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UPOV

RC/ad hoc/8

ORIGINAL: English

DATE: September 6, 1978

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

AD HOC COMMITTEE ON THE REVISION OF THE CONVENTION

Geneva, September 11 to 15, 1978

COOPERATION BETWEEN UPOV AND WIPO UNDER THE REVISED UPOV CONVENTION

Memorandum of the Secretary-General

1. At the sixteenth session of December 5 and 9, 1977, of the Consultative Committee (document CC/XVI/5), the Secretary-General said that he would prepare a draft agreement for technical and administrative cooperation between UPOV and WIPO to replace the present Rules (hereinafter referred to as "the Rules"; copy attached) in contemplation of the amendments envisaged in the UPOV Convention, namely, that the revised Convention would contain no reference to BIRPI or WIPO and would no longer provide for supervisory functions by the Swiss Government. He also said that, in its essence, the said agreement would not deviate in substance from the present arrangements.
2. After examining the question, the Secretary-General finds that it would be more practical to first seek guidance as to the principles involved and to prepare a full draft only thereafter.
3. As to such principles, the Secretary-General's tentative views are the following:
 - (i) The provisions regulating the cooperation between UPOV and WIPO should be laid down in an agreement between the two Organizations. Such agreement would be approved by the Council of UPOV and the Coordination Committee of WIPO. It would be signed, after approval by the said bodies, by the President of the Council of UPOV and the Director General of WIPO.
 - (ii) Articles 1, 2 and 3 of the Rules. The substance of these Articles, dealing with the seat of UPOV, the Secretary-General of UPOV and the Vice Secretary-General of UPOV, respectively, should remain unchanged.
 - (iii) Article 4 of the Rules. The "Plant Varieties Department" referred to in this Article has never been set up as such. The staff working exclusively for UPOV is usually referred to as "the Office" of UPOV. It is believed that this practice is preferable. Consequently, it is proposed to redraft the Article to the effect that (a) the Vice Secretary-General and the other staff in the exclusive service of UPOV shall be responsible for all questions relating to the substance of the UPOV Convention and for all activities concerning international cooperation in the field of the protection of new plant varieties, (b) subject to the responsibilities of the Secretary-General, the said staff shall be under the direction of the Vice Secretary-General, and, (c) "Office" of UPOV shall be understood to mean the Secretary-General, the Vice Secretary-General and the said staff.

(iv) Article 5 of the Rules. The reference to the Swiss Government being no longer applicable, this Article should be redrafted to the effect that before appointing any official to a post classified P/4 or above, the Secretary-General must consult the Vice Secretary-General and must have the agreement of the Council or the Consultative Committee or, where time presses, must consult the members thereof by mail; should such a consultation by mail result in objection by one half, or more than one half, of the members, the Secretary-General could not proceed with the appointment. The same provisions would apply also to dismissals from posts of the said grades.

(v) Article 6 of the Rules. In paragraph (1), the words "in agreement with the Swiss Government" should be omitted. The matters regulated in paragraphs (2) and (3) should become the substance of a decision by the Council of UPOV rather than that of any agreement with WIPO.

(vi) Article 7 of the Rules. The substance of this provision should remain unchanged.

(vii) Article 8 of the Rules. The substance of this provision should remain unchanged, except that the reference to the Swiss Government, contained in paragraph (3), should be omitted.

(viii) Article 9 of the Rules. The substance of this provision should remain unchanged.

(ix) Article 10 of the Rules. Whereas the substance of the second and fourth sentences of paragraph (1) and the totality of paragraph (2) should remain unchanged, the first sentence of paragraph (1) should provide for direct notification from UPOV to WIPO or vice-versa (rather than to the Swiss Political Department) and the third sentence of paragraph (1) should refer to a year which is five years posterior to the year in which the revised UPOV Convention will enter into effect.

(x) Article 11 of the Rules. This Article should be omitted since the supervisory functions of the Swiss Government would cease under the revised UPOV Convention.

3. The Committee is invited to express its views on the suggestions contained in the preceding paragraph.

[The Annex follows]

of Procedure for Technical and Administrative Cooperation
between the Union for the Protection of New Varieties of Plants
and the World Intellectual Property Organization*

Article 1

Seat of UPOV

The seat of UPOV shall be at Geneva with WIPO.

Article 2

Secretary-General of UPOV

The person who is at the present time Director General of WIPO, and any person who, in the future, is Director General of WIPO, shall be the Secretary-General of the Office of UPOV (hereinafter called "the Secretary-General").

Article 3

Vice Secretary-General of UPOV

- (1) There shall be established a post of Vice Secretary-General.
- (2) Notwithstanding the hierarchical subordination of the Vice Secretary-General to the Secretary-General, the Vice Secretary-General shall have the right:
 - (a) to be present at all the meetings of the Council of UPOV,
 - (b) to report directly to the Council of UPOV whenever he is in disagreement with any act, plan or proposal of the Secretary-General.

Article 4

Plant Varieties Department

- (1) A Plant Varieties Department shall be established within the Office of UPOV, which will be responsible for all questions relating to the substance of the Convention for the Protection of New Varieties of Plants and for all activities concerning international cooperation in the field of the protection of new plant varieties.
- (2) Subject to the responsibilities of the Secretary-General, the said Department shall be under the direction of the Vice Secretary-General.

* As approved by the Government of the Swiss Confederation on October 21, 1969, and amended on August 23, 1973 and on June 17, 1976, in accordance with Article 25 of the Convention for the Protection of New Varieties of Plants signed in Paris on December 2, 1961 (see documents UPOV/C/IV/6, Annex, UPOV/C/VII/7 and C(Extr.)II/2).

Article 5Appointments and Dismissals

(1) The Council of UPOV, before making proposals regarding the appointment of any official of the senior grade in the Office of UPOV, and the Swiss Government, before proceeding with such appointment, shall hear the opinion of the Secretary-General and of the Vice Secretary-General.

(2) The same shall apply before terminating the appointment of an official of the senior grade.

(3) "Official of the senior grade" shall mean any official whose post is classified P.4 or above.

Article 6 *Remuneration

(1) The Secretary-General shall receive an indemnity whose annual amount is fixed by the Council in agreement with the Swiss Government as a percentage of his salary as Director General of WIPO.

(2) The post of Vice Secretary-General shall be classified as grade D.1/D.2, at a step which is to be determined with due regard to the experience of the person appointed.

(3) The posts of other officials of the senior grade shall be classified P.5 or P.4 in accordance with the procedure laid down in the Staff Regulations and Rules.

Article 7Administrative Services

(1) WIPO shall satisfy the requirements of the Office of UPOV as regards:

- (a) premises, their upkeep (cleaning, heating, lighting) and their furnishing and equipment (furniture, office machinery, telephones),
- (b) financial administration (internal audit, receiving and disbursement of funds, etc.),
- (c) mail and documents (typing, reproduction, incoming and outgoing mail, registration of mail, etc.),
- (d) organization of meetings (rooms, interpreters, sound recording) as well as the organization of travel (tickets, hotel reservations, etc.),
- (e) purchase of material, equipment and office furniture,
- (f) translation of documents,
- (g) publications (printing, distribution, sales, subscriptions),
- (h) the personnel service,
- (i) any other service which may be agreed between UPOV and WIPO.

(2) The requirements of UPOV shall be met on a basis of strict equality with the requirements of the other Unions administered by WIPO.

Article 8

Indemnification of WIPO

(1) UPOV shall indemnify WIPO for any service rendered to UPOV by virtue of Article 7, above, and for any expenditure that it may incur on behalf of UPOV.

(2) The value of any service and of any expenditure by WIPO affecting both UPOV and one or several of the Unions administered by WIPO shall be apportioned in proportion to the relative interest of each of the Unions. The indemnification owed by UPOV shall correspond to the proportion of UPOV's interest in the said service or the said expenditure.

(3) The details of the evaluation of any service and expenditure shall be established by the Council of UPOV, the competent organs of WIPO and the Government of the Swiss Confederation.

Article 9

Independence of the Office of UPOV

Without prejudice to the application of Article 7, above, the Office of UPOV shall exercise its functions in complete independence of WIPO.

Article 10

Termination of Cooperation

(1) The cooperation defined in these Rules may be denounced by one or other of the parties by means of a written notification addressed to the Head of the Federal Political Department by the President of the Council of UPOV or by the Director General of WIPO. Such notification may but need not give reasons. It may not be made before January 1, 1972. It will take effect on December 31 of the year during which the notification is made if it is made during the first three months of that year, whereas it will take effect on December 31 of the year following the year during which the notification is made if it is made during the last nine months of the year.

(2) All cooperation between WIPO and UPOV, including its Office, shall automatically be terminated on the day when the person who is Director General of WIPO is no longer also Secretary-General of UPOV, whether because the post of Secretary-General has been filled by another person, or because the post of Secretary-General is no longer filled. It shall nevertheless be understood that, if the post of Director General is temporarily vacant, the person exercising the functions of Director General ad interim of WIPO shall automatically also act as Secretary-General ad interim of UPOV.

Article 11

Application, Modification and Abrogation of the Rules

The Federal Council, in its capacity of Supervisory Authority of the Unions concerned, shall supervise the application of these Rules. It may modify or abrogate the Rules in agreement with UPOV and WIPO.