

MAIN COMMITTEE II 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

Chair: Mr. Vladimir Yossifov (Bulgaria)

Secretary: Mr. Edward Kwakwa, Legal Counsel (WIPO)

First Meeting  
Friday, May 15, 2015  
Morning

1. The CHAIR welcomed the Delegations and thanked them for having entrusted him with chairing Main Committee II. He informed the Committee that the discussions would take place on an item by item basis, leaving non-concluded issues for a later stage. He urged the Committee to work in a speedy and constructive manner in order to avoid delaying the work of the Diplomatic Conference. Recalling that the President of the Conference had announced that the progress of Main Committees I and II would be reported on Monday, May 18, 2015, he said that the deadline to finish the work on the Basic Proposals was Tuesday, May 19, 2015. Therefore, he counted on the cooperation of the Committee to advance on the different issues. Finally, he invited the Secretariat to present the Secretariat Note of May 14, 2015.

Secretariat Note (May 14, 2015)  
Informal Revision to Administrative and Final Provisions

2. Mr. KWAKWA (WIPO) informed the Committee that the Secretariat Note of May 14, 2015, proposed amendments to the administrative and final provisions of the Basic Proposal, based on the constitutional reform decisions taken by the Lisbon Union Assembly, as well as by all the other Unions in 2003. They concerned the periodicity of the meetings of the assemblies, the abolition of the Conference and the unitary contribution system that had been in practice since 1993/1994. Although those constitutional reform amendments had not been formally accepted by three-fourths of WIPO Member States, they reflected the practice that had been in place for over a decade. The specific language of the constitutional reform provisions had been reflected, particularly, in Article 24, where terms inconsistent with the constitutional reform provisions had been stricken out and modified.

3. The CHAIR recalled that Main Committee I had transferred the discussion of an item relating to the implementation aspects of Article 1(xiv) to Main Committee II. He then invited the Committee to make general statements, if any, and suggested working on the basis of the Secretariat Note.

Article 21: Membership of the Lisbon Union

4. The CHAIR drew the attention of the Committee to Article 21 and invited the Delegations to express their views on the provision. He noted that there were no comments or objections to Article 21 and concluded that the text was agreed by the Committee.

Article 22: Assembly of the Special Union

5. The CHAIR invited the Secretariat to present the provisions of Article 22.

6. Mr. KWAKWA (WIPO) drew the attention of the Committee to Article 22(6), underlining that the terms “once in every second calendar year of every ordinary session” had been struck out, so that Article 22(6)(a) provided that the Assembly would meet upon convocation by the Director General. That language was identical to the one contained in the Singapore Treaty on the Law of Trademarks and was meant to reflect the constitutional reform decision according to which all assemblies would meet, whether in ordinary session or in extraordinary session, at the same time each year.

7. The CHAIR noted that there were no comments or objections to Article 22(1) and concluded that its text was agreed by the Committee.

8. Mr. GAOUAOUI (Algeria) raised a question concerning the wording of the second sentence of Article 22.2)(a)(ii). The Delegation of Algeria considered the French formulation of this provision to be terse and suggested inserting the terms “with due regard to the needs of the member of the Union”.

9. The PRESIDENT invited the Delegation of Algeria to submit its proposal in writing to the Secretariat, so that it could be presented to the Drafting Committee.

10. Ms. FERRITER (United States of America) recalled that there was a legal distinction in the current Lisbon Agreement between amendments and a revision resulting in a new agreement. While amendments could be binding upon current Contracting Parties, a revision could not. She underlined that, under the current Lisbon Agreement, any amendment to the articles should enter into force one month after written notifications of acceptance had been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said articles thus accepted should bind all the countries which were members of the Assembly at the time the amendment entered into force, provided that any amendment increasing the financial obligations of countries of the Special Union should bind only those countries which had notified their acceptance of such amendment. She noted that the New Act did not provide for the same safeguard clause in Article 27(3)(a) of the Basic Proposal. In her view, that could potentially increase the financial obligations of a Contracting Party without its consent. She wondered whether the Assembly would have the right to adopt amendments to Articles 22 to 24, which included provisions on the administration of the treaty.

11. Mr. KWAKWA (WIPO) recalled that the language contained in the Basic Proposal was similar to that contained in the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs. He pointed out that the Assembly was given the right to amend provisions in respect of the Assembly itself, in respect of provisions on finances and in respect of amendments by the Assembly. He observed that the Diplomatic Conference should determine whether to change the language so as to reflect the comments made by the Delegation of the United States of America.

12. Mr. POLINER (Israel) said that his Delegation aligned itself with the statement made by the Delegation of the United States of America.

13. After expressing its satisfaction regarding the explanation provided by the Secretariat, Mr. Okio (Democratic Republic of the Congo) accordingly expressed his preference that the provision not be modified.

14. Ms. FERRITER (United States of America) clarified that her question concerned the tasks under item (ix) [*adopt amendments to Articles 22 to 24 and 27*] and not item (iii) [*Regulations*] of Article 22(2)(a). The suggestion aimed at putting in square brackets the reference to Article 24 in Article 22(2)(a), until a discussion on Article 24 would take place. She expressed the view that the Lisbon membership might wish to consider whether Article 24 could be amended without a full consensus or only in a diplomatic conference.

15. The CHAIR concluded that the Committee had agreed on the text of Article 22(2)(a), items (i) to (x), except item (ix) as regards the reference to Article 24. He further noted that there were no comments on to Article 22(2)(b) and opened the discussion on Article 22(3) [*Quorum*].

16. Mr. GAOUAOUI (Algeria) requested clarifications on Article 22(3)(a) regarding the quorum and on Article 22(3)(b) regarding the vote. The Delegation wondered whether the same provisions as those in the Lisbon Agreement had been included in this article.

17. Mr. KWAKWA (WIPO) confirmed that one half of the members of the Assembly would constitute a quorum. The calculation would depend on the number of members eligible to vote on a given matter and at a given point in time. The number would change if the corresponding membership changed.

18. Mr. GAOUAOUI (Algeria) expressed his gratitude to the Secretariat. While highlighting its flexibility, he noted that his delegation would prefer nonetheless that in article 22(3)(b), the terms “is less than one-half but equal to or more than one-third of the members of the Assembly [...]” be replaced by “is less than two thirds but more than one-half of the members of the Assembly [...]”.

19. The CHAIR invited the Delegation of Algeria to submit its proposal in writing and suggested to postpone the discussion on the issue. He then turned to Article 22(4). Noting that there were no comments or objections on Article 22(4)(a) and Article 22(4)(b)(i), he concluded that those texts were agreed by the Committee and turned to Article 22(4)(b)(ii).

20. Mr. GAOUAOUI (Algeria) requested clarifications on Article 22(4)(b)(ii) given that, in the opinion of the Delegation of Algeria, this provision was ambiguous as concerns determining what would happen to the right to vote of an intergovernmental organization, which represented a certain number of States, in its absence.

21. M. KWAKWA (WIPO) said that, if an intergovernmental organization would exercise its right to vote, it could only vote in place of the members of that organization. However, to the extent that those members decided to exercise their vote themselves, then the intergovernmental organization would not be able to vote on their behalf. He pointed out that the proposed language was similar to that used in the Geneva Act of the Hague Agreement and in several other WIPO treaties.

22. Mr. GAOUAOUI (Algeria) thanked the Secretariat for its explanation and added that in order to be able to reach a decision on this issue, the Delegation of Algeria required a clearer explanation of the meaning of the term “conversely”, which appears at the end of

Article 22(4)(b)(ii). The Delegation wished to know if this term meant that if the intergovernmental organization were absent, its members could vote in its place, where appropriate.

23. Mr. KWAKWA (WIPO) said that, if any one of the members of an intergovernmental organization cast its vote, the intergovernmental organization could not cast its vote. Whether present or absent, so long as one of the members cast its own vote, then the organization could not do so.

24. The CHAIR reiterated that, if an intergovernmental organization cast its vote, none of its Member States had the right to cast their vote. However, if one of the Member States cast its vote, the intergovernmental organization had no right to do so on behalf of its Member States, which in turn also meant that the other Member States would be able to exercise their right to vote.

25. Mr. GAOUAOUI (Algeria) expressed gratitude to the Secretariat and the Chair for their clarifications but highlighted that the Delegation of Algeria understood the term “conversely” to mean that the Member States present who were members of the intergovernmental organization, which was itself also a member of the Lisbon Union, could vote in place of this organisation in its absence.

26. The PRESIDENT suggested that the question be left open.

27. Mr. OKIO (Democratic Republic of the Congo) noted that his Delegation would rely on the president’s conclusions concerning Article 22(4)(b)(ii).

28. The CHAIR turned to Article 22(5) to (7). Noting no comments or objections, he concluded that the Committee agreed on those provisions.

#### Article 23: International Bureau

29. The CHAIR turned to Article 23.

30. Ms. FERRITER (United States of America), referring to Article 23(1), said that the assumption that the new agreement would be administered by WIPO might not necessarily be true. In that regard, she recalled that WIPO was an Organization with inclusive norm setting, established to provide a forum for a balance of powers between the unions. She recalled that some WIPO members had expressed the preference that the unions be independent, whereas many developing countries had preferred the Organization to retain decision-making authority. She further indicated that such balance of powers had been reflected in Articles 4 and 6 of the WIPO Convention, which allowed the WIPO General Assembly, the Assembly of the Paris Union and the Assembly of the Berne Union to agree to assume or participate in the administration of the New Act but they also might not. She pointed out that the WIPO Convention did provide that WIPO had to perform the administrative tasks of the Paris Union, the special unions established in relation to that Union and the Berne Union. In that regard, she recalled that the Lisbon Union was a special union established in relation to the Paris Union, but the Lisbon Union alone was not able to determine the tasks to be performed by the Organization. She believed that the administrative tasks related to entities not members of the Paris Union would create a specific concern and, therefore, the Paris Union should give its point of view on whether a union under its umbrella could change in a significant manner to encompass entities nonmembers of the Paris Union.

31. Ms. FERRITER recalled that many Lisbon members had indicated their unawareness of the financial situation of the Lisbon Union and that the Secretariat had referred them to the Program and Budget. That document showed that the Lisbon Union was operating at a significant financial deficit, even though the treaty required it to be financially self-sufficient. According to the WIPO Convention, if three-fourths of the three Assemblies approved the result of the Diplomatic Conference and the financial situation of the Lisbon Union then they might agree that the New Act be administered by WIPO. However, they might also not approve the administration of the New Act by WIPO, in view of the past history of the Lisbon Union and, in particular, the failure to abide by the provisions of the Lisbon Agreement to hear the advice of the Coordination Committee and the significant budget deficit of the Lisbon Union caused by both the failure to increase its fees for 20 years and the failure of the Lisbon Union to collect the contributions of the countries of the Special Union where receipts from the sources of Article 11(3) had been insufficient. Consequently, the New Act might need to be administered separately. In that regard, she suggested considering an alternative and more neutral text for Article 23(1).

32. Mr. SCHMIDLIN (Italy), disagreeing with the interpretation of the WIPO Convention as presented by the Delegation of the United States of America, believed that WIPO could administer the New Act and expressed his preference for the text as it stood. He further urged the Committee to strictly focus on the pending issues.

33. Ms. HERNÁNDEZ NARVÁEZ (Mexico) noted that the Delegation of Mexico supported the statement made by the Delegation of Italy given that in its opinion those provisions had been previously discussed in the Working Group and the text appeared to be appropriate.

34. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) supported the statements made by the Delegations of Italy and Mexico.

35. Mr. KIM (Republic of Korea), aligning himself with the statement made by the Delegation of the United States of America, regretted that the Diplomatic Conference was not inclusive. He further expressed his Delegation's reservation on Article 23.

36. The CHAIR noted that there were no comments on the other paragraphs of Article 23. He postponed the discussion on the text of Article 23(1) and concluded that the other paragraphs of Article 23 were agreed by the Committee.

37. Ms. HERNÁNDEZ NARVÁEZ (Mexico) supported the work proposal of the CHAIR.

#### Article 25: Regulations

38. The CHAIR opened the discussion on Article 25.

39. Mr. GAOUAOUI (Algeria) referred to Article 25(2)(a) which provided firstly for unanimity and secondly for a three-fourths majority. The Delegation of Algeria wished to know how the decision would be taken should this provision allow for two options and expressed its preference in this case for the removal of the option based on unanimity so as to conserve only the three-fourths majority option.

40. Mr. KWAKWA (WIPO) clarified that Article 25 stated that, in addition to unanimity or three-fourths majority required for amendments, there were other options. In other words, the Regulations provided that some of the provisions be amended only by unanimity or only by a three-fourths majority, which in turn meant that any other provision of the Regulations could be amended by other majorities.

41. Mr. GAOUAOUI (Algeria) wished to know which provisions could be modified unanimously and which provisions could be modified by to a three-fourths majority. Taking into account these two options, the Delegation of Algeria also wished to know what principle would serve as the basis for deciding to choose one or the other option.

42. Mr. KWAKWA (WIPO) said that it would be within the competence of the Assembly to decide which majority to apply for which of the provisions in the Regulations. He believed that the Diplomatic Conference was only expected to determine the requisite majorities for amending the provisions referred to in Article 25.

43. Ms. LEE (Republic of Korea), referring to Article 25(2)(b), asked whether other WIPO treaties contained similar provisions.

44. Mr. KWAKWA (WIPO) confirmed that the Geneva Act of the Hague Agreement contained a similar provision.

45. Mr. GAOUAOUI (Algeria) expressed unease in relation to the options contained in Article 25(2)(a) in that the Delegation of Algeria did not have sufficient clarification regarding the situation that obtained in other treaties. After requesting explanations as to how this issue was to be resolved in connection with other treaties, the Delegation indicated that it believed that the two options in Article 25(2)(a) could lead to sustained debate in future Lisbon Union assemblies and conferences. It consequently reiterated its proposal to remove the option based on unanimity so as to maintain only the three-fourths majority option.

46. The CHAIR, recalling the proposal made by the Delegation of Algeria to keep only a “three-fourths majority” in the text, suggested to postpone further discussion of Article 25(2)(a). Noting that there were no comments on Article 25(2)(c) and Article 25(3), he concluded that the Committee agreed on those provisions.

#### Article 26: Revision

47. The CHAIR opened the discussion on Article 26.

48. Ms. FERRITER (United States of America), for the reasons indicated during the discussion of Article 22(2)(a)(ix), proposed to put in square brackets the reference to Article 24 in paragraph (2) of Article 26. She reiterated that Article 24 itself needed to be discussed first and that the Lisbon members should decide whether amendments to that Article required full consensus or revision by a Diplomatic Conference.

49. The CHAIR noted that there were no comments with regard to Article 26(1) and concluded that the Committee agreed on that provision. Consideration of Article 26(2) would be postponed until Article 24 would have been discussed.

#### Article 27: Amendment of Certain Articles by the Assembly

50. The CHAIR opened the discussion Article 27.

51. Ms. FERRITER (United States of America) proposed to put in square brackets the reference to Article 24 in paragraph (1) of Article 27.

52. The CHAIR noted that there were no comments with regard to Article 27(1)(b), Article 27(2), Article 27(3) and concluded that the Committee agreed on those provisions. Consideration of Article 27(1)(a) would be postponed until Article 24 have been discussed.

#### Article 28: Becoming Party to This Act

53. The CHAIR opened the discussion Article 28.

54. Mr. KWAKWA (WIPO) said that, Article 28(1)(ii), the words “member of the Organization” should be added after the word “State”, as accession should only be open, under that provision, to WIPO Member States.

55. The CHAIR concluded that Article 28(1)(i) and Article 28(1)(ii) with the insertion of the words “member of the Organization” were acceptable to the Committee.

56. Ms. FERRITER (United States of America), referring to Article 28(1)(iii) expressed the view that there might be a disconnect between which IGOs would be eligible to become party to the Act and the protection that an intergovernmental organization should provide. Referring to the last line of Article 28(1)(iii), she questioned that an intergovernmental organization would be entitled to become party to the New Act if it only provided protection for appellations of origin. Since the commitment that a Contracting Party would be making under the Agreement implied a full scope of protection, she proposed to delete the words “appellations of origin or”. She further wondered whether or not a Contracting Party not providing protection for geographical indications in request of, for example, non-agricultural products would be in compliance with the New Act. Finally, she sought clarification as to whether an intergovernmental organization would only file geographical indications and appellations of origin protected at the regional level or also those protected only in one of its member State.

57. Mr. HÖPPERGER (WIPO), in reply to the question raised by the Delegation of the United States of America on Article 28(1)(iii), quoted Article 9 of the Basic Proposal, which set out the commitment to protect subject matter that would be covered by the New Act. In particular, where the provision stated that “Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation”. Consequently, the reference to appellations of origin and geographical indications in Article 28(1)(iii) should be kept in the alternative.

58. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), recalling that the Agreement aimed at protecting appellations of origin and geographical indications, believed that subparagraph (iii) of Article 28(1) should be retained as it read.

59. Ms. OBANDO (Costa Rica) expressed concern regarding how the provision would be applied in the last part of section (iii). The concern was whether, through this provision, the possibility was being created for the registration of geographical indications that had been registered at the community level, or whether the provision whereby only those from a country that was already party to the Lisbon Agreement could register would be maintained.

60. The CHAIR said that Article 28(1)(iii) applied in respect of intergovernmental organizations which granted regional titles of protection.

61. Mr. HÖPPERGER (WIPO) confirmed that the provision referred to regional titles of protection available under the applicable regime of certain intergovernmental organizations.

This would not prevent individual Member States of such an organization to become party to the New Act, to the extent that the organization in question permitted Member State competence for the protection of appellations of origin or geographical indications.

62. The CHAIR thanked the Secretariat for this clarification. He further noted that there were no comments in respect of Article 28(2) and (3) and concluded that the Committee agreed on the Texts of those provisions.

#### Article 1: Abbreviated Expressions

63. The CHAIR, recalled that Main Committee I had referred the pending issue concerning the definition of “Contracting Parties” in Article 1(xiv) to Main Committee II. He noted that there were no comments and concluded that the Committee agreed with the current text of Article 1(xiv).

#### Article 29: Effective Date of Ratifications and Accessions

64. The CHAIR opened the discussion on Article 29.

65. Mr. GAOUAOUI (Algeria) raised the question concerning the figure proposed in Article 29(2), according to which five parties were sufficient to fulfill the required conditions laid out in Article 28, having deposited their instruments of ratification or accession to allow the new Act to enter into force. He wished to know whether this figure was also limited to five countries in the other treaties administered by WIPO.

66. Mr. KWAKWA (WIPO) indicated that the Berne Convention, the Madrid Agreement, the Locarno Agreement, the Convention for the Protection of Producers of Phonograms and the Vienna Agreement required five States to deposit their instruments of ratification or accession to enter into force. The Madrid Protocol and the Hague Agreement required four instruments of ratification or accession to enter into force. The two most recent WIPO treaties, i.e. the Beijing Treaty and the Marrakesh Treaty, required higher numbers of, respectively, 30 and 20 instruments.

67. Mr. KIM (Republic of Korea), expressing his concern with respect to the number of ratifications and accessions required for the New Act to enter into force, reserved his Delegation’s position on Article 29(2). The New Act would seriously influence national laws and the global intellectual property system, he regretted that not all WIPO Member States had been included in the decision-making process.

68. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of), referring to eligible parties under Article 29(2), wondered whether those included also intergovernmental organizations.

69. Ms. LU (China) sought clarification about the method for calculating the date of entry into force of the New Act.

70. Mr. KWAKWA (WIPO), in reply to the question raised by the Delegation of China, said that Article 29(2) provided that the New Act would enter into force three months after five eligible parties, as referred to in Article 28, had deposited their instruments of ratification or accession. Referring to the question raised by the Delegation of Iran (Islamic Republic of), he said that eligible parties according to Article 28(1) included States and intergovernmental organizations. Therefore, any combination of five States and intergovernmental organizations could cause the treaty to enter into force.



71. Mr. GAOUAOUI (Algeria) suggested amending the number of parties meeting the conditions stipulated in Article 29(2). Based on the current number of Member States in the Lisbon Agreement, he suggested increasing the number of parties from 'five' to 'ten'.

72. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) said that while his Delegation was flexible as to the number of eligible parties, it preferred that those be States.

73. The CHAIR said that at present only two intergovernmental organizations offered protection to appellations of origin and geographical indications at a regional level. In any case, intergovernmental organizations were constituted by their Member States, which had to give their agreement to the organization to become a member of the New Act. For example, although OAPI had four Member States that were party to the Lisbon Agreement, OAPI could only accede to the New Act if it was mandated by all its 17 Member States to do so. However, when it would accede, it would only count as one eligible party having acceded.

74. Mr. OKIO (Democratic Republic of the Congo) informed the Committee that the wording of this paragraph also appeared in other legal texts of the same status. While stressing its flexibility, the Delegation was inclined to retain that wording.

75. Ms. FERRITER (United States of America) emphasized that the new treaty should not be linked to the number of Lisbon members that would join. She believed that, as a new international agreement, it could also be five non-Lisbon members that might cause the New Act to enter into force.

76. The CHAIR confirmed that the provision did not require that five Lisbon Member States ratify the treaty but referred to any Member States of WIPO. The Chair also noted that there was no support for the proposal by the Delegation of Algeria to increase the number of States in Article 29(2) from five to ten.

77. Mr. KIM (Republic of Korea) reiterated that his Delegation reserved its position concerning the provision of Article 29(2).

78. The CHAIR recalled that according to the Rules of Procedure, any proposal to amend the Basic Proposal, had to be supported by a Member State of the Lisbon Union. Further, he noted that there was no request for the floor on Article 29(3) and, therefore, considered that its text was accepted by the Committee.

79. Ms. FERRITER (United States of America), referring to individual fees, recalled that its February 1, 2015 submission had proposed her Delegation in the following language to be included in Article 29(4) after "*mutatis mutandis*": "Acceding States and intergovernmental organizations may specify, in a declaration, that their national laws require the payment of an individual fee, and that no previously registered international registration would be considered for protection in that Contracting Party until that fee had been paid. In such an instance, for purposes of that Contracting Party the date of international registration shall be the date the individual fee has been paid". Then, in the next sentence, her Delegation would delete the word "however" and begin the sentence with the word "the". She also indicated that after the words "intergovernmental organization may" her Delegation would insert the word "also". Finally, recognizing that there was bracketed text in Article 17, her Delegation suggested that the words "and the periods referred to" in Article 17 also be bracketed until Main Committee I had finished its work on Article 17.

80. Ms. KULIKOVA (Russian Federation) said that her Delegation preferred to postpone the discussion on Article 29(4) until the MC I had agreed on Article 7(5). She also asked

what the “territory of an intergovernmental organization” in Article 29(4) implied and whether other WIPO treaties used similar wording.

81. Mr. KWAKWA (WIPO) replied that the reference to the territory of the acceding intergovernmental organization should be understood as the territories of the States comprising the intergovernmental organization.

82. Ms. FOUKS (France) requested clarification concerning the meaning of the terms “advantages of this Act” contained in Article 29(4), and wished to know whether these terms concerned all provisions of the act or only some of them.

83. Ms. MOORE (Australia) expressed her Delegation support for the proposal made by the Delegation of the United States of America and the rationale behind it.

84. Mr. KWAKWA (WIPO), in reply to the comment made by the Delegation of France, said that, for legal certainty, using the word “provisions” instead of “benefits” might be considered.

85. Ms. FERRITER (United States of America) suggested a technical amendment by introducing the term “and geographical indications” after the words “appellations of origin” in Article 29(4).

86. Ms. CERENZA (Italy) was also of the view that the wording of Article 29(4) was not clear.

87. The CHAIR proposed to revert to Article 29(4) after the Committee had agreed on Article 7(5) and Article 17.

#### Article 30: Prohibitions of Reservations

88. The CHAIR noted that there were no comments on Article 30 and concluded that the Committee agreed on the text of that provisions.

#### Article 31: Application of the Lisbon Agreement and the 1967 Act

89. The CHAIR opened the discussion Article 31.

90. Ms. CERENZA (Italy) expressed the view that the provision contained in Article 31(1) was not clear and, in response to a request from the Chair, said that her Delegation would present a proposal in writing.

91. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) sought clarification on the aim of Article 31(1). He drew the attention of the Committee to Article 31 which referred to “States Party” while Article 29 referred to “eligible party”, which comprised also intergovernmental organizations.

92. Mr. FICSOR (Hungary) pointed out that Article 31(1) could only be applied in respect of States, because only States could be parties to the current Lisbon Agreement.

93. The CHAIR proposed to postpone the discussion on Article 31.

#### Article 32: Denunciation

Article 33: Languages of this Act; SignatureArticle 34: Depositary

94. The CHAIR noted that there were no comments on Articles 32, 33 and 34 and concluded that the Committee agreed on the texts of those provisions.

Listing made by the Chair of the remaining issues

95. The CHAIR recalled that the Committee agreed to keep open for further discussions and deliberations Article 22(2)(a)(ix), Article 24, Article 25(2)(a), Article 26(2), Article 27(1), Article 29(4) and Article 31(1).

96. Ms. CHARIKHI (Algeria) recalled that her Delegation had proposed amendments to Article 22(3)(b), Article 25(2)(a) and Article 29(2).

97. Ms. FOUKS (France) sought clarification on the list of pending items, in particular regarding Article 29(2), as it had understood that the Committee had agreed not to change this provision.

98. The CHAIR recalled that a proposal by the Delegation of Algeria to Article 29(2) had been submitted but had not been supported by any other Member State. However, he expressed the readiness to further discuss it, if the Committee, so agreed.

99. Ms. CHARIKHI (Algeria) highlighted that her Delegation wished to maintain its proposal regarding Article 29(2) and reserved the right to review this proposal.

100. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed the need for more time to consider the merits of the proposal to Article 29(2).

101. The CHAIR proposed to revert to Article 29(2) at a later stage and adjourned the meeting.

Second Meeting  
Saturday, May 16, 2015  
Afternoon

Secretariat Note Rev. 1 (May 15, 2015)  
Informal Revision to Administrative and Final Provisions

102. The CHAIR recalled that the list of pending issues comprised the provisions of Article 22(2)(a)(ix), Article 22(3)(b), Article 22(4)(b), Article 24, Article 25(2)(a), (b) and (c), Article 26(2), Article 27(1)(a), Article 28(1)(iii), Article 29(2), Article 29(4) and Article 31. He proposed to start the discussion on Article 24 and invited the Secretariat to present the document entitled “Secretariat Note Rev. 1 (May 15, 2015), Informal Revision to Administrative and Final Provisions”.

Article 24: Finances

103. Mr. KWAKWA (WIPO), introducing the proposals concerning Article 24, said that those reflected the constitutional reform decisions taken by the Assemblies of Member States, including the Assembly of the Lisbon Union, in 2003. For the sake of clarity, he proposed to reformulate the last sentence of paragraph (4) to read: “Intergovernmental organizations shall be considered to belong to contribution class 1 (one), unless otherwise unanimously decided by the Assembly”.

104. Ms. NARAYANASWAMY (WIPO) stated that the Organization had moved over the last two decades from being a contribution-financed Organization to a fee-for-services financed Organization. In the 2014-2015 Biennium, fees from services had represented approximately 94% of the Organization’s income. By a decision of its Member States, the Organization had adopted the unitary contribution system whereby Member States made a single contribution, based on the unit value and the class to which they belonged. She informed that the budget of the Organization had been prepared by program and by result, with the presentation of the unions’ view of the budget based on an allocation methodology described in each program and budget proposal approved by the Member States. In the context of being primarily fee financed and in accordance with prudent financial management principles, the Organization must endeavor, in agreeing to any revision, to make provisions for more or greater financial sustainability of all unions. She said that a working capital fund, in a fee financed structure, was a mechanism whereby funds might be advanced by Member States to tide over the temporary shortfalls in liquidity or to finance investments decided upon by Member States. She added that the working capital funds were separately reported on in each financial period. The concept of a working capital fund was also embedded in the reserves of working capital policies of the Organization as approved by Member States in 2000 and 2010. Finally, she said that Article 24 as revised addressed all those principles and concepts.

105. The CHAIR opened the discussion to Article 24(1) [*Budget*]. He recalled that, as reflected in the revised Secretariat Note, paragraph (1) read: “The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner”. Noting that there were no comments or questions, he concluded that Main Committee II agreed on the text of Article 24(1).

106. The Chair then turned to Article 24(2) “[*Sources of Financing of the Budget*], as reflected in the revised Secretariat Note, which read: The income of the Special Union shall be derived from the following sources:

- (i) fees collected under Article 7(1) and (2);
- [(ii) maintenance fees, as referred to in Article 7(3);]
- (iii) proceeds from the sale of, or royalties on, the publications of the International Bureau;
- (iv) gifts, bequests, and subventions;
- (v) rent, investment revenue, and other, including miscellaneous, income;
- [(vi) any contributions of the Contracting Parties decided by the Assembly of the Special Union].”

107. The Chair observed that, as paragraph (2) listed sources of income which would finance the operations under the Lisbon System, the main question was whether the provision gave sufficient flexibility to the Assembly of the Lisbon Union or should list more options for financing the Lisbon System.

108. Mr. GAOUAOUI (Algeria) requested two changes to this article. The first concerned Article 24(2)(ii), where he suggested removing the maintenance fees in force under Article 7(3). He noted, however, that the talks were ongoing in Main Committee I and highlighted that the proposal of the Delegation of Algeria was in line with the suggestion to remove Article 7(3) during the work of Main Committee I. His second proposal concerned Article 24(2)(vi), regarding contributions from Contracting Parties. His Delegation instead favored a provision to make these contributions compulsory once the receipts originating from the sources mentioned were not sufficient to cover expenditure. However, considering that this second part of the sentence had been deleted following a proposal from a delegation, the Delegation of Algeria suggested the addition of the word “voluntary” to the following proposal: “any voluntary contribution from Contracting Parties decided by the General Assembly, so that contributions are voluntary and not statutory on the basis of the positions of Member Countries.”

109. Mr. SCHMIDLIN (Italy) expressed the support of his Delegation for the proposals made by the Delegation of Algeria on items (ii) and (vi) of Article 24(2). As regards item (v), he questioned the deletion of the term “interest”.

110. Ms. NARAYANASWAMY (WIPO) said that the term “investment revenue” in Article 24(2)(v) included interests that may be earned, if any. In reply to a question by the Chair, she said that WIPO was not incurring negative interest rates.

111. Ms. HERNÁNDEZ NARVÁEZ (Mexico) noted that her delegation would suggest deleting subparagraph 3(ii). Concerning subparagraph (vi), the Delegation added that it fully understood the Controller’s remarks, which seemed to be highly relevant and in line with the decisions taken in the meetings to have a unified budget. The Delegation stated that according to its understanding of this section, the decision regarding additional contributions from the Contracting Parties depended on the Lisbon Assembly and to that extent, the proposal presented by the Delegation of Algeria was not very clear. An additional paragraph would need to be added to read “any voluntary contribution from the Contracting Parties”. Its understanding was that subparagraph (vi) was intended to allow the assemblies to take a decision to discuss a possible solution should the system go into deficit. As a positive sign from the members of Lisbon if that occurred, the Delegation believed that the language proposed was fairly flexible and was not prejudicial. Nonetheless, the Delegation of Mexico wished to have further clarification from the Delegation of Algeria regarding the intention of its proposal.

112. Mr. GAOUAOUI (Algeria) recalled that, concerning subparagraph (vi), it agreed with the deleted text that provided for exceptional income when the sources of funding of the Lisbon Union were not sufficient to cover expenditure. The Delegation noted that in accepting to the deletion of this proposal, Algeria was opting for a positive and flexible approach, but suggested that the contribution from the Contracting Parties be voluntary. That was why the Delegation would be in favor of retaining the deleted sentence in brackets.

113. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation's support for the statements made by the Delegations of Algeria and Italy on paragraph (2)(ii) and (vi). He stated that his Delegation was flexible to introduce another item (vii) to provide for voluntary contributions.

114. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) aligned himself with the statements made by the previous Delegations with regard to the deletion of paragraph (2)(ii). Concerning item (vi), the Delegate understood that contributions were obligatory. He expressed the view that the concept of voluntary contributions was not clear and believed that the Assembly of the Special Union should decide on that matter.

115. Ms. MORENO (Nicaragua) aligned herself with the position of Algeria and the other Member States with regard to Article 24(2), in respect of which it had been agreed that subparagraph (ii) regarding maintenance fees be deleted. The Delegation also indicated that, with regard to subparagraph (vi), it preferred that these contributions be determined voluntarily, depending on the situation of the Member States, and that the paragraph stating "where revenue from the sources mentioned in paragraphs (i) to (v) are not enough to cover expenses" be retained.

116. Ms. VIEIRA LOPES (Portugal) supported the deletion of paragraph (2)(ii) on maintenance fees.

117. MS. LAUMONIER (France) noted that her delegation did not wish Article 24(2)(ii) to be included and was opposed to the maintenance fees in force. Concerning Article 24(2)(vi), the Delegation favored the amendment supported by the Delegation of Algeria, that is, a voluntary contribution from the Contracting Parties.

118. Ms. KOPECKÁ (Czech Republic) shared the position expressed by previous Delegations concerning the deletion of paragraph (2)(ii).

119. Mr. ROSSI COVARRUBIAS (Peru) disagreed with the inclusion of maintenance fees at subparagraph (ii). Concerning subparagraph (vi), the Delegation would welcome a wording where reference could be made to a voluntary contribution from members.

120. Ms. COTTON (United States of America) believed that it was critically important that the Lisbon Union be financially self-sustaining and noted that many Delegations agreed on that. The Delegate observed that, even where there were obligations under the current Lisbon Agreement to fund the system, members did not fulfill those obligations. Consequently, there was a deficit, and the deficit had been growing and not addressed. Expressing her concerns on the funding of the system, she believed that it was imperative that paragraph (2)(ii) on maintenance fees and paragraph (2)(vi) on contributions remain in the text. She suggested that item (vi) read: "Contributions of the Contracting Parties, if and to the extent to which receipts from the sources indicated in items (i) to (v) do not suffice to cover the expenses of the Special Union".

121. The Delegate believed that the amount of contributions should not be decided by the Assembly of the Lisbon Union but should be determined in a provision of the Act. She

recalled that her Delegation's submission dated February 1, 2015, advanced a particular provision which identified the amount of contributions of each Contracting Party being proportional to the relative number of registrations under the Lisbon System. She acknowledged that that proposal had been supported by the Delegation of Israel, as well as by other Delegations. She also recalled that the maintenance fees could be paid by the Contracting Parties themselves and operate in the same way as contributions based on the notion of proportionality. The Delegate believed that the idea of voluntary contributions represented a step backwards from the original Lisbon Agreement, while all had expressed the intention to go a step forward and to move to financial self-sustainability.

122. Mr. KUMER (United Kingdom), noting the number of modifications to Article 24, believed that in order to assess its overall impact, it should be analyzed in its entirety. In his view, the Committee should not adopt individual paragraphs until it saw the final version of Article 24. Further, he wondered whether, after the deletion of Article 24(1)(a), the budget of the Special Union would be replaced by a working capital fund and sought explanation on that issue. In relation to item (vi), he believed that it should stay unchanged, in line with the 2003 constitutional reform and its principles. He also believed that this would make the system sustainable, which was in the interest of all WIPO Member States.

123. Ms. KULIKOVA (Russian Federation) believed that maintenance fees under Article 7(3) and contributions by the Contracting Parties were two alternative sources of income for the Lisbon Union. Her Delegation preferred maintaining Article 24(2)(ii) on maintenance fees, as referred to in Article 7(3), and deleting Article 24(2)(vi) referring to contributions by the Contracting Parties.

124. Ms. NARAYANASWAMY (WIPO), in reply to a request by the Chair for clarification on the mechanism of allocation of income, said that the contribution income was allocated entirely to the contribution financed unions. Fee income from the PCT, Madrid, Hague and Lisbon registration systems were allocated entirely to the respective unions. Since the Organization moved to the unitary contribution system, the contributions went directly to the contribution financed unions and the fees collected within a certain union were funding that individual union.

125. The CHAIR suggested to amend Article 24(2)(vi) to reflect that there were mandatory contributions, to be paid irrespective of a decision by the Assembly and voluntary contributions, if deemed necessary by the Member States. Summarizing the discussion, the Chair noted that the majority of Lisbon Union members had expressed their preference for deleting paragraph (2)(ii) on maintenance fees as incompatible with the principles of the Lisbon System, while many Observer Delegations had been in favor of maintaining it as an option for financing. Concerning paragraph (2)(vi), opinions were divided. Some Member States had expressed their preference for the text of the Basic Proposal and that others had expressed their preference for the new text, while showing flexibility. Therefore, the Chair requested the Secretariat to produce for the next meeting a revised version of paragraph (2)(vi), which would reflect the comments expressed during the discussion.

126. The CHAIR turned to Article 24(3) [*Fixing of fees; Level of the Budget*], as reflected in the revised Secretariat Note and pointed out that it corresponded to Article 24(4) of the Basic Proposal with the only change being a reference to a previous paragraph.

127. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), referring to Article 24(3)(a), proposed to put in square brackets the reference to contributions under Article 24(2)(vi), since there was not yet a decision on whether Article 24(2)(vi) would provide for contributions or not.

128. The CHAIR noted that since paragraph (3)(a) already contained square brackets starting from the end of the second line after “Director General” to the end of the paragraph, no additional square brackets were needed. The Chair recalled that there was agreement on the first part of the provision, reading: “The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General”. The Chair sought the opinion of Delegations on whether to delete the square brackets or to handle the text in a different way.

129. Ms. KOPECKÁ (Czech Republic) expressed her Delegation’s preference for the deletion of the text in square brackets.

130. Ms. HERNÁNDEZ NARVÁEZ (Mexico) wished to retain paragraph 3(a) 3 without the text in brackets. The Delegation noted that it was the standard language used in other WIPO treaties, for example, in the Madrid System, where the text was fairly general and did not include such specific provisions as those included in brackets. Concerning subparagraph (b), the amendments proposed by the Secretariat seemed to be appropriate and were in fact in line with the changes made to the financial regulation of the Organization in the previous year, precisely in order to anticipate what would happen if there were no agreement on the approval of the budget.

131. Mr. MOLDOVAN (Republic of Moldova), agreeing with the arguments presented by the Delegation of Mexico, expressed his Delegation’s preference for removing the text in square brackets.

132. Mr. GAOUAOUI (Algeria) favored the removal of the text in brackets in Paragraph 3)a) in that, if the proposal presented by the CHAIR were approved, the text in brackets would be an exceptional situation, that is, voluntary contributions that could be decided by the Assembly if the sources of funding were not adequate.

133. Ms. COTTON (United States of America) expressed her preference for retaining the text that appeared in square brackets in paragraph (3). She believed that it was important that the system be self-financed, through a combination of more elements, such as fees and contributions. In her view, fees were more predictable, regularized and would not require continual monitoring by other bodies of WIPO to ensure that contributions had been paid. Indicating her flexibility on any combination of fees and contributions, her primary concern was that the expenses needed to be covered by the income of the Lisbon System, and not by other WIPO systems.

134. Mr. FICSOR (Hungary) expressed his Delegation’s support for the statement made by the Delegation of the Czech Republic. While the text in square brackets was standard wording used in other legal instruments administered by WIPO and corresponded to a provision of the current Lisbon Agreement, he believed that it might create a wrong impression that, as a general rule, the fees collected under the Lisbon System should be sufficient to cover the expenses of the Lisbon Union. In that case, the option was to raise the fees. However, that would make it difficult for users to access the system. Therefore, another option could be to find other possibilities for covering the costs or the expenses of administering the system. In that context, he expressed his Delegation’s readiness to explore other means of financing the system, including contributions by Contracting Parties, or even the establishment of a working capital fund. While his Delegation was flexible on the text within the square brackets and did not object to its inclusion, its preference was to remove the text, as it did not correspond to the financial reality.

135. Mr. KUMER (United Kingdom) reiterated the aim of the Diplomatic Conference to modernize and improve the Lisbon System, as well as to make it sustainable. He also



reiterated his Delegation's flexibility and openness to discuss any kind of mechanisms that would contribute towards that goal. Maintenance fees and contributions would give some guarantees towards financial balance. Therefore, while being willing to discuss different mechanisms and combinations, his Delegation preferred to retain the language which was in square brackets in paragraph 3(a).

136. Mr. SCHMIDLIN (Italy), noting that the Lisbon System had a deficit of 2.3 million Swiss francs, expressed his commitment to find mechanisms to make the system sustainable. While agreeing with the text of paragraph (2)(vi), he believed that the statement made by the Delegation of Hungary in respect of paragraph (3)(a) should be taken into account. He observed that if the letter of that draft provision was followed, fees would need to be increased to such an amount that those would not be feasible and would jeopardize the attractiveness of the system. Expressing his Delegation's flexibility on retaining that provision, he believed that its wording might generate different interpretations. Finally, he reiterated his openness to explore mechanisms for reaching a better form of sustainability of the Lisbon System.

137. Mr. MOLDOVAN (Republic of Moldova) sought clarifications on the meaning of the words "under normal circumstances" in paragraph (3)(a) and whether the word "revenue", used for the first time in paragraph (3)(a), had the same meaning as the word "income", used in paragraphs (1) and (2).

138. Ms. NARAYANASWAMY (WIPO), in reply to a request by the Chair for clarification on whether the regular budget of WIPO was contributing to the Lisbon Union, said that the Lisbon Union was not a contribution financed union. The Lisbon Union, like the PCT, Madrid and Hague unions, was a fee-financed union. Under the current union allocation methodology, the Lisbon System derived its income from fees, miscellaneous and other income streams of the Organization, as described in the WIPO Program and Budget.

139. The CHAIR noted that different views had been expressed during the discussion. However, all Delegations shared the view that the Lisbon System needed a clear financing mechanism that would permit its sustainability.

140. Mr. KWAKWA (WIPO), in reply to a question by the Delegation of the United Kingdom on whether the 2003 decisions on the constitutional reform had been taken into account, said that those decisions had been reflected in Article 24(1), while the idea of the unitary contribution system had been reflected in the whole Article 24.

141. Ms. NARAYANASWAMY (WIPO), in reply to the question raised by the Delegation of the Republic of Moldova, said that the words "revenue" and "income" were used interchangeably in the text.

142. Ms. COTTON (United States of America), referring to the bracketed text in paragraph (3), appreciated the comments made by the Delegations of Hungary and Italy. Observing that the number of registrations under the Lisbon System was less than under the Madrid System, she believed that funding the system merely on fee revenue would be difficult. Expressing her flexibility in finding a solution by combining different elements, she proposed to refer in the bracketed text to other elements, namely contributions established and assessed under paragraph (2)(vi) and paragraph (4). In conclusion, the Delegate proposed that the bracketed text in paragraph (3) be amended, so as to read: "and shall be so fixed that the revenue of the Special Union should, in combination with the contributions established and assessed under paragraph (2)(vi) and paragraph (4), be sufficient to cover the expenses of the International Bureau for maintaining the international registration service". Thus, she proposed to delete the last part of the sentence: "without requiring

payments of the contributions referred to in paragraph (2)(vi)".

143. Mr. FUSHIMI (Japan), attaching great importance to the financial sustainability of the Lisbon Union, appreciated the statements made by the Delegations of Hungary and Italy on the difficulty to cover the expenditure of the system by fees. He believed that the proposal made by the Delegation of the United States of America was a practical and good solution in order to provide for the financial sustainability of the Lisbon Union and, therefore, expressed his Delegation's support for it.

144. Mr. SCHMIDLIN (Italy), referring to the proposal put forward by the Delegation of the United States of America, wondered whether the notion "revenue of the Special Union" referred to all revenues, including the contributions. On the deletion of the last sentence, he reserved his Delegation's position.

145. Mr. FICSOR (Hungary) questioned that the word "revenue" referred to income deriving from all the sources mentioned in paragraph (2), and believed that the provision probably meant that the fees had to complement those sources of income, so that all the revenue derived from those sources should, under normal circumstances, be sufficient to cover the expenses. He further proposed to clarify the provision by adding language to indicate that the fees, together with other income deriving from the sources identified in other items of paragraph (2), should be sufficient to cover the expenses.

146. The CHAIR requested the Secretariat to prepare a draft text based on the proposal made by the Delegation of the United States of America and the statements made by the Delegations of Hungary and Italy. He also suggested using either the word "income" or "revenue" for the sake of simplicity. He noted that there was agreement that the Lisbon system could not be self-sustaining only on the basis of fees and that it needed other income sources.

147. Mr. FICSOR (Hungary) proposed an alternative wording for paragraph (3)(a) starting from the square brackets: "and shall be so fixed that, together with the income derived from other sources, the revenue of the Special Union should under normal circumstances be sufficient."

148. The CHAIR turned to Article 24(3)(b) and invited the Delegations to express their views on the provision. He noted that there were no comments and concluded that the Committee agreed on the text. Thereafter, he turned to Article 24(4) [*Establishing the Contributions Referred to in Paragraph 2(vi)*].

149. Ms. COTTON (United States of America) believed that, instead of establishing the class system for the amount of contributions, those contributions should be assessed proportionally to the relative number of registrations of the Contracting Party in the system. Therefore, she suggested replacing the text in paragraph (4) with a simple sentence that would read: "The contributions of each Contracting Party should be proportional to their relative number of registrations in the Lisbon System".

150. Mr. SCHMIDLIN (Italy), while recognizing the principle behind the proposal made by the Delegation of the United States of America, said it was difficult to support it for reasons related to the attractiveness of the system. Developing countries with a high number of geographical indication registrations risked paying more than developed countries with lower geographical indication registration activity. In his view, a class system was more suitable for establishing the special contributions, as it better reflected the level of development of the countries members of the Lisbon Union. Finally, thanking the Delegation of the United States of America for its proposal, he believed that it required more time for consideration.

151. Ms. LAUMONIER (France) fully supported the position and the explanations provided by the Italian Delegation with regard to reaction of the Delegation of the United States of America to the proposal.

152. Mr. MOLDOVAN (Republic of Moldova), while partially agreeing with the arguments presented by the Delegation of Italy, was in favor of the proposal made by the Delegation of the United States of America.

153. Ms. KOPECKÁ (Czech Republic) expressed her support for the statements made by the Delegations of Italy and France. She believed that a contribution system as proposed by the Delegation of the United States of America would not be an incentive to join the Lisbon System and to file applications, especially for developing countries.

154. Mr. KUMER (United Kingdom) wondered whether intergovernmental organizations would count as one class contributor, regardless of whether the Member States belonging to that intergovernmental organization were also members of the Lisbon System.

155. Mr. KWAKWA (WIPO) replied that since an intergovernmental organization would be a separate member of the system, it would count as one class contributor.

156. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), expressing his preference for a flexible approach without fixed contributions, supported the text as it stood. However, a provision could be added to provide for periodical reassessments of those contributions by the Assembly of the Lisbon Union.

157. The CHAIR, summarizing the discussion on paragraph (4), noted that some Delegations had expressed flexibility and support for that paragraph, while other Delegations needed more time for consideration of certain issues. He announced that the Committee would revert to Article 24(4) at a later stage and turned to Article 24(5) [*Working Capital Fund*].

158. Ms. HERNÁNDEZ NARVÁEZ (Mexico) requested further clarification on the activities to be financed by this working capital fund, as working capital funds usually served to cover costs at the beginning of each year, pending the receipt of contributions. The Delegation of Mexico added that this was standard procedure in international organizations, but for the purposes of the Lisbon System, it was not completely clear how this working capital fund would be applied and to what extent it would have to cover costs should funds be required.

159. Ms. NARAYANASWAMY (WIPO), in reply to the question raised by the Delegation of Mexico, referred to the General Provisions of the WIPO Financial Regulations and Rules, which read: "Working capital funds shall mean 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."

160. Ms. HERNÁNDEZ NARVÁEZ (Mexico) stated that she had understood it as such, but believed that this working capital fund would be useful for the Union in that it could draw on those funds should there actually be liquidity problems, provided that the fund was restored as cashflow found its way back into the system, that is, through fees. The Delegation emphasized that it would be a good idea for the system to be more flexible and sustainable, and above all, predictable for the current expenditure of the system, and consequently the Delegation of Mexico supported the proposal.

161. Mr. GAOUAOUI (Algeria) thanked the Chair for the clarifications provided following the question by the Delegation of Mexico. The Delegation of Algeria recalled that it was not completely in favor of the proposed text. However, concerning the working capital, it was the Delegation's understanding that it was composed of the first instalment of the annual contribution of a Member Country, to which a certain percentage was allocated and that it was paid only once. Furthermore, once it was exhausted, the fund was automatically replenished by other contributions, therefore retaining a certain amount to ensure a certain level of liquidity for the functioning of the Lisbon Union. The Delegation underlined, however, that in the current wording, this provision anticipated that "the working capital shall be made up of payments made in advance by each member of the Special Union". In this respect, the Delegation indicated that it was not in favor of this wording, as it advocated several payments ("the payments") made in advance by each member.

162. Mr. SCHMIDLIN (Italy) welcomed the provision and expressed his Delegation's willingness to consider it.

163. Ms. NARAYANASWAMY (WIPO), in reply to a comment by the Delegation of Algeria concerning the periodicity of contributions to the Working Capital Fund, stated that the provision foresaw that such decisions would be taken by the Member States of the Special Union. They would decide how and when those advances would need to be made, based on a proposal from the Secretariat.

164. The CHAIR observed that the provision was flexible and allowed the Lisbon Union Assembly to decide on whether it would be a single contribution or a periodical, as well as its proportion and terms of payment.

165. Ms. VIEIRA LOPES (Portugal), reserved her Delegation's position on the provisions in view of its possible implication

166. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation's support for Article 24(5).

167. Ms. LAUMONIER (France) stated that the Delegation of France aligned itself with the statements made by the Delegations of Portugal and Italy, and that it wished to assess the impact of this new wording. The Delegation therefore expressed reservations about the new proposed wording of Article 24.5).

168. The CHAIR announced that the Committee would revert to Article 24(5) at a later stage and turned to Article 24(6) [*Advances by Host State*] and Article 24(7) [*Auditing of Accounts*]. Noting that there were no comments, he concluded that Main Committee II agreed on the text of Article 24(6) and (7).

#### Article 22: Assembly of the Special Union

169. The CHAIR turned to Article 22(2)(a)(ix), recalling that the question was whether to accept the text as it stood, i.e., "adopt amendments to Articles 22 to 24 and 27" or to remove the reference to Article 24 from that provision.

170. Mr. KWAKWA (WIPO), in reply to a request for clarification from the Delegation of Iran (Islamic Republic of), recalled that a request to put the reference to Article 24 in square brackets had been made, as the decision to allow the Assembly to adopt amendments to Article 24 was pending.

171. Ms. COTTON (United States of America) recalled that her Delegation had requested to bracket the reference to Article 24 in Article 22(2)(a)(ix), Article 26(2) and Article 27(1). That request was based on the concerns raised on the concept of tacit amendment, which allowed the amendment of a treaty by a three-fourths majority. Thus, one quarter of the members of the Assembly would be bound to a treaty provision they did not agree to. Similar provisions appeared in several WIPO treaties. The Geneva Act of the Hague Agreement allowed for Article 24 to be amended by the Assembly. However, the distinction between the Geneva Act of the Hague Agreement and the New Act of the Lisbon Agreement was that the New Act contained provisions on special contributions as one of the sources of financing for the budget and the Hague Agreement did not.

172. The Delegate, pointing out that the Committee had been discussing intensively the sources of financing provided in Article 24(2), noted that a variety of opinions had been expressed on that matter. If the Committee decided and agreed on those sources of financing, the reference to Article 24 in Article 22(2) gave the possibility to amend Article 24. That could lead to a situation where a subset of Lisbon members, under the New Act, could decide to amend the sources of financing that the Diplomatic Conference had agreed upon with a three-fourths majority. That, potentially, could lead to the same financial situation in which Member States found themselves today, where a potential deficit could develop and that deficit would have to be addressed by non-parties to the New Act, as well as by other WIPO registration systems. Her Delegation was ready to discuss the referencing of all the other provisions of Article 24, but not of Article 24(2). In view of the concerns on including Article 24 in the tacit acceptance provisions of Article 22(2)(a)(ix), Article 26(2) and Article 27(1), she requested that all those references to Article 24 be bracketed.

173. Mr. SCHMIDLIN (Italy) believed that leaving a certain margin of maneuver to the Assembly provided for more flexibility and rapidity, potentially avoiding the holding of a Diplomatic Conference, in case other sources of financing needed to be considered.

174. The CHAIR postponed the discussion on Article 22(2)(a)(ix) and turned to Article 22(3)(b) [*Quorum*]. Recalling that the Delegation of Algeria had submitted a proposal on that paragraph, he invited the Delegation of Algeria to present it.

175. Mr. GAOUAOUI (Algeria) referred to the text proposed by the Delegation of Algeria, which was distributed by the Secretariat. The Delegation noted that if the 28 members of the Assembly of the Union of Lisbon were taken into account, as well as the ratios presented in the initial wording of Article 22(3)(b), the number of delegations that would be able to make binding decisions for all the Member States of the Assembly would be between 9 and 14. It stated that this was inadmissible and unacceptable to the Delegation of Algeria. The Delegation of Algeria therefore suggested increasing the number of countries that could take decisions from one-half to two-thirds, but equal to or more than half, rather than one-third of the members of the Assembly.

176. Mr. KWAKWA (WIPO), pointed out that the language of Article 22(3)(b) was identical to the corresponding provisions of the Paris Convention, the Singapore Treaty, the Lisbon Agreement, the Geneva Act of the Hague Agreement, the Patent Law Treaty and the Madrid Protocol. The suggestion to replace one half by two thirds and one third by a half would appear to be impracticable, given that under the 1967 Act of the Lisbon Agreement the majorities would remain one-half and one-third.

177. Mr. HÖPPERGER (WIPO) noted that the Contracting Parties to the New Act would be members of the existing Lisbon Union. The New Act would only bind the new Contracting Parties. If the procedural rules for the New Act changed and members of the same union sat on the same assembly, two different sets of procedures would apply. The countries bound

only by the New Act would have different procedural rules, different majorities, and different quorum rules. Consequently, the Assembly would have to operate with two different sets of rules.

178. He recalled that the Organization had experience with revisions and new acts in the registration unions, for example, within the Madrid Union, where two acts applied, and within the Hague Union, where at a certain point three acts applied in parallel. While the various revisions of those acts had introduced new substantive rules, the administrative rules had been kept the same. Moreover, under the older treaties, institutional rules for assemblies and voting did not exist. They were introduced later on, creating several categories of Contracting Parties that could or could not vote on several types of issues. In order to avoid such a complicated situation, consideration might be given to avoiding changes that were not really necessary.

179. Mr. GAOUAOUI (Algeria) thanked the president of the Secretariat for the clarifications and the information provided, which were not available when it submitted its proposal. However, because the Delegation could not reach its capital city, it preferred to retain this proposal for the time being, but added that it would revisit this point.

180. The CHAIR, recalling that any proposal needed to be seconded by at least one Member State, postponed the discussion of the proposal on Article 22(3)(b). He then turned to Article 22(4)(b)(ii), inviting the Committee to decide on whether to maintain the words “*vice versa*” at the end of the paragraph. He recalled that the gist of the paragraph was that if one member of an intergovernmental organization voted in one specific case, the intergovernmental organization had no right to vote on the same occasion, or if the intergovernmental organization voted, then no Member State of the intergovernmental organization had a right to vote.

181. Mr. GAOUAOUI (Algeria) wished to know the Secretariat’s interpretation of Article 22(4)(b). The Delegation of Algeria added that the French version of the text was quite ambiguous with regard to the word “*conversely*” and suggested a better formulation according to the explanation provided, at least for the French version.

182. Mr. HÖPPERGER (WIPO) noted that the provision covered a relatively new situation in public international law, where an international organization became a member of a treaty. He added that WIPO had already had experience in this area, in particular with the Madrid Protocol and the Geneva Act of the Hague Agreement. This opportunity was about to be introduced in this New Act of the Lisbon Agreement. The problem concerned an intergovernmental organization’s right to vote. An international organization would have no right to vote in and of itself, although Member States agreed that it could become a Contracting Party of a treaty. It would vote in the interests of its members and with the number of votes of the members present. Therefore, for practical reasons, this provision was included to avoid an organization and its members voting together. It determined that if an intergovernmental organization voted, the members had no right to vote. However, if one of the members of the intergovernmental organization wished to vote, this member blocked the intergovernmental organization’s right to vote. In order to express these two possibilities in simple terms, the expression “*vice versa*” was introduced. It permitted the intergovernmental organization to avail of its right to vote, provided that its members did not vote, and vice versa.

183. To illustrate this idea, Mr. HÖPPERGER cited the case of the OAPI and its 17 Member States. If each of the 17 Member States of the OAPI, and the OAPI per se, were members of the Assembly and if the OAPI voted, it would vote in the interests of and with the votes of its 17 Member States. However, if one of these Member States wished to vote, the OAPI

would have no right to vote. The other members of the OAPI would also be able to vote individually. Therefore, either only the intergovernmental organisation voted or each of the 17 Member States voted individually. In both cases, there would always be 17 voters. The Secretariat pointed out that it was a procedural rule that helped to avoid having to settle any disputes between the organization and its Member States. The term “*vice versa*” was therefore used to explain the situation in simple terms”.

184. The CHAIR wished to make a suggestion for the text in French, subject to approval by the French Delegation and the Delegations of French-speaking countries. To harmonize the texts, the CHAIR therefore suggested replacing the last two words “and conversely” in the French text with the words “*and vice versa*”, which was a Latin expression also used in English and this would avoid an incorrect interpretation of the word “conversely”.

185. Mr. GAOUAOUI (Algeria) expressed his satisfaction with the Secretariat’s clear explanations, but emphasized that the French wording of this provision did not reflect the Secretariat’s explanations. He therefore suggested meeting the Secretariat at the end of the meeting, to make suggestions to improve the text.

186. The CHAIR informed the Committee that the Delegation of Algeria would meet with the Secretariat, with a view to improving the French language version of Article 22(4)(b)(ii).

187. Mr. KUMER (United Kingdom) said that the words “*vice versa*” were in fact redundant, as that situation would not occur at all.

188. The CHAIR said that the words “*vice versa*” were useful as a reference to the reverse situation compared to the one described in the provisions.

#### Article 25: Regulations

189. The CHAIR turned to Article 25(2)(a), recalling that the Delegation of Algeria had proposed to delete the words “by unanimity”. The provision would thus read: “The Regulations may specify that certain provisions of the Regulations may be amended only by a three-fourths majority”.

190. Mr. KWAKWA (WIPO), in reply to a question by the Delegation of Iran (Islamic Republic of) on whether there was any difference between “unanimity” and “consensus”, believed that the word “consensus” denoted more of a political decision-making process than the word “unanimity”. In other words, “unanimity” would generally be the expectation that all those involved agreed, whereas “consensus” would be no objection from any of those involved. He also brought to the attention of the Committee that the text was identical with the text of the Geneva Act of the Hague Agreement, the Singapore Treaty, the Patent Cooperation Treaty and the Patent Law Treaty.

191. Mr. GAOUAOUI (Algeria) had questions concerning whether provisions would be adopted with a three-fourths majority or unanimity. The Delegation stated that the problem arose where, during the various Assemblies, some of the delegations would like to apply a three-fourths majority and others unanimity. There was no transparency, no regularity, in the decision itself. These were changes to provisions in the regulations, which should be governed by specific rules. Leaving the decision to the Assembly might cause a stir, or possibly debates. The Secretariat’s explanation that this provision was the same as that used in another treaty was not adequate. The concern here was to try to determine how the text could be improved and better implemented.

192. Mr. KWAKWA (WIPO) explained that the current text gave the Assembly an option for the future, that is, at the time when the Assembly decided, it could determine whether the amendments must be adopted with unanimity or three-fourths majority. He pointed out that the proposal from the Delegation of Algeria would be that in future the Assembly could only decide to require three-fourths majority and never require unanimity in order to amend certain provisions.

193. The CHAIR expressed the view that the provision would give the Assembly the flexibility to decide whether the amendment of a particular provision of the Regulation would need to be approved with unanimity or with three-fourths majority.

194. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) believed that the text as it stood was stronger, meaning that in some cases unanimity would be required to adopt amendments. Therefore, he expressed his support for the text as it stood.

195. Mr. KUMER (United Kingdom) believed that the purpose of the provision was not to specify which rules needed specific qualified majorities for their amendments, but to provide for the option of having different qualified majorities, which would then be linked to specific provisions in the Regulations.

196. The CHAIR, in response to a question raised by the Delegation of Moldova, referred to the provision of Article 22(2)(a)(iii), reading: “The Assembly shall amend the Regulations” which meant that the Assembly had the powers to amend the Regulations, and to decide that certain regulations might be amended only by unanimity or only by a three-fourths majority.

197. Mr. MOLDOVAN (Republic of Moldova), following the explanation by the Chair, believed it was reasonable to replace the word “Regulations” in Article 25(2)(a) by “the Assembly”, since it was within the competence of the Assembly to amend the Regulations.

198. Mr. KWAKWA (WIPO), following the proposal made by the Delegation of the Republic of Moldova, said that Article 25(2)(a) might read: “The Assembly may specify that certain provisions of the Regulations may be amended...” He noted, however, that Article 22(2)(a)(iii) had already made reference to the fact that it was the Assembly of the Lisbon Union that amended the Regulations.

199. The CHAIR, noting that one delegation expressed its support for the text as it stood in the Basic Proposal, invited Delegations to comment on the proposals put forward by the Delegations of Algeria and the Republic of Moldova. In the absence of any such comments, the Chair concluded that the text would not be modified at that stage.

#### Article 26: Revision

#### Article 27: Amendment of Certain Articles by the Assembly

200. The CHAIR moved to Article 26(2) and Article 27(1)(a), underlining that both provisions contained a reference to Article 24. Recalling that some Delegations had asked time to consider the issue, he expressed his readiness to leave the discussion open.

201. The CHAIR noted that there were no comments and concluded that the discussion on these articles remained open.



Article 28: Becoming Party to This Act

202. The CHAIR turned to Article 28(1)(iii) and said that no change of views had taken place since the earlier discussion on this Article.

Article 29: Effective Date of Ratifications and Accessions

203. The CHAIR referred to the earlier discussion on Article 29(2) [*Entry into Force of This Act*] and drew the attention of the Committee to the proposal made by the Delegation of Algeria aiming at replacing “five” eligible parties with “ten”.

204. Mr. GAOUAOUI (Algeria), while recalling that his delegation had already explained why it had submitted this proposal, noted that the current tendency was to copy what was found in other agreements or acts and that Main Committee II was not prepared to make substantive changes. For this reason, the Delegation preferred to withdraw its proposal and retain the current paragraph to accommodate all delegations.

205. The CHAIR, thanking the Delegation of Algeria for the withdrawal of its proposal, noted that the Committee agreed on the text of Article 29(2), as originally proposed in the Basic Proposal.

206. Mr. KUMER (United Kingdom) sought clarification on the criteria of five eligible parties in relation to intergovernmental organizations. He wondered whether an intergovernmental organization would count as one, or as one plus the number of its Member States, or just the number of its Member States which were in the system.

207. Mr. KWAKWA (WIPO) answered that an intergovernmental organization would count as one, in the sense in which it counted as one in the World Trade Organization.

208. The CHAIR said that, in his understanding, in case instruments of ratifications or accessions had been received from four States and OAPI, these would count as five parties and not four plus 17, which was the number of Member States of OAPI. However, if these four States were joined by three members of OAPI, but not by OAPI itself, these would count as seven.

209. The CHAIR then turned to Article 29(4) [*International Registrations Effected Prior to Accession*]. He recalled that it had been suggested to replace the term “benefits” by the term “provisions”, inserting a reference to “geographical indications” in the third line after the phrase “in respect of appellations of origin” and deleting the word “however”. He added that the text contained two square brackets, one surrounding the reference to Article 7(5), and another surrounding the reference to Article 17, for which decisions by Main Committee I were pending.

210. Ms. KULIKOVA (Russian Federation) recalled that she had sought clarification on the notion of territory of an intergovernmental organization. The Delegate also drew the attention of the Committee to some inaccuracies in the Russian version of Article 29(4), as the reference to Article 7(5) in that version was a reference to Article 7(6).

211. Mr. KWAKWA (WIPO) confirmed that similar language was contained in several WIPO Treaties such as the Madrid Protocol, the Hague Agreement, the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which was not yet in force, and the Singapore Treaty. He mentioned, for example, that the Madrid Protocol provided that, where the Contracting Party was an intergovernmental organization, it referred to the territory in

which the constituting treaty of that intergovernmental organization applied. The language in the Hague Agreement, the Washington Treaty and the Singapore Treaty was along those same lines. Consequently, "territory" would refer to the territories of the Member States of the intergovernmental organization.

Article 31: Application of the Lisbon Agreement and the 1967 Act

212. The CHAIR turned to Article 31(1) and recalled that it had been suggested to replace "States party" by "parties" so as to reflect the new situation according to which intergovernmental organizations could also become party to the New Act of the Lisbon Agreement.

213. Mr. KWAKWA (WIPO) drew the attention of the Committee to the fact that the proposal to replace the words "States party" by the word "parties" would be problematic because Article 31(1) dealt with the relations between States party to both this Act and the Lisbon Agreement or the 1967 Act. Consequently, replacing "States party" by "parties" would be inaccurate as intergovernmental organizations were not able to become parties to the previous versions of the Lisbon Agreement.

214. The CHAIR, taking into account the explanation by the Secretariat, suggested to the Committee to accept the text of Article 31(1), with the words "States party", as it stood in the Basic Proposal. He noted that there were no comments and therefore concluded that the Committee agreed on Article 31(1).

215. The CHAIR observed that the Committee had discussed all the pending issues, some of which still needed the guidance of, or a decision by, Main Committee I.

216. Ms. CERENZA (Italy) reminded the Committee that her Delegation still had an issue regarding Article 31(1), to which it wished to add a safeguard clause. However, as her Delegation had not had the possibility to consult with its capital, she would prefer discussing that issue at the next meeting.

217. The CHAIR drew the attention of the Committee to the future proposal announced by the Delegation of Italy in relation to Article 31(1). He added that discussions on Article 29(4) were still open because of its reference to Article 7(5) and Article 17. He observed that, thanks to the cooperation of and readiness to go ahead from all Delegations, the Committee had reduced considerably the volume of pending issues. He believed that Main Committee II could revert to these issues after the next meeting of Main Committee I.

218. Mr. HÖPPERGER (WIPO) informed the Committee that the Steering Committee would meet on Monday morning before the Plenary meeting. The Steering Committee would decide which Committee would meet after the Plenary meeting.

219. The CHAIR announced that he would report to the Steering Committee that the Committee had completed the majority of its work. He would also include in his report the pending issues, including those awaiting information from Main Committee I.

220. The CHAIR adjourned the meeting.

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221. The CHAIR welcomed the participants and expressed the hope that the Committee would advance to a final document taking into account the deadline. He recalled that the previous Diplomatic Conference had taken place in 1967 and underscored that the next Diplomatic Conference would probably be held in 30 to 40 years. This meant that the decisions by the current Diplomatic Conference would set the framework for the functioning of the Lisbon System for the next 30 or 40 years. Therefore, he invited the Committee to look towards the future, and not to rely on the past. Secondly, he observed that the work of Main Committee II was well advanced and that the Committee had achieved good progress.

222. The Chair reminded the Committee that Article 22(2)(a)(ix), Article 22(3)(b), Article 24(2), Article 24(3)(a), Article 24(4), Article 24(5), Article 25(2)(a), Article 26(2), Article 27(1)(a), Article 29(4) and Article 31(1) were still pending.

#### Article 22: Assembly of the Special Union

223. The CHAIR referred to Article 22(2)(a)(ix), in which the reference to Article 24 still appeared in square brackets.

224. Mr. SCHMIDLIN (Italy) said that his Delegation preferred to keep the reference to Article 24 in the text of Article 22(2)(a)(ix). As he had previously outlined, the Assembly needed flexibility. He underscored that it would not be possible to convene a Diplomatic Conference, which would entail costs to be borne by the members, only to revise the financing issues. Consequently, it was in the interest of WIPO to retain this reference.

225. Mr. POLINER (Israel) expressed his Delegation's preference for the deletion of the reference to Article 24 as it would prefer dealing with financing through rules and flexibilities in other provisions.

226. Ms. COTTON (United States of America) expressed her support for the statement made by the Delegation of Israel. She recalled that her Delegation had requested the deletion of the reference to Article 24 in Articles 22, 26, and 27, so as to ensure that the decisions taken during the Diplomatic Conference regarding the sources of financing were appropriate and of such an amount to fund the Lisbon System and make it self-sustainable, which it had not been in its history. In her Delegation's opinion, there was a need to depart from traditional formulations, where the Assembly could amend certain provisions of various treaties, because the Lisbon System was unlike other more successful registration systems which provided for an ongoing fee income to sustain them. Taking into account the limited number of geographical indications and appellations of origin, it was unlikely that the Lisbon System would never be financially sustainable on the basis of fees alone. The Delegate concluded by saying that she hoped that the various options discussed to provide for self-sustainability could stay in the treaty until the next Diplomatic Conference and could not be undone or revisited by those who could have an interest in the Lisbon System not being self-sustainable.

227. Ms. LAUMONIER (France) stated that for the sake of flexibility, as discussed by the Delegation of Italy to allow the Union to better manage its finances, and because the

Member States were responsible when involved in an international treaty, the Delegation of France was in favor of maintaining the Assembly's option to modify Article 24, and therefore of retaining the reference to this provision in Article 22(2)(a)(ix).

228. Ms. KOPECKÁ (Czech Republic) said that her Delegation preferred keeping the reference to Article 24 in the text of item (ix), for the reasons explained by the Delegations of Italy and France.

229. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that his Delegation also preferred to retain Article 22(2)(a)(ix) as it stood, because of reasons mentioned by the Delegations of Italy and France, and also because of its importance for the Assembly of the Special Union.

230. Ms. MOORE (Australia) supported the proposal aimed at deleting the reference to Article 24 as put forward by the Delegations of Israel and the United States of America. She underlined the importance of having mechanisms in place for appropriately ensuring that the finances of the Lisbon System were maintained in a sustainable way.

231. The Delegation of Tunisia also supported retaining point ix) of Article 22.2)a).

232. Mr. SCHMIDLIN (Italy) strongly believed that keeping the reference to Article 24 in Article 22 was in the interest of the sustainability of the Union.

233. Mr. RAMALHEIRA (Portugal) expressed his flexibility on the issue. As mentioned by the Delegation of Italy, allowing the Lisbon Union Assembly to adopt amendments to adapt the provisions dealing with the financing of the Lisbon System would also apply in case the Assembly would have to deal with a deficit in the future. In other words, the provision of Article 22(2)(a)(ix) would provide flexibility in both ways.

234. Ms. PEROVIĆ (Montenegro) aligned herself with the statements made by the Delegations of Italy, France and Portugal.

235. The CHAIR observed that only one Delegation was against retaining the reference to Article 24 in the text, and that all other Member Delegations had supported it. Therefore, he suggested that the Committee adopt the text as it stood in the Basic Proposal, i.e. with the reference to Article 24. He noted that there was no objection.

236. Ms. COTTON (United States of America) reiterated that her Delegation did not support the retention of the reference to Article 24 in Article 22(2)(a)(ix).

237. The CHAIR said that the Committee had agreed to retain Article 22(2)(a)(ix) as it stood in the Basic Proposal.

238. The CHAIR turned to Article 22(3)(b) and wondered whether the Committee wished to keep the text as it was in the Basic Proposal or to modify it according to the proposal made by the Delegation of Algeria. He noted that there were no comments and concluded that the Committee agreed to keep the text of Article 22(3)(b) as it was originally proposed in the Basic Proposal.

#### Article 25: Regulations

239. The CHAIR referred to opened Article 25(2)(a) and drew the attention of the Committee to the proposal made by the Delegation of the Republic of Moldova, to replace "The

Regulations may specify” by “The Assembly of the Special Union shall decide”.

240. Mr. MOLDOVAN (Republic of Moldova) recalled that the proposal to replace the words “The Regulations may specify” by the words “The Assembly of the Special Union shall decide” aimed to bring more clarity to the text of Article 25(2)(a).

241. Mr. KLINKA (Slovakia), endorsing the proposal made by the Delegation of the Republic of Moldova, believed it would clarify the Delegation of competence to the Assembly.

242. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) also supported the proposal put forward by the Delegation of the Republic of Moldova.

243. Ms. HERNÁNDEZ NARVÁEZ (Mexico) supported the amendment proposed by the Delegation of the Republic of Moldova.

244. Ms. LAUMONIER (France) stated that, for more clarity of Article 25(2), the Delegation of France also endorsed the amendment proposal presented by the Delegation of the Republic of Moldova.

245. Ms. VIEIRA LOPES (Portugal) expressed her support for the proposal put forward by the Delegation of the Republic of Moldova.

246. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) also expressed her support for the proposal made by the Delegation of the Republic of Moldova.

247. Mr. KUMER (United Kingdom) expressed the view that replacing the word “Regulations” by “the Assembly” would add some clarity. Referring to Article 22(4)(b)(ii), he requested clarification about the status of the discussion on that provision which, in his understanding, had not been clarified or agreed.

248. Ms. MORAU (Romania) stated that her delegation supported the proposal made by the Delegation of the Republic of Moldova.

249. Mr. CURCHOD (CEIPI) noted that the proposal made by the Delegation of the Republic of Moldova contained two aspects. Before expanding on these, the Representative of CEIPI wished to recall that currently the draft implementing regulations of the Lisbon Agreement did not provide for certain rules as subject to specific regulations for their modification. Provided that the Diplomatic Conference maintained this approach in the final adoption of the implementing regulations, there would be future changes and these would essentially be made by the Assembly. Consequently, the CEIPI representative considered that replacing the implementing regulations by the Assembly was a clarification that did not change anything substantive. However, the second aspect of this proposal changed the overall meaning, given that where the text of the basic proposal said that certain provisions could be modified by certain rules for adopting decisions, the proposal of the Republic of Moldova required the Assembly to identify those rules. As a result, if the provision were to be clarified while maintaining the meaning, it should be pointed out that the Assembly of the Special Union “could decide” and not “decides”.

250. Mr. MOLDOVAN (Republic of Moldova) expressed his appreciation for the comment made by the Representative of CEIPI. He stressed that the intention was to give to Article 25(2) the same spirit as Article 22(2), pointing out that, as regards the competences of the Assembly of the Special Union, Article 22(2)(a) contained the words “the Assembly shall”. He further underscored that Article 25(2) provided that certain provisions of the Regulations “may be amended”. In reply to a question by the Chair on whether the proposal could be

modified so as to provide that “the Assembly of the Special Union may decide”, he wished to know the opinion of the Secretariat.

251. Mr. KWAKWA (WIPO) wished to support the suggestion made by the Representative of CEIPI. As formulated by the Delegation of the Republic of Moldova, it would be obligatory for the Assembly to take a decision and to specify which of the provisions could be amended by unanimity or by a three-fourths majority. If the word “may” was used, it would be up to the Assembly to take that decision. In his opinion, this would still be consistent with Article 22.

252. Mr. MOLDOVAN (Republic of Moldova) expressed his flexibility and agreed to replace the word “shall” by the word “may”.

253. The CHAIR concluded that the text of Article 25(2)(a) would then read: “The Assembly may decide”.

#### Article 22: Assembly of the Special Union

254. The CHAIR turned to Article 22(4)(b)(ii) and reverted to the question raised by the Delegation of the United Kingdom on the term “*vice versa*”. He said that the decision taken by the Committee was to align the French version with the English version, so as to avoid any uncertainty concerning the interpretation of the French version. This did not imply a change in the English version, but only in the French version was concerned.

255. Mr. KUMER (United Kingdom) recalled that the need of keeping the term “*vice versa*” in the paragraph had been discussed. His Delegation was of the view that the term should be deleted altogether, as the “*vice versa*” situation would not occur.

256. The CHAIR recalled that most of the Delegations which had previously made statements on that issue were in favor of keeping the term “*vice versa*”, for reasons of clarity.

257. Mr. MOLDOVAN (Republic of Moldova) endorsed the position expressed by the Delegation of the United Kingdom. He observed that Article 22(4)(b)(ii) had two parts. The first part described the voting procedure in case of a Contracting Party that was an intergovernmental organization. The second part concerned how the intergovernmental organization should act when the vote was requested by its member States. He considered that, as pointed out by the Delegation of the United Kingdom, the phrase “*and vice versa*” was redundant.

258. Mr. GAOUAOUI (Algeria) recalled that his delegation had already expressed its unease with regard to the use of the word “conversely” placed after a semi-colon. The issue that arose was whether this word “conversely” applied to the whole paragraph or only to the sentence that started with “no intergovernmental organization has the right to vote if any of the Member States cast a vote”. The Delegation considered that if this word specifically applied to the second part of the sentence, it made no sense. This meant that no Member State could vote if the intergovernmental organization voted. However, if this same term applied to the whole paragraph, it changed the meaning completely. This meant that any Member State could vote in place of the intergovernmental organization. That is why the Delegation suggested removing the words “and conversely”. Whether it was “conversely” or “*vice versa*”, the meaning remained the same. To maintain the meaning of the word “conversely”, the Delegation suggested adding a paragraph to explain what was meant by “conversely”.

259. Mr. KWAKWA (WIPO) believed that the term “*vice versa*” referred to the last part of the

phrase quoted by the Delegation of Algeria, .i.e. but not to the whole phrase. This term aimed at reinforcing the fact that, if an intergovernmental organization voted, its Member States could not vote, and if any of those Member States voted, then the intergovernmental organization could not vote. He added that the language was consistent with the language of all other WIPO treaties to which an intergovernmental organization could become party.

260. Ms. FOUKS (France) specified that as a member of an intergovernmental organization, the Delegation of France had considered this provision carefully. The Delegation admitted that in the beginning, some of its members had expressed some doubts concerning the procedures for the implementation of this provision. It underlined that it was necessary to separate the two parts of the text. The first part had only one goal and that was to point out that the intergovernmental organization could not have more votes than those of its members who participated. The second part of the text related to “housekeeping matters” given that it addressed the issue of how the intergovernmental organization and its Member States agreed to vote. Whether it was the intergovernmental organization or its members who could vote depended on the relationship between them and could not be dealt with by WIPO. To resolve this issue, the Delegation suggested inserting a full stop rather than a semi-colon between the two parts of the sentence, which were unconnected. She suggested referring this linguistic question to the Drafting Committee. She concluded by pointing out that France, which was a member of an intergovernmental organization that could become a Contracting Party to this agreement, had no major issue with this provision.

261. Mr. GAOUAOUI (Algeria) endorsed the proposal made by the Delegation of France.

262. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed his support for the proposal made by the Delegation of France.

263. Mr. KUMER (United Kingdom), expressing the flexibility of his Delegation, said that that proposal would add some clarity to the text.

264. Mr. FICSOR (Hungary) supported the amendment proposed by the Delegation of France and seconded by the Delegation of Algeria, and considered it an appropriate solution to the issue. He further pointed out that the most recent WIPO treaty, namely the Marrakesh Treaty, contained the same language, with a full stop and without the term “but”.

265. The CHAIR noted the agreement of the Committee and considered the discussion on Article 22(4)(b)(ii) closed.

#### Article 26: Revision

266. The CHAIR, turning to Article 26(2), recalled the proposal to delete the reference to Article 24. He stated that, if there were no objections, he would assume that the Member Delegations would apply the same approach as for Article 22(2)(a)(ix) and, consequently, keep that reference.

267. He noted that no objection was raised and concluded that the Committee agreed to maintain the reference to Article 24 in Article 26(2).

268. Ms. COTTON (United States of America) indicated that her Delegation expressed its reservation to the inclusion of the reference to Article 24 in Article 26(2).

#### Article 27: Amendment of Certain Articles by the Assembly

269. The CHAIR turned to Article 27(1)(a) which raised a similar issue concerning the reference to Article 24. He assumed that the Member Delegations would apply the same approach as for Article 22(2)(a)(ix) and Article 26(2).

270. He noted that there were no objections and concluded that the Committee agreed to maintain the reference to Article 24 in Article 27(1)(a).

271. Ms. PERLMUTTER (United States of America) said that her Delegation was confused about the nature of the process followed in the Conference. She pointed out that, normally, at WIPO diplomatic conferences, the goal and the working methods had been to achieve consensus on each provision, and, where there was no agreement, the Delegations had always worked hard to find acceptable compromises. In the rare situations where, after intensive efforts, compromises were not possible, a vote was called. In contrast, in the current Conference, she observed that the Committee seemed to adopt texts where there was no consensus, without an effort to find compromise solutions, based on an apparent majority, but without a vote. Apart from the question of what the rules do or do not permit, she wished to clarify whether that would be the working method for the rest of the Diplomatic Conference, which was a change from the way diplomatic conference negotiations had normally proceeded.

272. The CHAIR said that, in his understanding, a proposal by an Observer Delegation needed to be seconded at least by two Member Delegations. A proposal made by one Member Delegations needed to be seconded by a second Member Delegations. He then observed that there was only one Member Delegations which opposed the inclusion of the reference to Article 24. Therefore, he considered that the Committee had complied with the practice.

273. Mr. KWAKWA (WIPO) recalled that Articles 22, 26 and 27, which all referred to Article 24, had been examined since the beginning of the discussions in Main Committee II. He reminded that the Chair had suggested giving enough time to the Committee to consider those provisions in order to take a decision. He observed that, while the Delegation of the United States of America had expressed its favor for the deletion of the reference to Article 24, most of the Lisbon members were in favor of keeping that reference. On that basis, the Chair had decided that a decision could be taken.

#### Article 29: Effective Date of Ratifications and Accessions

274. The CHAIR opened the discussion on Article 29(4). He noted that the proposal to add the term “geographical indications” after “in respect of appellations of origin” had been accepted by most of the Member States. He then said that the Committee still wished to keep Article 7(5) in square brackets as it waited for a decision on that provision in Main Committee I. Pending proposals consisted of deleting the word “however”, adding the word “also” in the sentence “the acceding State or intergovernmental organization may also specify” and putting in square brackets the reference to Article 7(5) and Article 17, as these were pending a decision of Main Committee I.

275. Mr. FICSOR (Hungary) was of the view that the issue of the reference to Article 24 depended on the outcome of the discussions on that provision. While it would prefer keeping this reference in the text so as to leave enough discretion to the Assembly of the Lisbon Union to permit the system to be financially sustainable, his Delegation was prepared to still consider this reference as a pending issue, taking into account its connection with the outcome of the discussions on Article 24.



276. Mr. FICSOR (Hungary) further said that the discussions in Main Committee I would result in an Article 7(5), although the content was not yet entirely clear. However, the principle enshrined in Article 7(5) was generally accepted. Consequently, his Delegation suggested removing the square brackets surrounding the reference to Article 7(5).

277. M. POLINER (Israel) supported both suggestions made by the Delegation of Hungary.

278. Ms. KULIKOVA (Russian Federation), referring to the notion of territory of the intergovernmental organization, expressed her preference for the wording already contained in previous WIPO treaties, i.e., “the territory in which the constituting treaty of that intergovernmental organization applied”. On the reference to Article 7(5), she agreed to remove the square brackets since, as pointed out by other Delegations, Article 7(5) on individual fees would be kept in the text of the treaty.

279. The CHAIR noted that no objections were made and therefore considered that the Committee agreed with the proposal made by the Delegation of Hungary, seconded by the Delegation of Israel, to remove the square brackets surrounding the reference to Article 7(5).

280. Mr. KWAKWA (WIPO) confirmed that the Secretariat would ensure that the language concerning the territory of intergovernmental organizations was consistent with the language contained in previous WIPO treaties. The Secretariat would reformulate the sentence and bring it back to Main Committee II, for its consideration, when the Basic Proposal would be consolidated.

281. Mr. CURCHOD (CEIPI), referring to the first sentence of Article 29(4), pointed out that replacing the term “benefits” by the term “provisions” was appropriate. In his view, the second sentence was an exception to the application of this Act in the case considered under paragraph (4). Therefore, he believed that the term “however” was proper to express the idea that an exception to the application of the Act was allowed in connection with the time limit referred to in Article 15(1).

282. The CHAIR, reminding that the Delegation of the United States of America had made proposals on the term “however” and the term “may”, recalled that Member Delegations had previously considered that taking away “however” and adding “also” would make the text clearer. He believed that, if it did not change completely the sense of the text, it should be left to the Drafting Committee to find the best presentation of the text in that second part of Article 29(4).

283. The Chair noted that there were no comments or objections and requested the Secretariat to consider improving the text or going back to the Basic Proposal with a justified explanation, in its preparation of the consolidated text.

#### Article 31: Application of the Lisbon Agreement and the 1967 Act

284. The CHAIR noted that the Committee was still awaiting a proposal from the Delegation of Italy.

#### Article 24: Finances

285. The CHAIR opened the discussion on Article 24(2) [*Sources of Financing of the Budget*].

286. Mr. POLINER (Israel) said that the issue of Article 24 was interrelated with the issue of maintenance fees. He observed that the discussion was about the running costs of the Lisbon System. He stressed that the costs would be borne by the government or by users, or by the Organization, which meant essentially by governments. He said that the issue was about cost allocation between users and governments. He recalled that, previously, the discussion was about a maintenance fee based on a *pro rata* basis or the payment by users of fees every ten years like with trademark applications, as a source of sustainable income to the system over a long period of time. If the system did not have a maintenance fee, there would be a subsidy system from those countries using the system less to those countries using the system more. This could not be a significant fee, but it would then transfer into an allocation of costs from users to nonusers.

287. The Delegate, referring to the statement of the Delegation of the European Union on the need for small producers to have access to the system and the statement of the Delegation of Italy concerning the need for the system to be attractive and not overburdensome to users, observed that the full extent of the cost in financing the system was not known. Those were legitimate concerns. In order to make the system more attractive to small users, he suggested that subsidies to small users came from governments or countries promoting small users might subsidize them, either by direct support of their local industries and/or a two-tiered system for payment of maintenance fees, for amounts equivalent to those applicable in respect of small and medium sized enterprises. While balancing these legitimate issues, he stated that his Delegation believed that a maintenance fee that would be paid to the Lisbon System would help the sustainability and attractiveness of the system and would make it more amenable to a greater variety of States.

288. Mr. MARTIN (France), referring to the opinions the Delegation of France had expressed in previous discussions, recalled that he was aware of the importance of the stability of the financial balance of the Lisbon System. With a view to removing maintenance fees, which the Delegation did not favor, he noted that other avenues could be explored. In his view, the concept of maintenance fees was at odds with geographical indications, which were filed only once. Territory or traditions which were established once and for all, could not be altered. Different possibilities had been considered in Paris, such as increasing registration fees, Member States' contributions and the introduction of a working capital fund. These possibilities needed to be considered further, the Delegation having undertaken to find expeditious solutions. He further noted that there was a source of funding, which had not been discussed: income that would be generated by the conversion fee, that is, through the transfer of the appellations of origin from the current system to the new revised system. A certain amount per appellation would be paid to the WIPO Secretariat, thereby providing a major source of funding. The Delegation concluded by recalling that, in its view, the renewal fee was not practical.

289. Mr. BATANGA (OAPI) believed it necessary to harmonise Article 24 with the decision taken concerning Article 7(3) and the last paragraph of Article 8, where the Main Committee chose to abandon the maintenance fees in force. In the same vein, the Delegation of the OAPI advocated the deletion of the reference to maintenance fees in force in Article 24.

290. Mr. GONDA (Hungary) fully aligned himself with the statement made by the Delegation of France and indicated that his Delegation was ready to consider any available means to create financial balance in the Lisbon System, except the introduction of maintenance fees, for the reasons explained by the Delegation of France.

291. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) pointed out that, as recalled by the Delegation of France, the nature of appellations of origin and geographical indications was completely different from trademarks. Therefore, he believed that the Committee should

think about compensating the expenses and the resources for the Lisbon System, but not with a maintenance fee, which should be deleted from Article 24.

292. Ms. HERNÁNDEZ NARVÁEZ (Mexico) stated that the Delegation of Mexico was keenly aware of the need to strengthen the sustainability and predictability of the Lisbon System and therefore supported some of the proposals that were now in Article 24. With regard to subparagraph 2(ii), she noted that the Delegation could not agree with the idea of maintenance fees. She concluded by emphasizing that the Delegation was fully prepared to consider the other options to ensure the sustainability of the system.

293. Mr. MOLDOVAN (Republic of Moldova) expressed the preference of his Delegation for maintaining square brackets in Article 24(2)(ii).

294. Mr. SCHMIDLIN (Italy) confirmed his Delegation's interest in making the Lisbon System more sustainable. However, this required careful consideration as it should be measured with the attractiveness of the Lisbon System for both States and businesses. In this spirit, his Delegation had requested to retain some flexibility by allowing the Assembly to modify Article 24. He underlined that a maintenance fee had philosophical problems and that members of the Lisbon System had to assess its impact on the attractiveness of the treaty. He considered that, even if maintenance fees were introduced, they would be operational only after the treaty had entered into force. At that stage, many producers would have to comply with the New Act and would maybe need to modify their registrations or to submit them again. This would generate modification fees which would be a source for the Lisbon Union. The Delegate informed the Committee that his Delegation was open to discussion on how to make the system sustainable and attractive, without concentrating on a specific measure that would be difficult to except for his Delegation, in view of its incompatibility with its country's domestic system.

295. Mr. VIEIRA LOPES (Portugal) considered that the financing and the sustainability of the system was absolutely essential for the Lisbon Union to work. In that context, she expressed readiness to find solutions to that problem. Sustainability should not be maintained by elements that would be adverse to the system and might lead to reduced sustainability. Therefore, her Delegation preferred to delete the reference to maintenance fees in Article 24.

296. Mr. HALL ALLEN (European Union), referring to the statements made by the Delegations of France and Italy, noted that the system would have a revenue stream, namely the transition fees, which had not yet been widely discussed. He therefore requested more information on the nature of those fees and their impact.

297. Ms. KOPECKÁ (Czech Republic) stated that her Delegation aligned itself with the statements made by the Delegations of France, Italy and Hungary and wished that the mention of maintenance fees be deleted from Article 24.

298. Ms. SAGBO (Togo) supported the proposal of the OAPI for the deletion of the maintenance fees in force.

299. Ms. COTTON (United States of America), referring to Article 24(2)(i), wondered whether a reference needed to be made to fees collected under the original Act and the 1967 Act, as that concerned the Special Union which included the previous Acts. As the latter would remain in force and fees could continue to be collected, she underlined the need to have reference to those. She stressed that the funding for the Special Union, with three different acts, was complicated and nuanced. She was in favor of keeping the square brackets in the text of item (ii) regarding maintenance fees. While she appreciated the

interventions referring to a desire to be flexible and to look at other ways to fund the system, she had not heard many proposals and would like to see a combination of elements in the text allowing for the Lisbon System's sustainability. Having heard other Delegations, it was clear that there were still questions to be answered, so that further discussions were necessary. Finally, her Delegation agreed with the Delegation of Israel, as its comments were useful and pertinent.

300. Ms. KIRIY (Russian Federation) reiterated that the beneficiaries of the Lisbon Union should make a contribution to the maintenance of the system and its financing. It was quite logical to keep in the text the possibility of having maintenance fees. However, an effort should be made to find other sources of financing, as mentioned by some Delegations. She observed that one of the alternative sources were contributions by States, which was also contained in the provision. She pointed out that, if the producers did not have enough funds, their government could provide support, for example by paying the maintenance fees. That would be a contribution by the Member States to the maintenance of the Lisbon System.

301. Ms. MORARU (Romania) supported the position expressed by the Delegations of France and Hungary. She stated that since Romania was not in favor of the maintenance fees in force, her suggestion was to delete them.

302. The CHAIR adjourned the meeting.

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303. The CHAIR recalled that pending issues in the Basic Proposal concerned Articles 7 and 8 as well as Rule 8 relating to fees. In the administrative provisions, outstanding issues also concerned Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a) which all referred in square brackets to Article 24. Pending issues also concerned Article 24(2), Article 24(3), Article 24(5), Article 29(4) and Article 31.

304. He announced the distribution of a Chair's Non-Paper compiling all proposals on the outstanding provisions.

Article 22: Assembly of the Special Union

Article 26: Revision

Article 27: Amendment of Certain Articles by the Assembly

305. The CHAIR turned to Articles 22, 26 and 27. He recalled that a majority of Lisbon Member States wished to keep the reference to Article 24 so as to leave more flexibility to the Assembly to decide on possible practical and operational issues.

306. Mr. POLINER (Israel), invoking the spirit of flexibility, agreed with maintaining the reference to Article 24, particularly if any amendments to Article 24 would be taken by unanimous decision of the Assembly.

307. Ms. HERNÁNDEZ NARVÁEZ (Mexico) wished to retain the reference to Article 24 in Articles 22(2), 26(2) and 27(1)(a), and expressed appreciation to the Delegation of Israel for its flexibility. The Delegation nonetheless added that, it would make a statement only when talks on Article 24 and the proposal by the Delegation of Israel began.

308. Ms. COTTON (United States of America) appreciated the statement made by the Delegation of Israel. In light of the discussion on seeking sustainable funding options, she supported the idea of requiring unanimity to amend Article 24. She expressed the interest in seeking a commitment from the Diplomatic Conference to finding sustainable funding sources and listing them specifically in Article 24(2). Her final decision on whether to maintain the reference to Article 24, however, would depend in part on the agreement on the text of Article 24. For that reason, the square brackets should be maintained around Article 24 until the conclusion on the discussion on Article 24 as a whole was taken.

309. Mr. GAOUAOUI (Algeria) was in favor of maintaining the reference to Article 24 for the three provisions concerned.

310. The CHAIR concluded that the Committee agreed in principle to keeping a reference to Article 24 in Articles 22(2)(a)(ix), Article 26(2) and Article 27(1). He announced that this would be confirmed following the discussions on Article 24.

Article 24: Finances

311. The CHAIR said that, as regard Article 24(3), the Chair's Non-Paper reflected several proposals, including one put forward by the Delegations of Italy and the Republic of Moldova.

312. Mr. SCHMIDLIN (Italy) pointed out that the proposal made by his Delegation and the Delegation of the Republic of Moldova intended to give flexibility to the Assembly in case of a financial gap. The term "alternative source" aimed at encompassing several possibilities, such as a fee or an increase of the existing fees. Both would mean that a part of the gap would be compensated with some contributions, leaving the rest to be charged in terms of fees. The Delegate underlined that the proposal would even allow Member States to decide how to contribute, either with public funds or with charges for producers. In his Delegation's view, the proposed provision would enable the Assembly to identify a mechanism for solving financial gaps. He added that the proposal did not stick only to contributions and gave the Assembly the possibility to find the optimal solution in the interest of sustainability and attractiveness of the Lisbon System.

313. Mr. MOLDOVAN (Republic of Moldova) underlined that the proposal aimed at making available all options for the Assembly, as the system should be working for the next half of a century.

314. Mr. GAOUAOUI (Algeria) underlined that the main rationale for the text was to attempt to define the nature of the contribution itself. The Delegation of Algeria was not opposed to the Assembly's examination of the issue of finance to find new mechanisms in the event of a deficit and it was prepared to discuss it to find a suitable mechanism. Nevertheless, while underlining that the main objective was to make the treaty attractive to new countries, including developing countries, the Delegation was concerned that the term "special", which did not define the nature of the contributions, might make these countries apprehensive of acceding to the treaty, considering that they could be requested to pay new contributions if the Assembly so decided. Insofar as the Organization was not in deficit and had adopted a special budget, distributing financial resources across the unions, the Delegation concluded by specifying that it maintained its position to ensure that contributions from Contracting Parties were voluntary.

315. The CHAIR recalled that the kind of contributions would be decided by the Assembly, if necessary, to obtain additional funds to enable the system to continue working and to become sustainable. That did not mean that those contributions were contributions in the classical sense, that Member States party to the treaty would be obliged to pay every year regardless of what happened. For that reason, he had proposed the word "special" in Article 24(2). He noted, however, that the proposal put forward by the Delegations of Italy and the Republic of Moldova did not contain the word "special".

316. He further observed that, in case of deficit, Member States would have to pay, so that a voluntary contribution could not be expected. The Chair added that the Assembly would deal with that when the treaty would be in force. At that time, the Assembly would also deal with the implementation modalities of the fees or of the different other income sources outlined in the paragraph. He wished to assure the Committee that that was not a hidden introduction of contributions, but rather a flexibility for future Assembly decisions, whenever necessary, asking Member States to provide additional funds in case of a deficit. The Chair, underlining the exceptional character of the situation, stated that the type of contributions mentioned in subparagraph (vi) could not be voluntary, but would be mandatory for the Member States adhering to the new treaty.

317. Ms. COTTON (United States of America), referring to the proposal made by the Delegations of Italy and the Republic of Moldova, expressed concern on the reference to “any alternative source”. She indicated that her Delegation had found out that the sources of income for the Lisbon Union were not limited to the sources of income specifically identified in Article 24(2) of the Basic Proposal and in the corresponding provision in the current Act of the Lisbon Agreement. There was another source of income - unknown to her Delegation - that had been used to fund the system. She considered that a reference to an alternative source could identify that source that her Delegation wished to see minimized. Consequently, a clarification about the alternative source would be necessary to support the proposal of the Delegations of Italy and the Republic of Moldova. For that purpose, she suggested adding the terms “derived from Lisbon Union members or its beneficiaries or both” after the terms “any alternative source”. She added that her Delegation would support the inclusion of the word “special” if it could be a helpful clarification.

318. Mr. KUMER (United Kingdom) sought more details in relation to the alternative source. Although it could accept the proposal made by the Delegation of the United States of America, his Delegation proposed that the provision refer to “contributions or any alternative source from the Contracting Parties”.

319. Mr. SCHMIDLIN (Italy) requested the Delegation of the United States of America to give examples so as to clarify the meaning of the wording “source derived from Lisbon Union members”. Considering that this was covered by contribution, he wondered what would be the difference and whether beneficiaries meant a fee. Besides, in order to alleviate the concern expressed by the Delegation of Algeria, his Delegation suggested adding an agreed statement such as: “it is understood that the nature of the contribution would be decided by the Assembly of the Special Union”. It would clarify that contribution would be used in a determined way.

320. Ms. FOUKS (France) believed that the issue of funding for the Lisbon Agreement should be dealt with in relation to its geographical scope, which should be extended to new Member States. She noted that efforts were currently being made to improve funding, including by allowing for an increase in registration fees and by the introduction of special contributions which, as noted by the Secretariat, would be exceptional and particular to the Lisbon Union. In that respect, the Delegation remained in favor of the text proposed in the CHAIR’S Non-Paper.

321. Mr. ROSSI COVARRUBIAS (Peru) stated that the proposals by the CHAIR and the Delegations of Italy and the Republic of Moldova appeared to be heading in the same direction. In both proposals, it seemed clear that the Assembly of the Union would decide on an alternative to cover the existing deficit. The Delegation of Peru stated that it had a suggestion concerning the proposal of the Delegations of Italy and the Republic of Moldova. It specifically suggested reversing the first part of the English sentence where it says “*contributions from the Contracting Parties or any alternative source, or both*”. In other words, the Delegation suggested that it go from the general to the particular stating, “*any alternative source, including contributions from the contracting parties, if and to the extent to which receipts...*” It was a suggestion, but it was the Delegation’s view that out of this range of possibilities, contributions should be an option. In any event, it believed that a more general meaning needed to be conveyed in Article 24(2)(vi) before a settlement could be reached on the subject.

322. Mr. FUSHIMI (Japan) understood that, under the current system, the deficit was filled by funding from the regular budget, including the revenue from the PCT and the Madrid System. As he did not feel comfortable with the continuation of such practice, he expressed the view that the reference to “any alternative source”, as proposed by the Delegations of

Italy and the Republic of Moldova, could allow the continuation of the current practice. Therefore, in case of introduction of a reference to “any alternative source”, his Delegation would need the guarantee that that practice would not continue under the New Act. From that perspective, he thought that the language proposed by the Delegations of the United States of America or the United Kingdom could constitute a safe way for avoiding the continuation of that practice.

323. Ms. VIEIRA LOPES (Portugal) supported the proposal put forward by the Delegations of Italy and the Republic of Moldova, because it brought the necessary flexibility for special contributions. She also agreed with the statement made by the Delegation of Peru.

324. Ms. COTTON (United States of America) reiterated her concerns as regards the alternative source, namely PCT and Madrid systems fees. Although those fees, as a source of financing for the Lisbon System, were not listed in Article 24(2), her Delegation shared the concerns raised by the Delegation of Japan on the continuation of that practice. She added that her Delegation seconded the proposal made by the Delegation of the United Kingdom but would still retain the term “derived”, so that the proposal would read: “any alternative source derived from the Contracting Parties”. Finally, the Delegate had no preference on the order of the sentence, as long as the phrase “derived from the Contracting Parties” was retained.

325. Mr. VANERIO (Uruguay) echoed the statement of the Delegation of Japan with regard to the proposal and the proposed wording by the Delegation of the United States. The Delegation stated that it clearly understood the observation of some members that some flexibility was needed, but that it was also understandable and should be understood that those countries that were not members of Lisbon required certain guarantees so as not to follow the practice of recent years concerning Lisbon’s deficit and that this did not entail a burden for the rest of the Organization.

326. Mr. KIM (Republic of Korea), expressing his concerns about the sustainability of the Lisbon System, supported the proposal made by the Delegation of the United States of America and the statements made by the Delegations of Japan and Uruguay.

327. Mr. SCHMIDLIN (Italy), referring to the proposal made by the Delegation of Peru, explained that the purpose of the proposal was to have either contributions or an alternative source of funding. An alternative was meant to be applied to contributions. He then pointed out that if the text was narrowed to sources derived from Contracting Parties of the New Act, any fee measure would be excluded. He further said that, in the concept of alternative sources of funding, his Delegation wished to encapsulate the possibility of increasing the fees collected under Article 7(1) and (2).

328. Mr. MOLDOVAN (Republic of Moldova), considering that putting any alternative source before the contributions would change the meaning of item (vi), shared the concerns expressed by the Delegation of Italy on the increase in fees.

329. Ms. KULIKOVA (Russian Federation) sought further clarification on the words “alternative source”.

330. Mr. FICSOR (Hungary) underlined that “any alternative source” was not intended to refer to revenues generated under other global intellectual property systems in WIPO, but aimed at providing the necessary flexibility in terms of fees that could be collected under the Lisbon System. Therefore, he wondered whether item (vi) could be limited to income derived from Contracting Parties and whether, in item (i), a more flexible wording could be found to reflect the idea that the Assembly may decide to modify the fee structure of the system. The



Delegate proposed referring, in item (vi), to “contributions of the Contracting Parties or any alternative source derived from them or both”. He also suggested introducing, in item (i), a more general wording such as “fees collected in respect of international registrations”.

331. The CHAIR observed that, on one side, the general principle to have special contributions from Contracting Parties was acceptable to Delegations and that the Assembly could also seek alternative sources of funding. The question was to ensure that those alternative sources did not use the WIPO budget. The Chair recalled that, on the one hand, the Delegation of the United States of America had proposed to use the terms “derived from Contracting Parties or beneficiaries” and that, on the other hand, the Delegation of Hungary had suggested limiting item (vi) only to “Contracting Parties” and modifying item (i) in order to refer to international registrations.

332. Mr. MOLDOVAN (Republic of Moldova) stated that, in the spirit of flexibility, his Delegation could consider the suggestion made by the Delegation of France to keep the word “special”. However, his Delegation would prefer to revert to that issue at a later stage.

333. Mr. SCHMIDLIN (Italy) declared that his Delegation needed time to reflect.

334. The CHAIR adjourned the meeting.

Fifth Meeting Tuesday, May 19, 2015 Afternoon
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Article 24: Finances

335. The CHAIR invited comments on Article 24(2)(i) and (vi) as contained in a Non-Paper No. 2 that he had circulated, reflecting the two proposed texts on Article 24(2)(vi). The first text related to the proposal made by the Delegations of Italy and the Republic of Moldova, including the terms proposed by the Delegation of the United States of America. The second text concerned the proposal made by the Delegation of Hungary in respect of Article 24(2)(i) and (vi).

336. Mr. POLINER (Israel) was of the view that the second option would provide greater flexibility for the future.

337. Mr. KUMER (United Kingdom) sought clarification regarding the proposal made by the Delegation of Hungary, in particular, regarding fees collected in respect of international registrations. He believed that, although Article 1(ix) defined the term “international registration”, it would be preferable to clearly specify that those fees concerned international registrations under the Lisbon System.

338. Mr. FICSOR (Hungary) was of the view that, if a term was defined in the abbreviated expressions and used consistently throughout the agreement, it would not be necessary to re-define it in any other provision. In his opinion, it was clear that a reference to “international registrations” in the New Act referred to international registrations under the New Act of the Lisbon Agreement, as defined in Article 1.

339. The CHAIR also believed that, if a definition of a certain term was provided at the beginning of an international treaty, the same term could be used throughout the treaty without any additional clarification.

340. Mr. SCHMIDLIN (Italy) highlighted the difference between the two proposals. In the proposal made by his Delegation and the Delegation of the Republic of Moldova, the alternative source, including fees, would be subject to a condition expressed by the terms “if and to the extent to”. He also said that, if there appeared to be a general consensus on the proposal made by the Delegation of Hungary, his Delegation would not oppose it.

341. Ms. KULIKOVA (Russian Federation) sought further explanation about the alternative sources that could be used for financing the Union. She expressed concerns as regards the way in which the funds would be divided up between Contracting Parties, because each State had its own budget period. Therefore, her Delegation wondered how that would work in practice.

342. The CHAIR pointed out that Article 24(4) provided that contributions by the Member States of the Lisbon Union would be proportionate according to the contribution class to which the State belonged. In other words, if a country belonged to contribution class I, it would pay a portion corresponding to class I, whereas a country belonging to class V would pay a portion corresponding to class V.

343. He then underlined that, in the proposal made by the Delegation of Hungary, item (vi) concerned only the contributions by Contracting Parties, since the contributions by beneficiaries had been moved to item (i) as part of the fees. He expressed the view that one of those contributions could be a grant or a voluntary contribution by Contracting Parties, in view of the importance they might attach to the system. He said that, in the absence of comments from the Committee, he would assume that his interpretation of the text was sufficient.

344. The CHAIR wondered whether the Committee agreed with the proposal made by the Delegation of Hungary in respect of items (i) and (vi) of Article 24(2).

345. Mr. MARTIN (France,) referring to Article 24(2), expressed his preference for the proposal put forward by the Delegations of Italy and of the Republic of Moldova. Concerning the proposal by the Delegation of Hungary, the Delegation of France considered that the issue of collected fees was not sufficiently clear. It wondered under what conditions the amount of the fees would be set by the Assembly of the Lisbon Union. The Delegation concluded by stating that it did not have all the facts required to take a decision on this proposal.

346. The CHAIR, noting that the Delegation of France retained its position, said that fees collected in respect of international registrations were all fees that would be collected by the International Bureau in respect of international registrations, as mentioned under Article 7 and Rule 8. These were all the fees that a beneficiary would have to pay in order to register its appellation of origin or geographical indication.

347. The CHAIR then moved to Article 24(3)(a). He referred to the Non-Paper entitled "Main Committee II - Revised compilation by the Chair of proposals on Article 24(2)(vi), Article 24(3)(a), Article 24(4) and Article 31".

348. He opened the discussion on Article 24(3)(a).

349. Mr. SCHMIDLIN (Italy) expressed his preference for Alternative A, as proposed by the Delegation of Hungary.

350. Ms. COTTON (United States of America) recalled that her Delegation had proposed Alternative B when it was still unclear on the sources of income in Article 24(2), trying to ensure that there would be a balance between fees and contributions that would fund the expenses of the Lisbon System. However, as her Delegation found out that there were other funds at issue, which were not included in paragraph (2), she could also go along with Alternative A, as proposed by the Delegation of Hungary.

351. The CHAIR noted that no other comments were made and stated that the Committee agreed that Article 24(3)(a) incorporate the text proposed by the Delegation of Hungary.

352. The CHAIR then turned to Article 24(4) and pointed out that the proposal made by the Delegation of the United States of America suggested that the contribution by each Contracting Party be proportional to their relative number of registrations under the Lisbon System. He recalled that the Basic Proposal contained a text relating those contributions to the classes used in the context of the Paris Convention.

353. He then opened the discussion on Article 24(4).

354. Mr. SCHMIDLIN (Italy) expressed his Delegation's preference for the language contained in the Basic Proposal. As pointed out previously, the Assembly could modify

Article 24. It would therefore be possible to switch to another system.

355. Mr. RENDÓN ALGARA (Mexico) welcomed the proposal put forward by the Delegation of the United States and considered that it should be discussed further so as to be taken as the basis, should the Member States accept it.

356. Mr. MARTIN (France) agreed with the position expressed by the Delegation of Italy in favor of maintaining Article 24(4) as contained in the Basic Proposal, referring to the class of contribution, even if, given the class level of France, the amount could be increased.

357. Mr. MELÉNDEZ GARCÍA (Costa Rica) also approved the proposal made by the Delegation of the United States and for that reason, the Delegation of Costa Rica required a little more time to examine it before adopting a final position.

358. Mr. POLINER (Israel) seconded the statements made by the Delegations of Costa Rica and Mexico and supported the proposal put forward by the Delegation of the United States of America.

359. Ms. KOPECKÁ (Czech Republic) shared the position of the Delegations of France and Italy and expressed her preference for the text of Article 24(4), as contained in the Basic Proposal.

360. Mr. VANERIO (Uruguay) welcomed the proposal of the Delegation of the United States in so far as all the members of the Committee sought a Lisbon Agreement that was self-sustaining and attractive for current, potential and future members, but also for WIPO Member States. The merit of the proposal of the Delegation of the United States was that it introduced a criterion of justice and equity in the sense that those who used or took more advantage of the system would contribute more to it. As a small developing country, Uruguay welcomed this type of text, in that it added a certain degree of justice and as such echoed what its Delegation expressed in favor of the proposal from the Delegation of the United States and it requested that it be thoroughly examined.

361. Ms. VIEIRA LOPES (Portugal) preferred to retain the text contained in the Basic Proposal with respect to Article 24(4), as it was of the view that a distribution by class was a more equitable system.

362. The CHAIR noted that the Delegations were still divided with respect to Article 24(4) and had requested more time to consider it. He therefore suggested reverting to the issue at a later stage.

363. The Chair then turned to Article 24(5) on the Working Capital Fund, while recalling that some Delegations had requested more time to consider it.

364. The CHAIR noted that no comments were made and concluded that the Committee agreed on the text of Article 24(5).

#### Article 29: Effective Date of Ratifications and Accessions

365. The CHAIR turned to Article 29(4). He referred to the question raised by the Delegation of the Russian Federation concerning a definition of the territory of a Contracting Party which was an intergovernmental organization.

366. He believed that the provision could be considered as agreed by the Committee but

asked the Delegation of the Russian Federation whether it would agree with the text as had been modified at its request.

367. Ms. KIRIY (Russian Federation) said that her Delegation could now fully support the drafting of Article 29(4).

368. Mr. GOGILIDZE (Georgia) stated that his Delegation did not support the changes proposed by the Delegation of the Russian Federation, as it considered that the provision at issue was not the place to determine and define the territory of an intergovernmental organization. He observed that the territory of a country was also not defined. He added that in many WIPO treaties, where intergovernmental organizations were Contracting Parties, the territory of the latter was not defined.

369. The CHAIR pointed out that several WIPO treaties contained the exact same language, such as the Singapore Treaty, the Washington Treaty, the Geneva Act of the Hague Agreement and the Madrid Protocol.

370. Mr. GOGILIDZE (Georgia) said that, if the definition added to Article 29(4) was the same as the one contained in the Madrid Protocol, his Delegation had no objection.

371. Ms. LU (China) wondered whether the terms “territory of an intergovernmental organization” could be misunderstood and asked whether the language could be clarified. She suggested referring to the territories of the Member States of the intergovernmental organization.

372. The CHAIR reiterated that the text introduced in Article 29(4) was similar to the one contained in other WIPO treaties. For this reason, he suggested aligning the wording of Article 29(4).

373. He noted that the Delegation of China agreed with that suggestion.

374. The CHAIR concluded by stating that the Committee agreed on the text of Article 29(4).

#### Article 31: Application of the Lisbon Agreement and the 1967 Act

375. The CHAIR moved to Article 31(1) and referred to the proposal put forward by the Delegation of Italy.

376. Mr. SCHMIDLIN (Italy) underlined that the proposal mirrored the provision of Article 10(3) in the last version of the draft New Act. It would help to ensure the compatibility with Article 24.3 of the TRIPS Agreement. He added that it provided a level of comfort for the current Contracting Parties of the Lisbon Agreement. It would therefore not affect newly acceding Contracting Parties to the New Act. Finally, on the alternative language offered in the proposal, he expressed his Delegation’s preference for the words “no lower protection”.

377. Ms. KOPECKÁ (Czech Republic) lent her support to the proposal made by the Delegation of Italy and expressed her flexibility on the two options presented, namely the words “no lower protection” or “no less favorable protection”.

378. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation’s support for the proposal put forward by the Delegation of Italy.

379. Ms. VIEIRA LOPES (Portugal) also seconded the proposal from the Delegation of Italy.

380. Mr. KLINKA (Slovakia) lent his support to the proposal made by the Delegation of Italy.

381. The CHAIR noted that no other comments were made and declared that the Committee agreed on the text of Article 31(1), as modified on the basis of the proposal from the Delegation of Italy.

Article 22: Assembly of the Special Union

Article 26: Revision

Article 27: Amendment of Certain Articles by the Assembly

382. The CHAIR referred to Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a), in which the reference to Article 24 had been placed in square brackets. He wondered whether the Committee agreed to keep the reference to Article 24 in those provisions, or to delete the reference.

383. Ms. COTTON (United States of America) informed the Committee that, in the interest of flexibility and in order to move forward, her Delegation withdrew its proposal to delete the reference to Article 24 from Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a). She, however, expressed the reluctance of her Delegation in doing so, as it still had serious concerns about the sustainable funding of the Lisbon System. She observed that her Delegation had not received a firm commitment to implement maintenance fees for international registrations and to institute mandatory contributions. She added that her Delegation had also not received any commitment on the sustainability of the system other than a general statement of intent.

384. The CHAIR thanked the Delegation of the United States of America for its spirit of cooperation to move the work of Main Committee II forward.

Article 7: Fees

Article 24: Finances

385. The CHAIR reverted to pending issues. The first one concerned the distribution of additional contributions. He recalled that the Delegation of the United States of America had proposed that contributions by the Contracting Parties be proportional to their relative number of registrations under the Lisbon System. That proposal had been seconded by the Delegations of Costa Rica, Israel and Mexico.

386. The second remaining issue related to Article 24(2). The Chair reminded the Committee of the proposal made by the Delegations of Italy and the Republic of Moldova and the proposal made by the Delegation of Hungary. The Delegation of France had expressed its preference for the proposal made by the Delegations of Italy and the Republic of Moldova, while other Delegations had seconded the proposal made by the Delegation of Hungary.

387. The Delegation of France stated that substantial progress had been made and it suggested continuing discussions so as to take a definitive position.

388. Ms. RODRÍGUEZ CAMEJO (Cuba) supported the proposal for contribution proportional to the number of registered countries as in Article 24(4).

389. Mr. MOLDOVAN (Republic of Moldova) indicated that his Delegation had made a

written proposal on Article 24(4) which had not yet been printed. In his view, the proposal reflected a compromise text for the provision.

390. The CHAIR suspended the meeting until the proposal from the Delegation of the Republic of Moldova had been made available.

391. When resuming the meeting, the Chair said that he had understood that Main Committee I had agreed to delete the reference to maintenance fees. As no comments were made, he concluded that Main Committee II agreed to delete item (ii) in Article 24(2).

392. The CHAIR invited the Secretariat to prepare a consolidated version of all the Administrative Provisions to be distributed before their adoption by Main Committee II.

393. He then invited comments on Article 24(2).

394. Mr. POLINER (Israel) recalled that his Delegation had initially lent its support to the proposal from the Delegation of Hungary on Article 24(2). However, in the light of the comments made by the Chair relating to Article 7, he expressed the flexibility of his Delegation as, in its view, there were no significant differences between the proposal by the Delegations of Italy and the Republic of Moldova and the proposal put forward by the Delegation of Hungary.

395. Mr. MARTIN (France) indicated that, although it felt that there was very little difference between the two proposals, the Delegation preferred the proposal put forward by the Delegations of Italy and of the Republic of Moldova concerning Article 24(2). He added that the Delegation of France wished however to put into brackets the terms "*or any alternative source derived from the Contracting Parties or beneficiaries, or both*". It believed that these terms were not clear, as they could encompass maintenance fees, with which it did not agree. The Delegation highlighted, furthermore, that there had been no national discussion on the allocation of expenses and in particular on the obligation of producers, especially those operating in sectors already in difficulty, to pay maintenance fees. Although it was noted that the reference to such maintenance fees was deleted in Article 7, there remained some ambiguity on this subject, to which the Delegation did not wish to commit. The Delegation announced that with regard to income, France would be willing to pay a special contribution. In its opinion, the operating expenses of the Union of Lisbon corresponded to the registration costs. The Delegation concluded by pointing out that this issue of expenses would need to be reviewed during the discussions concerning WIPO (PBC)'s program and budget.

396. The CHAIR turned to Article 24(4).

397. Mr. SCHMIDLIN (Italy) said that his Delegation remained in favor of the text of the Basic Proposal and would continue to work on it in order to accommodate all the interests.

398. The CHAIR recalled that several Member Delegations had expressed their preference for the proposal made by the Delegation of the United States of America.

399. Mr. MELÉNDEZ GARCÍA (Costa Rica) reiterated his continued support for the proposal on Article 24(4) put forward by the Delegation of the United States but added that he likewise acknowledged the effort and the draft paragraph presented by the Delegation of the Republic of Moldova, which would still be thoroughly examined and for which the Delegation required extra time.

400. Mr. POLINER (Israel) restated the support of his Delegation for the proposal made by

the Delegation of the United States of America, which was also seconded by the Delegation of Costa Rica. He was of the view that paying on a proportional basis for the number of registrations was fair. It would be difficult for countries which had very few registrations to agree to pay the same amount as countries having a hundred registrations. He concluded by saying that it would be difficult to justify a subsidy from those not using the system to those using it.

401. Ms. CHARIKHI (Algeria) pointed out that her Delegation saw merits in all the proposals made, including the proposal from the Delegation of the United States of America, in discussing the option of proportionality. She suggested having a document which would reflect the three proposals on Article 24(4), namely the text as contained in the Basic Proposal, the proposal from the Delegation of the United States of America and the proposal from the Delegation of the Republic of Moldova. She believed that the Committee should be working on that last proposal.

402. Mr MARTIN (France) suggested that the financial tables prepared by the Secretariat in relation to the projections for funding contributions in class I be included in the document containing the three proposals, to help guide delegations' decision-making. The Delegation believed that these projections could reassure the delegations of Contracting Parties with only a few registrations, if they could see that there would be a minimal and reasonable annual contribution and that France would pay a major part of the contributions. While noting that the issue of proportionality had never existed in WIPO, the Delegation highlighted that it did not wish to become involved in this process.

403. The CHAIR asked the Secretariat whether it could provide a copy of the projections of possible contributions by Member States of the Lisbon Union based on the contribution classes.

404. Mr. MOLDOVAN (Republic of Moldova) asked whether the Secretariat could also provide a copy of the projections of possible contributions by Member States based on the number of international registrations.

405. The CHAIR observed that projections based on the existing number of international registrations would only reflect the current situation and would not, as such, give an idea of the future.

406. Mr. MOLDOVAN (Republic of Moldova) confirmed that his Delegation would still prefer to obtain these calculations.

407. The CHAIR asked the Secretariat to provide a calculation based on the contribution fees and another one based on the existing number of international registrations.

408. The CHAIR adjourned the meeting.



Sixth Meeting  
Tuesday, May 19, 2015  
Evening

409. The CHAIR referred to President Non-Paper No. 3 containing the consolidated text of the Administrative and Final Provisions, namely Articles 21 to 34, of the draft New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

#### Article 24

410. The CHAIR drew the attention of Main Committee II to Article 24(2). He underlined that, in Article 24(2)(i), the text “fees collected under Article 7(1) and (2)” had been kept and the text within square brackets had been deleted. He added that the provision of Article 24(2)(v) would read “special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly”.

411. Ms. PEROVIĆ (Montenegro) asked whether the square brackets at the end of item (v) would also be deleted.

412. Ms. HERNÁNDEZ NARVÁEZ (Mexico) acknowledged the enquiries and supported the wording recently presented by the CHAIR.

413. Ms. FERRITER (United States of America) sought clarification on the reasons for opting, under item (i), for the language “under Article 7(1) and (2)” rather than for “in respect of international registrations”. She believed that the latter was broader language, providing important flexibility in connection with the deletion of the reference to the maintenance fees and giving the possibility to the Lisbon Union in the future to have additional fees beyond those stated in Article 7(1) and (2).

414. Mr. MARTIN (France), in reply to the question asked by the Delegation of the United States of America, reported that his delegation had had an iterative process with different positions. He noted that the Delegation of Israel, which was a member of the Lisbon Union, had expressed its agreement with the proposal by the Delegations of Italy and of the Republic of Moldova. The Delegation considered the reference to Articles 7(1) and 7(2) to be more reassuring and added that, subparagraph (v) in general expressed openness to other funding sources.

415. The CHAIR turned to Article 24(4) and recalled that three alternatives were proposed: Alternative A reflected the text of the Basic Proposal, Alternative B was contained in the proposal from the Delegation of the United States of America and Alternative C had been proposed by the Delegation of the Republic of Moldova and reflected a combination of the Basic Proposal with the text proposed by the Delegation of the United States of America. The Chair noted that, in the last sentence of the text in Alternative C, the word “shall” had been replaced by “may”, so that the sentence would read: “The contribution may be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.”

416. Ms. FERRITER (United States of America) expressed her strong support for

Alternative B. She believed that the change in the last sentence of Alternative C basically eliminated that sentence, as it made it optional. Thus, a contribution unit system would remain providing that intergovernmental organizations, such as OAPI, would pay a Class I contribution, unless otherwise unanimously decided by the Assembly. The Delegate believed that Alternative B was much fairer and expressed the hope that members would support that option.

417. Mr. POLINER (Israel) expressed his Delegation's strong support for Alternative B, which was fairer, as it was proportion based. If Alternative C were to prevail, his Delegation would suggest to keep the words "shall be" and delete the word "partially", which appeared to be redundant, as the term "weighted" included the notion of partially.

418. Mr. MARTIN (France) recalled that Alternative C, with the replacement of the word "*shall*" by "*may*", was a point on which his Delegation and numerous other Member Delegations had worked very hard. The Delegation highlighted that this was not an option, contrary to what was said by the Delegation of the United States of America, but a new concept that posed huge problems for France, which had already expressed its concerns. The Delegation emphasized that Alternative C was the result of a compromise between those Delegations that had wanted to introduce this notion of proportionality. However, this compromise constituted the maximum to which the Delegation could commit.

419. The CHAIR drew the attention of the Committee to the estimates prepared by the Office of the Controller, based on an assumed deficit of 100,000 Swiss Francs, contribution classes and actual number of registrations. The Chair invited the Committee to consult the document and to find pragmatic solutions which would achieve a sustainable, balanced and self-sufficient Lisbon System.

420. Mr. SCHMIDLIN (Italy) expressed the view that Alternatives A and B reflected two extremes. Alternative A had shortcomings as it introduced a new concept. A pure proportional system could create a situation where a country, France for example, would have to bear half of the costs of the Lisbon Union, which was unfair. As Alternative C tried to create an intermediate solution, his Delegation invited Delegations to support it, with the "may" formulation. He underlined that Alternative C was a good compromise and a good starting point in establishing special contributions, given the fact that Article 24 could be revised in the future.

421. Ms. KIRIY (Russian Federation) recalled that she had originally opposed provisions based on contributions by Member States. However, in order to show flexibility, her Delegation expressed its support for Alternative C, in its mandatory mode. Considering that the version of Alternative C using the verb "shall" was the fairest one, she opposed replacing "shall" by "may".

422. Mr. FERREIRA (Chile) reported that after analyzing the different proposals, the Delegation of Chile considered Alternative B to be the most suitable for the interests of Chile as a developing country, as an alternative involving proportionality was what could eventually allow for a greater number of members, including developing countries.

423. Ms. CHARIKHI (Algeria) wondered whether and to what extent the calculations were indicative. Her Delegation supported Alternative C in its original version. In her view, both options, namely a class contribution and a proportionality contribution, should be available. The Assembly of the Lisbon Union would choose the option.

424. Mr. RAMALHEIRA (Portugal), with reference to the contributions calculated on the basis of proportionality and contribution classes, noted that Portugal would pay much more in

a system based on contribution classes. However, the Delegate considered that the best solution would be a system based on class contribution combined with elements of proportionality. He believed that that option would be an achievable compromise, as many Delegations had already expressed their support for it. In his view, that solution would enable the Lisbon Union Assembly to subsequently define the best solution for remedying its deficit. That would also ensure the longevity of the Lisbon System and encourage other countries to join.

425. Mr. KUMER (United Kingdom) wished to recognize the flexibility and efforts made by the Delegations of France and Italy. He expressed the preference of his Delegation for Alternative C, including the amendment proposed by the Delegations of France and Italy, which was, in its view, the fairest option.

426. Ms. JOHNSTON (MARQUES) believed that Alternative B, which referred to the relative number of registrations in the Lisbon System, could create some issues from a drafting perspective. While recognizing the flexibility shown by the Delegation of France, she expressed her support for Alternative C.

427. Ms. FERRITER (United States of America) expressed her strong disagreement to the idea that replacing “shall” by “may” would not significantly change the meaning of the last sentence. The Delegate wondered what the provision with “may” would mean and how the Secretariat would do the calculation. Besides, she shared the view of the Delegation of Israel on the term “partially” which did not seem to be necessary. In her opinion, Alternative B was clearer and easier to implement. The relative number of registrations her Delegation interpreted as registrations effected under the New Act.

428. Mr. KUMER (United Kingdom) wondered whether Rule 8 would be discussed by Main Committee II.

429. Mr. MARTIN (France) took the floor on Article 7(5).

430. The CHAIR, wishing to conclude the discussion on Article 24(4), answered that he would revert later to the question raised by the Delegation of the United Kingdom and the intervention made by the Delegation of France.

431. Mr. POLINER (Israel) considered that the proposal made by the Chair with regard to Alternative C, as presented in President Non-Paper No. 3, was the best solution.

432. Ms. FERRITER (United States of America) requested clarifications on the calculation model under Alternative C, in particular the amount of contributions calculated according to the first part of the sentence. She expressed her Delegation’s preference for keeping both Alternatives B and C in the text.

433. Mr. BERÁNEK (Czech Republic) expressed his Delegation’s preference for Alternative A based on a class contribution system. In his opinion, combining it with other systems, such as the proportionality system, would make the system depart from other WIPO unions. However, in a spirit of flexibility, his Delegation could support Alternative C.

434. Mr. MARTIN (France) believed the Delegation of France had taken the biggest step in accepting this new concept and Alternative C, replacing “shall” by “may” or even by “could be”. The Delegation indicated that as this concept was new, it should be defined, and the Secretariat’s help would be needed to this end. Nonetheless, it noted that despite the efforts made by the Delegation, some other delegations maintained their original position. The Delegation requested that the document contain the three alternatives, including

Alternative C as drafted by the fifteen Member States of the Lisbon Union, that is that it contain the word “*may*” instead of the word “*shall*”.

435. Mr. POLINER (Israel) wondered whether the verb “should be” from Alternative B could be used in the second sentence of Alternative C, in order to replace “shall” or “may”. That would allow the submission of only Alternative C to the Plenary.

436. Mr. MARTIN (France) noted that the Delegation of France was not alone in defending Alternative C containing the term “*may*” instead of “*shall*”, and that was why it was leaving it to the other delegations to express an opinion on this point.

437. The CHAIR observed that some Member Delegations had expressed their support for Alternative B, while others had supported Alternative C. He noted that Observer Delegations were also divided in supporting Alternative B or C. Therefore, the Chair proposed submitting to the Plenary Alternative B in square brackets, and Alternative C in square brackets, with the words “may” and “shall” in square brackets.

438. Ms. FERRITER (United States of America) recalled that her Delegation had asked a question about the operation of the last sentence of Alternative C. Her Delegation did not wish that the amount due according to the first sentence be magnified or weighted according to the number of registrations. Her Delegation had something different in mind. Supporters of Alternative C could consider alternative language, for example that the contribution could be divided in two parts, one part based upon the contribution unit and another part based upon the number of registrations.

439. The CHAIR said that, in his view, it would be for the Assembly of the Member States to decide the mechanism of calculation, whether to use one option or another and in which proportion. This could also depend on the amount of the deficit. Therefore, the text had better not indicate the exact mechanism of calculation.

440. Mr. MOLDOVAN (Republic of Moldova) asked which Delegations had expressed support for Alternative B.

441. The CHAIR recalled that the Delegations of Costa Rica, Cuba, Mexico and Nicaragua had expressed their support for Alternative B during the previous meeting of Main Committee II.

442. Mr. MARTIN (France) noted that, at the end of the last meeting of Main Commission II, progress had been made with regard to Alternative C and therefore invited delegations to outline their position once again.

443. Ms. HERNÁNDEZ NARVÁEZ (Mexico) clarified that during the preliminary discussions, it had spoken in favor of Alternative B, but underlined that in the interim, there had also been meetings with the CHAIR, and that based on these meetings her Delegation had understood that a consensus was swinging towards Alternative C. The Delegation indicated that in the spirit of flexibility and openness, it would be in favor of Alternative B, should this be the consensus.

444. Mr. LIZANO (Costa Rica) stated that, in the interest of achieving greater flexibility, it was also prepared to support Alternative C.

445. Ms. SÁNCHEZ TORRES (Cuba) also supported Alternative C.

446. Mr. MAYAUTE VARGAS (Peru) expressed his preference for Alternative C.

447. Mr. KLINKA (Slovakia) expressed the support of his Delegation for Alternative C.
448. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) also lent the support of his Delegation for Alternative C.
449. Ms. CHARIKHI (Algeria), recalling that her Delegation preferred Alternative C, believed that the best way to proceed was to focus on that alternative. She therefore suggested submitting to the Plenary the text of Alternative C containing all the words “shall”, “may”, “could be” or “should be” within square brackets.
450. Ms. PEROVIĆ (Montenegro) expressed the support of her Delegation for Alternative C.
451. Mr. RAMALHEIRA (Portugal) lent his Delegation’s support for Alternative C. His Delegation endorsed the proposal made by the Delegation of Algeria to submit to the Plenary the text of that alternative with all its variants. He felt that there was wide support from Member States of the Lisbon Agreement for that proposal.
452. Ms. DÍAZ MORENO (Nicaragua) stated that it could not yet make a statement about any of the alternatives proposed. The Delegation said that it had a clear overview because of the information provided by the finance division and reported that it had sent a statement to higher authorities to know their position, so it could then act accordingly.
453. Mr. GOGILIDZE (Georgia) expressed the preference of his Delegation for Alternative C.
454. The CHAIR concluded that the Committee agreed to submit Alternative C to the Plenary, with the words “shall” and “may” within square brackets. The Plenary would eventually take the final decision on the mandatory or optional character of the provision.

#### Rule 8: Fees

455. The CHAIR turned to Rule 8 and recalled that the Delegation of the United Kingdom had raised a question in that regard.
456. Mr. KUMER (United Kingdom) noted that, in the previous version of Rule 8, the amount of fees stood within square brackets, while, in the latest version, the square brackets had been removed. Referring to discussions as well as to the proposal of the Director General of WIPO to increase the registration fees, the Delegate observed that that had not been reflected in the latest version of Rule 8 and asked whether it was the final version.
457. Mr. HÖPPERGER (WIPO) recalled that it had been decided to include the current amount within the square brackets for purely indicative reasons. He confirmed that there was an ongoing discussion about the review of the fees currently applicable under the Lisbon Agreement, and that a document on that subject had been prepared and presented to the Assembly of the Lisbon Union in 2014. However, the Assembly had decided to wait for the outcome of the Diplomatic Conference before reverting to that proposal.
458. Mr. KUMER (United Kingdom) pointed out that at the 2015 Assembly the Lisbon Union would be invited to accept the proposal to update the fee schedule only as far as the Lisbon Agreement and the 1967 Act were concerned and therefore suggested that the amounts indicated in Rule 8 be taken out from the text for the time being.
459. The CHAIR pointed out that the fees were in the text for indicative purposes, so that

they could be taken out. The Chair recalled that Main Committee I had not yet discussed Rule 8.

460. Mr. KUMER (United Kingdom) agreed with the suggestion by the Chair to take out the amount of the fees from the text.

461. Ms. FERRITER (United States of America) concurred with the suggestion to remove the fees from the text. She believed that, under the New Act, the fees would be established by the Contracting Parties of the New Act and that there was no requirement for those fees to be the same as those under the existing Lisbon Agreement and the 1967 Act. All the more so, those Contracting Parties could be different and there was no reason to assume that they would necessarily be the same. The Delegate concluded that it could be helpful to not use the same fees as currently set under the Lisbon Agreement and to leave the amounts in Rule 8 blank.

462. Mr. HÖPPERGER (WIPO) confirmed that the indication of the amount of the fees was of a theoretical nature. The Assembly would determine the amount of the fees when the treaty would enter into force.

463. The CHAIR proposed therefore that the amount of the fees be taken out from the text, while observing that a decision on this should be taken by Main Committee I.

464. Mr. FICSOR (Hungary), while recalling that Main Committee I had agreed to include the current amount of fees on the understanding that they would be reviewed upon entry into force of the New Act and depending on any changes to the Fee Schedule that might be decided by the Assembly. He believed that, independently of the decision either to include the current figures with that understanding or to use three dots within square brackets, the Assembly would have to revisit the issue upon entry to force in the New Act.

465. The CHAIR requested the Secretariat to prepare the document to be submitted to the Plenary on the basis of a text for Rule 8(1) showing three dots within square brackets instead of the amount of fees.

#### Article 7: Fees

466. The CHAIR moved to Article 7 and invited the Delegation of France to take the floor.

467. Mr. MARTIN (France), in reference to Article 7(5)(a) on individual fees and after having worked together with other delegations, suggested the following amendment to the last sentence: *“Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires administrative fees relating to the use by the beneficiaries of the appellation of origin or geographical indication in that Contracting Party”*.

468. The CHAIR, noting that the subject matter of the proposal concerned the competence of Main Committee I, proposed to the Delegation of France to raise the issue in the next meeting of Main Committee I.

469. The CHAIR suggested submitting the text of Articles 21 to 34, in accordance with the outcome of the discussions, to the Plenary for consideration. In the absence of comments, he concluded that it was so decided. He thanked all Delegations for their constructive support and collaboration.

470. The CHAIR adjourned the meeting.

Seventh Meeting  
Wednesday, May 20, 2015  
Afternoon

471. The CHAIR announced that the Committee was holding its final meeting. He understood that Main Committee I had worked well and hoped that the same spirit would continue to be shown in Main Committee II. He suggested that the Committee consider the entirety of Chapters V to VII, from Article 21 to Article 34. As regard the square brackets in Article 24(4), he had been informed by several Delegations that they had agreed that, in the last sentence of the provision, the word “shall” should be retained, so that it would read: “The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.” Further, Article 29(4), the square brackets relating to Article 17 could be removed.

472. Mr. TOČÍK (Czech Republic) recalled that his Delegation had expressed support for the text of Article 24(4) as contained in the Basic Proposal and was not in favor of any prescriptive language concerning proportionality. Proportionality was not necessarily a fair and equitable concept. On the contrary, as there were no variable costs directly linked to maintaining the Lisbon System in relation to the number of registrations. Moreover, proportionality could discourage new registrations, including from developing countries, which would have to bear additional costs for maintaining the system and might not find the system to be sufficiently attractive for them. He also pointed out that proportionality was a new foreign element introduced into a WIPO system that had not been sufficiently discussed. Before binding the Assembly on this issue, an analysis of the current fixed and variable costs associated with maintaining the system should be prepared and properly considered. However, for the sake of an emerging consensus on the alternative proposed by the Delegation of the Republic of Moldova, his Delegation would not insist on the original text of the Basic Proposal, although with reluctance. His Delegation would have preferred a text not binding the Assembly as regard the proportionality concept. However, as it did not wish to oppose the final compromise, his Delegation lent support to its submission to the Plenary.

473. Mr. MARTIN (France) stated that the Delegation of France associated itself with the statement made by the Delegation of the Czech Republic and emphasized, in particular, the importance of the responsibility of the Lisbon Union to ensure that the funding system to be implemented served as an incentive. For that reason, the proportionality issue was designed so that weighting would be partial, so as not to dissuade potential applicants from registering future geographical indications or appellations of origin. The Delegation announced that this issue would be taken into consideration during the next sessions of the Lisbon Union Assembly. It agreed with the adoption by Main Committee II of the text proposed and its submission to the Plenary.

474. Mr. GOGILIDZE (Georgia) said that his Delegation supported the submission of the text to the Plenary.

475. Ms. HERNÁNDEZ NARVÁEZ (Mexico) endorsed the submission of the proposals to the Plenary, including the reference to Article 24 in Paragraph 4. The Delegation added that it would join the consensus on the text chosen but that it still remain between brackets.

476. Mr. OKIO (Democratic Republic of the Congo) congratulated the CHAIR for his work and stated that he was in favor of the transmission of the text to the Plenary of the diplomatic conference.

477. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) said that his Delegation welcomed the consensus and fully supported the text.

478. Ms. PEROVIĆ (Montenegro) supported the submission of the text to the Plenary for adoption.

479. Mr. SCHMIDLIN (Italy) also supported the transmission of the text to the Plenary for adoption.

480. Ms. VIEIRA LOPES (Portugal) said that her Delegation was in favor of sending the text to the Plenary for adoption.

481. Mr. MOLDOVAN (Republic of Moldova) supported the transmission of the text to the Plenary for adoption.

482. Ms. YOUSFI (Tunisia) stated that she was in favor of the submission of the text to the Plenary for adoption.

483. Mr. MAYAUTE VARGAS (Peru) supported the formal adoption of the text in the Plenary.

484. Mr. FICSOR (Hungary) was in favor of the decision to recommend the articles in question to the Plenary for adoption.

485. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) said that her Delegation supported the submission of the document to the Plenary for adoption.

486. Ms. CHAKHIRI (Algeria) congratulated the CHAIR for his efforts and stated that the Delegation of Algeria was in favour of the transmission of the text to the Plenary.

487. Ms. DÍAZ MORENO (Nicaragua) also wished to endorse the submission of the draft document to the Plenary.

488. Mr. MELÉNDEZ GARCÍA (Costa Rica) supported the text as proposed in the Plenary.

489. Ms. SAGBO (Togo) congratulated the CHAIR for his efforts and stated that the Delegation of Togo favored the submission of the text to the Plenary for adoption.

490. Mr. POLINER (Israel) stated that his Delegation also supported the submission of the document to the Plenary.

491. Ms. RODRÍGUEZ CAMEJO (Cuba) supported the submission of the text to the Plenary for approval.

492. Mr. KLINKA (Slovakia) supported the transmission of the proposed text to the Plenary for adoption.

493. Ms. ARGIROVA (Bulgaria) indicated that her Delegation also supported the submission of the text to the Plenary.

494. Ms. ILBOUDOU (Burkina Faso) agreed with the submission of the text to the Plenary for adoption.

495. Ms. LU (China), referring to Article 27(3), sought clarification on the wording “in



accordance with their respective constitutional processes”. She believed that some improvement of the Chinese version of the document would be needed.

496. Mr. KWAKWA (WIPO) confirmed that the language used in Article 27(3) was identical to that in the WIPO Convention and the reference to constitutional processes was a reference to the various domestic processes in the different countries. He said that this provision could be interpreted as “according to the domestic system of the country in question”. He believed that the Chinese text would reflect the same.

497. Ms. LU (China) said that the interpretation of Article 27(3) was acceptable if the English text referred to the domestic legal process.

498. The CHAIR confirmed the interpretation provided by the Secretariat which would improve the Chinese translation in order to reflect exactly the English text.

499. Ms. COTTON (United States of America) said that her Delegation did not support the recommendation of Main Committee II to submit the texts contained in documents LI/DC/14 and 15 to the Plenary. She considered that those texts did not reflect a commitment of the Lisbon Union to financial sustainability. She observed that, during the Conference, her Delegation had learned that the unitary contribution system was used for WIPO programs which were not registration systems. For registration systems, registration fees collected were generally used to sustain those systems. Even when those registration systems ran a deficit, as in the case of the Hague Union with regard to the IT modernization, Member States had agreed to pay back to other unions from which they had borrowed. This was not the case with the Lisbon Union. The Delegate observed that the Lisbon Union had run a deficit for years, but there had been no fee increases for twenty years and no contributions, which were required under the current Lisbon Agreement, had been paid. She stressed that her Delegation had found out that the deficit had been funded by fees, mainly from the PCT and Madrid systems. For her Delegation, this situation was particularly painful as the Lisbon System potentially had negative effects on trademark holders using the Madrid System. The Delegate further pointed out that, in the texts, there was no specific agreement on maintenance fees. Although the texts contained some references to contributions, many of the decisions were left to the Assembly. Moreover, Article 24 could be amended by the Assembly by a three-quarters majority. Many of the financial decisions were shifted to the Assembly in the name of flexibility. However, there was self-interest in not achieving financial sustainability within the Assembly, as had been seen in the past. The Delegate concluded by saying that the texts did not provide the comfort that her Delegation needed to support a recommendation to the Plenary.

500. Ms. MOORE (Australia) informed the Committee that her Delegation shared the concerns expressed by the Delegation of the United States of America. Her Delegation was of the view that the financial provisions in the draft text would continue to create challenges and uncertainty for the future financial sustainability of the Lisbon System. For these reasons, her Delegation could not lend its support to the texts.

501. Mr. KIM (Republic of Korea) said that his Delegation endorsed the statements made by the Delegations of the United States of America and Australia. In addition, he recalled that his Delegation had expressed its reservation in respect of Article 29(2).

502. The CHAIR concluded that there was no consensus, but there was support expressed by the majority of the Delegations present in Main Committee II to submit the text to the Plenary.

503. He thanked all Delegations for their support and flexibility and closed the meeting.