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UPOV

C/XVI/14

ORIGINAL: English

DATE: September 21, 1982

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Sixteenth Ordinary Session
Geneva, October 13 to 15, 1982**AGREEMENTS, REGULATIONS AND RULES
UNDER THE 1978 TEXT OF THE UPOV CONVENTION-----
HEADQUARTERS AGREEMENTMemorandum of the Secretary-General

1. Annexes A, B and C to this document contain, respectively, the English translations of the texts of the Headquarters Agreement between UPOV and Switzerland, (hereinafter referred to as "the Agreement"), of arrangements for the implementation of the Agreement (hereinafter referred to as "the Arrangements"), and of a letter which the Swiss Federal Department of Foreign Affairs intends to send to the Secretary-General of UPOV. They are translations of the French versions of the texts that the Swiss Federal Authorities are ready to accept or to send (subject to the definitive approval of the Swiss Federal Council). It is to be noted that these texts differ only in minor details from the texts which were distributed in February 1982 and which, subject to two amendments in the Agreement (incorporated in the text transmitted to the Swiss Authorities), were accepted by the Consultative Committee as the basis for negotiations with the Swiss authorities. The differences between those texts and the texts that the Swiss Federal Authorities are ready to accept, in the English translations, are as follows:

a. The Agreement

- (i) Articles 1 and 2 have been reversed and in Article 1 (in the new order) the words "in Switzerland" have been added after the words "legal capacity";
- (ii) in Article 12(2) the words "federal police control of aliens" have been replaced by "Federal Office of Aliens" (the new name of the office concerned);
- (iii) the second part of Article 18 (which, in the text distributed in February 1982, reads: "on the understanding that the Union shall, as far as possible and on terms to be agreed upon, affiliate to the Swiss insurance schemes, those of its agents who do not benefit from equivalent social protection") has been replaced by the following full sentence: "The Union shall, however, report to the competent Swiss insurance bodies the Swiss nationals employed by it and those persons who are not beneficiaries of an institution of the kind mentioned in Article 17, in order that those bodies can, as far as Swiss legislation permits, apply to them the Swiss social security schemes";
- (iv) in the heading of Article 28 the word "amendment" has been replaced by "revision";
- (v) paragraph 3 of Article 28 has been transformed into Article 29 entitled "Denunciation of the Agreement" and has been given an independent meaning, whereas, in the text distributed in February 1982, any denunciation was dependent upon the failure of negotiations for the revision of the Agreement;

- (vi) the Agreement is to be signed, for the Swiss Federal Council, by the Head of the Directorate for International Organizations of the Federal Department of Foreign Affairs, instead of by the Head of Political Division III (which takes account of a change in the organization of the Swiss Federal Department of Foreign Affairs).

b. The Arrangements

- (i) Article 7 of the text distributed in February 1982 has been adapted to the changes proposed for the corresponding Article in the Agreement, i.e. in the heading the word "modification" has been replaced by "revision", and paragraph 3 has been given an independent meaning, and transformed into Article 8, entitled "Denunciation of these Arrangements";
- (ii) the Arrangements are to be signed by the Head of the Directorate for International Organizations of the Swiss Federal Department of Foreign Affairs (see item (vi) above).

c. Letter to be sent by the Federal Department of Foreign Affairs

The only change anticipated is that the letter is to be signed by the Directorate for International Organizations of the Swiss Federal Department of Foreign Affairs (see item (vi) above).

2. At the time of drafting this memorandum, the Swiss Authorities have only prepared the French texts of the Agreement, the Arrangements and the letter referred to in paragraph 1 above. They are still working on the German versions of the said texts. The English versions are mere translations for the use of UPOV since the Swiss Authorities do not use English. However, the absence of German versions approved by the Swiss authorities should not prevent the Council from adopting the Agreement and the Arrangements, and from noting with approval the said letter. The Secretary-General will see to it that the German versions have the same contents as the French versions; should this not be the case, the matter will be referred back to the Council.

3. The above-mentioned texts have not yet been cleared by the Swiss Federal Department of Foreign Affairs with the Geneva Cantonal Authorities. However, there is no reason to believe that the clearances would be refused. It should be understood that the Agreement and the Arrangements would be signed on behalf of UPOV only once all papers--including the draft for the additional letter to be sent to the Secretary-General, attached as Annex D to this memorandum--have been cleared by the Geneva Cantonal Authorities.

4. The Council is invited to approve the Agreement and the Arrangements contained in Annexes A and B and to authorize the Secretary-General to sign them in their French (or French and German) text(s), as they are or with such changes that the Swiss Authorities may propose, provided such changes do not affect the essence of the Agreement or the Arrangements, and provided that, by the time such signature would take place, the letters whose drafts appear in Annexes C and D, or letters identical in their essence to those drafts, have been received or their prospective authors have declared to be ready to sign and send such letters.

5. The Council is invited to note with approval the contents of the letters contained in Annexes C and D.

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ANNEX A

D R A F T

A G R E E M E N T

between

the Swiss Federal Council and the International Union for the Protection of New Varieties of Plants to determine the legal status in Switzerland of that Union

THE SWISS FEDERAL COUNCIL

of the one part, and

THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

of the other part,

desiring to enter into an agreement for the purpose of determining the legal status in Switzerland of the International Union for the Protection of New Varieties of Plants (UPOV), have agreed upon the following provisions:

Article 1Status

The Federal Council shall recognize the international status and the legal capacity in Switzerland of the International Union for the Protection of New Varieties of Plants (hereinafter designated as "the Union").

Article 2Freedom of Action of UPOV

1. The Federal Council shall guarantee to the Union the autonomy and freedom of action to which it is entitled as an international organization.
2. In particular, it shall recognize that the Union and its members in their relations with the Union have absolute freedom to hold meetings, including freedom of discussion and decision.

Article 3Immunities and Privileges

The Union shall enjoy such immunities and privileges as are customarily granted to international organizations.

Article 4Inviolability

1. The buildings or parts of buildings and land which, whoever may be the owner thereof, are used for the purposes of the Union shall be inviolable. No agent of the Swiss public authorities may enter therein without the express consent of the Union. Only the Secretary-General of the Union or his duly authorized representative shall be competent to waive such inviolability.
2. The archives of the Union and, in general, all documents intended for its official use, belonging to it or in its possession, shall be inviolable at all times and in all places.
3. The Union shall exercise supervision of and police power over its premises.

Article 5Immunity from Jurisdiction and in respect
of Other Measures

1. The Union shall enjoy immunity from criminal, civil and administrative jurisdiction, save in so far as such immunity has been formally waived in any given case by the Secretary-General of the Union or his duly authorized representative. The insertion in any contract of a clause instituting the jurisdiction of a Swiss ordinary court shall constitute a formal waiver of immunity. However, unless expressly stated to the contrary, such waiver shall not extend to measures of execution.

2. The buildings or parts of buildings, land and property belonging to the Union or used by it for its own purposes, whether belonging to it or not, may not be subjected to search, requisition, seizure or measures of execution.

Article 6Communications

1. The Union shall benefit, in respect of its official communications, from treatment at least as favorable as that which is granted to other international organizations in Switzerland, in so far as it is compatible with the International Telecommunication Convention.

2. The Union shall have the right to use codes for its official communications. It shall also have the right to send and receive correspondence by duly identified couriers or bags enjoying the same privileges as diplomatic couriers and bags.

3. Official correspondence and other official communications of the Union, when duly identified, may not be subjected to censorship.

Article 7Publications

The importation and exportation of publications of the Union shall not be subject to any restriction.

Article 8Tax Arrangements

1. The Union, its assets, income and other properties shall be exempt from direct federal, cantonal and communal taxes. With regard to buildings, however, such exemption shall apply only to those owned by the Union and occupied by its services, and to income deriving therefrom. The Union shall not be subject to taxation on the rent it pays for premises rented by it and occupied by its services.

2. The Union shall be exempt from indirect federal, cantonal and communal taxes. With regard to the federal turnover tax included in prices or separately charged, exemption shall apply only to purchases effected for the official use of the Union, provided that the amount invoiced for one and the same purchase exceeds 100 Swiss francs.

3. The Union shall be exempt from all federal, cantonal and communal dues, except dues charged as the price of actual services rendered.

4. Where appropriate, the exemptions mentioned above may take the form of reimbursement at the request of the Union and according to a procedure to be determined by the Union and the competent Swiss authorities.

Article 9Customs Arrangements

The treatment by customs authorities of articles intended for the Union shall be governed by the customs regulations of the Federal Council applicable to international organizations, the said regulations being an integral part of the present Agreement.

Article 10Advances of Funds by Switzerland

1. Switzerland shall grant advances to the Union if the working capital fund of the latter is insufficient. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between Switzerland and the Union.

2. Switzerland and the Union shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

Article 11Free Disposal of Funds

1. The Union may receive, hold, convert and transfer any funds, gold, any foreign currency, cash and other transferable assets, and dispose freely thereof both within Switzerland and in its relations abroad.

2. This Article shall also apply to member States in their relations with the Union.

Article 12Freedom of Access and Residence

1. The Swiss authorities shall take all the necessary steps to facilitate the entry into, departure from and residence in Swiss territory for all persons, irrespective of their nationality, who are to attend the Union in an official capacity, namely:

- (a) representatives of member States;
- (b) the Secretary-General and the staff of the Union;
- (c) any other person, regardless of his nationality, who is to attend the Union in an official capacity.

2. All measures concerning the Federal Office of Aliens and intended to restrict the entry of foreigners into Switzerland or to control the conditions of their residence shall have no effect on the persons referred to in this Article.

Article 13Status of Representatives of Members of the Union

The representatives of members of the Union attending meetings organized by the Union shall enjoy the following privileges and immunities in Switzerland:

- (a) inviolability of the person and place of residence, and of all articles belonging to the party concerned;

- (b) immunity from arrest and imprisonment and, with regard to acts accomplished by them in the discharge of their duties, including words spoken and writings, from any jurisdiction;
- (c) customs facilities, granted in accordance with the customs regulations of the Federal Council applicable to international organizations;
- (d) the same immunities and facilities concerning their personal baggage as those granted to representatives to other inter-governmental organizations in Switzerland;
- (e) the right to use codes in official communications or to receive or send documents or correspondence by means of couriers or duly sealed diplomatic bags;
- (f) exemption, for themselves and their spouses, from all measures restricting immigration, all registration formalities for aliens and all national service obligations;
- (g) exemption from restrictions relating to freedom of exchange on the same terms as those granted to representatives of foreign governments on official missions.

Article 14

Status of the Secretary-General and of Certain Categories of Officials

1. The Secretary-General of the Union and those categories of officials designated by him with the consent of the Federal Council shall enjoy such privileges and immunities, exemptions and facilities as are granted to diplomatic agents in accordance with the law of nations and international custom.
2. Customs privileges and facilities shall be granted in accordance with the customs regulations.

Article 15

Immunities and Facilities Granted to All Officials

Officials of the Union, whatever their nationality, shall enjoy immunity from any jurisdiction for acts accomplished in the discharge of their duties, including words spoken and writings, even after such persons have ceased to be officials of the Union.

Article 16

Immunities and Facilities Granted to Non-Swiss Officials

Officials of the Union who do not have Swiss nationality shall:

- (a) be exempt from all obligations relating to national service in Switzerland;
- (b) together with their spouses and dependent members of their families, not be submitted to any provisions restricting immigration and formalities concerning the registration of aliens;
- (c) enjoy, with respect to exchange facilities, the same privileges as those granted to the officials of other international organizations;
- (d) together with the members of their families and their household staff, benefit from the same repatriation facilities as officials of other international organizations;

- (e) enjoy the customs facilities provided by the customs regulations of the Federal Council for international organizations;
- (f) enjoy exemption from all federal, cantonal and communal taxes on salaries, fees and allowances paid to them by the Union. Capital payments due in whatever circumstances by a pension fund or provident institution within the meaning of Article 17 of the present Agreement shall also, at the time of payment, be exempt in Switzerland from any tax on capital or income; the same shall apply to any payments which may be made to agents, officials or employees of the Union by way of indemnity for sickness, accidents, etc.

Article 17

Pension Funds and Special Funds

1. Any pension fund or provident institution acting officially for the benefit of officials of the Union shall have legal capacity in Switzerland in so far as it complies with the form laid down by Swiss law for such institutions. It shall enjoy, to the extent that it acts for the benefit of such officials, the same exemptions, immunities and privileges as the Union itself.

2. Funds and foundations, whether having legal personality or not, administered under the auspices of the Union and allocated to the achievement of its official objectives, shall benefit from the same exemptions, immunities and privileges as the Union itself with regard to their movable property.

Article 18

Social Security

The Union shall be exempt from all compulsory contributions to general social security institutions such as compensation funds, unemployment benefit funds, accident insurance, etc. The Union shall, however, report to the competent Swiss insurance bodies the Swiss nationals employed by it and those persons who are not beneficiaries of an institution of the kind mentioned in Article 17, in order that those bodies can, as far as Swiss legislation permits, apply to them the Swiss social security schemes.

Article 19

Purpose of Immunity

1. The privileges and immunities provided for in the present Agreement are not established for the personal benefit and convenience of officials of the Union. Their purpose is solely to ensure, in all circumstances, the freedom of action of the Union and the complete independence of its agents.

2. The Secretary-General of the Union shall have the right and the duty to waive the immunity of any official when he considers that such immunity is hindering the normal course of justice, and that it is possible to take such action without prejudicing the interests of the Union. In respect of the Secretary-General himself, the Council shall have the power to waive immunity.

Article 20

Prevention of Abuse of Privileges

The Union and the Swiss authorities shall cooperate at all times to facilitate the satisfactory administration of justice, ensure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities provided for in the present Agreement.

Article 21Identification Cards

1. The Federal Department of Foreign Affairs shall transmit to the Union an identification card, with a photograph of the holder, for each official and each dependent member of his family living with him and having no gainful occupation. This card shall be authenticated by the Federal Department of Foreign Affairs and by the Union and shall serve to identify the holder for the purposes of any federal, cantonal or communal authority.

2. The Union shall regularly communicate to the Department of Foreign Affairs the list of the officials of the Union, and of the members of their families, indicating, in respect of each, date of birth, nationality, domicile in Switzerland, and category or class of employment.

Article 22Private Disputes

The Union shall take the necessary steps to ensure the satisfactory settlement of:

- (a) any disputes arising from contracts to which the Union is party and any other disputes relating to points of private law;
- (b) any disputes involving any official of the Union who, by virtue of his official position, benefits from immunity, where immunity has not been waived in accordance with the provisions of Article 19.

Article 23Non-Responsibility of Switzerland

Switzerland shall not, on account of the Union's activities on its territory, assume any international responsibility for acts or omissions of the Union or for acts committed or omissions made by its officials within the scope of their official functions.

Article 24Security of Switzerland

1. Nothing in this Agreement shall affect the right of the Swiss Federal Council to apply appropriate safeguards in the interests of the security of Switzerland.

2. Should the Federal Council consider it necessary to apply the provisions of the first paragraph of the present Article, it shall, as promptly as circumstances permit, establish contact with the Union in order to agree jointly upon such measures as may be necessary to protect the interests of the Union.

3. The Union shall cooperate with the Swiss authorities to prevent any prejudice to the security of Switzerland on account of any activity of the Union.

Article 25Implementation of the Agreement by Switzerland

The Federal Department of Foreign Affairs is the Swiss authority responsible for the application of this Agreement.

Article 26

Jurisdiction

1. Any difference of opinion concerning the application or interpretation of this Agreement which direct consultations between the parties have failed to settle may be submitted, by either party, for consideration by an arbitration tribunal, composed of three members, including the president.

2. The Swiss Federal Council and the Union shall each designate one member of the tribunal.

3. The members thus designated shall choose their president.

4. In the event of disagreement between the members as to the choice of the president, the latter shall be designated by the President of the International Court of Justice at the request of the members of the tribunal of arbitration.

5. The tribunal shall establish its own rules of procedure.

Article 27

Entry into Force

The entry into force of this Agreement is fixed with retroactive effect to November 8, 1981.

Article 28

Revision of the Agreement

1. This Agreement may be revised at the request of either party.

2. In such a case, the parties shall jointly examine any change proposed to be made in the provisions of the present Agreement.

Article 29

Denunciation of the Agreement

The present Agreement may be denounced by either party, subject to a notice of two years.

Done and signed in two copies at Berne, on

For the International Union
for the Protection of
New Varieties of Plants:

For the Swiss Federal Council:

Secretary-General

Head, Directorate for
International Organizations,
Federal Department of Foreign Affairs

[Annex B follows]

C/XVI/14

ANNEX B

D R A F T

A R R A N G E M E N T S

for the Implementation of the Agreement concluded between the Swiss Federal Council and the International Union for the Protection of New Varieties of Plants to determine the legal status of that Union in Switzerland

Article 1Visas

In order to facilitate the entry into Switzerland of persons mentioned in Articles 12, 13, 14 and 16 of the Agreement, Swiss embassies and consulates shall be given standing instructions to issue visas, in all cases where entry visas are required, upon presentation by the persons concerned of their passports or other, equivalent identity or travelling documents, together with sufficient evidence of their holders' status in relation to the Union.

Swiss embassies and consulates shall have instructions to grant visas without delay and without requiring the personal appearance of the applicants or the payment of fees.

Article 2Status of Representatives of Members of the Union

In cases where liability for a given tax is subject to the taxpayer's residence in Switzerland, the periods spent in Switzerland, in the discharge of their duties, by the representatives of members of the Union attending meetings convened by it shall not be considered periods of residence.

Article 3Immunities and Facilities Granted to Non-Swiss Officials

1. Non-Swiss officials shall be exempt from federal, cantonal and communal taxes on income earned by them from sources outside the Swiss Confederation.
2. Customs examination of the baggage of such officials shall be reduced to a strict minimum.

Article 4Consultants

Persons of other than Swiss nationality who are called upon by the Union to act as consultants and who devote all their time to such activity shall be treated as officials of the Union for the duration of their duties.

Article 5Military Service of Swiss Officials

1. The Secretary-General of the Union shall communicate to the Federal Council a list of the officials of Swiss nationality subject to military service obligations.

2. The Secretary-General and the Federal Council shall jointly draw up a list of a limited number of officials of Swiss nationality whose activities shall entitle them to dispensation.

3. In the event of the mobilization of other Swiss officials, the Union may request the Federal Department for Foreign Affairs to grant provisional exemption or to take whatever other measures may be appropriate.

Article 6

Entry into Force

These Arrangements shall enter into force at the same time as the Headquarters Agreement.

Article 7

Revision of these Arrangements

1. The present Arrangements may be revised at the request of either party.

2. In such a case, the parties shall jointly examine any changes proposed to be made in the provisions of the present Arrangements.

Article 8

Denunciation of these Arrangements

The present Arrangements may be denounced by either party, subject to a notice of two years.

Done and signed in two copies at Berne, on

For the International Union
for the Protection of
New Varieties of Plants:

For the Swiss Federal Council:

Secretary-General

Head, Directorate for
International Organizations,
Federal Department of Foreign Affairs

[Annex C follows]

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ANNEX C

D R A F T

L E T T E R

from the Federal Department of Foreign Affairs
to the Secretary-General of UPOV

3003 Berne,

International Union for the Protection
of New Varieties of Plants

1211 Geneva 20

Sir,

In your letter of, you brought to our attention that all officials of your Union were subject to internal taxation.

We have the honor to inform you that the Federal Council has decided, in the light of your communication, to apply to the International Union for the Protection of New Varieties of Plants its decree of June 26, 1964, concerning the taxation of Swiss officials of international organizations. In accordance with this decision, officials of your Union who are of Swiss nationality and reside within the territory of the Confederation will be exempt from Federal taxes in respect of their salaries as from, and as long as your Union maintains the system of internal taxation on the salaries of all its officials.

We would ask you to take note of this decision of the Federal Council; at the same time we wish to point out that this communication must not be regarded as an amendment of either the Headquarters Agreement or the Arrangements for its implementation which we signed in Berne on

Accept, Sir, the assurances of my highest consideration.

FEDERAL DEPARTMENT OF FOREIGN AFFAIRS
Directorate for International Organizations

[Annex D follows]

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ANNEX D

D R A F T

L E T T E R

from the State Council of the Republic and Canton of Geneva
to the Secretary-General of UPOV

STATE COUNCIL
OF THE
REPUBLIC AND CANTON
OF GENEVA

Geneva,

The Secretary-General of the
International Union for the Protection
of New Varieties of Plants

Geneva

Sir,

We refer to the Headquarters Agreement signed by your Union and by the Swiss Federal Council on, and take this opportunity to inform you that the State Council is prepared to extend to the officials of your Union the same tax benefits as accorded to members of the staff of the World Intellectual Property Organization.

Consequently, Swiss and non-Swiss officials domiciled in the Canton of Geneva and working within your Union will, in that capacity, be exempt from cantonal and communal taxes on such salaries, fees and indemnities as they may receive from your Union.

Accept, Sir, the assurances of our highest consideration.

FOR THE STATE COUNCIL

The Chancellor:

The President:

[End of document]

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