had repeatedly provided the relevant arguments supporting the legality of actions of the Russian Federation, and it urged Member States to return to substantive work and refrain from politicizing the work of WIPO's governing bodies, which distracted the Organization from its specific work.

12. The Delegation of the Republic of Moldova, speaking on behalf of the Central European and Baltic States (CEBS) Group, recognized the progress made regarding the freeze of the application of the 1960 Act. The CEBS Group looked forward to a continued discussion on the revision of the Schedule of Fees, which should include an assessment of the impact of the revision of the Schedule of Fees that entered into force on January 1, 2024. Regarding the introduction of new languages into the Hague System, the Group considered that more in-depth discussions were needed on some of the more technical measures related to the introduction of new languages, especially in the context of potential negative financial implications that such a decision might have for current and future users of the Hague System. The CEBS Group concluded that, taking also into account the current geopolitical context, it was currently not in a position to support the introduction of the Russian language into the Hague System.

13. The Delegation of Lithuania supported the statements made by the Delegation of the Republic of Moldova, on behalf of the CEBS Group, and the Delegation of Ukraine. Regarding the introduction of new languages into the Hague System, the Delegation agreed with other delegations who were of the view that further discussions on that subject should be based on objective criteria and should not negatively impact the users of the Hague System, especially considering possible financial implications. Regarding the introduction of the Russian language, the Delegation was of the opinion that the Russian Federation should not be the primary beneficiary of the expansion of the language regime of the Hague System, reiterating that the aggressor State should be deterred from exploiting any of WIPO's resources and global IP services to justify and support its military aggression against Ukraine. On that occasion, the Delegation restated its serious concerns about the operation of the Hague System regarding addresses located in the illegally annexed territories of Ukraine but for which the Russian Federation was indicated as country of origin. The Delegation requested to evaluate and present to the Working Group necessary changes regarding the possibility to correct the International Register, or to refuse the international registration of designs originating from territories whose illegal annexation had been recognized by the UN.

14. The Delegation of Poland supported the statements made by the Delegation of the Republic of Moldova, on behalf of the CEBS Group, the Delegations of Ukraine and Lithuania. Regarding the possible introduction of new languages into the Hague System, the Delegation saw the need for more in-depth discussions, adding that such introduction should be based on clear and objective criteria and should not entail a negative impact on the users of the Hague System, especially taking into account the possible financial implications of such changes. The Delegation requested that all technical aspects, in particular for IP Offices, should be taken into thoughtful consideration. The Delegation noted that it was not in a position to support the introduction of the Russian language into the Hague System, arguing that the aggressor State should not make use of WIPO's resources, funds or its global IP registration systems as long as it continued its unjustified and unprovoked war against Ukraine and violated international law.

15. The Delegation of Latvia supported the statements made by the Delegation of the Republic of Moldova, on behalf of the CEBS Group, the Delegations of Ukraine, Poland and Lithuania. Regarding the introduction of new languages into the Hague System, the Delegation believed that subject required further analysis. It emphasized that the invasion and full-scale military aggression by the Russian Federation against Ukraine impeded a discussion or decision on the inclusion of the Russian language into the Hague System. The Delegation echoed the suggestion made by the Delegation of Lithuania to analyze the legal justifications provided by

the Russian Federation for pursuing a war in Ukraine, claiming occupied territories in Ukraine were Russian territories and for registering Ukrainian IP rights in the Russian Federation.

16. By way of a written statement, the Delegation of China welcomed the freeze of the application of the 1960 Act, which would help to simplify the legal framework of the Hague System, facilitate its administration and enhance its efficiency. The Delegation added that it attached great importance to the introduction of new languages into the Hague System, including the Chinese language. The Delegation emphasized that it was willing to continue to participate in the relevant discussions in a positive and constructive manner, while regretting that no substantive progress had been made on that issue. The Delegation expected the Hague System to further optimize and improve itself, speed up the introduction of new languages, enhance its attractiveness and provide better services and more convenience to users.

17. The Assembly of the Hague Union:

(i) decided to freeze the application of the 1960 Act, with a date of effect of January 1, 2025;

(ii) adopted the proposed amendments to the Common Regulations, as set out in Annexes II and III to document H/A/44/1, with a date of entry into force of January 1, 2025; and

(iii) adopted the proposed amendments to the Common Regulations with respect to Rule 14 and to the Schedule of Fees, as set out in Annexes I and II to document H/A/44/2, with a date of entry into force to be decided by the International Bureau.

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