

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

BIRPI

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BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENEVA, SWITZERLAND

COMITÉ DE COORDINATION INTERUNIONS, CINQUIÈME SESSION INTERUNION COORDINATION COMMITTEE, FIFTH SESSION

(Genève, 18-21 décembre 1967)
(Geneva, December 18 to 21, 1967)

MATTERS CONCERNING THE CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

REPORT OF THE DIRECTOR OF BIRPI

1. The Interunion Coordination Committee, in its Fourth Session held in September 1966, considered a report by the Director of BIRPI on the question of possible future relations between the existing Unions administered by BIRPI and the future Union for the Protection of New Varieties of Plants (hereinafter referred to as "the Plant Union"). A copy of that report (BIRPI document CCIU/IV/7) is attached to the present document.

2. Subject to the Netherlands Delegation reserving its position, the Interunion Coordination Committee agreed, on September 28, 1966, on the following principles and procedure:

"(a) The autonomy of the Plant Union must be entirely preserved as far as all matters concerning the protection of new varieties of plants are concerned.

"(b) The administration of the Plant Union---unless completely separate---should be under one direction, namely that of BIRPI, as the Director of BIRPI must remain master in his own house.

"(c) Should the Director of BIRPI wish to be assisted by provisional advice before the next meeting of the Interunion Coordination Committee, he will convene a group consisting of representatives of Germany (Federal Republic), Switzerland, the Soviet Union, the United Kingdom, and the United State of America.

"(d) If final decisions have to be reached before the next Ordinary Session of the Interunion Coordination Committee, scheduled for December 1967, an Extraordinary Session of that Committee will be convened before the Director of BIRPI accepts any final arrangement." (BIRPI document CCIU/IV/13, paragraph 16).

3. The Director of BIRPI convened the Advisory Group and submitted to it a report (BIRPI document NV/IV/1), copy of which is attached to the present document.

4. The Advisory Group met at Geneva on October 7, 1967. In addition to its five members--Federal Republic of Germany, Switzerland, Soviet Union, United Kingdom, United States of America--representatives of the following countries participated as observers: Belgium, France, India, Netherlands.

5. (a) The members of the Advisory Group and the observers from Belgium, France, and the Netherlands, were of the opinion that "Plan A" outlined in BIRPI document CCIU/IV/7, pages 5 to 9, seemed to be acceptable, at least for an initial period, from the viewpoint of the Unions presently administered by BIRPI, although in some respects "Plan A" did not go far enough in integrating, administratively, the Plant Union into BIRPI. The need for having as Secretary General of the Plant Union the same person as the Director of BIRPI was unanimously recognized. Closer administrative integration would probably become necessary when the World Intellectual Property Organization started functioning and the International Bureau would be bound by the provisions of the Convention establishing the World Organization.

(b) The Observer of India did not express any opinion.

(c) The opinions expressed were declared to be tentative since the representatives had not yet received formal instructions from their Governments.

(d) The report of the Advisory Group (BIRPI document NV/IV/3) is attached to the present document.

6. The Director of BIRPI, after having heard the opinion of the Advisory Group, is still prepared to recommend to the Swiss Government, as Supervisory Authority both of BIRPI and of the Plant Union, that the matter of administrative and technical cooperation between the Union for the Protection of New Varieties of Plants and the other Unions administered by BIRPI be regulated according to the principles laid down in "Plan A," provided such regulation is limited in time so that, in the light of experience and the new legal situation which will arise with the entry into force of the WIPO Convention, it can be revised. He recommends that regulation be made effective for three years, expiring at the end of 1970.

7. In view of the observations made in the Advisory Group to the effect that the administrative integration did not go far enough and the possibility that persons employed by the Plant Union might not be admitted to the BIRPI Pension Fund, the Director of BIRPI would be prepared to modify "Plan A" to the extent that BIRPI, rather than the Plant Union, would be the employer of the staff of the Plant Varieties Department. Such a solution would establish equality of treatment among all the Unions and would automatically extend the benefits of the BIRPI Staff Rules and Regulations and the BIRPI Pension Fund to persons working exclusively for the Plant Union. Such an arrangement would in no way affect the independence (described in "Plan A," paragraph 2.3) of the Assistant Secretary General of the Plant Union and the other members of the Plant Varieties Department.

8. The Interunion Coordination Committee is invited to express its opinion on the conditions under which BIRPI could assume the task of technical and administrative cooperation with the Plant Union. In particular, advice is sought on:

- (i) the general acceptability of "Plan A,"
- (ii) the question whether the staff of the Plant Varieties Department should be employees of BIRPI,
- (iii) the length of the period of any initial arrangement.

Enclosures:

BIRPI document CCIU/IV/7 (contains "Plan A")
Annex (Provisions from the Plant Convention)

BIRPI document NV/IV/1
Plant Union Working Party document PC/27
Plant Union Working Party document PC/32

BIRPI document NV/IV/3

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

(Genève, 26-29 septembre 1966)

(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

= 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 classfive units
Second classthree units
Third classone 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.

ADVISORY GROUP
ON
MATTERS CONCERNING THE PLANT CONVENTION

REPORT OF THE DIRECTOR OF BIRPI

1. The Interunion Coordination Committee, in its Fourth Session held in September 1966, considered a report by the Director of BIRPI on the question of possible future relations between the existing Unions administered by BIRPI and the future Union for the Protection of New Varieties of Plants (hereinafter referred to as "the Plant Union"). A copy of that report (BIRPI document CCIU/IV/7) is attached to the present document.

2. Subject to the Netherlands Delegation reserving its position, the Interunion Coordination Committee agreed, on September 28, 1966, on the following principles and procedure:

- "(a) The autonomy of the Plant Union must be entirely preserved as far as all matters concerning the protection of new varieties of plants are concerned.
- "(b) The administration of the Plant Union--unless completely separate--should be under one direction, namely that of BIRPI, as the Director of BIRPI must remain master in his own house.
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"(d) If final decisions have to be reached before the next Ordinary Session of the Interunion Coordination Committee, scheduled for December 1967, an Extraordinary Session of that Committee will be convened before the Director of BIRPI accepts any final arrangement." (Document CCIU/IV/13, paragraph 16).

3. Eight months later, Mr. L.J. Smith, Controller, The Plant Variety Rights Office, London, informed the Director of BIRPI that the Preparatory Working Party, set up by an unofficial meeting of the eight signatory States of the Plant Convention, had considered the matter and, on May 25, 1967, communicated to him a document entitled "Revised Proposals of the Preparatory Working Party of the Plant Union" (P.C.27(2nd revised), copy of which is attached to ./.

4. Mr. Smith visited the Director of BIRPI on June 5, 1967, and thereafter prepared a report to the Preparatory Working Party on his discussions with the Director (document P.C.32, copy attached). In transmitting a copy of that report to the Director for his information with a letter dated July 25, 1967, Mr. Smith wrote that he was sorry that the Director was unable, in the discussions which they had had on June 5, 1967, "to respond to the Preparatory Working Party's attempts to find a compromise solution and it would now rest with the Council of the Plant Union when it is set up to review the problem."

5. Before reporting on the matter to the forthcoming Fifth Session of the Interunion Coordination Committee (December 18 to 21, 1967), the Director of BIRPI wishes to avail himself of the possibility offered to him under subparagraph (c) of the above-quoted decision of the Fourth Session of the Interunion Coordination Committee and has asked the members of the Advisory Group designated in that decision to meet with him in Geneva, in October 1967.

6. The Director of BIRPI wishes to draw the attention of the members of the Advisory Group to the following considerations:

(a) Both the proposals of BIRPI under "Plan A" (document CCIU/IV/7, paragraph 17) and those of the Preparatory Working Party of the Plant Union satisfy the principle of entire autonomy for the Plant Union as far as all matters concerning the protection of new varieties of plants are concerned (subparagraph (a) of the above resolution of the Interunion Coordination Committee). On the contrary, only the proposals of BIRPI satisfy the principle set out in subparagraph (b) of the said resolution, "that the administration of the Plant Union--unless completely separate--should be under one direction, namely that of BIRPI, as the Director of BIRPI must remain master in his own house." The proposals of the Preparatory Working Party do not satisfy these conditions because, although they claim to leave "undivided control" over the integrated common services in the hands of the Director of BIRPI, they do not accept BIRPI's proposal according to which the Director of BIRPI and the Secretary-General of the Plant Union should be one and the same person. This would mean that the envisaged "Plant Varieties Department" would work in BIRPI and use the common services under a directorship which would have no hierarchical relation with the Director of BIRPI and would be responsible only to the Council of the Plant Union.

(b) The Director of BIRPI continues to believe that unity of direction, as indicated in the resolution of the Interunion Coordination Committee, is indispensable for any close administrative cooperation between BIRPI and the Plant Union. This is the more so because of the many new tasks with which BIRPI has been entrusted during recent years, and especially by the Stockholm Conference of July 1967. These developments could hardly have been foreseen when the Plant Convention was signed and administrative collaboration with BIRPI was planned, in 1961, but they lead to the conclusion under present circumstances that administrative cooperation between BIRPI and the Plant Union can only be envisaged in the form of a far-reaching integration. Otherwise, complications might arise which could endanger the efficiency of BIRPI in other fields as well.

(c) It must be observed that, notwithstanding the unity of direction proposed in BIRPI's "Plan A", this plan would not only leave to the Plant Union complete autonomy in matters of substance (see the safeguards indicated in document CCIU/IV/7, paragraph 17, subparagraph 2.3), but

also a degree of independence in staff matters such as none of the Unions now administered by BIRPI has. The plan provides (ibidem, subparagraphs 1.3 and 4.1) that there would be a separate Plant Varieties Department, the employer of whose senior officials would be the Plant Union and not BIRPI, so that the Director of BIRPI would not appoint and could not dismiss those officials. Such a system is non-existent today and is without precedent in the history of BIRPI. The Director of BIRPI is not at all convinced that this feature of "Plan A" reflects sound administrative policy. The only reason for which he nevertheless has put it forward was that he wanted to make a strong effort to render administrative collaboration with the Plant Union possible. He wishes to maintain this proposal although, in the light of the results of the Stockholm Conference of July 1967, it appears even more difficult to justify than it was last year.

(d) In fact, the administration of new Unions, under the Convention establishing the World Intellectual Property Organization (WIPO) adopted by the Stockholm Conference, will have to obey rules which would, in all probability, not make it possible to envisage solutions such as those proposed in "Plan A". It could nevertheless be of advantage both to BIRPI and to the Plant Union to adopt "Plan A" for the time being and seek to adapt their collaboration to the Stockholm text only at some later stage. However, the principle of unity of direction, both in BIRPI and later in the new Organization, should never be abandoned.

(e) As a motive for the wish for autonomy and independence, the view has often been advanced from the side of the Plant Union that the protection of new varieties of plants is completely different from the protection of industrial property and copyright, and presents different problems. This is no doubt entirely true, but these differences are not greater than those existing between the protection of inventions and trademarks, or inventions and literary and artistic works. Notwithstanding those differences, the Paris, Madrid and Berne Unions are administered by BIRPI under one Director. This common administration has proved beneficial to the member States, as was confirmed by the Stockholm Conference. Of course, these same States,

as members of the Plant Convention, may be less convinced of the advantages of integrated administration and unity of direction in this case and more inclined to independence. If this is so, and if BIRPI cannot serve the Plant Union under mutually acceptable conditions, the independence of the Plant Union could better be achieved with an entirely independent administration, but with BIRPI as advisor ("Plan B" of BIRPI).

/End of document/

Annex to BIRPI document NV/IV/1

INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

TECHNICAL AND ADMINISTRATIVE CO-OPERATION WITH THE UNIONS
ADMINISTERED BY B.I.R.P.I.

Revised Proposals of the Preparatory Working
Party of the Plant Union

Introductory

1. The International Convention for the Protection of New Varieties of Plants was signed in Paris on 2nd December, 1961. There are at present 8 signatory States, all of whom are members of the Industrial Property (Paris) and Copyright (Berne) Unions. Six of these States (Belgium, Denmark, Holland, France, Germany and the United Kingdom) are now represented on the enlarged Preparatory Working Party. Their task is to prepare for the Convention coming into force. The latest information suggests that the required number of ratifications will be deposited towards the end of 1967.
2. Article 25 of the Plant Convention states that the procedures for technical and administrative co-operation between the Plant Union and the Unions administered by BIRPI shall be determined by rules established by the Swiss Government in agreement with the Unions concerned. Other Articles of the Plant Convention provide for a Council of Member States (Articles 15-22), and for the appointment of a Secretary-General in charge of the Office of the Union (Article 21). The functions of the Office and the Secretary-General are set out in Article 23.
3. The provision for technical and administrative co-operation in Article 25 arose from the desire of the signatory States of the Plant Union to co-ordinate its activities in these respects with those of other Unions operating in the field of intellectual property, more particularly through the use of common services where financial economics might be achieved. In 1961 this aim was cordially endorsed by the Director of BIRPI and supported by the Swiss Government as the supervisory power of all the Unions concerned including the Plant Union.

Since it was set up in 1965 the Working Party in discussions with the Director of BIRPI has sought to establish a suitable basis for collaboration between the respective Unions. Although no generally acceptable basis has yet been found, the Working Party nevertheless remained convinced that co-operation would be desirable in the interests of the member States of all the Unions concerned. The Working Party further believes that difficulties which have arisen are capable of being resolved and intends to continue its efforts in this direction.

4. These difficulties are mainly concerned with two questions:

- (i) the respective positions of the Director of BIRPI and the Secretary-General of the Plant Union in relation to the integrated common services;
- (ii) the position of the Director in relation to general intellectual property questions arising in the field of action of the Council of the Plant Union.

5. As regards (i), it is clear that a potentially difficult situation would be created if the Director were asked to share his authority over the integrated common services with the Secretary-General. A good working relationship could be established while leaving undivided control of these services in the hands of the Director. This the Working Party is prepared to recommend as a policy for adoption by the Council of the Plant Union in due course.

6. As regards (ii), the International Convention for the Protection of New Varieties of Plants is a highly-specialised technical agreement and the Council of the Plant Union will be mainly concerned with questions of a specialist agricultural character which have no significance for other intellectual property Unions. In so far as problems may arise of wider significance and possibly affecting other sectors of intellectual property, it would be desirable for the Council to have the benefit of the views of other Unions concerned before reaching decisions. The Working Party would therefore support a close liaison with the Director of BIRPI in view of his high responsibilities and special concern for the international aspects of intellectual property. In carrying out its functions under Article 21, the Council of the Plant Union would therefore be recommended by the Working Party to make suitable arrangements for this purpose, including a right of access for the Director to meetings of the Council, as outlined below.

7. If the Council of the Plant Union is prepared to accept the Working Party's recommendations on these points, the Director's proposal to combine his post with that of the Secretary-General would not appear to be an essential condition of co-operation between the Unions within the terms of Article 25 of the Plant Convention. This proposal has been exhaustively discussed but remains a source of extreme difficulty for the signatory States of the Plant Union.

Main features of the proposed arrangements

8. Under the proposed arrangements which are outlined below:-
- (i) the autonomy of the Plant Union and of the other Unions concerned, and of their constituent bodies, in matters of substance, administration and finance is recognised and respected;
 - (ii) BIRPI would provide, staff, maintain and control certain administrative services for the common use of the BIRPI Unions and the Plant Union on the basis of equality;
 - (iii) the Plant Union would repay to BIRPI the cost of its share of the use of common services;
 - (iv) in view of the administrative contacts which are envisaged, the interests of the Director of BIRPI in the selection and conditions of service of Plant Union personnel and financial procedures are suitably recognised;
 - (v) suitable recognition is also given to the special interest of the Director of BIRPI in all forms of intellectual property.

Methods of co-operation

9. Co-operation between the Unions would be effected through contacts between:
- (i) the Council of the Plant Union and the Director of BIRPI, and
 - (ii) the Secretary-General of the Plant Union and the Director of BIRPI and their collaborators.

10. As regards (i), the Director of BIRPI shall be invited to attend all meetings of the Council in an advisory capacity and to speak on any matter.

11. As regards (ii), contacts would be concerned with:-

- (a) the provision and use of common services;
- (b) uniform application of any staff, financial or other regulations which are common to the Office of the Plant Union and BIRPI;
- (c) any other matters of common interest.

BIRPI common services

12. The common services provided by BIRPI for the Paris and Berne Unions etc. would work for the Plant Union and meet the needs of that Union in the following main fields:

Conferences, including Conference accommodation, Personnel administration, Accommodation for Plant Union personnel, Finance administration, Interpretation and Translation, Office services, printing and any other matters agreed between the Director and the Secretary-General.

13. The common services would be provided by BIRPI for the use of the Plant Union according to the instructions of the Director of BIRPI and subject to the following agreed rules:-

- (i) The Director would ensure that the needs of the Plant Union were satisfied strictly on a basis of equality with the needs of the other Unions;
- (ii) the Secretary-General would give the Director of BIRPI adequate notice of the needs of the Plant Union for common services and of changes in those needs;
- (iii) the Secretary-General would be consulted by the Director if difficulties arise which might involve delay to the work of the Plant Union. If such difficulties cannot be resolved the attention of the Council should be drawn to them;

- (iv) the Plant Union's share of any expenses of common interest to the Plant Union and other Unions arising from the use of common services would be determined on the same basis as common expenses are apportioned between other Unions, and allocated to the budget of the Plant Union.

Other aspects of co-operation

14. Arrangements for technical and administrative co-operation would also provide as follows.-

- (a) personnel for common services would be recruited and employed by BIRPI and would be responsible to the Director of BIRPI;
- (b) BIRPI personnel mentioned in (a) allocated for whole-time service with the Plant Union would be selected after consultation with the Secretary-General;
- (c) the Plant Union would employ and pay direct -
 - (i) the Secretary-General
 - (ii) his personal assistant
 - (iii) any plant specialists required and their personal assistants if any;
 - (iv) staff required for the special service for varietal names under Article 13 of the Convention, and any other staff not employed on the common services, unless suitable persons are provided by BIRPI by agreement between the Director and the Secretary-General;
- (d) the Director would be consulted before names are proposed by the Council to the Swiss Government for appointment to the post of Secretary-General or other higher Plant Union staff appointments of a non-specialist character;
- (e) Plant Union staff members in minor grades would be appointed by the Secretary-General after consultation with the Director;

- (f) the classification of higher posts would be proposed by the Council of the Plant Union to the Swiss Government in the light of the practice of BIRPI;
- (g) personnel recruited and employed by the Plant Union would be admitted to the BIRPI Pension Fund and sickness insurance scheme;
- (h) Plant Union personnel would be provided with accommodation appropriate to their grades, and according to BIRPI standards, at the BIRPI headquarters;
- (i) in principle, staff regulations for Plant Union personnel would be harmonised with BIRPI staff regulations;
- (j) in principle, financial regulations of the Plant Union would be harmonised with those of BIRPI.

April, 1967

INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

Report by the Chairman of the Preparatory Working
Party on further discussions with the Director of BIRPI

1. In accordance with the instructions of the Working Party (meeting held in London on 26th April, 1967) I visited Geneva on 5th June, 1967 to discuss with the Director of BIRPI the compromise proposals of the Preparatory Working Party for administrative and technical co-operation between the Plant Union and the BIRPI Unions. These are set out in P.C.27 (2nd Revise)* copies of which were sent to the Director in advance of the meeting.
2. In presenting P.C.27 (2nd Revise) for discussion, I drew particular attention to those aspects of the proposals which were designed to meet the difficulties raised by the Director at earlier discussions with members of the Working Party. For example, paragraph 5 of the paper stated unequivocally that the Director of BIRPI would remain in sole control of the BIRPI common services. Paragraph 6 recognised the special position of the Director of BIRPI in relation to general intellectual property questions and proposed to grant the Director a right of access to and a right to speak at any meeting of the Council of the Plant Union. These and other points were elaborated later in the document.
3. I explained that in the view of the Working Party these compromise proposals fully met the Director's difficulties which he had earlier explained and further that the proposals as a whole fully carried out, both in letter and spirit, Article 25 of the Plant Convention which provided for technical and administrative co-operation between the Unions. The compromise proposals recognised and respected the autonomy of the Plant Union and of the other Unions concerned in matters of substance, administration and finance, while at the same time providing machinery for achieving savings in administrative costs as desired by the member States.

*) This document incorporates certain amendments to P.C.27 (Revised) following suggestions made by M. Laclavière. These do not relate to matters of substance.

4. In reply the Director of BIRPI again drew attention to the practical problems which would arise for BIRPI in giving effect to Article 25 of the Plant Convention. There could be no certainty, certainly not before 1970, that accommodation could be found for the Plant Union in the BIRPI building at 32, chemin des Colombettes. The Director considered that shared accommodation was an essential condition for providing common services. Office services were already under heavy pressure and certain proposals due to be discussed at the Stockholm Conference in July 1967 would, if adopted, give rise to further **heavy** demands on the staff, accommodation and other BIRPI services. The Director could not therefore at this stage see his way clear to advising the Unions concerned that effect could be given to Article 25 if this involved demands on the BIRPI services.
5. The Director further stated that if and when these practical difficulties could be overcome, the only plan which he would feel able to recommend to the other Unions must provide for integration, for example on the lines of Plan A (See P.C.9C). This would however involve extensive re-organisation which he could not at present contemplate in view of other administrative pressures. The Director was unwilling to consider compromise proposals on the lines of P.C.27 (2nd Revise).
6. The Director felt unable to comment on the safeguards and assurances offered by the Working Party to the Director in P.C.27(2nd Revise), and made no suggestions as to ways in which Plan 'A' might be revised and adapted in the light of the views of the Working Party.
7. The Director indicated his intention of presenting his conclusions to the December 1967 meeting of the Inter-Union Co-ordination Committee, after first consulting the advisory group of 5 member States set up by the Inter-Union Co-ordination Committee in September 1966.
8. I conclude from these and earlier attempts to reach an understanding with the BIRPI Directorate that:
 - (a) for practical reasons, BIRPI are now unable to offer technical and administrative co-operation under Article 25 in a form which involves the use by the Plant Union of BIRPI common services;

- (b) if the practical difficulties could be overcome at some time in the future, the use of BIRPI common services could only be obtained by integration on the lines proposed by BIRPI;
- (c) the Plant Union has no alternative therefore but to make its own administrative, technical and financial arrangements as a separate organisation;
- (d) the possibilities of co-operation with BIRPI under Article 25 in relation to such matters as exchange of information, and consultation and advice on matters of common interest, should be studied by the Council of the Plant Union in due course.

L.J. SMITH
Chairman
Preparatory Working Party

July, 1967

ADVISORY GROUP
ON
MATTERS CONCERNING THE PLANT CONVENTION

REPORT

1. This Advisory Group was set up by the Interunion Co-ordination Committee of BIRPI in September 1966 with Germany (Federal Republic), Switzerland, the Soviet Union, the United Kingdom, and the United States of America, as members.
2. The Advisory Group was convened by the Director of BIRPI, Professor G.H.C. Bodenhausen, and met under his chairmanship on October 7, in Geneva.
3. All five members of the Advisory Group were represented.
4. Representatives of Belgium, France, India, and the Netherlands, were admitted as observers on the proposal of the Director of BIRPI and with the agreement of the members.
5. Dr. A. Bogsch, Deputy Director, BIRPI, acted as Secretary.
6. The list of participants is attached to this document.
7. Document NV/IV/1, a report by the Director of BIRPI, served as the basis of the deliberations.

8. The Director of BIRPI summarized the contents of the said document and of its annex numbered PC/32, which is a report by the Chairman of the informal preparatory working party of the signatory countries of the future Union for the Protection of New Varieties of Plants. The Director remarked that document PC/32 painted a somewhat sombre picture of his views and omitted an important point, namely that in his conversations with the Chairman of the said working party he had insisted on the need for unity in the direction of BIRPI and the Plant Union.

9. All the Government Representatives named in the following paragraphs declared that they merely expressed tentative views since none of them had received formal instructions from their Governments.

10. Mr. Grant (United Kingdom) said that Plan A, contained in BIRPI document CCIU/IV/7, seemed to represent the maximum concessions which should be acceptable to BIRPI. He agreed that it was essential that the Secretary General of the Plant Union be the same person as the Director of BIRPI; otherwise the common services would be working for two masters. He wished to keep the situation fluid for a few more weeks, since the preparatory working party of the Plant Union was expected to meet at the end of the current month and it might well be that new counsel would prevail in that working party.

11. Mr. Voyame (Switzerland) said that Plan A went perhaps too far in satisfying the desiderata of the working party of the Plant Union but, since any arrangement would be only for a limited period of time, Plan A could be accepted. One should examine the possibilities of giving representation to the Plant Union in the Interunion Coordination Committee.

12. Mr. Mast (Federal Republic of Germany) said that Plan A was generous to the Plant Union but that this was in order since, in the initial period, more independence for the Plant Union might be justified.

13. Mr. Hermans (Belgium) said that he agreed with Plan A, including the proposal that the Director of BIRPI would also be the Secretary General of the Plant Union.

14. Mr. Brenner (United States of America) expressed the view that Plan A was the limit as regards the concessions which BIRPI could make. Such a degree of independence for the Plant Union seemed to be justified only for the first few years.

15. Mr. Artemiev (USSR) said that the Plant Union could increase its effectiveness only if it were closely integrated with BIRPI. Plan A might be justified only for an initial period. When the WIPO Convention came into effect, the Plant Union would have to be integrated into WIPO according to the provisions of the WIPO Convention.

16. Mr. Phaf (Netherlands) said that in his country three groups of experts have a say in this matter: the Paris Union, the Berne Union and the Plant Union experts, and that the situation is probably about the same in the other countries concerned. He thinks that no progress can be made in this matter as long as no common view of these distinct expert groups has been evolved and will try to further this in his country. As plant protection, though different from industrial property, certainly belongs to the domain of intellectual property a solution along the lines of plan A seems to be needed. It should be pointed out to the Plant Union experts that this solution could be regarded as a provisional one to be reviewed after say five years.

17. Mr. Labry (France) expressed the view that Plan A seemed to be acceptable. The identity of the Director of BIRPI with the Secretary General of the Plant Union was indispensable.

18. The Director of BIRPI said that personal relations and all other aspects of collaboration with the Plant Union would probably prove to be very difficult. Plan A contained guarantees that neither he nor his successors could play a leading role in the substantive matters of the Plant Union, a situation which should reassure the partisans of a high degree of independence for that Union. The solution should be regarded as a provisional one, concluded for a trial period, to be followed either by separation or much closer integration in conformity with the rules laid down in the WIPO Convention.

/follows list of participants/

LIST OF PARTICIPANTS

Members

GERMANY (FEDERAL REPUBLIC)

Mr. K. HAERTEL
President
German Patent Office
Munich

Mr. H. MAST
Regierungsdirektor
Federal Ministry of Justice
Bonn

SWITZERLAND

Mr. J. VOYAME
Director
Federal Office of Intellectual Property
Berne

UNION OF SOVIET SOCIALIST REPUBLICS

Mr. E.I. ARTEMIEV
Deputy Chairman
Committee for Inventions and Discoveries attached
to the Council of Ministers of the U.S.S.R.
Moscow

UNITED KINGDOM

Mr. G. GRANT, C.B.
Comptroller-General
Patent Office
London

Mr. E.E. ARMITAGE
Assistant Comptroller
Patent Office
London

UNITED STATES OF AMERICA

Mr. E.J. BRENNER
Commissioner of Patents
Patent Office
Department of Commerce
Washington, D.C.

Mr. H.J. WINTER
Assistant Chief
Business Practices Division
Department of State
Washington, D.C.

Observers

BELGIUM

Mr. L. HERMANS
Counsellor, Head of Service
Ministry for Economic Affairs
Brussels

FRANCE

Mr. R. LABRY
Counsellor of Embassy
Ministry for Foreign Affairs
Directorate of Economic and Financial Affairs
Paris

NETHERLANDS

Mr. W.M.J.C. PHAF
Head of the Division of Legislation
and Legal Affairs
Ministry for Economic Affairs
The Hague

INDIA

Mr. R. VASUDEVA PAI
Joint Controller of Patents and Designs
Patent Office
Calcutta

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UNITED INTERNATIONAL BUREAU FOR THE PROTECTION
OF INTELLECTUAL PROPERTY (BIRPI)

Professor G.H.C. BODENHAUSEN, Director
Dr. Arpad BOGSCH, Deputy Director
Mr. I. MOROZOV, Industrial Property Division

[END]