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INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW PLANT VARIETIES

COUNCIL

Seventh Ordinary Session

Geneva, October 10 to 12, 1973

REVISION OF THE CONVENTION

Report by the Secretary General

1. In accordance with a decision taken by the Council at its sixth session from November 7 to 10, 1972 (see paragraphs 128 to 130 of document UPOV/C/VI/12), the Consultative Working Committee discussed the amendments to the Convention which it might be desirable to introduce at the next Revision Conference. The Consultative Working Committee decided that the question should be put on the agenda of the next session of the Council.

2. In this connection the Secretariat draws the attention of the Council to the fact that the wording of paragraph (2) of Article 5 of the Convention might lead to misunderstanding. The paragraph reads as follows:

"The authorization given by the breeder or his successor in title may be made subject to such conditions as he may specify."

3. As the paragraph stands, it might lead to the erroneous conclusion that the breeder may make anything a condition for the grant of licenses. This is not true, however. Conditions which are contrary to public order, morality, the general law on contracts or the law against restrictive business practices would, of course, always be inadmissible. Also many laws on plant breeders' rights in the member States require the terms fixed by the breeders to be reasonable or provide that they must not be unreasonable.

4. The above requirement in national legislations as to reasonable conditions is legitimate under Article 9 of the Convention. However, the necessary restriction on the provision regarding the breeder's right to impose conditions for the grant of a license should be contained in the relevant paragraph itself.

5. In this connection attention is drawn to the BIRPI/WIPO Model Laws which all contain a section on Invalid Clauses in License Contracts. Section 33(1) of the Model Law on Invention reads:

"Clauses in license contracts or relating to such contracts are null and void in so far as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by the patent."

6. The following draft addition to paragraph (2) of Article 5 of the Convention is hereby submitted to the Council for consideration:

"However, it shall be a matter for national law to determine the extent to which license contracts or particular clauses in license contracts shall be invalid."

6. The Council is invited to consider the above addition to Article 5(2) of the Convention.

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