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**DIPLOMATIC CONFERENCE
FOR THE ADOPTION OF A NEW ACT OF THE HAGUE
AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT
OF INDUSTRIAL DESIGNS**

Geneva, June 16 to July 6, 1999

NOTES ON THE BASIC PROPOSAL FOR THE NEW ACT OF THE HAGUE
AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF
INDUSTRIAL DESIGNS

Document prepared by the International Bureau

INTRODUCTION

The present document contains the notes on the draft new Act which appears in document H/DC/3. Where a provision appears not to require explanation, no note has been provided.

Notes on Article 1

1.01 Article 1 explains a certain number of abbreviated expressions and defines several terms used throughout the draft new Act.

1.02 *Item (i)*. It is proposed that the name of the Hague Agreement be amended to read henceforth the Hague Agreement Concerning the International *Registration* (and no longer the International *Deposit*) of Industrial Designs. Thus, throughout the wording of the draft new Act (and the Regulations) the words “application” and “registration” are used in place of the word “deposit” employed in the 1934 and 1960 Acts. This new terminology corresponds more closely to that used in current legislative texts at national and regional levels and reflects more closely the procedure leading up to an international registration under the draft new Act.

1.03 *Item (v)*. The international application is allocated a filing date after it has been filed, either direct with the International Bureau or indirect through the Office of a Contracting Party, in accordance with Article 4(2). This filing date determines the date of the international registration (provided that the international application does not contain any irregularities entailing a postponement of the date of the international registration (see Rule 14(3)); the date of the international registration is the date to be taken into consideration for various purposes under the new draft Act (for example, to determine the date as from which the minimum period of protection is to be calculated (Article 15)).

1.04 *Item (vi)*. The definition of “International Register” takes up that given in Rule 1(xxiv) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Agreement Concerning the International Registration of Marks (hereinafter referred to as “the Madrid Agreement” and “the Madrid Protocol”). It permits the holding of data concerning international registrations either on paper or in a computer database, on whichever medium is the most appropriate. It should be noted that this provision does not prevent a Contracting Party from keeping a national register containing data relating to international registrations of industrial designs; in such case, however, the holder cannot be required to pay a fee for the entry of his international registration in the national register or for the publication of data already published by the International Bureau (see Articles 9(3), 12, 14(2) and 20).

1.05 *Item (vii)*. A definition of the term “legal entity” is given in the draft Regulations (see Rule 1(2)(v)).

1.06 *Item (x)*. It is proposed that the new Act should be open both to States and to certain types of intergovernmental organization. The intergovernmental organizations that are entitled to become party to the Act are those that meet the criteria set out in Article 27(1)(ii).

1.07 *Item (xi)*. The term “Contracting Party” has been used throughout the text of the draft new Act in order to cover both contracting States and contracting intergovernmental organizations.

1.08 *Item (xii)*. To be entitled to file an international application, Article 3 requires an applicant to possess a link (whether nationality, domicile, habitual residence or real and effective industrial or commercial establishment) with at least one of the Contracting Parties. Where an applicant derives his right to file an international application from more than one Contracting Party, he may freely elect from amongst those Contracting Parties that which is to be considered the applicant’s Contracting Party; he must simply show it as such in the international application (*there can in fact be only one applicant’s Contracting Party*). The concept of “applicant’s Contracting Party” is used in relation to indirect filing (see Article 4 and Rules 13 and 27).

1.09 *Item (xiv)*. The term “Office” covers both national Offices and regional Offices, including common Offices such as the Benelux Designs Office. The expression “grant of protection for industrial designs” refers to both the protection afforded by registration and that afforded by the grant of a design patent. It does not refer to the protection of industrial designs by means of copyright or trademarks, which does not fall within the scope of the draft new Act. With regard to the applicability of the various forms of protection that may be afforded to industrial designs, see the Notes on Article 2.

1.10 *Item (xv)*. The term “Examining Office” refers to an Office which *ex officio* carries out a substantive examination of applications—that is to say with regard to novelty and, possibly, other substantive requirements such as originality or non-functionality. In order to accommodate the varying requirements of the Offices, the draft new Act contains a number of provisions that apply only to such Offices. Those provisions are contained in a special chapter in the draft new Act, that is to say Chapter II, comprising Articles 17 to 20; see also Article 7(2) and Rule 18(1)(b).

1.11 *Item (xxiii)*. The Contracting Parties to the new Act would be members of the same Union as the States party to the 1934 Act or the 1960 Act that are not bound by the new Act (see also item xxiv)).

1.12. *Item (xxiv)*. The Assembly of the Hague Union was established by the Stockholm Complementary Act of 1967 to which all Member States of the Union are party, with the exception of the following six: Egypt, Holy See, Indonesia, Morocco, Spain and Tunisia. There are currently proposals for institutional reform within WIPO which could mean, in the future, that in place of the specific Assemblies for each of the special Unions (Hague Union, Madrid Union, Berne Union, Lisbon Union, etc.), a single Assembly would be set up grouping all of those special Unions. That is why Article 1(xiv) states that, for the purposes of the draft new Act, the word “Assembly” is to be understood as the Assembly of the Union—the Hague Union (see Article 1(xiii))—established by the Complementary Act of 1967 “*or any body replacing that Assembly*” (see also the Notes on Article 23).

1.13 *Item (xxxi)*. It may be noted that it is not necessary to be a member of the Locarno Union in order to become party to the new Act (nor in fact in order to become party to any other Act of the Hague Agreement).

Notes on Article 2

2.01 *Paragraphs (1) and (2)* have the same purpose as Article 18 of the 1960 Act.

2.02 *Paragraph (1)* confirms that the new Act, which would set up a centralized procedure for obtaining in each Contracting Party the protection which that party affords to industrial designs, would not itself be an obstacle to the possibility of enjoying any other protection that may be afforded to industrial designs under the law of a Contracting Party, with the obvious condition that such other protection should not diminish or interfere with the enjoyment of the rights afforded by the new Act. The terms “legislation” or “law” in the draft new Act refer to all binding acts issued by the legislative authority or the executive authority of a State or of an intergovernmental organization, including rules issued by the Offices of such States or organizations, together with court decisions. The term “other protection” would cover the protection afforded by a Contracting Party under national or regional legislation on trademarks, unfair competition or copyright. If the protection afforded to industrial designs by the laws of a Contracting Party interferes with or diminishes enjoyment of the rights afforded to applicants or holders under the new Act, the provisions of the new Act will prevail.

2.03 *Paragraph (2)* concerns certain international treaties. *Item (i)* deals with “the protection accorded to works of art and works of applied art by international copyright treaties and conventions.” Where an industrial design covered by an international registration satisfies the conditions for protection laid down by those treaties and conventions, the fact that it is covered by an international registration has no consequence for the protection concerned.

2.04 *Item (ii)* mentions the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, constituting Annex 1C of the Agreement Establishing the World Trade Organization) and stipulates that the provisions of the new Act will have no effect on protection afforded to industrial designs under the TRIPS Agreement.

2.05 Article 27(1) gives States that are members of the World Intellectual Property Organization and also certain intergovernmental organizations the possibility of acceding to the new Act even if they are not party to the Paris Convention. Consequently, *paragraph (3)* requires each Contracting Party to comply with the provisions of the Paris Convention which concern industrial designs. These provisions are: Article 2 (which affords national treatment to nationals of countries of the Paris Union), Article 3 (which assimilates certain categories of persons to nationals of the countries of the Paris Union), Article 4A to E (dealing with the right of priority), Article 5B and D (dealing with failure to work industrial designs and with signs and notices on them), Article *5bis*(1) (providing for a period of grace for the payment of

fees for the maintenance of rights), Article 5^{quinquies} (requiring industrial designs to be protected), Article 11 (dealing with temporary protection of industrial designs exhibited at certain international exhibitions) and Article 12 (requiring the establishment of special national industrial property services).

Notes on Article 3

3.01 *Article 3* sets out the requirements for entitlement to file an international application. To be entitled, an applicant must satisfy one at least of the following conditions:

(i) be a national of a State that is a Contracting Party or of a State member of an intergovernmental organization that is a Contracting Party *or*

(ii) have a domicile in the territory of a State that is a Contracting Party or in the territory in which the treaty establishing an intergovernmental organization that is a Contracting Party applies *or*

(iii) have a habitual residence in the territory of a State that is a Contracting Party or in the territory in which the treaty establishing an intergovernmental organization that is a Contracting Party applies *or*

(iv) have a real and effective industrial or commercial establishment in the territory of a State that is a Contracting Party or in the territory in which the treaty establishing an intergovernmental organizations that is a Contracting Party applies.

3.02 The third of the requirements cited in the foregoing paragraph contains an expression (“habitual residence”) taken from the Berne Convention for the Protection of Literary and Artistic Works. This expression has been used to compensate for any excessively narrow interpretation that could be given to the concept of “domicile” under domestic laws.

3.03 As a result of the definition given in Article 1(vii), the requirements referred to in Note 3.01 above apply both to natural persons and to legal entities. In order to define more precisely the application of the nationality requirement to legal entities, the draft Regulations set out the conditions under which a legal entity is to be considered a national of a State (see Rule 1(2)(v)).

Notes on Article 4

4.01 *Article 4* deals with certain questions concerning the manner of filing an international application.

4.02 *Paragraph (1)(a)* provides that an international application may be filed, at the option of the applicant, either directly with the International Bureau or indirectly through the Office of the applicant’s Contracting Party. The expression “applicant’s Contracting Party” is defined in Article 1(xii) (see the corresponding Note).

4.03 Whereas the general principle is that an applicant may choose to file his application directly or indirectly, *paragraph (1)(b)* permits Contracting Parties to suppress the indirect path if they so wish. On the other hand, Contracting Parties are not allowed to impose the indirect path.

4.04 *Paragraph (2)* requires a filing date to be allocated to each international application:

- in the case of direct filing, the filing date will, in accordance with *subparagraph (a)*, be the date on which the International Bureau *receives* the international application;
- in the case of indirect filing under *subparagraph (b)*, the filing date is to be determined as prescribed (this date will be the date on which the intermediary Office received the international application, subject to the application reaching the International Bureau within a certain period of time; see Rule 13(3) and (4) and the Notes on Rule 13 in document H/DC/6).

4.05 Provided the international application does not contain an irregularity entailing postponement of the filing date (see Rule 14(3)), the filing date is the same as the date of the international registration.

4.06 *Paragraph (3)*. Rule 13(2) lays down that the amount of the transmittal fee and its due date are to be fixed by each Contracting Party concerned and notified by the Office of that Contracting Party to the International Bureau to enable the latter to publish them in a guide or in any documentation it may publish concerning the new Act of the Hague Agreement.

Notes on Article 5

5.01 *Article 5* lays down the contents of international applications.

5.02 *Paragraph (1)* sets out the conditions with which all international applications must comply.

5.03 *Item (iii) of paragraph (1)*. The term “reproduction” refers equally to photographs and other graphic representations as to any other form of representation that may be conceived in the future to give an exact image of the industrial design. The manner of presenting the reproduction is given in the draft Regulations (see Rule 9). The expression “or ... of several different reproductions” refers to the case where an applicant wishes to submit differing views of the same design in order to illustrate all its characteristics or in order to comply with a requirement prescribed by the legislation of a designated Contracting Party.

5.04 The draft new Act provides for the possibility of deferring publication (see Articles 5(4) and 10). If deferred publication of a two-dimensional design is requested, it is not necessary to furnish the reproduction of the design (required for publication) before the time of publication. Consequently, item (iii) of paragraph (1) provides that a prescribed number of *specimens* of the design may be submitted with the international application where

deferment of publication has been requested. The number of specimens and the manner in which they are to be presented are laid down in the draft Regulations (see Rule 10). However, a reproduction of the design must be submitted, in accordance with Article 10(6)(b), on expiry of the time limit for deferred publication.

5.05 *Item (iv) of paragraph (1)*. The identification of the product or products is to be expressed in words (see Rule 7(3)(d)).

5.06 *Item (v) of paragraph (1)*. In contrast to what is provided for in Article 7(2) of the 1960 Act, the applicant's Contracting Party may always be designated.

5.07 *Item (vi) of paragraph (1)*. Details of the prescribed fee structure are given in Rule 12(1). Under Article 7, they include a designation fee.

5.08 *Item (vii) of paragraph (1)*. The particulars that must be contained in any international application and which are prescribed in the draft Regulations concern the number of reproductions or specimens accompanying the international application (Rule 7(3)(e)) and the amount of the fees being paid or the instructions concerning payment of fees (Rule 7(3)(g)).

5.09 *Paragraph (2)* gives applicants the possibility of including in the international application, or accompanying it by, those additional elements which are specified in Rule 7(4). Certain of those elements may be furnished by applicants in order to avoid refusal by a designated Contracting Party. If the international application does not contain an optional element as referred to in Article 5(2) and designates a Contracting Party that imposes the requirement or requirements concerned, regularization will not be carried out with the International Bureau, but with the designated Office that has issued the refusal.

5.10 *Paragraph (3)*. The draft new Act provides that an international application may contain two or more different designs, without setting a maximum figure. However, this possibility is limited to compliance with the requirement ("subject to the prescribed conditions") contained in Rule 7(6) of the draft Regulations according to which all designs to which an international application relates must belong to the same class of the International Locarno Classification.

5.11 *Paragraph (4)* provides for the possibility of requesting deferred publication of the industrial design or designs contained in an international application. The question of the Contracting Parties to which the request for deferment may apply and that of the duration of deferment are dealt with in Article 10.

Notes on Article 6

6.01 *Paragraph (1)*. The period of priority laid down for industrial designs in Article 4 of the Paris Convention is six months (Article 4C(1)) as from the filing date of the first application from which the priority is claimed (Article 4C(2)).

6.02 The words “filed in or for any country” in *subparagraph (a)* aim to cover both an application filed with the Office of an intergovernmental organization or with the common Office of a number of States and an international application filed under the Hague Agreement.

6.03 A claim to priority may be based not only on one or more earlier applications filed in a country party to the Paris Convention, but also, in view of Article 2(1) of the TRIPS Agreement, on one or more earlier applications filed with a Member of WTO that is not party to the Paris Convention. However, a Contracting Party not a Member of WTO is not required to recognize the effects of a priority claim based on an application filed in a State that is not party to the Paris Convention.

6.04 *Subparagraph (b)* makes reference to the Regulations for the possibility of providing that the declaration of priority may be furnished after the filing of the international application and, where such is the case, for prescribing the latest time by which this declaration is to be made. It is to be noted that the possibility of making a “late” priority claim (that is to say after the filing of the international application) is not excluded by the Paris Convention (see particularly Article 4D(1)).

6.05 In the present version, the draft Regulations do not provide the faculty of making a late claim to priority nor, therefore, do they prescribe a maximum time limit for making the corresponding declaration. Consequently, as things stand, it is imperative for a priority declaration to be made at the time of filing the application, on pain of inadmissibility. However, it is useful that this paragraph should provide for the Regulations to contain such provisions in order to allow a more flexible solution for applicants to be introduced in future if this is considered appropriate following the outcome of the ongoing discussions within the framework of a Patent Law Treaty (PLT).

6.06 *Paragraph (2)* states that an international registration will be equivalent to a “regular filing” within the meaning of Article 4 of the Paris Convention (according to Article 12, an international registration does in fact have at least the same effect in each designated Contracting Party as a regularly filed national or regional application); consequently, an international registration may also itself give rise to a right of priority.

Notes on Article 7

7.01 This Article deals specifically with the designation fee to be paid for an international application. This fee may be either the prescribed designation fee (paragraph (1)) or an individual designation fee (paragraph (2)).

7.02 *Paragraph (1)* provides that the prescribed fees are to include a designation fee to be paid for each designated Contracting Party. The amount of the fee will be determined in a Schedule of Fees to be included in the Regulations. (No Schedule of Fees is proposed at present; that will be done when the new Act is close to entry into force).

7.03 *Paragraph (2)* permits an individual designation fee to replace the prescribed standard designation fee. As discussed at the seventh session of the Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as “the Committee of Experts”) (see paragraph 77 of Document H/CE/VII/6), it is proposed that the faculty be available only to Contracting Parties with Examining Offices (see Article 1(xv) and the corresponding Note 1.10, it being understood that the term does not apply exclusively to those Offices of the Contracting Parties that have made a notification under Chapter II. Each Contracting Party with an Examining Office would therefore be able to choose whether to receive the standard designation fee (laid down in the Schedule of Fees) or the individual designation fee (the amount of which will be fixed by each Contracting Party concerned).

7.04 The amount of the individual fee may be fixed either for the initial term of registration of five years and for each five-year renewal term or for the maximum period of protection authorized by the Contracting Party concerned. For example, a Contracting Party could set the individual designation fee at a level sufficient to cover the whole possible period of protection of that Contracting Party and lay down no individual designation fee payable on renewal of the international registration; it could also give the applicant the option at the time of filing of paying a fee covering the initial term of the international registration only or a fee covering the whole of the possible period of protection. Additionally, the Contracting Parties may require the payment of national fees not covered by the individual designation fee (such as fees charged for an appeal, for extension of a time limit or for inspection of documents).

7.05 The draft new Act places two restrictions on the amount of the individual designation fee: firstly, the amount may not be higher than the fee that would be payable to the national or regional Office of the Contracting Party for the grant of protection for an equivalent period and, secondly, it must be diminished by the amount of the savings resulting from the international procedure (for example, due to the fact that the formal examination of the application is carried out by the International Bureau or the fact that the latter publishes the registered design). The system corresponds to that applicable under the Madrid system for the international registration of marks, where experience has shown that it satisfies the users. It should be noted that the amount of the designation fee (whether the standard designation fee, whose amount is to be fixed in the Schedule of Fees, or the individual designation fee) may vary depending on the number of designs contained in an international application. It should also be noted that where the legislation of a Contracting Party lays down, as part of the national (or regional) procedure, a filing fee followed, where protection is granted, by a fee for the grant of protection, the individual fee must cover all the fees that would be charged under the national (or regional) procedure for the grant of protection, it being understood that, in the event of a refusal of protection, that part of the individual fee corresponding to the grant of protection would be refunded to the holder of the international registration. In practice, that

part of the individual fee could be “held” by the International Bureau and then, following the procedure before the Office of the Contracting Party concerned, either be credited to that Contracting Party or refunded by the International Bureau to the holder of the international registration.

7.06 *Paragraph (3)* deals with the transfer of designation fees (the standard designation fee fixed in the Schedule of Fees and the individual designation fee). It should be noted that the draft new Act does not mention the frequency of transfers; that question is dealt with in Rule 29. Transfers would be made to the department or body within the Contracting Party concerned that will have been notified by that Contracting Party to the International Bureau.

Notes on Article 8

8.01 This Article requires the International Bureau to examine compliance of the international application with the requirements of the new Act and of the Regulations and sets out what is to be done with an irregular application.

8.02 *Paragraph (1)* states that if the international application does not fulfill the requirements of the new Act or of the Regulations, the applicant will be invited to correct the international application within a period of time laid down in the draft Regulations (under Rule 14(2), this period is three months).

8.03 *Paragraph (2)(a)* stipulates that if the international application is not corrected within the prescribed time limit, it will be deemed, subject to subparagraph (b) (see Note 8.05), to have been abandoned. Reference should also be made to Rule 5 which allows the International Bureau to excuse certain delays due to disturbances in the postal service or in mail delivery services.

8.04 The fact that an international application is deemed abandoned does not prevent the subsequent filing of another application for the same designs.

8.05 *Paragraph (2)(b)* constitutes an exception to the rule set out in paragraph 2(a): in the case of an irregularity relating either to Article 17 (additional elements notified by a Contracting Party) or to a special requirement notified to the Director General by a Contracting Party in accordance with the Regulations (for example particulars concerning the identity of the creator or the declaration of assignment referred to in Rule 8(2)), failure to make the corrections within the prescribed time limit will not lead to the international application being deemed abandoned, but will simply mean that the *designation of a Contracting Party* is deemed abandoned (that with regard to which the application is irregular).

8.06 Article 8 does not deal with the case in which an international application does not contain an optional element as referred to in Article 5(2) and designates a Contracting Party that requires such element. In that case, the correction will not be made before the International Bureau but before the designated Office concerned which will have issued a refusal on the grounds that the element was missing.

Notes on Article 9

9.01 *Paragraph (1)* provides that the international registration shall be made immediately on receipt of the international application by the International Bureau, it being understood that only those international applications that satisfy all applicable conditions are to be registered. The registration of a regularly filed international application will therefore be made, in the case of direct filing, immediately after transmittal of the international application to the International Bureau and, in the case of indirect filing, immediately after its communication to the International Bureau by the Office with which it has been filed. The same applies to the case where an international application contains a request for deferment of publication under Article 5(4).

9.02 *Paragraph (2)* sets out the rules to be applied for determining the date of the international registration. The general principle is that the date of the international registration is the filing date of the international application (*paragraph (2)(a)*). This principle will apply if:

- the international application, when received by the International Bureau, satisfies the requirements of the new Act and the Regulations;
- the application is irregular, but the irregularity is not one of those referred to in subparagraph (b) (entailing postponement of the filing date) and the application is corrected within the prescribed time limit; failing correction within the prescribed time limit, the application is deemed abandoned (see Article 8(2)(a)).

9.03 Where the international application contains an irregularity relating to additional elements notified by a Contracting Party under Article 17, or where it contains an irregularity that entails postponement of the date of registration (see Rule 14(3)), the international registration will bear the date on which the required correction is received by the International Bureau (subject of course to correction taking place within the prescribed time limit). Failing correction within the prescribed time limit, the application will be deemed abandoned, unless the irregularity relates to an additional element notified by a Contracting Party under Article 17; in such case, in accordance with Article 8(2)(b), the failure to regularize will simply mean that the *designation concerned* will be deemed abandoned.

9.04 *Paragraph (3)(a)* provides that all international registrations will be published by the International Bureau. That publication takes the place of any national or regional publication, so that no other publicity may be required of the holder (however, Article 20 qualifies this principle in certain circumstances). The particulars to be included in the publication are prescribed by Rule 17(2).

9.05 *Paragraph (3)(b)* lays down the principle that the publication of the international registration is to be sent by the International Bureau to each designated Office.

9.06 *Paragraph (4)* lays down the principle that international applications and international registrations shall be kept secret by the International Bureau until publication. This principle of confidentiality also applies to any document accompanying the international application or the international registration. However, its application is subject to Article 10(4)(b) (copies of reproductions at the request of the holder or third party access to designs under international registrations with the authorization of the holder) and subject to Article 19 (confidential copies

of international registrations sent to designated Examining Offices which have notified their wish to receive such copy where publication has been deferred).

Notes on Article 10

10.01 *Article 10* sets out the conditions for deferred publication (the principle being contained in Article 5(4)). These conditions take into account the treatment of this matter under the various national and regional systems, including the case of Contracting Parties which do not permit deferred publication.

10.02 As to the various current systems of deferred publication, *paragraph (1)* provides for three possibilities: those whose legislation provides for a deferment period equal to or longer than the prescribed period (i.e. 30 months under Rule 15), those whose legislation permits deferment of publication for a period that is less than the prescribed period and those whose legislation does not authorize deferment of publication. The general principle is that each Contracting Party is assumed to permit the prescribed period of deferment of publication unless it has notified, in a declaration to the Director General, that it authorizes a shorter period of deferment (*subparagraph (a)*) or that it does not authorize deferment of publication (*subparagraph (b)*).

10.03 *Paragraphs (2) and (3)* specify the date on which publication takes place, taking account of the various systems referred to in Note 10.02. Four hypotheses may be envisaged. If the international application contains a request for deferment of publication and:

(a) designates *no* Contracting Party having made a declaration under paragraph (1), publication takes place on expiry of the prescribed period (paragraph (2)(i));

(b) designates *one* Contracting Party that has made a declaration under paragraph (1)(a) and in accordance with which the period of deferment under its legislation is less than that prescribed by the Regulations, publication will take place on expiry of the period stated in such declaration (paragraph (2)(ii));

(c) designates *more than one* Contracting Party having made a declaration under paragraph (1)(a) in accordance with which the period of deferment under the legislation is less than that prescribed in the Regulations, publication shall be made on expiry of the shortest of the periods notified in their declarations (paragraph (2)(ii) *in fine*);

(d) designates a Contracting Party having made a declaration under paragraph (1)(b), under which deferment is not possible under its legislation, that international application shall be subject to special treatment which will differ depending on whether the application is accompanied by reproductions or specimens of the filed design (paragraph (3)). The principles are as follows:

(i) if the international application is accompanied by *reproductions* of the design (paragraph (3)(i)), the International Bureau will notify the holder; if the holder does not withdraw the designation of that Contracting Party within one month as from the date of the notification sent by the International Bureau (see Rule 15(2)), *the request for deferment of publication* will not be taken into consideration and publication will therefore be made in accordance with Rule 17(1);

(ii) if the international application is not accompanied by reproductions, but by *specimens* of the design (paragraph (3)(ii)), the International Bureau will not take into account the *designation of the Contracting Party concerned* and will so notify the applicant. In such case, in order to determine the date on which publication is to be made, reference should be made to items (a) to (c) above. The exception to the rule laid down in paragraph (3)(i) by paragraph (3)(ii) takes into account comments submitted to the Committee of Experts (see paragraph 38 of document H/CE/VII/6). However, it should be noted that, in practice, the cases in which paragraph (3)(ii) would apply are likely to be altogether very exceptional. For this paragraph to apply, it would be necessary not only that the applicant had designated, in an international application requesting deferment of publication, a Contracting Party whose laws did not authorize such deferment, but also that, despite paragraph (3)(ii), the international application was accompanied by specimens instead of reproductions. If necessary, an appropriate note in the international application form could be included to prevent any possibility of committing this double irregularity.

10.04 The deferment period begins on the date of the international registration or, where appropriate, on the claimed priority date (see Rule 15(1)).

10.05 *Paragraphs (4) and (5)* concern certain measures that may be taken by the holder with regard to an international registration during the period of deferment of publication and the implications of those measures. Four measures are explicitly mentioned.

10.06 Firstly (paragraph (4)(a)), the holder may request earlier publication, that is to say publication prior to the expiry of the deferment period referred to in paragraph (2). The deferment period is then considered to have expired on the date on which the request for earlier publication is received by the International Bureau.

10.07 Secondly (paragraph (4)(b)), the holder may request the International Bureau to provide an extract of the international registration to a third party he has designated or to authorize access by the third party concerned to the international registration. The holder may require an extract or such access, for example, in order to assert before the courts his rights in industrial designs covered by an international registration.

10.08 The third measure (paragraph (5)) available to the holder is to renounce the international registration, or to limit it, in respect of all the designated Contracting Parties. In the event of renunciation, no publication of the designs will take place; in the case of a limitation, there will be no publication of the designs affected by the limitation.

10.09 The fourth possibility (not mentioned in the text) available to the holder is to renounce the international registration with respect to any Contracting Party that has notified a deferment period less than the prescribed period (30 months). The period of deferment of publication of an international registration will be extended, where appropriate, to correspond to the shortest deferment period notified by any of the remaining designated Contracting Parties, or extended to 30 months.

10.10 *Paragraph (6)*. At the end of the deferment period, the international registration will be published. For publication to be made, the prescribed fees must have been paid (*subparagraph (a)*). Additionally, where a specimen of the industrial design has been filed with the international application in place of a reproduction in accordance with Article 5(1)(iii), the prescribed reproductions must be furnished (*subparagraph (b)*).

10.11 If the publication fee is not paid before the date on which the deferment period expires or is deemed to have expired or, where appropriate, if reproductions have not been furnished before that date, the international registration will be canceled and will not be published (see Rule 15(3)).

Notes on Article 11

11.01 *Paragraph (1)* affords the Offices of the designated Contracting Parties the right to refuse the effects of international registrations in which they are designated. It is clear, to begin with, that protection may not be refused on the grounds that the filing does not satisfy the requirements as to form or content of the international application *laid down in the new Act or in the Regulations* to the extent that such requirements are to be considered by each Contracting Party as having already been satisfied under the international procedure. Additionally, once the International Bureau has ascertained that those conditions have been satisfied and has proceeded with the international registration, paragraph (1) stipulates that no Office may refuse the effects of an international registration on the grounds that requirements relating to the form or contents of the international application that are contained *in the legislation of the Contracting Party concerned* and which are additional to or different from the requirements set out in this Act or in the Regulations have not been met. The wording of this provision is based on Article 27(1) of the Patent Cooperation Treaty (PCT). The principle of the formal examination of an international application being centralized at the International Bureau has received broad-based support under the PCT which currently numbers around 100 Contracting Parties (and for which, as a general rule, the registration of patents is subject to a much greater number of formal requirements than is the registration of industrial designs).

11.02 Thus, in the framework of the new Act, an Office will not be able to require the furnishing of reproductions presented in a manner other than the manner prescribed in the draft Regulations (see Rule 9 and the corresponding Notes). In addition, the Office of a Contracting Party will not be able to impose translation of the international registration into a language other than those prescribed and, consequently, will not be able to refuse a designation on the grounds that such translation has not been furnished. Obviously, it will not be possible either to invalidate protection in a designated Contracting Party on such grounds. Likewise, an Office will not be able to invoke failure to pay the required fees in order to refuse the effects of an international registration since verification of the payment of such fees is the responsibility of the International Bureau (in addition, since the International Bureau alone has the power to receive the fees that are payable on filing of the international application, a designated Contracting Party will not be able to check whether the due fees have been paid).

11.03 The system under the draft new Act therefore means that a Contracting Party will only be able to exercise its right of refusal with respect to certain conditions for granting protection. It is proposed that the Applicant's Guide should set out each of those conditions for each Contracting Party in order to advise applicants of such conditions and to make it possible for them to satisfy the conditions at the application stage, if they so wish, by including the corresponding elements as part of the optional contents of the international application under Article 5(2).

11.04 *Paragraph (2)* deals with communication by the Office, to the International Bureau, of refusal of effects of an international registration by means of a notification of refusal. *Subparagraph (a)* requires all notifications of refusal to be transmitted within the prescribed period (that is to say a basic period of six months which—for those Contracting Parties having an Examining Office or that permit opposition procedures—may be extended to 12 months; see Rule 18(1) and the corresponding Notes).

11.05 As under the 1960 Act of the Hague Agreement (Article 8(1)) and the system for the international registration of marks (Article 5(1)(2) of the Madrid Agreement and Protocol), the obligation to notify a refusal within the prescribed time limit does not mean that the Office is obliged within that period to reach a *final* decision of refusal, that is to say a decision which would no longer be subject to *ex officio* re-examination, a request for review or an appeal. To comply with paragraph (2)(a), it is simply necessary that the Office of a designated Contracting Party should notify within the prescribed period those grounds *liable* to deny protection to the designs concerned. To sum up, what has to be notified within the prescribed time limit is simply an objection or a first decision (“first action”). In practice, refusal could be based on:

- an objection resulting from the *ex officio* examination undertaken by the Office of a designated Contracting Party or
- an opposition lodged by a third party.

11.06 It has to be emphasized here that, under the wording of the basic proposal for the new Act, the simple fact of an opposition being lodged against an international registration must be notified to the International Bureau as a “refusal of protection” (based on an opposition). This does not prejudice the eventual decision taken on the opposition.

11.07 Additionally, if a Contracting Party has a system of opposition subsequent to registration which is based on a national publication following the favorable outcome of the *ex officio* examination undertaken by the designated Office and which occurs too late for the time limit for refusal to be applied, a third party opposition that was successful would result in invalidation under Article 13 and not a refusal under Article 11.

11.08 The notification of refusal must state all the grounds on which the refusal is based (*paragraph (2)(b)*). The aim of this provision is to enable the holder to refute all the grounds that prevent recognition of the effects of the international registration. However, this does not prevent new grounds being raised subsequently during the procedure before the Office, even after expiry of the time limit for refusal, as a result of the holder's reaction to a refusal or the communication of additional information by the holder or again during an appeal procedure lodged by the holder, since the latter will be informed of those grounds under the procedure. In all those cases, the Office will communicate direct with the applicant and not through the International Bureau. For example, a notification of refusal stating as grounds of refusal the absence of unity of design (see Article 18) will not prevent other grounds (such as lack of novelty) being subsequently invoked by the Office of the Contracting Party concerned in order to justify the refusal of protection.

11.09 In the event of a refusal based on similarity with a design that is the subject of an earlier international registration that has not been published (because deferred publication has been requested), the Office will not be able to state the grounds for its refusal since it is required to keep the copy of that earlier registration secret (see Article 19(2) and the corresponding Notes). In such case it will have to show in its notification, as grounds for refusal, similarity with an earlier, unpublished international registration. The holder of the later international registration will receive notification of the exact grounds (that is to say of the detailed contents of the earlier international registration) once publication has been made. The time limits applicable to a possible appeal against refusal would be suspended until such time as the earlier international registration is published and the holder of the other international registration has received notification of the exact grounds for refusal.

11.10 The notification of refusal may be withdrawn at any time by the Office that has issued it (*paragraph (2)(c)*). A refusal that has been notified is therefore not necessarily final. The withdrawal of a refusal may take the form of an explicit notification to that effect or of a communication that the international registration (in whole or in part) has effect in the territory of the Contracting Party concerned.

11.11 *Paragraph (3)* requires the International Bureau to transmit a copy of the notification of refusal to the holder (*subparagraph (a)*) and affords to the holder the same remedies as those available to him under the law applicable to the Office that has notified the refusal (*subparagraph (b)*). These remedies must consist of at least the possibility of an *ex officio* re-examination, a review at the request of the holder or an appeal against the refusal. It goes without saying that, in the framework of an *ex officio* re-examination, the holder may be invited by the Office to submit observations concerning the refusal. The Office in question may, of course, also require the appointment of a local representative if the holder intends to act on the refusal.

Notes on Article 12

12.01 *Article 12* determines the effects of an international registration to be recognized under the law of each Contracting Party. To that end, it endeavors to take account of the various solutions adopted by the potential Contracting Parties to give effect to registrations in the framework of their legislation and to do it in the simplest possible manner without, however, ignoring the variations between these differing solutions.

12.02 This provision requires that two sets of effects be recognized, successively:

– to begin with, the international registration must have the same effect in each designated Contracting Party as a regularly filed application for protection in that Contracting Party (*paragraph (1)*);

– subsequently, in each designated Contracting Party that has not notified a refusal in accordance with Article 11, the international registration must be accorded the same protection as that obtained by the national or regional path (*paragraph (2)*).

12.03 *Paragraph (1)* affords an international registration the same effects as a regularly filed application under the applicable law of each designated Contracting Party. These effects, whose recognition by each Contracting Party is a minimum (“at least”) condition, must begin on the date of the international registration. One of the consequences of Article 12(1) is that any Contracting Party that affords provisional protection to published national applications must also afford that type of protection to published international registrations in which it is designated.

12.04 *Paragraph (2)(a)* lays down the fundamental rule that, if no refusal has been notified under Article 11, the international registration shall have the same effect as the grant of protection under the law of each Contracting Party. Concerning the point of departure for such effects, the provision lays down a principle and a possible derogation from that principle. The principle is that an international registration must have effect in each designated Contracting Party at the latest from the date of expiry of the refusal period under Rule 18(1). By derogation, the effects of the international registration referred to in paragraph (2)(a) may be delayed in a Contracting Party if it has made the declaration referred to in Rule 18(1)(c) (permitting a statement to be made that the effect will be produced at the latest at a time subsequent to the date referred to in Article 12(2)(a), but not more than six months later; see this Rule and the corresponding Notes). In such case, the effect of the grant of protection will begin at the time stated in that declaration. Since the maximum period for issuing a refusal authorized under Rule 18(1)(a) and (b) is six months for Contracting Parties not having an Examining Office and 12 months for Contracting Parties having an Examining Office (the term “Examining Office” is defined in Article 1(xv)), taking Article 12(2)(a) and Rule 8(1), including its subparagraph (c), in conjunction, means that the effect of the grant of protection is guaranteed:

– in each Contracting Party not having an Examining Office and which has not notified a refusal, at the latest 12 months (six months plus six months) after the date on which the International Bureau has sent a copy of the publication of the international registration to the Office concerned;

– in each Contracting Party having an Examining Office and which has not notified a refusal, at the latest 18 months (12 months plus six months) from the date on which the International Bureau has sent a copy of the publication of the international registration to the Office concerned.

12.05 The words “at the latest” mean that each Contracting Party has the possibility of recognizing that the international registration has the effect of a grant of protection under its laws at an earlier date, for example as from the date of the international registration. Moreover, it is to be understood that, where a multiple international registration has been refused with respect to some only of the industrial designs contained in the registration, protection of the international registration under the applicable law is limited to those industrial designs that are not subject to the notification of refusal.

12.06 Where a notification of refusal is subsequently withdrawn, this changes the basic rule. In such case, the effects of the protection under the laws of the Contracting Party concerned have to be afforded to the international registration, to the extent that the refusal is withdrawn, at the latest on the date of its withdrawal (*paragraph (2)(b)*). Again in this case, the words “at the latest” mean that each Contracting Party has the possibility of recognizing that the effect of protection under its applicable law begins at an earlier date, for example retroactively as from the date of the international registration. The words “to the extent that the notification of refusal is withdrawn” indicate that, where a refusal is withdrawn with respect to some only of the industrial designs that were the subject of the notification, the protection under the applicable law does not extend to the designs with regard to which the refusal has not been withdrawn.

12.07 *Paragraph (2)(c)* stipulates that the effect given to the international registration applies to the industrial designs that are the subject of the registration as received from the International Bureau by the designated Office or, where applicable, as amended in the procedure before that Office (following a refusal). Consequently, if the reproduction of the industrial design has been amended during the procedure before the Office, the effect is given to the amended reproduction.

Notes on Article 13

13.01 *Article 13* deals with invalidation of the effect of an international registration in a Contracting Party. Invalidation, which occurs after effect has been given to an international registration (and may result, for example, from a court decision in infringement proceedings), is to be distinguished from refusal of the effects of an international registration where those effects have never been recognized. It should nevertheless be noted that the term

“invalidation” covers both a retroactive decision and a decision with a future effect. It should also be noted that Article 13 in no way prevents the laws of a Contracting Party from stipulating that the effects of an international registration may be declared non-enforceable without, however, it being invalidated.

13.02 *Paragraph (1)* requires each Contracting Party to afford the holder an opportunity to defend his rights before invalidation is pronounced. The holders of international registrations also enjoy the right to be heard before the effects of an international registration may be declared non-enforceable.

13.03 *Paragraph (2)* requires the Office of the Contracting Party in which the effects of an international registration has been invalidated to notify such invalidation to the International Bureau. Rule 20(1) provides that invalidation is to be notified to the International Bureau only when it may no longer be subject to any review or appeal. However, an Office is only required to notify an invalidation to the International Bureau if it has been made aware of that invalidation.

Notes on Article 14

14.01 This Article deals with the recording of various changes in the International Register.

14.02 *Paragraph (1)* permits in *item (i)* a change in the ownership of an international registration to be recorded in the International Register provided that the new owner is himself entitled to file an international application under Article 3. If this latter condition is not met, the International Bureau will not record the change of ownership.

14.03 *Item (iv)* deals with renunciation of an international registration by the holder. Renunciation always concerns all the industrial designs that are the subject of the international registration, but may relate to some or all of the designated Contracting Parties.

14.04 *Item (v)* deals with limitation of an international registration in relation to some of the industrial designs that are the subject of the registration. Limitation differs from renunciation insofar as a renunciation always concerns all the industrial designs that are the subject of an international registration, but not necessarily all the designated Contracting Parties, whereas limitation concerns one or more industrial designs covered by a multiple international registration (but, never all of the designs) in relation to any or all of the Contracting Parties.

14.05 *Item (vii)* provides for the recording of other relevant facts concerning, for instance, licenses or the existence of pledges. The draft Regulations do not currently propose to permit the recording of such facts. However, it may be considered appropriate in the future.

14.06 The draft Regulations determine who is entitled to request the recordings referred to in paragraph (1), together with the required conditions (see Rule 21).

14.07 *Paragraph (2)* explains that recording in the International Register has the same effect as recording entry in a national or regional register. This provision does not prevent Contracting Parties from providing for recording in their national or regional registers, without cost to the holder, of any recording in the International Register; this faculty should be viewed against the fact that the contents of the International Register will be directly and immediately accessible to national and regional Offices by electronic means. The Offices will therefore be able to readily reproduce the contents of the International Register, where they are concerned, in their national or regional registers. It should be noted that, for facts not giving rise to recording in the International Register (for example, the granting of a license or the entering of a pledge), the Contracting Parties are at liberty to charge the holder for the cost of the corresponding recording in their national or regional registers in order for the act concerned to have effect in their territory.

14.08 *Paragraph (3)* provides that the recordings referred to in paragraph (1) may be subject to payment of a fee. Certain recordings will be fee-exempted. Those recordings of changes which are subject to payment and the amount of the corresponding fee will be determined in the Schedule of Fees.

Notes on Article 15

15.01 *Paragraph (1)* stipulates that the international registration is effected for five years as from the date of the international registration.

15.02 *Paragraph (2)* lays down the principle that an international registration may be renewed for additional five-year terms, subject to payment of the prescribed fees, and leaves it to the Regulations to determine the corresponding procedure (see Rules 23 to 25).

15.03 *Paragraph (3)* lays down the minimum and maximum periods of protection in the designated Contracting Parties.

15.04 *Paragraph (3)(a)* provides that the protection afforded by designated Contracting Parties shall not terminate before the expiry of 15 years as from the date of the international registration. The wording chosen for this provision—which stipulates the period of time before which protection may not expire instead, for example, of fixing the duration of that period—takes into account the situation of potential Contracting Parties whose laws stipulate (subject to Article 12(2)) that it is the grant of protection that determines the start of the period and which provide no provisional protection for the time between the filing of the application and its acceptance.

15.05 As agreed by the Committee of Experts, the minimum period that should elapse before protection may terminate has been fixed at 15 years as from the date of the international registration and not at ten years as is the case under the 1960 Act of the Hague Agreement.

15.06 *Paragraph 3(b)* states that where the law of a Contracting Party provides a maximum period of protection of more than 15 years for industrial designs, that maximum period will

apply to an international registration. In the countries party to the Hague Agreement, the term of protection for industrial designs ranges from 10 to 50 years, but is 15 years in most cases. It will be for the holder or, where appropriate, his representative to check, once the third five-year term has expired, whether the law of a given designated Contracting Party enables protection to be extended beyond the period of 15 years.

15.07 *Paragraph 3(c)* nevertheless requires Contracting Parties to notify to the International Bureau the maximum period of protection afforded to industrial designs under their domestic law. Information so received by the International Bureau will be published in order to inform holders and to enable them to check that a renewal requested with regard to a given Contracting Party is justified. Any change in this period in the law of a Contracting Party has also to be notified to the International Bureau by the Contracting Party concerned.

15.08 It would be compatible with paragraphs (1) to (3) for a Contracting Party to stipulate a single 15-year (or more) period and to require payment of an initial individual designation fee for the whole period. In such case, protection would be maintained in its territory for that whole period, whether the international registration were renewed or not. The Administrative Instructions will deal with the inclusion in the International Register of an appropriate notice in such cases to ensure that, where the international registration has not been renewed, users may be aware of the continued protection at national level with respect to the Contracting Party concerned.

15.09 *Paragraph (4)* permits the holder to carry out a limited renewal, that is to say for some only of the designated Contracting Parties or for some only of the industrial designs that are the subject of the international registration.

15.10 The renewal procedure is given in the Regulations (see Rules 23 and 24).

Note on Article 16

16.01 *Paragraph (1)* provides for the International Bureau to supply information on published international registrations or copies of entries in the International Register with respect to those registrations. The procedure to be adopted for obtaining such information will be indicated in the Administrative Instructions. However, it will not be possible to provide information or copies with respect to an international registration of which publication has been deferred since such registrations are kept confidential by the International Bureau (Article 9(4)), subject to the cases referred to in Articles 10(4)(b) and 19. Likewise, no information relating to international applications and no copy of applications may be communicated to third parties.

Notes on Article 17

17.01 *Article 17* deals with certain additional elements which Contracting Parties may require in order for applications to be accorded a filing in accordance with their laws. It applies only to those Contracting Parties having an Examining Office (the term “Examining Office” is defined in Article 1(xv)).

17.02 *Paragraph (1)* permits such Contracting Parties, where their laws at the time they become party to the new Act subject the according of a filing date to the inclusion in the application of certain additional elements to notify those elements to the Director General in a declaration.

17.03 *Paragraph (2)* restricts those additional elements which may be notified by Contracting Parties having an Examining Office to three: particulars of the identity of the creator of the industrial design (*item (i)*), a brief description of the reproduction or of the characteristic features of the industrial design (*item (ii)*) and a claim (*item (iii)*). It has been judged necessary to limit these additional elements to three in the interests of simplicity of the international registration system. The three authorized additional elements correspond to the requirements that certain delegations in the Committee of Experts held indispensable for obtaining a filing date under their national law. For instance, the element set out in item (i) is required in Brazil, in the Russian Federation and in Romania; that under item (ii) is required in the Russian Federation, the Republic of Korea and Romania and that under item (iii) in the United States of America.

17.04 If an international application contains the designation of a Contracting Party that has notified additional elements under paragraph (1), it must also contain those additional elements. If such is the case, the Office of the Contracting Party concerned may not refuse the effects of the international registration (see Article 11(1) and the corresponding Notes). The consequences of the absence of any additional element notified under Article 17(1) are governed by Article 8(2)(b) (which stipulates that if the applicant does not comply with the invitation addressed to him by the International Bureau within the prescribed period of three months, the international application is deemed not to contain the designation of the Contracting Party concerned) and by Article 9(2)(b) with regard to the date of the international registration (see these provisions and the corresponding Notes). The manner in which these additional elements must be indicated in the international application is set out in Rule 11.

Notes on Article 18

18.01 The laws of a number of potential Contracting Parties (for example, the United States of America, Japan and the United Kingdom) enshrine the principle of unity of invention or unity of design under which an application relating to several industrial designs has to be divided in those cases where the designs do not correspond to the same inventive or creative concept. The draft Community Regulation on designs contains a somewhat similar requirement, but which is based on the concept of an assembly of articles or a composition of articles. *Article 18* takes into account the requirements of these Contracting Parties without, however, depriving applicants of the possibility of including more than one industrial design in the same international application.

18.02 *Paragraph (1)* permits Contracting Parties whose laws, at the time they become party to the new Act, require unity of invention, unity of design, unity of production or unity of use, or which require industrial designs to belong to the same set or the same composition of items, or require that only one independent and distinct invention may be claimed in the same application, to notify the fact to the Director General in a declaration.

18.03 *Paragraph (2)* deals with the effect of notification of the declaration referred to in paragraph (1). The aim of this declaration is to enable the Contracting Party that has made a notification to refuse the effects of an international registration if that principle is not complied with. In other words, applicants may obtain a filing date on the basis of an international application that contains several industrial designs that do not comply with that requirement, but, if the international application concerned contains the designation of a Contracting Party that has notified the aforementioned requirement, that Contracting Party may notify its refusal of the effects of the international registration.

18.04 Where refusal is notified for failure to comply with this rule, the Office that has issued the refusal will request the holder of the international registration to divide his registration solely for the designated Contracting Party concerned. The Administrative Instructions will determine the numbering to be used in the event of division.

18.05 *Paragraph (3)* provides the possibility of an additional fee payable to the designated Office where an international registration is divided before that Office following refusal on the grounds that the unity of invention, unity of design, unity of production or unity of use requirement has not been met or on the grounds that the designs under the international registration do not belong to the same set of items or the same composition of items. That Office may request the holder of the registration to pay a number of additional fees equal to the number of divisions (in addition to the initial international registration). The conditions for payment of such additional fees are not dealt with in the draft new Act nor in the draft Regulations, but will be defined by each Contracting Party concerned, which will charge those fees directly to the applicant. As far as the amount of the additional fees is concerned, the Contracting Parties will be requested to inform the International Bureau for the purposes of publication so that potential applicants will know in advance the amount that they may be required to pay.

Notes on Article 19

19.01 When the publication of an international registration has been deferred, the Examining Offices are faced with the situation in which they need to examine applications without knowing whether an international registration whose publication has been deferred is included in the prior art. To resolve that problem, *Article 19* provides that a designated, Examining Office may receive a confidential copy of each international registration of which publication is deferred (*paragraph (1)*) on condition that the copy is used only for examining other applications (*paragraph (2)*).

19.02 The designated Examining Office is required to keep in confidence the copy transmitted and may not divulge its contents. There is, however, one exception to that rule: the content of a transmitted copy may be divulged confidentially to parties involved in an administrative or legal proceeding involving a conflict over entitlement to file the international application on which the international registration is based—a typical case is that of interference proceedings in the United States of America—it being understood that participation in those proceedings presumes consent to such disclosure and that any breach of the confidentiality imposed on the parties in such case would be punishable by law.

19.03 If an Examining Office concludes that an application concerns a design that is similar to a design that is the subject of an international registration resulting from an earlier application, of which it has received a confidential copy, it will be required to suspend the prosecution of the later application until publication of the international registration since it will not be able to divulge the content of the international registration to the holder of the subsequent application. It may notify to the latter the fact that prosecution is suspended on account of possible conflict with an as yet unpublished registration resulting from an earlier application. If the later filing is also an international registration, the Examining Office will refuse the effect of that later international registration until the earlier international registration has been published and it has taken a decision on the conflict between the two registrations.

19.04 If the international application is accompanied by a specimen, and not by a reproduction, of the industrial design in accordance with Article 5(1)(iii), the designated Examining Office will receive a specimen at the same time as a copy of the international registration. For that purpose, Article 5(1)(iii) requires that an international application should be accompanied, if a specimen is filed in place of a reproduction, by the prescribed number of copies of the specimen. As prescribed by Rule 10(1), the required number of copies of the specimen corresponds to the number of Contracting Parties designated in the international application having an Examining Office and that have made a notification under Article 19(1), plus one copy for the International Bureau.

Notes on Article 20

20.01 Centralized publication of an international registration having effect in all the designated Contracting Parties is one of the basic features of the international registration system and constitutes an important advantage for users. The principle of publication by the International Bureau taking the place of national (or regional) publication, with the result that no other publication may be required of the holder, is laid down by Article 9(3)(a).

20.02 However, *Article 20* provides an exception to that principle in limited and specific circumstances: if the Office of a designated Contracting Party carries out a novelty examination and that examination leads to an amendment of the industrial design in order to satisfy the condition of novelty, the Office concerned is authorized to republish the amended designs, in its own publication, and to charge the holder a fee. This exception is justified by the fact that, in the Contracting Party concerned, the reproduction of the design for which protection is afforded will differ from the reproduction published by the International Bureau and it is therefore proper that the Contracting Party should carry out a republication showing

the final appearance of the design for which protection is actually afforded in its territory. It should be noted that the possibility of an amendment to the design does not mean that the Office concerned accepts the inclusion of new elements in the designs that are the subject of the international registration.

20.03 It should also be pointed out that, even if the Office of a Contracting Party does not carry out an examination of novelty or, if it does carry out such examination, even in a case where the examination does not lead to an amendment of the industrial design, Article 20 does not prevent a Contracting Party from republishing the international registration if it so wishes (for example, to translate into its national language the particulars contained in the international registration). However, in such cases, the republication may not create for the holder an obligation to furnish further reproductions of the design or an obligation to pay an additional fee to the Office of that Contracting Party.

Notes on Article 21

21.01 *Article 21*, which corresponds to Article 30 of the 1960 Act, to Article 9^{quarter} of the Madrid Agreement and Article 9^{quarter} of the Madrid Protocol, deals with the special case of States that set up a common Office responsible for the protection of industrial designs in each of those States under uniform national laws. In practice, the situation is at present that of the three Benelux States—Belgium, Luxembourg and Netherlands—for which the Benelux Designs Office registers industrial designs in application of the same law in force in each of these States.

21.02 *Paragraph (1)* permits States having uniform national laws and a common Office, as explained in the preceding paragraph, to notify the Director General of the fact that the common Office will be substituted for the national Office of each of them and that the whole of their territories is to be deemed a single Contracting Party for the purposes of Articles 1, 3 to 20 and 31 of the new Act. Articles 1 and 3 to 20 are substantive provisions that define the procedure to be adopted and the conditions to be met for the filing of international applications and the obtaining of international registrations. Article 31 sets out the rules that govern relations between the Contracting Parties and the States party to the 1934 Act or the 1960 Act.

21.03 *Paragraph (2)* specifies the time at which the notification referred to in paragraph (1) is to be made. There are two cases. The first is that of States that have already unified their national laws before becoming party to the new Act. In such case, notification is to be made at the time of the deposit of the instruments of ratification or accession of the States concerned. The second case is that of States that are already party to the new Act when they unify their national laws. In such case, notification may be made at any time after unification has been effected.

Notes on Article 22

22.01 *Article 22* provides that the Contracting Parties shall be members of the Union. This is defined in Article 1(xxiii) as the Hague Union established by the 1925 Act of the Hague Agreement and maintained by subsequent Acts. Thus the Contracting Parties will belong to the same Union as States that are not Contracting Parties but are party to the 1934 Act or the 1960 Act. At the time of drafting the present document, six States were party to the 1934 Act without being party to the 1960 Act, and 23 States were party to the 1960 Act.

22.02 The relations between Contracting Parties and States party to the 1934 Act or the 1960 Act are governed by Article 31.

Notes on Article 23

23.01 The Stockholm Conference of 1967 which adopted the Convention Establishing the World Intellectual Property Organization also adopted new Acts of several treaties which are administered by WIPO in order to incorporate into each of those treaties provisions creating an Assembly and dealing with the role of the International Bureau in relation to the Union concerned and with the budget of that Union. Examples of treaties in respect of which a Stockholm Act containing such provisions was adopted are the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Marks, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

23.02 In the case of the Hague Agreement however, there were, at the time of the Stockholm Conference, two Acts in existence: the 1934 Act and (although it had not yet entered into force) the 1960 Act. Accordingly, rather than introduce the administrative provisions into one or both of these Acts, the Stockholm Conference adopted a separate treaty, the Complementary Act of 1967. As its name implies, it is complementary to the existing Acts of the Hague Agreement and contains the provisions on the Assembly, the International Bureau and the Finances of the Union which, in the other cases mentioned above, are found in the treaties themselves.

23.03 In previous drafts of the new Act of the Hague Agreement, the model followed had been that of the Paris Convention, the Madrid Agreement and the other treaties mentioned above. A recent development has however given reason to reconsider this approach. That development is the proposals for constitutional reform of WIPO. These proposals were set out in document A/33/3, which was submitted to the Assemblies of the Member States of WIPO in their meeting in September 1998. In particular, the Assemblies were invited to request the Director General to initiate a process to examine whether to amend the

corresponding treaties in order to make the WIPO General Assembly the competent body for each such treaty, and also to pronounce on the desirability of including *inter alia* budget structure and working capital funds in the matters that might be included in any process initiated to review the administrative provisions of the corresponding treaties.

23.04 In the event, the General Assembly of WIPO did not carry out a substantive discussion of the proposals but merely took note of them. It is therefore not possible to predict at present what will be the course and pace of any constitutional reform. However the existence of these proposals makes it undesirable to add to yet another treaty administrative provisions which may need to be amended in the near future, possibly before the new Act has entered into force.

23.05 The present draft of the new Act therefore proposes instead to rely, for the necessary administrative provisions, on the already-existing provisions of the Complementary Act of 1967. A further reason for following this course is that, even after the new Act has entered into force, and until any constitutional reform takes place, there will continue to be a single Hague Union, including countries party to the 1934 Act and/or the 1960 Act that are not party to the new Act, with a single Assembly and a single budget of the Union.

23.06 Article 10(2) of the Complementary Act of 1967 provides that “any country which has not ratified or acceded to the 1960 Act shall become bound by Articles 1 to 7 of this Complementary Act from the date on which its ratification of, or accession to, the 1960 Act enters into force (...)”. In other words, any country subsequently acceding to the 1960 Act automatically becomes bound by the administrative provisions relating to the Hague Union without the need in addition to accede to the Complementary Act.

23.07 *Article 23* is modeled on that provision. Its effect is that any State or intergovernmental organization which accedes to the new Act will become bound by Article 2 (Assembly), Article 3 (International Bureau), Article 4 (Finances), and Article 5 (Amendment of Articles 2 to 5); there is therefore no longer any need to include such provisions in the new Act.

23.08 The provision in Article 23(i) of the draft new Act that references to “countries” must be construed as references to Contracting Parties means that, in the application of Articles 2 to 5 of the Complementary Act by virtue of Article 23 of the new Act, every provision in those Articles which mentions countries applies to Contracting Parties to the new Act.

23.09 In particular, the provision in that subparagraph that the reference to “those countries which have ratified or acceded to this Complementary Act” must be construed as a reference to Contracting Parties has the effect that, by application of Article 2(1)(a) of the Complementary Act, all Contracting Parties to the new Act will be members of the Assembly. It is recalled that, according to Article 1(xxiv) of the new Act, “Assembly” means the Assembly of the Hague Union established by the Complementary Act of 1967, or any body replacing the said Assembly. If, in the context of constitutional reform of WIPO, the Hague Assembly were replaced by another body (for example, if the functions of the Hague Assembly were subsumed by the General Assembly of WIPO), the Contracting Parties would automatically become members of that Assembly. Similarly, if any of Articles 2 to 5 of the

Complementary Act were amended, these amendments would automatically be binding on Contracting Parties to the new Act. (On the other hand, if Articles 2 to 5 of the Complementary Act were repealed, Article 23 of the new Act would no longer have any effect.)

23.10 Article 23 is made subject to Article 24, for the following reason. As stated in Notes 23.08 and 23.09, Article 23 has the effect that all Contracting Parties to the new Act will be members of the Assembly and that Article 2 of the Complementary Act should be read as though all references to “countries”, including such references in paragraph (3) of that Article, were references to Contracting Parties. This would therefore give a right to vote to each Contracting Party, even to Contracting Parties that are not States. Several States who are interested in ratifying or acceding to the new Act have however indicated that they would have great difficulties with this. See further Note 24.01.

23.11 Article 23 is also made subject to Article 25(2). This latter provision provides for the Regulations under the new Act to specify that certain Rules may be amended only by unanimity. There is no equivalent provision in Article 2 of the Complementary Act, paragraph (2)(a)(iii) of which concerns the amendment of the Regulations and paragraph (3)(d) of which establishes that decisions of the Assembly, including those which concern the amendment of the Regulations, require a two-thirds majority. Article 25(2) therefore needs to be specified as an exception to the general rule concerning the amendment of the Regulations.

Notes on Article 24

24.01 As mentioned in Note 23.10, in the absence of any special provision on voting in the Assembly, each Contracting Party would have a vote in the Assembly. Several States which are interested in becoming party to the new Act have however indicated that they consider it unacceptable for a Contracting Party that is an intergovernmental organization to have a vote which is additional to those of its Member States. Special provisions may therefore have to be made in *Article 24* (Voting in the Assembly). For the time being however, the International Bureau is not making a proposal for such provision; it is therefore indicated in document H/DC/3 that the text of any such provision is reserved. Early in 1999, the International Bureau will distribute a further document discussing the issue and possibly containing one or several alternative provisions.

24.02 Article 24 could also provide that, on matters concerning only the 1934 or 1960 Acts, Contracting Parties which are not party to the relevant Act shall not vote in the Assembly and that, conversely, countries party to those Acts that are not party to the new Act shall not vote on matters concerning only the new Act. Alternatively, such provisions may be included in the Rules of Procedure of the Hague Assembly rather than in the new Act itself, which may be better since they are of interest to all members of the Union and not only to the Contracting Parties of the new Act.

24.03 Another matter that could be dealt with in the Rules of Procedure of the Hague Assembly is the extent to which observers representing non-governmental organizations may attend meetings of the Assembly.

Notes on Article 25

25.01 The draft agenda of the Diplomatic Conference provides for the Conference to adopt the Regulations under the new Act at the same time as it adopts the new Act itself.

25.02 *Paragraph (1)* contains a general description of the matters to be dealt with in the Regulations. It is to be noted that paragraph (1) envisages that the Regulations will deal only with international registrations under the new Act. It is not intended, therefore, that a common set of Regulations should be adopted to deal with international registrations under the 1934 Act, the 1960 Act and the new Act. This situation may be contrasted with the special case of the Common Regulations under the Madrid Agreement and the Madrid Protocol, where one set of Regulations govern registration under both the Madrid Agreement and the Madrid Protocol. In the present case, a uniform set of Regulations for the various Acts of the Hague Agreement is not considered to be useful, since it is to be hoped that the new Act will enjoy a sufficiently widespread acceptance to lead to the obsolescence of the previous Acts of the Hague Agreement.

25.03 No express provision is made concerning amendment of the Regulations. In accordance with Article 2(2)(a)(iii) and 2(3)(d) of the Complementary Act of 1967, as applicable under Article 23 of the new Act, the Regulations may be amended by the Assembly by a two-thirds majority, subject to *paragraph (2)* of the present Article, which makes an exception to that provision (see Note 23.11).

25.04 *Subparagraph (a)* provides for the Regulations to specify Rules which may be amended only by unanimity. Such Rules are specified in Rule 30 of the draft Regulations (document H/DC/4). *Subparagraph (b)* requires unanimity for the deletion of the requirement of unanimity for the amendment of any Rule referred to in subparagraph (a). *Subparagraph (c)* requires unanimity for the establishment of a requirement of unanimity for the amendment of any Rule. It is recalled that, according to Rule 36(1) of the WIPO General Rules of Procedure, in determining whether unanimity is attained, only votes actually cast are taken into consideration. That is, it is sufficient that no votes are cast against the proposal.

25.05 *Paragraph (3)* establishes the superiority of the provisions contained in the Act over those contained in the Regulations so that, in the event of conflict between the two sets of provisions, the provisions of the Act prevail.

Notes on Article 26

26.01 *Article 26* confirms the standard rule that a treaty may be revised by a conference of the Contracting Parties. In accordance with Article 2(2)(a)(ii) of the Complementary Act, as applicable under Article 23 of the new Act, the Assembly may give directions to the International Bureau concerning the preparation for such conferences.

26.02 The former paragraph (2) of the present Article (Revision or Amendment of Certain Articles) and the former Article 28 (Amendment of Certain Articles by the Assembly) have been omitted from the basic proposal. It should be noted however that Article 5 of the Complementary Act provides for that Act (including in particular Articles 2 to 4) to be amended by the Assembly. (See also the Notes on Article 23.)

Notes on Article 27

27.01 *Paragraph (1)* lays down that States (*item (i)*) and intergovernmental organizations (*item (ii)*) may, subject to satisfying certain conditions, become party to the new Act.

27.02 *Item (i)* specifies that, to become a Contracting Party, a *State* has to meet just one condition, that is to say be a member of WIPO; it is therefore not required that the State be a party to the Paris Convention. This condition follows the recent precedent of the Trademark Law Treaty. However, any State that is a Contracting Party will be required, even if not bound by the Paris Convention, to comply with the provisions of the Paris Convention on industrial designs (see Article 2(3)).

27.03 *Item (ii)* sets out the conditions to be met by *an intergovernmental organization* in order to become party to the new Act. Firstly, it must maintain an Office that grants protection to industrial designs with effect in the territory in which its constituting treaty applies. Secondly, at least one of the Member States of the intergovernmental organization must be a member of WIPO. Finally, for an intergovernmental organization to be eligible to become a Contracting Party, the Office that it maintains may not be the subject of a notification under Article 21 (provision concerning an Office common to several States that are deemed, under that same Article, to be a single Contracting Party). In other words, the Benelux Designs Office will not be able to become a Contracting Party if, as is to be expected, it is the subject of a notification under Article 21. This third condition is the same as the condition contained in Article 14(1)(b)(ii) of the Madrid Protocol. The African Intellectual Property Organization (OAPI) is an intergovernmental organization that satisfies the conditions set out in item (ii); this will also be the case of the European Community once the proposed Community Design Office comes into existence. In view of the features of the system of registration of industrial designs set up by the 1982 Harare Protocol, within the framework of the African Regional Industrial Property Organization (ARIPO), the possibility of ARIPO becoming party to the new Act requires detailed examination.

27.04 *Paragraph (2)*. Under Article 1(xxx), the expression “instrument of ratification” also covers instruments of acceptance or approval.

27.05 *Paragraph (3)* governs the date on which the deposit of instruments of ratification or accession takes effect for States and intergovernmental organizations that meet the requirements for becoming party to the new Act. *Subparagraph (a)* lays down the principle that the effective date of a deposit of an instrument of ratification or accession is the date on which such instrument is deposited. However, various adjustments to that principle are contained in subparagraphs (b), (c) and (d).

27.06 *Subparagraph (b)* concerns those States for which protection of industrial designs can be obtained *solely* through the Office maintained by an intergovernmental organization of which that State is a member (this provision applies, for instance, to the 15 Member States of OAPI, but not to the Member States of the European Community insofar as, for these latter, protection of industrial designs can still be obtained through their own national Offices or the Benelux Designs Office, nor to the Member States of ARIPO whose national Offices register industrial designs). If a State referred to in subparagraph (b) deposits an instrument of ratification or accession, the effective date of that instrument will not be date on which it is deposited, but the date on which the instrument of the intergovernmental organization to which that State belongs is deposited. To return to the example of OAPI, this means that the “individual” ratification or accession of one, several or all of the Member States of OAPI under paragraph (1)(i) will take effect only when OAPI, in its capacity as an intergovernmental organization, has itself deposited its instrument. On the other hand, it will not be necessary for one or more, nor *a fortiori* all, the Member States of OAPI to accede to the new Act in order for OAPI itself to become bound by the new Act.

27.07 Given that the Member States of OAPI would become bound by the new Act only when OAPI would so become, there would be no point in designating one or more of those Member States along with the designation of OAPI or independently of the designation of OAPI. Consequently, OAPI alone should be entered in the international application form and not its Member States that may have acceded to the new Act by virtue of paragraph (1); this would not affect their capacity as Contracting Parties nor the rights deriving therefrom, for example, their right to vote in the Assembly.

27.08 *Subparagraph (c)* concerns the case of States having made a declaration under Article 21 (to the effect that a common Office will act as national Office for each of them and that those States will be deemed for certain purposes to be a single Contracting Party). For those States (in practice, the Benelux States), the effective date of their instruments of ratification or accession will be the date on which the last instrument of the Member States of that group of States is deposited.

27.09 *Subparagraph (d)* permits a potential Contracting Party to make sure that it will not be bound by the new Act unless one or two other potential Contracting Parties are also bound. This provision enables conditional ratification or accession, that is to say which takes effect only if one or two other potential Contracting Parties, expressly designated, also deposit their instruments of ratification or accession. The instrument of ratification or accession containing the declaration subjecting its deposit to that of the instrument of another potential Contracting Party is deemed deposited on the day on which that condition is satisfied (that is to say the day on which the other Contracting Party involved deposits its instrument of ratification or accession). Where the deposit of an instrument of ratification or accession (the “first instrument”) is subjected to the deposit of a second instrument of the same type (the “second instrument”) of which the deposit is itself subjected to that of a third instrument (the “third

instrument”), the second instrument is deemed, in accordance with the final sentence of paragraph (3)(d), deposited on the day of deposit of the third instrument. Therefore, the first instrument will not be considered deposited until the third instrument has been deposited.

Notes on Article 28

28.01 *Article 28* enables the initial entry into force of the new Act to be determined, as also the date of entry into force of ratifications and accessions subsequent to the entry into force of the new Act. *Paragraph (1)* confirms that only those instruments of ratification or accession that have been deposited by States or intergovernmental organizations satisfying the required conditions (i.e. those laid down in *Article 27(1)*) and for which the requirements of *Article 27(3)*, governing the effective date, have been met, may be taken into consideration for the entry into force of the new Act and of the subsequent ratifications and accessions. Compliance with the requirements of *Article 27(3)*, governing the effective date, is necessary to ensure that all the conditions attaching to the deposit of an instrument are indeed satisfied and that it is possible to give effect to international registrations throughout the whole territory of the entity that has deposited the instrument.

28.02 *Paragraph (2)* lays down the conditions for the entry into force of the new Act. In that respect, it is to be noted that only instruments deposited by States are taken into consideration.

28.03 *Paragraph (2)* contains a provision that aims to ensure, in all probability, that the international registration procedure provided by the new Act will be used to a large extent after the entry into force. The mechanism adopted for that purpose in *paragraph (2)* is based on the provisions of *Article 63(1)* of the Patent Cooperation Treaty (PCT). It provides that three at least of the six States whose instruments of ratification or accession are required for the new Act to enter into force should satisfy one at least of the two conditions laid down. These two—alternative—conditions concern the volume of activity related to applications for industrial design protection in or for the State concerned (at least 3000; *item (i)*) and the share thereof represented by applications filed by non-residents (at least 1000; *item (ii)*). The statistics to be used to determine whether those conditions have been met are the most recent annual statistics collected by the International Bureau.

28.04 The expression “applications ... filed in or for the State” makes it possible to include not only applications filed with the national Office of the State (where such an Office exists) but also international filings in which that State is designated and applications filed with a regional Office that have effect in the territory of the State concerned.

28.05 According to the statistics published for 1996 and the provisional statistics for 1997, the two conditions set out in items (i) and (ii) were met for the following States: Australia, Austria, Benelux (Belgium, Luxembourg and Netherlands), Canada, China, France, Germany, Japan, Republic of Korea, Spain, United Kingdom and the United States of America. Additionally, the condition set out in item (ii) was satisfied for Italy and Switzerland.

28.06 *Paragraph (3)* governs the date of entry into force of ratifications and accessions and makes a distinction between instruments deposited three months or more before the entry into force of the new Act (subparagraph (a)) or later (subparagraph (b)).

28.07 *Subparagraph (a)* provides that any Contracting Party that has deposited its instrument three months or more *before* the entry into force of the new Act becomes bound by that Act on the date of its entry into force.

28.08 *Subparagraph (b)* provides that any other Contracting Party (that is to say those not among the Contracting Parties at the date of entry into force of the new Act) becomes bound by the new Act three months after the date on which it deposits its instrument or, if the instrument prescribes a later date at which it is wished that the new Act should bind the Contracting Party, at that later date.

Note on Article 29

29.01 This Article excludes any reservation to the new Act.

Notes on Article 30

30.01 *Article 30* deals with the manner in which the various declarations may be made by the Contracting Parties under the provisions of the draft new Act and the date on which such declarations take effect.

30.02 *Paragraph (1)*. The declarations referred to in Article 30(1) may be made either at the time of deposit of the instrument of ratification or accession to the new Act or at any time after the deposit of that instrument. Where the declaration is made at the time of deposit of the instrument (*item (i)*), it will take effect on the date on which the State or intergovernmental organization becomes bound by the new Act. Where the declaration is filed after the deposit of the instrument (*item (ii)*), it takes effect three months after the date of its receipt by the Director General or at any later date referred to in the declaration, but applies only to international registrations whose date is the same as or later than the date on which it took effect.

30.03 *Paragraph (2)* applies to declarations made by States that have notified the Director General under Article 21(1) of the unification of their national laws on designs and of the substitution of a common Office for each of their national Offices. To ensure that the new Act will apply uniformly in such States, it is laid down that any declaration made by one of those States will take effect only if the other State or States that have made the notification under Article 21(1) also make a corresponding declaration.

30.04 *Paragraph (3)* provides that any declaration referred to in paragraph (1) may be withdrawn at any time by means of a notification addressed to the Director General and that such withdrawal will take effect three months after the date on which the Director General has received the notification or at any later date referred to in the notification. The purpose of the third sentence of paragraph (3) is to make it clear that in the case of withdrawal of a notification under Article 7(2) (replacement of the prescribed designation fee by an individual designation fee), an international application filed before the effective date of the withdrawal of the declaration will be subject to payment of the individual designation fee.

Notes on Article 31

31.01 *Article 31* governs relations between the various categories of members of the Union. It is modeled on Article 31 of the 1960 Act. It should be noted that Article 31 of the draft new Act does not set up a relationship based on a treaty between a Contracting Party to the new Act and the States party to the 1934 Act or the 1960 Act that are not party to the new Act.

31.02 *Paragraph (1)* deals with relations between States that are party both to the new Act and the 1934 Act or the 1960 Act. The principle set out is that the *new Act alone* applies to the relations between those States. Thus, with respect to persons who derive their right to file an international application from a country bound both by the new Act and the 1934 Act or the 1960 Act and who wish to obtain protection in other States party both to the new Act and the 1934 Act or the 1960 Act, only the provisions of the new Act will be applicable. Due to the application of this principle, the 1934 Act and the 1960 Act are destined to fall into disuse as those States currently party to the 1934 Act or to the 1960 Act ratify the new Act or accede to it.

31.03 The second sentence of paragraph (1) guarantees application of the 1934 Act or of the 1960 Act, as appropriate, to industrial designs filed before the date on which the new Act becomes applicable to relations between States party to one or the other of the Acts in question and the new Act.

31.04 *Paragraph (2)* deals with relations between States party both to the new Act and to the 1934 Act or the 1960 Act, on the one hand, and States party only to the 1934 Act or the 1960 Act without being at the same time party to the new Act, on the other.

31.05 *Subparagraph (a)* ensures that a State party to both the new Act and the 1934 Act will continue to apply the 1934 Act in its relations with States who are party to the 1934 Act without being at the same time party to the 1960 Act or to the new Act. *Subparagraph (b)* ensures that a State party both to the new Act and the 1960 Act will continue to apply the 1960 Act in its relations with States party to the 1960 Act without being at the same time party to the new Act.

Notes on Article 32

32.01 This is a usual provision. To enable those who have organized their activities as a function of the accession of a Contracting Party to the new Act to carry out the necessary adjustments in the event of that Contracting Party denouncing the Act, a minimum period of one year is provided in *paragraph (2)* for a denunciation to take effect. Additionally, paragraph (2) ensures that the new Act will continue to apply to any international application that is pending and to any international registration that is in force with respect to the Contracting Party that has denounced the Act at the time the denunciation takes effect. In other words, a Contracting Party which denounces the Act will continue to be bound by that Act in all respects with relation to international applications and international registrations that designate it and which, at the time the denunciation takes effect, were either pending or in force with regard to that Contracting Party, up to the end of the minimum period of protection referred to in Article 15(3)(a).

Note on Article 33

33.01 *Article 33* provides, in particular, that the new Act is to be signed in a single original in the six official languages of the United Nations and that all those texts will be equally authentic.

Note on Article 34

34.01 *Article 34* states that the Director General is the depositary of the new Act. The nature of the duties of the depositary of a treaty is defined, and a list of those duties is given, in Articles 76 and 77 of the Vienna Convention on the Law of Treaties. Those duties consist, in particular, in keeping the original text of the new Act, in establishing certified copies of the original text and in receiving the instruments of ratification or accession that are deposited.

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