

WIPO General Assembly

Forty-Fifth (24th Extraordinary) Session
Geneva, May 8 and 9, 2014

REPORT

adopted by the General Assembly

1. The General Assembly was concerned with the following items of the Agenda (document A/53/1): 1, 2, 3, 4, 5 and 6.
2. The reports on the items, with the exception of item 4 is contained in the General Report (document A/53/3).
3. The report on item 4 is contained in the present document.
4. Ambassador Päivi Kairamo (Ms.) (Finland), Chair of the General Assembly, presided over the meeting.

ITEM 4 OF THE AGENDA

CONSIDERATION OF THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY

5. Discussions were based on document WO/GA/45/2.

6. The Delegation Japan, speaking on behalf of Group B, declared that it regretted that an agreement on the convening of a diplomatic conference had not been reached at this General Assembly, and expressed the view that the text of the draft Articles and draft Regulations had reached the legal maturity to move to a diplomatic conference. Pointing out that a balanced solution taking into account all possible elements of the treaty in an equal manner and not deciding on the form of specific elements had been presented in this session, the Delegation regretted that some delegations had imposed conditions on proceeding to a diplomatic conference, which had prevented the Assembly from moving forward. The Delegation noted that the original version of the General Assembly decision was completely acceptable for Group B, including the item on a diplomatic conference in 2014 in Geneva. The Delegation reiterated its readiness to proceed to a diplomatic conference, emphasizing that this would streamline and enhance the design registration formalities and procedures and would benefit users, especially small and medium-sized enterprises (SMEs), irrespectively of the development status of their Member States. The Delegation, urging Member States to engage in the future process to find a solution, reiterated the importance of the technical assistance to implement the treaty and hoped that mutual understanding on this point would be reached. The Delegation also reiterated the importance of the implementation of the treaty in an effective manner.

7. The Delegation of the Czech Republic, speaking on behalf of the Regional Group of Central European and Baltic States (CEBS), expressed its gratitude to the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) for its efforts and work invested in the current draft of the Design Law Treaty (DLT) and, in particular, for the significant progress on the issue of technical assistance and capacity building. The Delegation further expressed its appreciation for the positive engagement of all members of the SCT in this respect. The Delegation declared that the CEBS Group attached great importance to the adoption of the DLT, which would simplify and align design registration formalities and procedures for the benefit of all users, creating a modern, flexible and user-friendly international framework in this field. The Delegation stressed the fact that the treaty was awaited by users across regions and that it ranked among top priorities. The Delegation indicated that the CEBS Group was of the view that the SCT had successfully fulfilled the mandate given by the General Assembly as regards the DLT, pointing out that the draft had reached a point where further negotiations at the expert level might lead to dilution of the text. The Delegation noted that compromises had been reached with regard to substantive parts of the draft treaty. The CEBS Group believed that this was a missed opportunity to move forward on an important issue to users across regions, which were being held hostage by Member States' inability to reach a compromise. The Delegation reiterated the CEBS Group's readiness to reach out and bridge gaps in the weeks and months to come, with a view to taking a positive decision at the September General Assembly to convene a diplomatic conference on the DLT.

8. The Delegation of Kenya, speaking on behalf of the African Group, expressed its gratitude to the Chair of the General Assembly and all Member States for their engagement, as well as its appreciation for the general spirit to go forward, despite of the lack of consensus. The Delegation regretted that an agreement had not been reached at this meeting, noting that the political spirit in the informal consultations did not allow a move forward. The Delegation, pointing out that the African Group had maintained its position towards an Article on capacity building as part of the DLT and noting the divergent position of other delegations on this issue, expressed the view that this matter should be resolved before the convening of a diplomatic conference. The Delegation expressed the view that solving this issue before deciding on the convening of a diplomatic conference would guarantee the success of the conference and the

conclusion of its work in an efficient and timely manner. The African Group reiterated its engagement and constructive participation in building consensus on this matter.

9. The Delegation of Uruguay, speaking on behalf of the Latin American and the Caribbean Group (GRULAC), expressed its willingness to continue, during the next General Assembly in September, with efforts to ensure that a consensus would be reached allowing the convening of a diplomatic conference for the adoption of a DLT. The Delegation reiterated its intention to play a constructive role in the discussions to be held before the next General Assembly. As it had stated during the last Session of the SCT, GRULAC recognized the potential benefits of the future treaty for all members and accordingly restated its firm belief that texts must contain provisions which ensured that technical assistance and national institutional capacity-building were provided for developing and least developed countries (LDCs), regardless of how such activities would be implemented.

10. The Delegation of Bangladesh, speaking on behalf of the Asia and Pacific Group (ASPAC), said that the Group was disappointed that, once again, no consensus had been reached on the DLT. The Delegation declared that its Group had no objection to convening a diplomatic conference, but, as the issue of technical assistance was extremely important for all countries, it would prefer to have a legally binding article on technical assistance in the main body of the text.

11. The Representative of the European Union, speaking on behalf of the European Union and its member states, commended the Chair for her leadership and dedication and extended its thanks to the two Vice-Chairs and the Secretariat for preparing the General Assembly. The Representative deeply regretted that, despite the clear window of opportunity and the obvious maturity of the text of the draft DLT, the General Assembly had once again failed to reach an agreement on the convening of the diplomatic conference to establish a DLT. Noting that the draft DLT was collectively the work of hundreds of experts over many years, representing great progress, the Representative reminded that all delegations had indicated their support for the principle of convening a diplomatic conference. The Representative considered that consensus remained elusive because of a single issue of concern for a limited number of delegations. Concerning future discussions, the Representative invited the General Assembly to ensure to uphold the high level of ambition of the nearly completed work, so as to preserve the common achievement. Finally, the Representative expressed its sincere hope that the current impasse would be overcome and that the next General Assembly would be in a position to agree on the convening of a diplomatic conference at the earliest practical time.

12. The Delegation of Egypt, speaking on behalf of the Development Agenda Group (DAG), thanked the Chair for her efforts in leading the consultation on this issue and for the decision adopted by the General Assembly. The Delegation indicated that the DAG wished to emphasize the importance of the full implementation of Clusters A and B of the WIPO Development Agenda on technical assistance, capacity building and norm-setting, respectively. From this perspective, the DLT should be inclusive and member-driven, take into account the different levels of development among WIPO Member States and take into consideration a balance between costs and benefits for WIPO Member States. The DAG appreciated the work made by the SCT in advancing the draft text on the DLT including a draft Article/Resolution on technical assistance and capacity building. In this regard, the DAG would be in a position to support the convening of a diplomatic conference to adopt a DLT integrating a legally binding provision agreement on technical assistance and capacity building, that would help developed countries and LDCs to realize the objectives of the treaty, level the playing field and ensure balance between WIPO Member States.

13. The Delegation of Algeria, thanking the Chair for her work and efforts and to all the delegations for the decision adopted by the General Assembly, expressed its support for the statement made by the African Group. The Delegation said that technical assistance was the

cornerstone of any WIPO treaty, which constituted an obligation resting on the organization rather than on the Member States. For this reason, the Delegation stressed the need to include in the treaty an article on technical assistance and capacity building, while indicating that it could be flexible on the wording used to express this need. Finally, the Delegation expressed its wish that future informal consultations would be more inclusive and open to interested delegations.

14. The Delegation of Hungary aligned itself with the statements of the CEBS Group and of the European Union and its member states. The Delegation also joined other delegations in expressing a deep regret that they had not been able to positively decide on the convening of a diplomatic conference at this extraordinary session of the General Assembly. The Delegation reminded delegations that the issue of deciding on the convening of the diplomatic conference to adopt the DLT would be on the Agenda of the General Assembly for the fourth time, and negotiations on the DLT had been going on for many years. Sharing the view of many delegations that the text of the DLT draft was more than mature enough to convene a diplomatic conference and responded to the demand of designers from all around the world, the Delegation said that concluding the DLT would fill in the gap in the international framework for the benefit of designers and users of other intellectual property titles like patents and trademarks that had been benefiting for a long time from harmonized formalities through the Patent Law Treaty and the Singapore Treaty on the Law of Trademarks. Furthermore, the Delegation stressed the fact that harmonizing design law formalities would be beneficial for applicants and users of developed and developing countries and LDCs, and would make it easier for any of them to seek design protection in foreign countries. The Delegation further considered that after all the extensive discussions in different SCT sessions and during previous sessions of the General Assembly, all delegations should be reassured that technical assistance would continue to be provided by WIPO in the field of designs and would be delivered particularly in relation to the implementation of the DLT. Finally, the Delegation hoped that in September 2014, all delegations would come to the table with an open mind and constructive spirit and would finally take a decision and convene the diplomatic conference for the adoption of the DLT.

15. The Delegation of Côte d'Ivoire expressed its support for the statement made by the African Group and regretted that a consensus for convening a diplomatic conference had not been reached. The Delegation, fully aware of the essential role of intellectual property in socio-economic development, stated that Côte d'Ivoire would like to be an emerging country by 2020 and was consequently following very closely the work on industrial designs and the impact on development. The Delegation, observing that its country continued to suffer from the lack of an international legally binding instrument, expressed its worry in particular with regard to the textiles and creative industries in its country, where two of the largest textile factories had closed after suffering from counterfeiting. In conclusion, the Delegation said that Côte d'Ivoire needed a means to fight against counterfeiting, as well as capacity building in order to receive fair and equitable support. The Delegation expressed the hope that WIPO would bear that in mind.

16. The Delegation of Greece associated itself with the statements of the European Union and its member states, and of Group B. The Delegation, noting that the SCT had meticulously examined the draft text of a design law formalities treaty in a series of meetings during the last years, observed that the outcome of these meetings was mature enough to constitute a basic proposal to be submitted to a diplomatic conference. Provisions on technical assistance and capacity building were accommodated to allow for the implementation of the treaty by developing countries and LDCs. For this reason, it was difficult to understand why the convening of a diplomatic conference should be conditioned on the existence of an article on technical assistance. Regardless of the flexible position of its Delegation on the nature of the provisions on technical assistance, the Delegation said that preventing a decision on the convening of a diplomatic conference was unjustified, given the fact that the text was mature.

The Delegation added that any efforts to harmonize and improve the intellectual property system should not be hindered, and regretted the fact that a positive decision of the Assembly could not be reached.

17. The Delegation of Poland thanked the SCT for the efforts and hard work invested in the current draft of the DLT and, in particular, for the significant progress on the technical assistance and capacity building issue made at its last session in March. The Delegation appreciated the positive engagement of all members of the SCT in this respect and extended its support to the statements of the European Union and its member states, and of the CEBS Group. The Delegation was of the view that significant progress had been made at the March SCT session on the substance of the treaty and regulations, that the Committee had fulfilled its mandate, and that the text had reached sufficient level of maturity to finalize the work. Therefore, the time was now ripe to go to the next level, the diplomatic conference. In respect of technical assistance, the Delegation was flexible on whether it should be included as an article or in a separate provision in the form of a resolution. However, agreement in respect of this issue should not be a precondition for convening a diplomatic conference. The Delegation pointed out that the DLT would simplify and align design registration formalities and procedures for the benefit of all users, as well as create a modern, flexible and user friendly international framework in this field. The treaty was long-awaited by users across regions and ranked among their top priorities. Indicating that this moment had been a missed opportunity to move forward on an important issue, the Delegation expressed its regret that the WIPO General Assembly had once again failed to find agreement on the convening of a diplomatic conference to establish a DLT and expressed the hope that the current impasse would be overcome at the next General Assembly.

18. The Delegation of Canada expressed its appreciation for the Chair's help in trying to reach consensus on this very important issue and announced its readiness to accept the decision text proposed by the Chair. Recalling that it had always been supportive of the DLT, the Delegation declared that, while it could support the convening of a diplomatic conference on the DLT and agree to negotiate an article on technical assistance at that conference, the Delegation opposed to committing to such an article as a precondition to hold the diplomatic conference. Considering that this raised an important systemic issue, the Delegation pointed out that diplomatic conferences should be convened on the basis of the overall text to be considered in a holistic manner, and not because there was a promise of one particular element to be included. Recalling that it had tried to be as flexible as possible at the last General Assembly in December 2013, where it had attempted to build in the necessary flexibility to suit the broad spectrum of options and positions in play, and at the last session of the SCT in March 2014, the Delegation declared that it was fully committed to the conclusion of the DLT and that it would continue to work constructively with partners to find a mutually acceptable decision to reach an agreement on the convening of a diplomatic conference. The Delegation invited all other parties to honor the spirit of WIPO by working collaboratively and constructively so as to reach a positive outcome in the near future.

19. The WIPO General Assembly:

- (a) took note of the progress made at the thirty-first session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) in relation to draft Articles and Regulations of a proposed Design Law Treaty;
- (b) encouraged delegations to hold informal consultations prior to the 54th series of meetings of the WIPO Assemblies to take place in September 2014 with a view to resolving pending issues;

(c) would at its session in September 2014 decide on whether to convene a diplomatic conference for the adoption of a Design Law Treaty as soon as practicable at a venue to be decided.

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