

Special Union for the Protection of Appellations of Origin and their International Registration (Lisbon Union)

Assembly

**Twenty-Seventh (19th Ordinary) Session
Geneva, September 26 to October 5, 2011**

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/49/1): 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 37, 44 and 45.
2. The reports on the said items, with the exception of item 37 are contained in the General Report (document A/49/18).
3. The report on item 37 is contained in the present document.
4. Ms. Branka Totić (Serbia) was elected Chair of the Assembly; Mr. Jan Walter (Czech Republic) was elected Vice-Chair.

ITEM 37 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. Discussions were based on documents LI/A/27/1 and LI/A/27/2.
6. In opening the session, the Chair read out a report on the activities of the Working Group on the Development of the Lisbon System (hereinafter referred to as “the Working Group”), received from the Chair of the Working Group, Mr. Mihály Ficsor (Hungary), who was not able to attend the present session of the Lisbon Union Assembly.
7. The Chair said that, at its twenty-fifth (18th Ordinary) session held in Geneva, from September 22 to October 1, 2009, the Assembly of the Lisbon Union had noted that the Working Group had embarked upon a review of the Lisbon system with the aim of introducing improvements that would make the Lisbon system more attractive for States and users, while preserving the principles and objectives of the Lisbon Agreement.
8. Since then, the Working Group had met twice. At its second session, held in Geneva, from August 30 to September 3, 2010, it had discussed in depth the results of a survey on the Lisbon system—which had generated a wide variety of suggestions for changes to the Lisbon system from member States and non-member States alike. As a result, the Working Group had drawn a number of relatively detailed conclusions enabling the International Bureau to submit draft provisions to the third session of the Working Group. In addition, the second session of the Working Group had also considered a study conducted by the International Bureau on the relationship between regional systems for the protection of geographical indications and the Lisbon system, and the conditions for accession to the Lisbon Agreement by intergovernmental organizations.
9. The third session of the Working Group, held from May 23 to 26, 2011, had dealt with basically two major issues. Firstly, the Working Group had considered a couple of draft amendments to the current Regulations under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Regulations). Secondly, it had looked into a set of so-called draft provisions prepared by the International Bureau in accordance with the request of the Working Group.
10. As a result of in-depth discussions, based on a proposal drawn up by the International Bureau, the Working Group had managed to agree on a couple of proposed amendments to the Regulations under the Lisbon Agreement and also agreed that the International Bureau should submit them to the Assembly of the Lisbon Union for adoption at the present session. These amendments, as contained in document LI/A/27/1, related to the optional contents of international applications and to notifications of invalidation.
11. As regards Rule 5(3) of the Lisbon Regulations—specifying particulars that international applications may contain or indicate, in addition to the mandatory contents of international applications provided for in Rule 5(2)—the Working Group had agreed that further optional elements should be allowed. In particular, the application form should allow the country of origin the option to indicate factual information that had permitted the grant of protection in respect of the appellation of origin in question, notably particulars that had helped in ascertaining that definition requirements were met and that the link between the product in question and a precise geographical area had been established. Such factual information would be helpful for competent Authorities of other member States to better understand the merits or legitimacy of the protection granted. Moreover, it would allow the public and possibly affected traders and trademark holders to be informed properly of the particulars on which protection of the appellation of origin in question was based.

12. As regards Rule 16(1) of the Lisbon Regulations – listing the mandatory requirements for the contents of notifications of invalidation – the Working Group had agreed that an additional requirement should be added. As a result of the requirement in Rule 16(1) that a copy of the decision to invalidate the effects of an international registration be contained in the notification of invalidation, the ground on which such a decision was based would only be available in the language of the notifying country. It would serve transparency if the notifying country were required to indicate the ground in the notification, so that the ground would be recorded in the International Register in the three working languages of the Lisbon system.

13. These new procedural rules would serve the interests of users, enhance transparency within the Lisbon system, and thus render it more attractive.

14. In addition to the proposed amendments to the Lisbon Regulations, the third session of the Working Group had also discussed a set of draft provisions, which concerned the following issues: (i) basis for protection and definitions; (ii) filing of international applications; (iii) accession criteria for intergovernmental organizations; (iv) international registration; (v) scope of protection; (vi) prior use; and (vii) procedures in Contracting Parties prior to the issuance of possible refusals and for challenging the refusals issued. With regard to these draft provisions, which left open the question as to the legal instrument by which they might be formalized, the Working Group had been invited to indicate its recommendations both in respect of content and the possible initiation of a process that might result in a revision of the Lisbon Agreement and/or the conclusion of a protocol or a new treaty supplementing the Agreement. Following a discussion about these draft provisions, the Working Group had agreed that the Assembly of the Lisbon Union be requested to take note, at the present session, of the following:

- (i) that the Working Group had made considerable progress on the development of the Lisbon system and that work would continue with a view to further preparing a process that might result in a revision of the Lisbon Agreement and/or the conclusion of a protocol or a new treaty supplementing the Lisbon Agreement;
- (ii) that the Working Group had requested the Secretariat to prepare a draft new instrument containing the draft provisions submitted to its third session, as revised on the basis of comments made in that session, as well as any further draft provisions the inclusion of which would be necessary for making the draft new instrument as complete as possible;
- (iii) that further meetings of the Working Group would be convened and would be held more frequently, preferably twice a year.

15. In conclusion, the Chair of the Working Group wholeheartedly recommended the Assembly to adopt both the proposed amendments to the Lisbon Regulations and the mandate for the Working Group to continue its work.

16. The Delegation of Iran (Islamic Republic of) expressed its support for the implementation of decisions aiming at simplification of the registration regulations as well as the overall development of the Lisbon system. The Delegation recalled that, at its third session, from May 23 to 27, 2011, the Working Group had extensively discussed draft provisions, as prepared by the International Bureau on the basis of discussions in the Working Group, aimed at improving the functioning of the Lisbon system and making it more attractive for users while allowing the membership of the Lisbon Agreement to increase. The Delegation emphasized that it had been actively involved in the discussions that had taken place in the Working Group, aimed at identifying areas requiring clarification or possible amendments. The Delegation concluded by saying that, as a general rule, it was of the view that any amendment to the

Agreement or its Regulations should be in line with the aim of strengthening the purposes and core principles of the Lisbon Agreement. Proposals for such changes and alternative texts should be extensively studied by the Contracting Parties of the Lisbon Agreement and be subject to their approval. Finally, in adding a new category of membership to the Lisbon system, as in the case of intergovernmental organizations, their ability to satisfy the criteria required for the protection of appellations of origin should be carefully assessed.

17. The Assembly:

- (i) adopted the amendments to Rules 5(3) and 16(1), as set out in the Annex to document LI/A/27/1, with effect from January 2012; and
- (ii) took note of the considerable progress made, and the planned work ahead, as referred to in paragraph 3 of document LI/A/27/2, in the review of the Lisbon system.

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