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BUREAUX INTERNATIONAUX  
RÉUNIS POUR LA PROTECTION  
DE LA PROPRIÉTÉ INTELLECTUELLE  
GENÈVE, SUISSE

# BIRPI

UNITED INTERNATIONAL  
BUREAUX FOR THE PROTECTION  
OF INTELLECTUAL PROPERTY  
GENEVA, SWITZERLAND

COMITE DE COORDINATION INTERUNIONS, QUATRIEME SESSION  
INTERUNION COORDINATION COMMITTEE, FOURTH SESSION

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(Geneva, September 26 to 29, 1966)

TECHNICAL AND ADMINISTRATIVE COOPERATION  
BETWEEN THE UNION FOR THE PROTECTION OF  
NEW VARIETIES OF PLANTS AND THE OTHER UNIONS  
ADMINISTERED BY BIRPI

Background

(1) The Convention for the Protection of New Varieties of Plants was signed at Paris on December 2, 1961. Extracts of the text of this Convention (hereinafter referred to as the "Plant Convention") are annexed to the present report.

(2) The Plant Convention was signed by the following 8 States: Belgium, Denmark, France, the Federal Republic of Germany, Italy, the Netherlands, Switzerland, and the United Kingdom of Great Britain and Northern Ireland. The Convention will enter into force 30 days after the deposit of the third instrument of ratification. Up to the present time (June 30, 1966), only one State, the United Kingdom, has deposited an instrument of ratification.

(3) It is expected that further ratifications will be effected and that the Convention might enter into force in the course of 1967.

(4) In view of this expectation, representatives of the eight signatory States held an informal meeting at London on February 26, 1965, under the chairmanship of Mr. L.J. Smith (United Kingdom). BIRPI was represented by an observer.

(5) The meeting appointed a Working Party of three-- Mr. L.J. Smith, Chairman (United Kingdom), Mr. B. Laclavière (France), Mr. J.E. van Leeuwen (Netherlands)-- for the purpose of making proposals concerning the administrative consequences of the entry into force of the Convention. The Working Party was asked to seek the collaboration of the Swiss Government and BIRPI in its task.

(6) It is to be noted in this connection that, among other things, the Convention provides:

- (i) that the seat of the Plant Union and its permanent organs shall be at Geneva (Article 1(3));
- (ii) that the permanent organs of the Plant Union shall be the Council (consisting of representatives of the Member States of the Plant Union (Article 16(1)), and a general secretariat, entitled the Office (Bureau, in French) of the International Union for the Protection of New Varieties of Plants (Article 15);
- (iii) that the Office shall be under the high authority of the Swiss Confederation (Article 15) (as is BIRPI);
- (iv) that the Office shall be headed by a Secretary-General and that he and the officials of senior grade shall be appointed, on a proposal of the Council, by the Government of the Swiss Confederation (Article 23);
- (v) that the terms of these appointments shall be fixed by the Government of the Swiss Confederation (Article 23);
- (vi) that the procedures (modalités, in French) for technical and administrative cooperation between the Plant Union and the Unions administered by BIRPI shall be determined by rules (un règlement, in French) established by the Government of the Swiss Confederation in agreement with the Unions concerned (Article 25);

- (vii) that the Plant Union Office shall use the English, French and German languages (Article 28) (BIRPI only uses English and French).
- (7) During the period between the February 1965 London meeting and the establishment of the present report (June 1966) several exchanges of views took place between BIRPI and the Working Group set up in London, and between that Working Group and the Swiss Government.
- (8) Since the Working Group holds no official mandate from the signatory States, these exchanges of views had an exploratory and unofficial character.
- (9) The two alternative plans for administrative cooperation outlined in the present paper reflect the present views of the Director of BIRPI. Although they were thoroughly discussed with the informal Working Group of the signatory States of the Plant Convention, and although the Swiss Government was informed about these views, they were endorsed by neither. It is believed that the Working Group intends to make a report to another informal meeting of the signatory States scheduled for after the 1966 session of the Interunion Coordination Committee of BIRPI.
- (10) The two alternative plans are submitted herewith for consideration and advice by the Interunion Coordination Committee. Such advice would be of valuable assistance to the Swiss Government and BIRPI in further discussions with representatives of signatory States.
- Two plans for cooperation under the terms of Article 25 of the Plant Convention
- (11) Two, mutually exclusive, plans for technical and administrative cooperation are outlined in this report: Plan A, entitled "Integrated Common Services," would achieve a much closer cooperation than Plan B, entitled "BIRPI as Advisor."
- (12) The essence of Plan A is that whereas all questions relating to the substance of the Plant Convention would be dealt with by a special unit, tentatively called the Plant Varieties Department, whose senior officers would be employees of the Plant Union only (and not of BIRPI), the financial, personnel, conference, publication, and other administrative services would be furnished by BIRPI proper. The Head of the

Plant Union Department would be a specialist of plant protection questions, selected by the Council of the Plant Union, although appointed by the Swiss Government. He would have the title of Assistant Secretary-General of the Plant Union, whereas the Secretary-General would be the person who is the Director of BIRPI. The Assistant Secretary-General would be independent from the Secretary-General to the extent that he could go "over the head" of the Secretary-General to the Council when he disagreed with the Secretary-General. Finances would be kept strictly separate, as is the case today for the Paris, Berne, Nice, Madrid, and The Hague Unions.

(13) The Director of BIRPI considers it as a conditio sine qua non of this type of close cooperation that the offices of the Secretary-General of the Plant Union and of the Director of BIRPI be held by one and the same person. Otherwise, the administrative services of BIRPI would have two heads with equal rights, an administratively inadmissible situation as it would be liable to undermine both discipline and efficiency. Naturally, the Secretary-General would, in Plant Union matters, be under the instructions of the Council. Should the Council require acts incompatible with the Secretary-General's position as Director of BIRPI, or should a person other than the Director of BIRPI be appointed Secretary-General of the Plant Union, the Plan A type of cooperation would have to be terminated.

(14) Plan B provides for no common services for the Plant Union and the other Unions now administered by BIRPI. It merely provides that officers of BIRPI would put their experience, in the form of advice, at the disposal of a wholly separate Plant Union Office in the stage of setting up such a Secretariat.

(15) The Director of BIRPI is of the opinion that whatever might have been in the mind of the drafters of the Plant Convention, in the present situation, in which BIRPI's tasks are considerably and constantly growing and signs of understaffing are becoming more and more evident, BIRPI as such would lose little, if anything, if Plan A were not adopted. On the other hand, he is of the opinion that Plan A would serve incomparably better the interests of the Plant Union and its Member States than Plan B for the following two main reasons:

- (a) integrated common services would result in substantial savings in money for the Member States;

(b) the experience and know-how of BIRPI in setting up and running international administrations would save the Plant Union many difficulties, possibly some errors, and would enhance the probabilities of a rapid and efficient setting up of administrative machinery for this new Union.

(16) The Director of BIRPI is also of the opinion that, even if Plan A is adopted, it will not necessarily have to last ad infinitum. Experience will show whether its maintenance is desirable. The possibility of terminating the cooperation envisaged under it should be kept open: should the burden prove to be excessive for BIRPI, should the members of the Plant Union feel that BIRPI hampers them in their freedom of action, should insuperable divergences of opinion arise between the Director-Secretary-General and the Council of the Plant Union or the Assistant Secretary-General, nothing should prevent severing all relations between BIRPI and the Plant Union.

(17) The outlines of the two plans--A and B--are the following:

PLAN A: INTEGRATED COMMON SERVICES

1. Administrative Structure

1.1 The following services ("common services") of BIRPI would work for the Plant Union as well as for the Industrial Property and Copyright Unions:

the Director and his staff ("La Direction"),

the Financial and Personnel Service,

the "Chancellerie" (typing pool, registry of mail, documents, etc.),

the Publications Service (printing, distribution and sale),

the Conference and Translation Services,

the Building Maintenance Service.

1.2 The following Services of BIRPI would not play any role in the administration of the Plant Union:

the Industrial Property Division,  
the Industrial Property Registration Services,  
the Copyright Division.

1.3 The Plant Union would have a separate unit, tentatively called "the Plant Varieties Department," headed by the Assistant Secretary-General of the Plant Union, and consisting of a staff which would deal exclusively with questions of interest to the Plant Union. The staff of this Department would not be BIRPI staff members. Their sole employer would be the Plant Union.

1.4 The Secretary-General of the Office of the Plant Union would be the person who is the Director of BIRPI.

## 2. Responsibilities and Rights

### 2.1 The Secretary-General would:

- (a) receive instructions from, report to, and be responsible to, the Council of the Plant Union (hereinafter "Council");
- (b) be responsible for the conduct of diplomatic relations (Member States, other organizations) in conformity with the instructions of the Council;
- (c) coordinate the work of the common services, ensuring that the needs of the Plant Union be satisfied strictly on a basis of equality with the needs of the Industrial Property and Copyright Unions.

2.2 The common services would provide for the needs of the Plant Union in the following fields: conferences (translation and reproduction of documents, interpretation, recording, minute writing); financial and personnel administration (internal control, receiving and disbursing, payroll, pension fund, sickness insurance, etc.); mail (typing, registration, mailing); office space (as far as one can foresee, the Plant Varieties Department in the BIRPI Building too) and equipment (purchase, maintenance, cleaning, heating, light, etc.); printing (relations with printers) and publication (distribution, sale, etc.); travel (purchase of tickets, etc.).

2.3 (a) The Plant Varieties Department would be responsible for all questions relating to the substance of the Plant Convention and for all activity concerning international cooperation in the field of protection of plant varieties. In particular, the Plant Department would:

- prepare reports and working papers,
- prepare publications,
- prepare meetings,
- prepare programs,
- establish services,

in the field of plant protection and according to the directives of the Council.

(b) The Assistant Secretary-General would have the right:

- (i) to be present at any meeting of the Council (i.e., the Secretary-General may not exclude him from such meetings);
- (ii) to report directly (i.e., without the approval, or notwithstanding the opposition, of the Secretary-General) to the Council whenever he disagrees with any act, plan, or proposal, of the Secretary-General.

(c) The Plant Varieties Department would conduct its correspondence, issue its documents, and print its publications, under a heading referring to the Plant Union (and not necessarily also to BIRPI).

(d) In matters concerning exclusively the Plant Union, the Secretary-General would conduct correspondence as such (and not as, or also as, Director of BIRPI).

### 3. Finances

3.1 (a) The Plant Union would have a separate budget showing its proper expenses and its participation in the common expenses. The latter would be computed according to the following two main principles:

- (i) any expense of exclusive interest to the Plant Union would be borne by the budget of that Union (e.g., salaries of the staff of the Plant Varieties Department, travel by such staff, conferences and publications of the Plant Union);
- (ii) any expense of common interest to the Plant Union and one or more other Unions would be apportioned, in proportion to the relative interest of each of them, among the interested Unions (generally, salaries and other expenses of the common services).

(b) The details of assessing the expenses would be worked out and approved in advance by the Council, the Swiss Government, and the competent organs of BIRPI.

### 4. Staff Questions

4.1 The Assistant Secretary-General and any staff member of the Plant Varieties Department in categories P/4 and above would be appointed, on a proposal of the Council, by the Government of the Swiss Confederation, after consultation with the Secretary-General.

4.2 Staff members of the Plant Varieties Department in categories P/3 and below would be appointed by the Secretary-General after consultation with the Assistant Secretary-General.

4.3 The classification of the posts in the Plant Varieties Department would be determined by the Government of the Swiss Confederation according to the norms of the BIRPI-UN common system. The post of the Assistant Secretary-General would be classified as D/1.

4.4 Members of the Plant Varieties Department would be admitted to the BIRPI Pension Fund and the BIRPI sickness insurance scheme.



4.5 Administrative, financial, and staff regulations, applicable to the Plant Union and the Plant Varieties Department, would be in harmony with the comparable regulations of BIRPI.

PLAN B: BIRPI AS ADVISOR

The Plant Union would set up a Secretariat of its own without any common services with the Unions now administered by BIRPI.

Officers of BIRPI would, their time permitting, assist the Plant Union Secretariat with their advice as to the establishment of their services.

(18) The Interunion  
Coordination Committee  
is requested to express  
its opinion on the  
above questions.

CONVENTION OF PARIS FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

December 2, 1961

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= E X T R A C T S =

Article 1

(1) The purpose of the present Convention is to recognise and to secure to the breeder of a new plant variety, or to his successor in title, a right the content and the mode of exercise of which are defined hereafter.

(2) The States parties to the present Convention, hereinafter referred to as Member States of the Union, constitute a Union for the Protection of New Plant Varieties.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 15

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the general secretariat, entitled the Office of the International Union for the Protection of New Varieties of Plants. The Office shall be under the high authority of the Swiss Confederation.

Article 16

(1) The Council shall consist of representatives of the Member States of the Union. Each Member State of the Union shall appoint one representative to the Council and an alternate.

(2) Representatives and alternates may be accompanied by assistants and advisers.

(3) Each Member State of the Union shall have one vote in the Council.

Article 17

(1) States which have signed but not yet ratified the present Convention shall be invited as observers to meetings of the Council. Their representatives shall be entitled to speak in an advisory capacity.

(2) Other observers and experts may also be invited to such meetings.

Article 18

(1) The Council shall elect from among its members a President and a first Vice-President. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

Article 19

(1) Meetings of the Council shall be convened by its President.

(2) A regular meeting of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it within a period of three months if a third of the Member States of the Union so request.

Article 20

(1) The Council shall adopt its rules of procedure.

(2) The Council shall adopt the administrative and financial regulations of the Union, after having consulted the Government of the Swiss Confederation. The Government of the Swiss Confederation shall be responsible for ensuring that the regulations are carried out.

(3) A majority of three-quarters of the Member States of the Union shall be required for the adoption of such regulations and any amendments to them.

Article 21

The tasks of the Council shall be the following:

- (a) to study measures to safeguard the interests of and to encourage the development of the Union;
- (b) to examine the annual report of the activities of the Union and adopt the programme of future work of the Union;
- (c) to give the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national authorities;
- (d) to examine and approve the budget of the Union and fix the contribution of each Member State of the Union in accordance with the provisions of Article 26;
- (e) to examine and approve the accounts presented by the Secretary-General;
- (f) to fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) to make proposals to the Government of the Swiss Confederation concerning the appointment of the Secretary-General and the officials of the senior grade;
- (h) generally, to take all decisions necessary to assure the efficient functioning of the Union.

Article 22

Decisions of the Council shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, and for the vote on the budget and the fixing of the contributions of each Member State. In these last two cases, the majority required shall be three-quarters of the members present.

Article 23

(1) The Office of the Union shall have the task of carrying out all the missions and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) The Secretary-General and the officials of the senior grade shall be appointed, on a proposal of the Council, by the Government of the Swiss Confederation which shall determine the terms of their appointment.

The terms of service and the remuneration of other grades in the Office of the Union shall be determined by the administrative and financial regulations.

Article 24

The Government of the Swiss Confederation shall watch over the expenditure and accounts of the Office of the International Union for the Protection of New Varieties of Plants. It shall present to the Council an annual report on its supervisory function.

Article 25

The procedures for technical and administrative co-operation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property shall be determined by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned.

Article 26

- (1) The expenses of the Union shall be met:
- (a) from annual contributions of Member States of the Union;
  - (b) from payments received for services rendered;
  - (c) from miscellaneous receipts.
- (2) For the purpose of determining the amount of their annual contribution, the Member States of the Union shall be divided into three classes:

First class .....five units  
Second class .....three units  
Third class .....one unit

Each Member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of Member States by the total number of units.

(4) Each Member State of the Union shall indicate, on joining the Union, the class in which it wishes to be placed. Any Member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

Such declaration must be made at least six months before the end of the financial year preceding that in which the change of class is to take effect.

Article 27

(1) The present Convention shall be reviewed periodically with a view to the introduction of amendments designed to improve the working of the Union.

(2) For this purpose, Conferences shall be held every five years, unless the Council, by a majority of five-sixths of the members present, considers that the convening of such a Conference should be advanced or delayed.

(3) A Conference shall not be deemed to be validly constituted unless at least half of the Member States of the Union are represented at it.

A majority of five-sixths of the Member States of the Union represented at the Conference shall be required for adoption of a revised text of the Convention.

(4) The revised text shall enter into force, in respect of Member States of the Union which have ratified it, when it has been ratified by five-sixths of the Member States of the Union. It shall enter into force thirty days after the deposit of the last instrument of ratification. If, however, a majority of five-sixths of the Member States of the Union represented at the Conference considers that the revised text includes amendments of such a kind as to exclude the possibility, for Member States of the Union which do not ratify the revised text, of remaining bound by the former text in respect of the other Member States of the Union, the revised text shall enter into force two years after the deposit of the last instrument of ratification. In such case, the former text shall, from the date of such entry into force, cease to bind the States which have ratified the revised text.

#### Article 28

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its tasks.

(2) Meetings of the Council and revision Conferences shall be held in the three languages.

(3) If the need arises, the Council may decide, by a majority of three-quarters of the members present, that further languages shall be used.

#### Article 29

Member States of the Union reserve the right to conclude among themselves special arrangements for the protection of new plant varieties, in so far as such arrangements do not contravene the provisions of the present Convention.

Member States of the Union which have not taken part in making such arrangements shall be allowed to accede to them on demand.

#### Article 30

(1) Each Member State of the Union undertakes to adopt all measures necessary for the application of the present Convention.

In particular, each Member State undertakes:

- (a) to assure to nationals of the other Member States of the Union appropriate legal remedies for the effective defence of the rights provided for in the present Convention;
- (b) to establish a special authority for the protection of new plant varieties or to entrust their protection to an existing authority;
- (c) to ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection granted.

(2) Special agreements may also be concluded among Member States of the Union, with a view to the joint utilisation of authorities entrusted with the examination of new varieties, in accordance with the provisions of Article 7, and with assembling the necessary reference collections and documents.

(3) It is understood that on depositing its instrument of ratification or accession, each Member State must be in a position, under its own domestic law, to give effect to the provisions of the present Convention.

#### Article 31

(1) The present Convention shall be open for signature until December 2, 1962, by States represented at the Paris Conference for the Protection of New Varieties of Plants.

(2) The present Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the French Republic, which shall notify such deposit to the other signatory States.



(3) When the Convention has been ratified by three States, it shall enter into force in respect of those States thirty days after the deposit of the third instrument of ratification. It shall enter into force in respect of each State which ratifies thereafter, thirty days after the deposit of its instrument of ratification.

#### Article 32

(1) The present Convention shall be open to accession by non-signatory States in accordance with the provisions of paragraphs (3) and (4) of this Article.

(2) Requests for accession shall be addressed to the Government of the Swiss Confederation, which shall notify them to the Member States of the Union.

(3) Requests for accession shall be considered by the Council which shall have particular regard to the provisions of Article 30.

Having regard to the nature of the decision to be taken and to the difference in the rule laid down for the revision Conferences, accession of a non-signatory State shall be accepted if a majority of four-fifths of the members present vote in favour of it.

Three-quarters of the Member States of the Union must be represented when the vote is taken.

(4) In the case of a favourable decision, the instrument of accession shall be deposited with the Government of the Swiss Confederation which shall notify the Member States of the Union of such deposit.

Accession shall take effect thirty days after the deposit of such instrument.

#### Article 33

(1) When ratifying the Convention, in the case of a signatory State, or when submitting a request for accession, in the case of any other State, each State shall give, in the first case to the Government of the

French Republic and in the second case to the Government of the Swiss Confederation, the list of genera or species in respect of which it undertakes to apply the provisions of the Convention in accordance with the requirements of Article 4. In addition, it shall specify, in the case of genera or species referred to in paragraph (4) of that Article, whether it intends to avail itself of the right of limitation available under that provision.

(2) Each Member State of the Union which subsequently decides to apply the provisions of the Convention to other genera or species shall send the same information as is required under paragraph (1) of the present Article to the Government of the Swiss Confederation and to the Office of the Union, at least thirty days before its decision takes effect.

(3) The Government of the French Republic or the Government of the Swiss Confederation, as the case may be, shall communicate to all the Member States of the Union the information referred to in paragraphs (1) and (2) of the present Article.