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

Assembly

Thirty-Second (21st Ordinary) Session
Geneva, October 5 to 14, 2015

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/55/1): 1, 2, 3, 4, 5, 6, 10, 11, 22, 31 and 32.

2. The reports on the said items, with the exception of item 22, are contained in the General Report (document A/55/13.).

3. The report on item 22 is contained in the present document.

4. Mr. Vladimir Yossifov (Bulgaria) was elected Chair of the Assembly; and Mr. Olivier Martin (France) was elected Vice-Chair.

ITEM 22 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. Discussions were based on documents LI/A/32/1, LI/A/32/2, LI/A/32/3 and LI/A/32/4.

Outcome of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

6. Discussions were based on document LI/A/32/1.

7. The Delegation of Iran (Islamic Republic of) expressed the view that the Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration had not only become a more robust instrument for preventing the misuse and misappropriation of geographical applications and appellations of origin, but had also made the Lisbon System more attractive and inclusive. The Delegation further indicated that the Geneva Act would benefit all producers from both developed and developing countries as it constituted a reliable tool to protect those products with unique quality and characteristics directly attributable to their geographical origin. In that regard, the Delegation pointed out that a majority of developing countries, including Iran (Islamic Republic of) were rich in biodiversity and plant varieties because of their diverse ecosystems. In that sense, the protection of geographical indications would play a vital role for the economy of those countries. The Delegation went on to say that the new Act would also provide a meaningful tool for the benefit of farmers living in rural areas to protect their products in the global market and, consequently, would assist countries in consolidating their development strategies towards increased sustainable development. In addition, the Delegation pointed out that the main objectives and defined functions of WIPO were to promote the protection of intellectual property rights (IPRs) throughout the world in accordance with Articles 3 and 4 of the WIPO Convention. In that regard, the Delegation recalled that geographical indications and appellations of origin were also part of those IPRs and expressed the view that the successful outcome of the Lisbon process also meant a clear success for WIPO as a whole in realizing and implementing its main objectives in promoting IPRs as well as the crystallization of development objectives into the intellectual property normative framework, thereby also representing a success for the WIPO Development Agenda (DA) as such. The Delegation indicated that it welcomed transparency, clarity and openness within WIPO, in particular on the budgeting process, and recalled that the members of the Lisbon Union had shown maximum flexibility and had attempted to work in a constructive manner during the last session of the Program and Budget Committee (PBC) in order to find a way to approve the Program and Budget. In that regard, the Delegation recalled that Lisbon members had not only agreed that the income and expenses, including both direct and indirect expenses, of the Madrid and the Lisbon Systems in Program 6 would be presented in the Program and Budget for the 2016/17 biennium as separate programs, so as to increase transparency for accounting purposes, but also to consider, in accordance with the Lisbon Agreement, various options for addressing the financial sustainability of the Lisbon System at the present session of the Assembly of the Lisbon Union. As regards the proposal made by the Delegation of the United States of America in respect of Program 6, the Delegation indicated that the consideration of such proposal would require as a prerequisite that WIPO be first restructured and the Financial Regulations, including the allocation methodology of the projected budget, be amended. Given such profound consequences, the Delegation was not in a position to go along with the proposal made by the Delegation of the United States of America, as it seemed contrary to some constituent treaties, such as the Paris Convention for the Protection of Industrial Property and the WIPO Convention, as well as the WIPO Financial Regulations and Rules, including the unitary contribution system. Moreover, the Delegation was of the view that such proposal could also set a dangerous precedent that could have implications on the funding of other WIPO treaties and unions, including future treaties. The Delegation expressed the wish that a compromise solution be found with regard to Program 6,

so as to pave the way for the adoption of the Program and Budget for the 2016/17 biennium. Lastly, the Delegation suggested that the remaining proposals made by the Delegation of the United States of America be discussed and analyzed at the next session of the PBC, with a view to having a more objective result. The PBC would then be able to report the result of its deliberations to the next General Assembly in 2016.

8. The Delegation of Hungary expressed its support for each element of the decision paragraph that the Assembly was invited to adopt in document LI/A/32/1. The Delegation particularly supported the establishment of a Working Group for the Preparation of Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement, for the reasons set out in paragraph 7 of the document in question.

9. The Delegation of France supported each element of the decision paragraph contained in document LI/A/32/1, in particular given the positive outcome of the diplomatic conference that was conducted both in accordance with international law, but also in line with the Program and Budget for the 2014/15 biennium. The Delegation further indicated its support for the establishment of a Working Group for the Preparation of Common Regulations as well as the designation of additional official languages.

10. The Delegation of the United States of America pointed out that document LI/A/32/1 only captured the statistics of the diplomatic conference without reflecting the dynamics of that meeting. In particular, the Delegation expressed its disappointment that the Lisbon Union had been unable to allow the participation of the full WIPO membership and that it ultimately did not produce a new agreement that the fuller WIPO membership would be able to join. In that regard, the Delegation recalled that it had approached the diplomatic conference believing that it would represent a real opportunity to negotiate a geographical indications system that would be of interest to the wider WIPO membership, thereby continuing the work that had been done under the Paris Union in the 1970’s and 1980’s at WIPO, but which had been paused to allow for the negotiations that had resulted in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). As explained in document WO/GA/47/10 regarding the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), the Delegation believed that the Geneva Act was inconsistent with many national and regional systems for the protection of geographical indications, and therefore that the Lisbon Union had failed to meet the needs of the wider WIPO membership at the diplomatic conference. The Delegation further recalled that the Lisbon Union had significant financial difficulties and expressed the view that the proposed establishment of a Working Group would need to be funded with money from the Lisbon Union. As a result, the Delegation expressed concerns about the Lisbon Union embarking upon yet another expensive work program. Furthermore, the Delegation was of the view that it would be premature for the Lisbon Union members to commence work on plans for WIPO to administer the Geneva Act, when the full WIPO membership had not agreed that WIPO should perform that task. Pursuant to the WIPO Convention, the Delegation believed that the General Assembly, the Paris Union Assembly and the Berne Union Assembly would still have to formally decide to administer that new plurilateral agreement. Until such time, the Delegation was of the view that any decision by the Lisbon Union Assembly to make the Organization administer the Geneva Act would not be legitimate. The Delegation recalled that it had encouraged the Director General to propose measures to the relevant Assemblies so that there could be clarity on the issue as discussed in its proposal to the General Assembly, as contained in document WO/GA/47/3. In consequence, the Delegation expressed the view that the Lisbon System should not approve the establishment of a Working Group for the Preparation of Common Regulations at this point in time.

11. The Delegation of Slovakia considered the Geneva Act as a WIPO normative breakthrough. The Delegation had actively participated in the negotiations during the diplomatic conference in May and had appreciated the open, fair and inclusive character of the discussions. The Conference had taken the views of all WIPO Member States into serious

consideration, regardless of whether these views differed from those of Lisbon members or not. The Delegation believed in the need to exercise goodwill to hear each other and value all the relevant arguments properly to achieve the best possible results in the Assembly. The Delegation realized its own part of responsibility as a member of the Lisbon System and was ready to negotiate the open issues with all relevant partners.

12. The Delegation of Hungary wished to clarify that the Geneva Act of the Lisbon Agreement was a new Act of the Lisbon Agreement, which implied that Contracting Parties of the Geneva Act would be members of the same Special Union as the States party to the current Lisbon Agreement, as stipulated in Article 21 of the Geneva Act and Article 1(1) of the current Lisbon Agreement. According to these provisions, the Lisbon Union, both under the current Lisbon Agreement and under the Geneva Act, remained a Special Union within the framework of the Paris Union for the Protection of Industrial Property. Thus, WIPO had to continue to perform the administrative tasks of this Special Union, in accordance with Article 4(2) of the WIPO Convention.

13. The Delegation of Portugal congratulated WIPO and all those who had contributed in a participatory and active way in the diplomatic conference in May. The Geneva Act was extremely important for the Lisbon Agreement. The Delegation said that it agreed with both points put forward in document LI/A/32/1, i.e., the creation of a Working Group for the Preparation of Common Regulations and the translation of the Lisbon Agreement and Regulations into additional languages.

14. The Delegation of Australia expressed its concerns as regards the characterization in document LI/A/32/1, paragraph 3, that it had taken part in the diplomatic conference. The Delegation said that the wording minimized the prejudicial impact of the participation rules adopted by Lisbon members for the diplomatic conference. The Delegation also expressed its deep dismay as to the way in which the Geneva Act was adopted at the end of the conference. Only members of the Lisbon Agreement had full participation rights and the opportunity to meaningfully take part in the diplomatic conference. Lisbon members had retained for themselves the decision-making power in relation to issues of interest to all WIPO members. Issues which had been and remained more appropriately a subject for discussion among the broader membership of the SCT. The Delegation reiterated its statement from the diplomatic conference that it did not agree that the Geneva Act was a consensus outcome and that it could not agree to it. The Delegation did not support the proposal as set out in paragraph 7 until such time as the financial status of the Lisbon Union would be sufficient to fund its work. The establishment of a Working Group would simply increase the considerable deficit outlined in document LI/A/32/2, to the benefit of Lisbon members but to the detriment of other WIPO members who would be funding that exercise.

15. The Delegation of the Czech Republic welcomed the adoption of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. It believed that the modernization of the Lisbon System under the Geneva Act and the flexibility of the treaty were to the benefit of all countries. Concerning the document under discussion, the Delegation indicated that it endorsed all the proposed measures, especially the creation of a Working Group for the Preparation of Common Regulations for the Geneva Act and the Lisbon Agreement. The Delegation also endorsed the statements made by the Delegations of Hungary and Slovakia.

16. The Delegation of Montenegro fully supported the establishment of a Working Group for the Preparation of Common Regulations.

17. The Delegation of the Russian Federation was very satisfied with the diplomatic conference that adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and, in spite of difficult discussions, had been able to reach consensus. The Delegation was particularly happy to see that a number of its hopes had been fulfilled, in particular as regards provisions on individual fees. In spite of the fact that the Delegation had taken part in the diplomatic conference as an observer delegation, its proposals on matters that were vital to it had been heard and supported. Therefore, the Delegation expressed its gratitude to the member States of the Lisbon Agreement for their flexibility. The Geneva Act of the Lisbon Agreement had a number of provisions which the Delegation of the Russian Federation considered as progress in the preservation of geographical indications and trademarks. The Geneva Act would enable the Lisbon Agreement to become more attractive to countries which had not yet adhered to it. The Delegation also considered extremely important the possibility of the registration of geographical indications in one single international register together with trademarks certifying origin. The Delegation considered the new Act a good text and hoped that the Russian Federation would be able to participate in it. The Delegation welcomed the proposal to set up a Working Group for the Preparation of Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement and supported the designation of Arabic, Chinese and Russian as languages in which the official texts of the Lisbon Agreement and the Regulations would be established.

18. The Delegation of the United States of America wished to address two points. The first point concerned the question of the status of the Geneva Act of the Lisbon Agreement and the status of its Union, i.e., as to whether it was a Special Union under the WIPO Convention. The Delegation had intended to discuss the item of the administration of the Geneva Act of the Lisbon Agreement during the General Assembly but, now that the question had come up at the present meeting, wished to state that it did not believe that the union created under this new Act was in anyway “grandfathered” by the WIPO Convention as an existing union, or could be enlarged to non-Paris or non-WIPO members. As a second point, the Delegation suggested to postpone further discussion of the issue until it would be taken up in the General Assembly.

19. The Delegation of Switzerland echoed the comments made by the Delegation of the Russian Federation, and expressed the view that the diplomatic conference had been open and inclusive and had allowed observer countries such as Switzerland to actively participate in the negotiations. The Delegation was happy to have had the opportunity to contribute to the success and outcome of the diplomatic conference.

20. The Delegation of Italy welcomed the adoption of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which would provide for an international system for the protection of geographical indications, and would make the Lisbon System more attractive to producers from both developed and developing or least developed countries (LDCs). The Delegation was of the view that this result would not have been possible without transparent and inclusive negotiations, throughout the revision process up to the diplomatic conference. The Delegation recalled that the entire WIPO membership had actively participated in this conference. Further, on the issue of the nature of the Geneva Act, the Delegation shared the opinion expressed by the Delegation of Hungary.

21. The Delegation of the Republic of Korea expressed the view that the diplomatic conference had not been equally open to all WIPO members and that the Geneva Act had not been adopted on a consensus basis by Lisbon Union members.

22. The Delegation of Israel agreed with the Delegations of the Republic of Korea and the United States of America that the records of the diplomatic conference should reflect that participation had not taken place on an equal basis, as Member States of WIPO that were not Lisbon members had not had the right to vote, even though all had had the opportunity to participate in the discussions. As regards the establishment of a Working Group, the Delegation

said that such a Working Group should be financed on a self-sustained basis, as each union should finance itself, in line with what had been reflected as the position of the Delegation of Israel during the diplomatic conference. The Delegation expressed the view that this issue should be discussed with regard to the Geneva Act itself. Therefore, the Delegation supported the suggestion made by the Delegation of the United States of America to postpone this topic until its discussion in the General Assembly.

23. The Assembly:

(i) took note of the content of the "Outcome of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration" (document LI/A/32/1);

(ii) approved the establishment of a Working Group for the Preparation of Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement; and

(iii) designated Arabic, Chinese and Russian as languages in which official texts of the Lisbon Agreement and the Regulations thereunder had to be established.

Proposal to Update the Fee Schedule Under Rule 23 of the Regulations Under the Lisbon Agreement

24. Discussions were based on document LI/A/32/2.

25. The Delegation of France recalled that the matter of increasing the applicable fees under the Lisbon System had been tabled for a number of years and said that it wanted to assume its responsibilities by agreeing to review the Fee Schedule. More specifically, the Delegation of France was of the view that the registration fee could be doubled to 1,000 Swiss francs, but could also envisage a tripling of the registration fee to 1,500 Swiss francs in the coming years, once the Geneva Act would have entered into force. The Delegation went on to say that France would also be ready to accept that the modification fee be more than doubled up to 500 Swiss francs, that the fee for providing an extract also be virtually doubled to reach the amount of 150 Swiss francs, and that the fee for providing an attestation be increased to 100 Swiss francs.

26. The Delegation of the United States of America was of the view that the proposal contained in document LI/A/32/2 was a good start and was satisfied to hear that it had been received positively by Lisbon Union members. The Delegation added, however, that it had been somewhat discouraged by the explanation that it had just heard from the Delegation of France as to their perspective on the increase of fees. In that regard, even though the Delegation recognized that the estimated registration activity that had been used to identify the amount of fee income necessary to sustain that level of activity was merely a guess, it was still of the view that the predicted activity level was overly generous. In particular, the fee increase presumed that the average number of registrations for 28 Contracting Parties was 30. That estimate clearly ignored the fact that of the 824 international registrations in force, only four Contracting Parties out of 28 had more than 30 registrations each, namely 509 from France, 76 from the Czech Republic, 51 from Bulgaria, 41 from Italy, 28 from Georgia, 28 from Hungary, 19 from Cuba, 14 from Mexico, while the rest of Contracting Parties had less than 10 registrations and seven Contracting Parties did not even have a single registration. In light of those numbers, the Delegation found it hard to believe that the Lisbon Union would suddenly refer to 30 registrations per existing Contracting Party with an increase of 30 Contracting Parties with their own registrations over the next 20 years. In addition, the Delegation indicated that it did not see any reference in the document to the amount of income that the Lisbon Union would need to collect and the fees it would, therefore, need to charge in order to pay for the direct and indirect costs of the Lisbon Union beyond the registration activity. Along the same lines, the

Delegation pointed out that there had been no discussion of the costs of promotion or technical assistance or the indirect costs that the Lisbon Union would have to pay to the Organization, as it was the case for the other registration Unions. The Delegation was of the view that the Lisbon Union had not carried its fair share of the costs and that was the reason why the United States of America had requested a discussion of alternative methodologies to also consider those costs when targeting an appropriate level of fee income for the Lisbon Union. Additionally, the Delegation said that it failed to see an explanation in document LI/A/32/2 of where the Geneva Act provided that existing international registrations under the Lisbon Agreement would be given automatic legal effect as international registrations effected under the Geneva Act without the need for filing an international application or paying the required application fee. The Delegation pointed out that paragraph 12 of LI/A/32/2 stated, in part, that, "As regards the current Lisbon Union member States, it should be noted that, upon accession to the Geneva Act of the Lisbon Agreement, all the international registrations in force at that time, in respect of which they are the Contracting Party of Origin, will have to be modified in order to bring them in conformity with the requirements of the Geneva Act of the Lisbon Agreement". However, the Delegation had been unable to find any article in the new Act that would authorize that. Article 29(4) of the Geneva Act clearly stated that whenever a new Contracting Party would accede to the Geneva Act, it would have to protect the existing registrations effected under the Geneva Act, and not those registrations effected under the Lisbon Agreement prior to the date of accession to the Geneva Act. However, document LI/A/32/2 indicated that prior registrations would be transformed into international registrations effected under the Geneva Act merely by paying a modification fee. In addition, upon pointing out that a "modification" under Rule 15 of the Geneva Act included, *inter alia*, requests for a change of name or address of the authorized beneficiaries, the Delegation considered the proposed fee increase for a modification of the international registration from 200 to 1,500 Swiss francs rather high for such a simple request as a change of address. The Delegation went on to say that it now understood that the proposed modification fee would actually function as a half priced international application fee for existing Lisbon member States seeking protection for their old Lisbon registrations under the new Geneva Act. The Delegation further observed that the proposed fee for the modification of an international registration was 1,500 Swiss francs, while an international application filed by a new Contracting Party would cost 3,350 Swiss francs under the Director General's fee proposal. In other words, all new Contracting Parties would have to pay the full application fee, while the existing Lisbon Contracting Parties would get a significant discount for their 824 international registrations, previously registered under the Lisbon Agreement or the 1967 Act. The Delegation insisted that it failed to see any provision in the Geneva Act that would authorize existing international registrations to simply be grandfathered into the Geneva Act and that it saw no legal basis for some Geneva Act members to be able to pay 1,500 Swiss francs for their international registrations while others would be expected to pay 3,350 Swiss francs. The Delegation did not consider this consistent with the objective of the Geneva Act to expand the membership of the Lisbon System. Moreover, the Delegation said that the fee proposal under consideration was particularly frustrating in light of the current discussion on financial sustainability. The Delegation was of the view that the unfairness of such treatment between the old Lisbon members and the new Geneva Act Contracting Parties highlighted the inequity in allowing a new treaty to be drafted only by a small group of countries, namely the Lisbon Union members. The Delegation concluded by saying that the full WIPO membership needed a true accounting of the direct costs of operating the International Registration System of the Lisbon Agreement and, in future, the Geneva Act. This would include the direct costs of providing a significant amount of technical assistance that would be required to implement those difficult treaties and the indirect costs of contributing to the activities of the Organization as a whole in order to determine how to move the situation forward in the best way for the Organization. The Delegation did not believe that enough information had been provided in the fee proposal and in the options paper to be in a position to determine how to create a financially viable system. However, the Delegation was, nonetheless, of the view that that the fee proposal was a step in the right direction, as the time had come for the Lisbon Union to raise its fees.

27. The Delegation of Hungary said that, even though it was ready to consider and support an increase in the Lisbon fees, especially in view of the fact that they had not been changed since 1994, the Delegation was a bit hesitant to accept the rather sharp increase proposed by the International Bureau, which would result in amounts six or seven times higher than the current amounts. As this might shock and deter users and consequently have a freezing effect on the whole system, the Delegation proposed a somewhat more gradual approach. For those reasons, the Delegation could go along with the alternative proposal that had been put forward by the Delegation of France.

28. The Delegation of France was surprised to hear a negative response to its announcement that it could agree to increase the Lisbon registration fees. In that regard, the Delegation recalled that all the members of the Lisbon Agreement had worked very hard since September on specific proposals in the PBC aimed to increase transparency. As a result, the Lisbon Union would now appear as a separate program under the new Program and Budget. The Delegation was, therefore, of the view that the Lisbon Union members appeared to be the only ones who were trying to make progress and to find compromise solutions. However, it never seemed to be enough for some other delegations.

29. The Chair recalled that the proposal contained in document LI/A/32/2 concerned the applicable fees under the existing Lisbon System and not those that would apply under the future Geneva Act, which was not yet in force. He, therefore, invited delegations to limit their interventions to the fees that would be charged under the existing Lisbon System. He further recalled that the Working Group for the Preparation of Common Regulations under the Lisbon Agreement and the Geneva Act would look into the modalities of the procedures under these instruments.

30. The Delegation of Peru said that it shared the views expressed by other members of the Lisbon Union in support of a review of the Fee Schedule on the basis of a more gradual approach, in particular since the 28 Contracting Parties of the Lisbon Agreement had different levels of development.

31. The Delegation of Italy said that even though it agreed to the necessity to increase the fees, it favored a more balanced approach. To that end, the Delegation proposed the following fee increase: an international registration fee of 1,500 Swiss francs; a fee of 500 Swiss francs for the modification of an international registration; a fee of 150 Swiss francs for providing an extract from the International Register; and a fee of 100 Swiss francs for providing an attestation or any other information given in writing concerning the contents of the International Register.

32. The Delegation of the Czech Republic agreed that the time had come to update the Fee Schedule, as it had remained unchanged for 20 years. However, the Delegation also favored a more reasonable and gradual increase of registration and other fees, so that such increases would not deter users.

33. The Delegation of Georgia also favored a fee increase in order to make the Lisbon System more sustainable. However, the Delegation added that the Lisbon System should remain attractive for potential new members and for existing users. Hence, the Delegation favored the gradual increase in fees proposed by the Delegation of France.

34. The Delegation of Iran (Islamic Republic of) said that, even though it positively considered the proposal made by the Delegation of France, it would not be in a position to support it at this stage.

35. The Delegation of Portugal said that it would support a fee increase as long as the system would remain attractive for existing users and potential new members. In that regard, the Delegation expressed the view that some kind of balance would have to be found between finding a way to cover the deficit while also maintaining the incentive to join the Lisbon System. That being so, the Delegation expressed support for the proposal made by the Delegation of France and would not be opposed to a regular update of such fees in the medium and long term.

36. The Delegation of Mexico said that it was fully aware of the need to update the international registration fees that would be applicable under the Lisbon Agreement, because they had not been changed since 1993. That said, the Delegation was of the view that any increase of fees would require careful examination and not only take into account the expenses of the International Bureau to maintain the International Registry, but also the need to make the Lisbon System accessible for existing users and potential new members. The Delegation, therefore, expressed its support for the gradual approach proposed by the Delegation of France, while adding that it would be happy to look together with the other members of the Lisbon Union for the best way of updating such fees in accordance with the situation in the market so as to guarantee the sustainability of the Lisbon System.

37. The Delegation of Bulgaria supported the proposal put forward by the Delegation of France.

38. The Delegation of Cuba also favored a gradual increase in the fees in a reasonable and balanced manner, so that the Lisbon System would remain attractive for current users of the system, in particular those users from developing and LDCs.

39. The Delegation of Slovakia fully agreed with the need for increasing the Lisbon fees. However, as the Delegation also believed in a gradual and more balanced approach, it supported the proposals put forward by the Delegations of France and Italy.

40. The Delegation of Australia acknowledged the agreement at the recent PBC to separate the Lisbon and the Madrid Systems in the financial accounting system and was of the view that it was a good start in terms of increasing the transparency of the financial situation of the Lisbon System. However, the Delegation found it difficult to see how the proposed fee increase would render the Lisbon System financially sustainable. The Delegation appreciated the comments made by some Lisbon Union members recognizing the need to find a sustainable way forward in terms of finances. However, the Delegation was of the view that an overall framework plan to ensure financial sustainability for the Lisbon Union would be needed. In that regard, the Delegation pointed out that all potential sources of funding as referred to under Article 11 of the Lisbon Agreement, including special contributions and the establishment of a working capital fund, would also have to be addressed. Upon recalling that geographical indications were powerful property rights, the Delegation said that it would be entirely reasonable that the beneficiaries of such a commercial advantage be expected to bear some responsibility for the costs of obtaining and maintaining a system for their protection. That was particularly so, as these rights were of an indefinite duration on an international scale. The Delegation, therefore, urged current and prospective Lisbon members to establish a plan for better financing the system, so that there would be no need to rely on other unions.

41. The Delegation of the United States of America sought clarification from the Secretariat as to the proposed fee of 3,353 Swiss francs, as the Secretariat had explained that such a fee would be comparable to the fee that would be charged under the Madrid Schedule of Fees. The Delegation further agreed with the Delegation of Australia that a geographical indication was a very significant and powerful right, comparable to a trademark, and that it, therefore, failed to see why the proposed fee of 3,353 Swiss francs would be seen as a deterrent by Lisbon members.

42. The Director General said that the question raised by the Delegation of the United States of America concerned a matter for the member States to decide and that clarification from the Secretariat in that regard would not be necessary. Upon hearing the comments made by the Delegation of the United States of America, the Director General was of the view that there was a slight confusion between the estimates that the Secretariat had tried to put forward to address the question of financial sustainability, on the one hand, and, on the other hand, the specific proposal about a fee increase for the existing Lisbon System. As the Chair had indicated, as far as the future Lisbon System was concerned, the Working Group that had been established would look into that matter in the next few years, before the entry into force of the Geneva Act. It would only be upon the entry into force of the Geneva Act that the question of the fee level with respect to the various transactions that would occur in relation to the new Act of the Lisbon Agreement, including the transitioning of any existing registrations from the Lisbon Agreement to the new Act, would need to be considered. The Director General further stated that what the document under consideration was simply trying to do was to determine the appropriate amount of fees under the Lisbon Agreement as a possible source of revenue for achieving a sustainable system. To do so, only approximate estimates could be made, as it was a complete shot in the dark to indicate how many registrations one could expect under the Lisbon System.

43. The Chair concluded that the member States of the Lisbon Union appeared to agree that the amounts in the Fee Schedule should be modified as proposed by the Delegation of Italy, with effect from January 1, 2016. In addition, member States also appeared to agree that the fees should be the subject of periodic reviews, so that they could be adapted in view of existing market conditions or sustainability needs.

44. The Delegation of Iran (Islamic Republic of) said that it was not in a position to support the proposed fee increase and needed to consult further at the national level.

45. The Chair said that his conclusion appeared to be acceptable, pending confirmation from the Delegation of Iran (Islamic Republic of).

46. The Assembly:

(i) took note of the contents of document LI/A/32/2;

(ii) decided to modify the amounts of the fees mentioned in Rule 23 of the Lisbon Regulations with effect from January 1, 2016, as follows: (i) an international registration fee of 1,000 Swiss francs; (ii) a fee of 500 Swiss francs for the modification of an international registration; (iii) a fee of 150 Swiss francs for providing an extract from the International Register; (iv) a fee of 100 Swiss francs for providing an attestation or any other information given in writing concerning the contents of the International Register;

(iii) decided that it would continue to review fees on a regular basis.

<u>Options for the Financial Sustainability of the Lisbon Union and the Proposal to Establish a Working Capital Fund for the Lisbon Union</u>

47. Discussions were based on documents LI/A/32/3 and LI/A/32/4.

48. The Delegation of France pointed out that the Lisbon Union member States had met three times since August in order to study together the document on options for the financial sustainability of the Lisbon Union. The Delegation drew attention to the fact that the document on the working capital fund was produced by the Secretariat following the request of the Lisbon Union member States, and noted that the document had a financial Annex with some heavy financial repercussions for Lisbon Union members. Most of the member States were in a

process of budgetary planning for 2016, as was the case for France. Thus, as far as deadlines were concerned, it was rather difficult to take a specific position at this stage on those heavy budgetary commitments. However, the document would remain on the table.

49. The Delegation of Hungary believed that it was important to first look at the causes of the Lisbon Union financial situation. This financial situation was determined, basically, by two main factors. First, as it had been rightly pointed out by the International Bureau, appellations of origin and geographical indications were based on geographical names, so there was an inherent limit to the total number that might ever exist. Unlike in other registration systems in respect of IPRs, there would never be a continuous and major flow of new applications in respect of geographical indications and appellations of origin. Secondly, the recently increased costs of the Lisbon Union were primarily attributable to the review of the Lisbon System, i.e., a process serving the interests of the whole Organization and open to its entire membership. According to an estimate of the International Bureau, about 70 per cent of the total costs consisted of the services provided in respect of the revision of the Lisbon System. Another significant part of the expenditure was related to the introduction of up-to-date electronic tools for running the registry. These were one-time costs. In other words, they were expenses which were unlikely to be incurred periodically or permanently. The Delegation said that it was against that background that the Lisbon Union Assembly had to consider the various options for ensuring financial sustainability of the Lisbon Union. In that regard, the Delegation stressed its willingness to live up to its responsibility as a member of the Lisbon Union and to address the issue of the long-term financial sustainability of the Lisbon System. In addition, the Delegation recalled that the Geneva Act, once it would enter into force, would include new provisions that were intended to improve the long-term financial sustainability of the Lisbon System. The Delegation also considered that that aspect was indicative of the willingness of the membership to address the current situation. As to the various options presented by the International Bureau, the Delegation was open to the suggestion for the establishment of a working capital fund. As that was a measure that was applied in the context of some other unions, it would not be a measure of a discriminatory nature. However, in view of the fact that the proposal for the establishment of a working capital fund had been submitted relatively late, the Delegation did not have the necessary mandate at this stage to agree to every detail of the proposal as tabled. Furthermore, the Delegation asked for some more time to further study the implications of the proposal and to consult its authorities.

50. The Delegation of Australia encouraged the Lisbon Union members to use the information contained in the two documents as a basis from which to design an enduring and robust framework for financial stability. The Delegation was of the view that such a framework would necessarily include increased fees, contributions and the establishment of a working capital fund, as proposed by the Director General and submitted for the advice of the Coordination Committee. The Delegation said that it would be encouraging to see Lisbon members agree on such a framework, so that the system would be capable of supporting itself.

51. The Delegation of Portugal said that it would be prepared to look into the possibility of establishing a working capital fund. However, for the same reasons as expressed by the Delegation of Hungary, the Delegation had not yet come to a final conclusion on the amounts, the method and the form of the fund.

52. The Delegation of the Czech Republic recalled its statement at the meeting of the PBC in September, where it had strongly supported the unitary contribution system. The Delegation also supported all potential measures to minimize the expenses and increase the efficiency of the Lisbon procedures. Regarding long-term measures, the Delegation indicated that it was carefully studying the proposal on the establishment of a working capital fund for the Lisbon Union, similar to those of the Madrid and Hague ones. The Delegation said that these measures required broad consultations in its government, especially the Ministry of Finance and the Ministry of Foreign Affairs. These consultations had not yet been finalized.

53. The Delegation of Mexico reiterated its commitment to work towards a solution for the deficit of the Lisbon Union and acknowledged its responsibilities as a member of the Lisbon Union. The Delegation said that it was aware that the increase of registration fees would not suffice to guarantee the sustainability of the system. Therefore, there should be other measures to accompany increased registration fees. Among those that had been put forward, the Delegation supported the establishment of a working capital fund, because this would provide a fairly flexible mechanism. The Delegation considered it essential that the efforts of the Lisbon Union member States to guarantee the sustainability of the Union should go hand in hand with an effort by the International Bureau to contain or even reduce the expenses of the registration system. The Delegation noted that most of the expenses were for human resources. Therefore, the Delegation proposed that those costs be reduced for the 2016/17 biennium. If the operating costs of the program would be reduced, a working capital fund might not be necessary.

54. The Delegation of Switzerland reiterated the comments it had made during the PBC on the document regarding the Options for the Financial Sustainability of the Lisbon Union. The title of this document suggested that it contained options to finance the Lisbon Union. In fact, only those options mentioned under A and B in that document constituted such options, namely registration fees and member contributions. Those under C and D, however, did not fall in that category. The Delegation clarified that a working capital fund and advances made by the host country were not sources of financing, but advances provided in case of a lack of liquidity. The Delegation added that such advances were provided for in various treaties administered by WIPO and were by definition temporary *ad hoc* measures to remedy a potential lack of liquidity. They were not actual financing options as suggested by the document in question. The Delegation said that it attached great importance to the respect of treaties that it had adhered to and that it took its role very seriously in hosting international organizations, such as WIPO. The Delegation added that the establishment of working capital funds was a good budgetary practice.

55. The Delegation of Slovakia said that it would like to see options for reducing the expenses significantly. Then, all the relevant aspects should be examined in a constructive way.

56. The Delegation of the United States of America said that the options contained in the document reminded the Delegation of the legal obligations under Article 11 of the Lisbon Agreement. Together with the three options identified in the document, namely Lisbon member State contributions, fees and host government funding, the Delegation had identified two additional funding sources that were currently available at WIPO: the Madrid surplus and the large funds in trust accounts of certain Lisbon member States. The Delegation said that it had noted the financial problems of the Lisbon Union for many years. The Delegation found it surprising that a fee of 1,000 Swiss francs had just been agreed and that a 3,000 Swiss francs fee was deemed too much for an intellectual property right that lasted in perpetuity. Given the availability of the five options, three of which had existed since the adoption of Lisbon Agreement in 1958, the Delegation of the United States of America hoped that the Lisbon members would take appropriate action to address their deficit for the 2016/17 biennium, so that a budget for the Organization could be adopted by consensus. The Delegation said that it strongly supported the unitary contribution system, while recalling the explanation given by the Director General that the unitary contribution system was not meant to fund the Lisbon Union or other fee funded unions. Finally, the Delegation asked whether the Financial Regulations and Rules of WIPO permitted the routine use of a working capital fund for operating expenses.

57. The Delegation of Montenegro said that in relation to the establishment of a working capital fund, it needed to consult the competent ministries, primarily the Ministry of Finance and the Ministry of Foreign Affairs. For that reason, the Delegation indicated that further time was needed for consultation and for respecting the national procedures.

58. The Delegation of Peru said that it was also aware of the fact that the increase in fees, although necessary, was not sufficient. It was necessary for the Lisbon Union to have additional income in order to support the Lisbon System. The Delegation noted that the Lisbon Union was not the only union with a deficit in the Organization. The working capital fund was a possible solution which needed further examination.

59. The Delegation of France noted that there were a number of delegations wondering about the possibility of reducing expenditures. That would require interaction with the Secretariat. The Delegation recalled the comment from the Delegation of Hungary that 70 per cent of the cost of the functioning of the Secretariat of the Lisbon Union was linked to the work required to revise the Lisbon System. The Delegation said that, without going into micromanagement, it seemed that 90 per cent of the costs of the small Secretariat of the Lisbon Union rested on the shoulders of two P posts and one G post. In the next two years, prior to entry into force of the Geneva Act, the level of activity for the Lisbon Secretariat might be low. For that period, costs might be reduced as a result of possible retirements, reviewing grades and the possible freezing in the level of activity of the Secretariat. However, once the Geneva Act would enter into force, there would be new members and a substantial increase in the work, considering that several States had said in their general statements that they were prepared to become party to the Geneva Act.

60. The Delegation of Japan, speaking in its national capacity, thanked the Secretariat for the preparation of the two documents, which provided a good basis for the consideration of measures to secure the financial sustainability of the Lisbon Union. The Delegation said that it was encouraging that the shared understanding of the necessity of the financial sustainability of the Lisbon Union and the necessity of additional measures were acknowledged by Lisbon Union members, though a decision had not been reached yet on the concrete measures to be adopted. The Delegation believed that such increased willingness had to be, at least, explicitly reflected in the possible decision paragraph of the Lisbon Union Assembly. The Delegation hoped that this could give some comfort regarding the future direction of the Lisbon Union to all WIPO Member States, and the Organization as a whole. The Delegation believed that the establishment of a working capital fund was a very good option that was generally supported by Lisbon Union members. Such general support about the framework for the future should be dictated in the decision paragraph as evidence of the good faith willingness of members. At the same time, the Delegation expressed its interest in the adoption of rapid measures to reduce the expenses for the forthcoming biennium. Lastly, the Delegation was of the view that the combination of those two elements would give some comfort to all WIPO Member States about the future direction of the Lisbon Union, from the perspective of financial sustainability.

61. The Director General said that he would like to confine himself to the immediate question raised by the Delegation of the United States of America. He said that the short answer was yes, but he wished to elaborate his answer. There was a difference between what was possible and what might be the best possible design. What the Secretariat had done, since it was its duty, was simply to try to assist the Member States in respect of their deliberation of this question. So, the Secretariat had put forward an options paper, setting out very clearly and exactly what the situation was. As such, it was for the Member States to decide what they wished to do with that. As an immediate response, a number of members of the Lisbon Union wanted to consider the possibility of creating a working capital fund. Thus, the Secretariat had put out a paper which described the possibility of establishing a working capital fund. As to the question how that could work in the current context in which the Lisbon Union had a deficit, the Director General referred to the Financial Regulations and Rules, and read out the definition of working capital funds, which were "funds established for providing advance financing of appropriations should there be a temporary liquidity shortfall and for such other purposes as the Assemblies of Member States and of the unions, each as far as it is concerned, shall decide". Consequently, in principle, a working capital fund was meant to fund short-term shortfalls in liquidity, i.e., a temporary measure and not a measure of financial sustainability, unless

members wished to see, in the case of a recurrent deficit, contributions continuing to a working capital fund *ad infinitum*. The Financial Regulations and Rules provided for this possibility. It was for Member States to decide whether they wished to use the working capital fund for the purposes of reducing the deficit that existed in the operations of the Lisbon Union.

62. The Delegation of the United States of America thanked the Director General for his clear answer. In response to the statement made by the Delegation of France, the Delegation of the United States of America said that, if the Lisbon Union would like to reduce expenditure, Lisbon members should be asking for a change to the proposed Program and Budget to that effect. In that respect, the Delegation noted that it had been negligent in thanking the Secretariat for the revised Program and Budget and the new narrative for the new Program 32 concerning the Lisbon System. The Delegation suggested further refinement of the narrative, because unlike in the past, when the Hague System had been separated into its own program, there was not the same level of information as had been provided at that time. The Delegation stressed that the discussion that day was really to ask the Lisbon Union to be part of the WIPO family and to be like the other unions contributing to the work of the Organization. The Delegation was of the view that if the Lisbon Union members were going to ask the external offices to do outreach for wider accession to the Lisbon System, the Lisbon Union should help fund these Offices. In the same vein, if the members of the Lisbon Union were going to ask the Chief Economist to do a study on geographical indications and their contribution to the economy, then they should contribute to the cost of that work. At present, they did not do so. Instead, that burden was borne by the Madrid System, the PCT System and the contribution financed unions, while those other systems might prefer to use the money for their own purposes.

63. The Delegation of France wished to stress, for a better understanding of the discussion, that what had just been said by the Delegation of the United States of America was false. The Lisbon Union was not the only union that did not take on board indirect expenses of the Organization. In an informative presentation to the Member States on the WIPO budget, the Secretariat had demonstrated that the WIPO budget was based on the capacity to pay of each union. The Delegation noted that with respect to the indirect expenses of the Organization such as the cost of external offices, of the Academy, or of development expenses the Hague Union paid zero Swiss francs. The Delegation further warned that it was important to avoid that the unitary budget of WIPO would explode.

64. The Chair said that the main objective of the discussion was to take a decision on the two documents presented to the Lisbon Union Assembly. He said that the decision paragraph should reflect any conclusion that the Lisbon Union members might reach in respect of a sustainable formula for the Lisbon Union. From the different statements made on this issue, the Chair concluded that Delegations were prepared to look for a solution and to consider even a working capital fund. However, as the document had been submitted only recently, Delegations needed more time for consultations at the national level. His understanding was that Lisbon Union members agreed to discuss the different options proposed in the document concerning the options for the financial sustainability of the Lisbon Union (document LI/A/32/3), and the document concerning the proposal to establish a working capital fund (document WO/CC/71/6), with a view to solving its deficit. However, the practical solution could only come after consultations within their member governments. The Chair wondered whether Lisbon Union members might be prepared to decide to request the Working Group that the Assembly had just established to also prepare a proposal on the financial sustainability of the Lisbon System, so that the next meeting of the Lisbon Union Assembly could take a decision on that issue.

65. The Delegation of France agreed with the Chair's conclusions, while indicating that the expenditure side should not be forgotten. The Delegation said that reducing immediately some of the expenses would be a response to the requests from the Delegation of the United States of America and other delegations, and would be an additional signal of the willingness of Lisbon

members to solve the deficit. Trying to find savings on 0.3 per cent of the budget was not easy, in particular in respect of a very small Secretariat such as that of the Lisbon Registry. However, there was a retirement coming up and the question might also be asked whether a P5 or a P4 post was really necessary. The Delegation acknowledged, however, that this was rather an issue within the realm of the Secretariat.

66. The Chair, while recalling that the PCT had for many years been in deficit and the Madrid System had been in deficit at certain times, while the Hague Union was still in deficit, requested the Secretariat to expose its views on the issue. Lisbon Union members clearly needed more time for consultations at the national level.

67. The Delegation of the United States of America pointed out that when the PCT was in deficit, its contracting parties had made contributions and that when the Madrid Union members had taken a loan from the PCT Union and the Hague Union had taken one from the Madrid Union, these unions had engaged themselves to pay back these loans. The General Assembly could no longer turn a blind eye when a system representing less than one-sixth of the WIPO membership created a new Act, using the funds of other unions as well as the unitary contribution system, for which it was not intended, to conclude a treaty to which many governments, including the United States of America, could not adhere. Therefore, the Delegation reiterated its objection to the use of PCT revenues or reserves for funding the Lisbon System.

68. The Director General, in response to the intervention made by the Delegation of France, said that, firstly, the Lisbon Union was not facing a problem of expenses but one of revenue. Secondly, the suggestions made were not in line with the WIPO System of results based management. He noted that the Organization had been through an extensive and long process in the preparation of the draft Program and Budget, during which nobody had raised that the results set out for the Lisbon Union, and the resources that the Secretariat suggested to the Member States were necessary to reach those results, were inappropriate. This point was only raised now. In a system of results based management, members went through the process of agreeing on the results, while the Secretariat said what the necessary resources were. If there was a deficit, the Secretariat had to face that fact. Thirdly, the Director General recalled the provisions of Article 9(7) of the WIPO Convention which gave authority to the Director General for nominating the staff and how to deal with staff questions. A suggestion to put a P3 instead of a P4 or a P2 instead of a P3 was not normally something that was within the competence of the Member States. The Secretariat was quite willing to look into a possible reduction of expenses, although this might have an impact on the results that Member States wished to achieve.

69. The Delegation of Hungary wished to address one of the elements of the statement made by the Delegation of the United States of America, concerning an option which was not referred to in the documents under consideration, namely, the precedent set by the loan that the Madrid Union had provided to the Hague Union for the financing of the information technology (IT) modernization program of the Hague System. The Delegation believed that this option could perhaps also be considered in the Lisbon context. That kind of investment was also a one-off measure, just like those that had generated the overwhelming part of the Lisbon Union’s recent expenditure and ensuing deficit. Therefore, the Delegation said that there was no reason for not considering a similar scheme in relation to the Lisbon Union, especially in view of the interaction between geographical indications and trademarks, and in view of the fact that both the current Lisbon Agreement and the Geneva Act contain provisions that deal with the relationship between trademarks and appellations of origin or geographical indications.

70. The Delegation of France supported the statement made by the Delegation of Hungary. Whatever effort would be made for the Lisbon Union, or whatever arguments could be made on it, the same should apply to the Hague Union. The Delegation further thanked the Director

General for the reply to its suggestion which had resulted from contact that the Delegation had had with the delegations of some other Lisbon members. In view of the response given by the Director General, the Delegation would not go further along this path.

71. The Chair announced that Agenda Item 22 "Lisbon System" would remain open pending the advice of the Coordination Committee (refer to Agenda Item 23 "Advice of the Coordination Committee to the Lisbon Union Assembly Regarding the Proposal to Establish a Working Capital Fund for the Lisbon Union") and informal consultations on the last issue (being undertaken together with related issues covered under other agenda items).

72. During the session, the Chair of the General Assembly provided regular updates on the status of those informal consultations to the plenary of the Assemblies, including the Assembly of the Lisbon Union. The updates are reported under Agenda Item 11 "Report of the Program and Budget Committee".

73. The Lisbon Union Assembly, recognizing that the Lisbon Union has a deficit and that its receipts do not suffice to cover its expenses, decides that:

(i) in accordance with Article 11 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the 'Lisbon Agreement') the Lisbon Union, as a fee-funded union, shall adopt measures by the 2016 Assemblies to eliminate its projected biennial deficit, as described in the 2016/17 biennium WIPO program and budget of the Lisbon Union (1.523 million CHF).

(ii) the Lisbon Union shall receive a loan from the Contribution-financed Unions if such measures are not sufficient to cover its projected biennial deficit as described in paragraph (i) at the Lisbon Union Assembly in 2016. Such loan shall be provided on the basis that no interest shall be payable and that it would be repaid when the Lisbon Union reserves would allow it to do so.

(iii) the Lisbon Union will take advantage of the meetings of the Working Group for the discussion relating to the Lisbon system in order to consider the financial sustainability of the Lisbon Union, including the options contained in document LI/A/32/3 or any other practical solution, and to present a proposal to the next session of the Assembly in 2016.

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