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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

Twenty-sixth Session  
Geneva, April 23 to 26, 1990

## SUMMARY REPORT

adopted by the CommitteeOpening of the Meeting

1. The meeting was opened by Mr. J.-F. Prevel (France), Chairman of the Administrative and Legal Committee, who welcomed the participants, of which the list is given in Annex I.

Adoption of the Agenda and Nature of the Meeting

2. When considering the draft agenda contained in document PM/1/1, the participants decided that the meeting should be regarded as one (the twenty-sixth session) of the Administrative and Legal Committee, it being understood that the main purpose of the meeting was preparation for the revision of the UPOV Convention.

3. The agenda was adopted as contained in document PM/1/1.

4. It was agreed that no detailed report of the session was called for.

Adoption of the Report on the Twenty-Fifth Session of the Administrative and Legal Committee

5. The draft report was adopted by the Committee, subject to a few amendments proposed, each in paragraphs reflecting its own interventions, by the Delegations of the Federal Republic of Germany and the United States of America. They are reflected in the final version of the said report (document CAJ/XXV/2).

## New Developments in the Field of Plant Variety Protection

6. The Delegations of Belgium, Denmark, the Federal Republic of Germany, Italy, the Netherlands, Spain, Switzerland and the United Kingdom made statements, as did the observer Delegations of Bulgaria and Finland. The statements are reflected in Annex II.

## Revision of the Convention

### General

7. Discussions were based on document PM/1/2 (Draft Revised Substantive Law Provisions) (hereinafter referred to as the "Draft"). Documents PM/1/3 (Variety Notion) and PM/1/4 (Conference of the International Chamber of Commerce (ICC) on the Interface Between Patent Protection and Plant Breeders' Rights) were also referred to in the consideration of certain Articles of the Draft.

8. The Delegations of the Netherlands and Denmark expressed regret that document PM/1/2 was distributed only a few days before the opening of the present session, a circumstance that did not permit their authorities to consult sufficiently with the interested circles. They asked that, for each future session, the Office should distribute the preparatory documents much before the date of that session; also, that if all the documents could not be issued at the same time, those containing the amended drafts of the articles should take precedence over the draft of the detailed report on the previous session.

9. The Secretary-General said that the Office would prepare a summary report on the present session during the present session and otherwise proceed as suggested in the preceding paragraph. This summary report only reflects, as far as the revision of the Convention is concerned, the decisions that have been reached by the Committee and the substantive proposals that have been made by the participants, unless those became superseded as a result of the subsequent discussions.

## Draft Article 2 - Definitions

### Item (iii) - Definition of "Variety"

10. There was no general agreement on the text proposed in the Draft.

11. The Delegation of the Federal Republic of Germany proposed that the definition be based on the notion of a biological entity, i.e. a genotype or a combination of genotypes, rather than on the notion of a unit for purposes of use. In relation to the second sentence, it had objections to the inclusion of examples and would have preferred a more abstract formulation capable of being transformed into national law. The Delegation expressed its intention to submit a new proposed text for the next session of the Committee.

12. The Delegation of the European Patent Office (EPO) suggested that the proposed definition might be divided into two elements.

13. The Delegation of the United States of America suggested that the final indent should read "by plants or parts of plants or components ..."

14. The Delegation of Sweden suggested that the third sentence could be included in an explanatory memorandum.

Item (iv) - Definition of "Essentially Derived Variety"

15. There was no general agreement on the text proposed in the Draft.

16. The Delegation of the Federal Republic of Germany proposed that:

(i) the definition should be based on the notion of genotype, the phrase "which have the effect of conserving essentially the same genotype" being substituted for "which have the effect of conserving the essential elements" in the first indent and "conforms to the genotype" being substituted for "conforms to the description" in the last indent;

(ii) the term "production method" should be substituted for the term "plant breeding method" since e.g. the discovery of a sport was not a breeding method sensu stricto;

(iii) the references to the genome, the genotype and the phenotype should be deleted at the end of the last indent.

17. Furthermore, the said Delegation expressed the view that the case of backcrossing was rather one of minimum distances between varieties.

18. Finally, the said Delegation said that the definition might be dispensed with, the notion then being described in Article 17(2), which was the only one in which it appeared.

19. The Delegation of France advocated deletion of the word "minimal" in the phrase "other minimal differences."

Item (v) - Definition of "Breeder"

20. The text proposed in the Draft was generally accepted.

21. The Delegation of Italy proposed that the reference to the successor in title be moved forward into Article 2(ii) (definition of the "breeder's right").

Item (vi) - Definition of "Material of the Variety"

22. The third indent of this item (covering "transformed products directly obtained from harvested material ...") was the subject of differing opinions. The Committee decided that the Secretariat should present a number of possible provisions in square brackets as a result of discussion of this item. The first would be the addition in Article 17 of a provision similar to Article 5(4) of the present text of the Convention explicitly permitting Contracting Parties to grant more extensive protection than that required under the Convention. The second would be the deletion of the third indent from the definition of "material of the variety"; an explanatory note would highlight the fact that a Contracting Party could optionally extend protection to material covered by the third indent under the above addition to Article 17. The third, as an alternative to the second, would provide for the definition of "material of the variety" so as to include the third indent

with two modifications to the text of the Draft, namely (i) the word "transformed" should be deleted, and (ii) the words presently appearing in square brackets should be deleted. Pursuant to this alternative, therefore, Contracting Parties would be obliged to extend protection to products directly obtained from harvested material.

Items (i) and (vii) to (xiv) - Other Definitions

23. These items were generally accepted by the Committee, although the Delegation of the Federal Republic of Germany questioned the necessity of all of those proposed definitions.

24. The Secretary-General stated that the question of whether and, if so, under what conditions an intergovernmental organization could become a Contracting Party, as well as the details on the voting right, would be dealt with in the administrative and treaty-law provisions.

Draft Article 11 - Conditions Required for the Granting of a Breeder's Right

Paragraph (1), Introductory Part

25. The Delegation of the Federal Republic of Germany wondered whether the phrase "by a Contracting Party" was not superfluous.

Paragraph (1)(a) - Novelty

26. There was no general agreement on the text proposed in the Draft.

27. The Delegation of the Federal Republic of Germany proposed that the condition of novelty should not be based on the commercial exploitation of the variety but rather on the fact that plants or certain parts of plants had or had not been remitted to others together with the right of disposition, i.e. that the variety would become freely available to those persons. In relation to the present text--based on the offering for sale or marketing--it expressed willingness to reconsider the reference to the offering for sale, which did not make a variety available to others, it being understood that the fact that public knowledge of the existence of a variety would continue to be without effect on the novelty of that variety.

28. There was much support for the proposition that novelty should not be destroyed if the variety was being multiplied by the breeder himself or by another person under a contract ensuring that the plant material concerned would be returned to the breeder.

29. The Delegation of France was unable to accept that plant materials that had been systematically exploited under strict contractual conditions but that had not been offered for sale or commercialized, as such, could remain novel. Questions would arise in relation to common knowledge of such materials for the purposes of the examination of other varieties which could not be distinguished from them.

Paragraph (1)(b) - Distinctness

30. It was agreed that the final part of subparagraph (ii), starting with "or, if it is not granted," should be deleted since the enumeration was non-exhaustive.

31. A number of delegations favored Alternative B in subparagraph (iii), although it was pointed out that there was a need for defining the circle of people (e.g. specialized or commercial circles) for which the existence of a variety had become a known fact. The Delegation of the Federal Republic of Germany favored Alternative A, but the Office of the Union referred to linguistic differences which made that alternative somewhat problematic in particular in French.

Paragraph (1)(c) - Homogeneity

32. The text proposed in the Draft was accepted by the Committee.

Paragraph (1)(d) - Stability

33. Subject to the drafting amendment mentioned in the next paragraph, the text proposed was accepted by the Committee.

34. The Committee decided that the provision should define "stability" rather than speak of a requirement of absence of non-stability.

Paragraph (2) - Variety Denomination

35. The Committee agreed to the text proposed in the Draft.

Paragraph (3) - Exclusion of Other Conditions

36. The text proposed in the Draft was accepted by the Committee.

Draft Article 6 - Forms of Protection

37. The Office of the Union was requested to prepare two alternatives for the next session:

(1) Alternative 1 should provide that plant varieties shall not be the object of protection by patent.

(2) Alternative 2 would be the absence of any regulation of this question; in other words the Convention would not contain the said prohibition; explanatory notes would state that the silence of the Convention means that each Contracting Party is free to provide for the possibility of granting patents for plant varieties in addition to breeders' rights; a Contracting State providing for this possibility could require that an applicant must choose between the breeders' rights and a patent or it might permit him to apply for both forms of protection. Where the same variety is protected by breeders' rights and by patent, the resolution of any conflict will be left to national legislation and will not be regulated by the Convention.

38. In any case, it is understood that each Contracting Party must provide for the granting of breeders' rights for all varieties of the plant kingdom; however the exception provided in the present text of the Convention will be maintained for those Contracting Parties which benefit from it at the time of the adoption of the revised Convention.

#### Draft Article 17 - Effects of the Breeder's Right

##### Paragraph (1) - Nature of the Rights

39. There was no agreement whether the presently proposed structure of a general right followed by non-exhaustive examples of the exercise of that right should be retained or whether the examples should be deleted. The Delegation of the Federal Republic of Germany moved the deletion of the phrase "from exploiting the variety commercially and in particular," legal security requiring that the acts covered by the breeder's right be defined exhaustively. Other delegations spoke in favor of retention to enable the right to cover new forms of exploitation that might be developed in the future.

40. With respect to the alternatives, the Committee agreed to retain Alternative 1, that is, to delete the words "subject to the provisions of paragraph (4)."

41. The Delegation of the United States of America suggested replacing the word "conditioning" in subparagraph (i) by the phrase "cleaning or otherwise conditioning" to avoid misinterpretations.

42. The Delegation of the United Kingdom wondered whether subparagraph (iii) should not be expanded to cover the territorial restriction presently appearing in paragraph (4)(iii).

##### Paragraph (2) - Extension of Right to Other Varieties

43. The discussions hinted to the desirability of adding "clearly" before "distinguishable" in subparagraph (i). The Secretary-General suggested to say "even if they are not essentially derived varieties."

44. The Representative of the EPO suggested that the case of varieties that were not sufficiently distinct from the protected variety, which should in fact be part of the latter variety for all intents and purposes, could be more appropriately dealt with in paragraph (1). There would then be no 'extension' of the breeder's right to such varieties or material.

45. In relation to subparagraph (ii), the Delegation of the Federal Republic of Germany suggested that the final part starting with "where" might be deleted. It was suggested that the matter should be considered after the document containing worked examples of essential derivation had been studied.

46. In relation to the same subparagraph, the said Delegation suggested that the term "essentially derived variety" should be defined in the paragraph under consideration.

47. Several delegations were of the opinion that subparagraph (iii) should also refer to the repeated use of varieties of the kind considered in the foregoing subparagraphs. In relation to subparagraph (ii), the Delegation of the Netherlands stated that the owner of the right should have the right to

prevent all persons not having his consent from undertaking the acts mentioned in paragraph (1) in relation to varieties which were essentially derived unless equitable remuneration was paid.

Paragraph (3)(a) - Limitations to the Breeder's Right

48. The Draft was generally accepted by the Committee.

Paragraph (3)(b) - Alternative A: Public Interest

49. It was agreed that this Alternative should be deleted.

Paragraph (3)(b) - Alternative B: Farmer's Privilege

50. The following proposal was made by the Delegation of the Federal Republic of Germany:

"(b) By derogation from the provisions of paragraphs (1) and (2), each Contracting Party may limit the effects of the breeder's right in order to permit farmers to use harvested material which they have derived from growing the protected variety or a variety referred to in paragraph (2) as reproductive or vegetative propagating material on their own holdings, provided that the limitation does not cause an unjustified prejudice to the legitimate interests of breeders. The Contracting Party concerned shall notify any limitation which it has introduced to the Secretary-General."

51. The Committee agreed that the next proposal should be based on the above with the addition in square brackets (in view of the prevailing divergent opinions) of an obligation on the part of the farmer to pay equitable compensation to the breeder. Square brackets should also be placed around the words "farmers" and "holdings" in view of the fundamental debate which these expressions occasioned.

52. The Secretary-General proposed that the words "in respect of any variety" be inserted after "breeder's right" and "on their own holding" after "use." He further proposed that the proviso at the end of the first sentence be deleted and that the core of the provision read "each Contracting Party may, within reasonable limits, introduce restrictions to the breeder's right."

Paragraph (4) - Exhaustion of the Breeder's Right

53. The Committee decided that Alternative 1 should provide the basis for the future revised version of paragraph (4), with square brackets around the word "express" in Article 17(4)(iv).

54. The Delegation of the Federal Republic of Germany stated that the text which it had proposed at the last session of the Committee and which was incorporated in Alternative 2 had not been intended as an alternative to the text which had been proposed by the Office of the Union in document IOM/IV/2 on the basis of corresponding texts in the field of patents and which was incorporated in Alternative 1. Several delegations indicated their wish to have Alternative 2 transformed into an explanatory note on the practical operation of the principle of exhaustion.



55. The Vice Secretary-General observed that the words "[put on the market] in the territory of the Contracting Party concerned" had been unintentionally missed out of the introductory part of the proposed text and would be reinstated.

**Draft Article 18 - Restrictions on the Exercise of the Right**

56. The text proposed in the Draft was generally accepted.

**Draft Article 8 - Field of Application of the Convention**

57. Several interventions led to an alternative formulation of paragraph (1) reading "... all varieties of the plant kingdom," or simply "all varieties."

58. It was agreed that paragraph (2) of the Draft should be deleted. In its place, the Secretary-General proposed, and the Committee accepted, that the next draft should provide the obligation for each Contracting Party to achieve full coverage within 10 years from the date of becoming bound by the new Act. In respect of Contracting Parties who would enter the Union by accession to the new Act without being party to previous Acts, it was proposed that the obligation to achieve full coverage should apply progressively as provided in Article 4(3) of the present text of the Convention.

**Draft Article 1 - Purpose of the Convention - and Draft Article 3 - Seat of the Union; Headquarters Agreement**

59. The Delegation of the Federal Republic of Germany proposed that:

(i) the two Articles be put in reverse order since the primary purpose of the Convention was to create a Union, the obligation currently provided in Article 1 arising from membership;

(ii) the current draft Article 1 bear the title "Obligations of Contracting Parties";

(iii) the current draft Article 3 bear the title "International Union."

Subject to those observations, the text of Articles 1 and 3 of the Draft were generally accepted.

**Draft Article 4 - Legal Status**

60. The Delegation of the Federal Republic of Germany proposed that the word "hat" be substituted for "besitzt" in the German text of paragraph (1). The text of draft Article 4 was otherwise generally accepted.

**Draft Article 5 - Seat of the Union; Headquarters Agreement**

61. The Delegation of the Federal Republic of Germany proposed that the title be limited to its present first part.

62. The Secretary-General proposed that paragraph (2) be amended to take account of the fact that there was already a headquarters agreement.

63. Subject to the observations in the two preceding paragraphs, the text of Article 5 in the Draft was accepted.

**Draft Article 7 - Protection Independent from Measures Regulating Production, Certification and Marketing**

64. Subject to the proposals set out in the next two paragraphs, the text of the Draft was generally accepted.

65. It was agreed:

(i) to replace "each Contracting Party" by "any Contracting Party" ("eine Vertragspartei" in German);

(ii) to replace "however," at the beginning of paragraph (2), by "in any case," and to merge the two paragraphs into one paragraph or even one sentence;

(iii) to replace "hinder" by "affect" in the current paragraph (2) in view of the proposed deletion of "as far as possible."

66. The Delegation of the United States of America drew attention to the possible incompleteness of the wording of Article 7 now that Article 17(1)(iii) had added specific acts, such as exporting and importing to the effect of the breeder's right, and since Article 17 no longer provided for an exclusive right for the breeder but for the right for the breeder to exclude others from certain acts. It was agreed that specific transactions, such as importing and exporting, could be added to "the production, certification and marketing" already specified in Article 7(1) and it was noted that the new wording proposed for Article 7(2) with the introduction of the word "affect" overcame the problems envisaged.

**Draft Article 9 - National Treatment**

67. The Delegation of the Federal Republic of Germany proposed that the two paragraphs be merged and that the reference to a Contracting Party should be written in full whenever such a reference was made (this proposal was based on the French and German texts).

68. It was agreed that the Secretariat should make proposals in the new draft of ways in which the term "national treatment" might be reformulated so as to apply equally to Contracting Parties that were intergovernmental organizations.

**Draft Article 10 - Free Choice of the Contracting Party With Which the First Application is Filed; Applications to Other Contracting Parties; Independence of Breeders' Rights Granted by Different Contracting Parties; Special Arrangements**

69. The Committee decided that paragraph (3)(b) and (c) would be deleted from the text and replaced by a suitable commentary.

70. The Delegation of the Federal Republic of Germany proposed that the title be shortened and limited to the first proposition; that in the German text "erteilen" be used instead of "gewähren" (recurrent replacement); that in paragraph (3)(a) the words "natural or legal" could be deleted (whereas they should be retained in Article 9 in view of the references to the place of residence or registered office).

71. The Secretary-General proposed that in relation to applications there should be a reference to an office rather than simply to a Contracting Party. He also indicated that paragraph (3) would be redrafted to highlight the application of the principle of independence of protection in several Contracting Parties whether an application was granted or refused.

**Draft Article 12 - Transitional Limitation of the Requirement of Novelty**

72. The Delegation of the Federal Republic of Germany proposed a new structure for the provisions on the conditions for the granting of a breeder's right (presently in Article 11 of the Draft), with an introductory article enumerating the conditions and further articles defining each condition. In that structure the Article 12 in the Draft would be incorporated into the Article dealing with novelty in the meaning of Article 11(1)(a); this would result in a shortening of the reference to previous provisions in Article 14(1).

73. The Delegation of the United Kingdom proposed a structure in which there would be an Article on novelty and another on the "technical" conditions of protection.

74. The Committee agreed to the deletion of paragraph (2) since there would no longer be an option of progressive application of the Convention to varieties of the whole plant kingdom.

75. The Secretary-General further indicated that paragraph (1) would be made more explicit in relation to the taxa that may be concerned by a transitional limitation.

**Draft Article 13 - Right of Priority**

76. The Delegation of the Federal Republic of Germany proposed that the word "Schutzrechtsantrag" in paragraph (3) should read "Antrag auf Erteilung eines Züchterrechts" and the phrase "vorgenommenen Antrag" in paragraph (4) "eingereichten Antrag."

77. The Secretary-General noted that the right of priority was not defined.

**Draft Article 14 - Examination of the Application; Provisional Protection**

78. On the proposal of the Delegation of the Netherlands, it was agreed that paragraph (3) would be placed in square brackets in the next draft. The Secretary-General referred to the inadequacy of the word "joint [utilization]" and suggested to use "[utilization] by each of them" instead.

79. In relation to paragraph (4), the Secretary-General proposed to replace "at the very least" by "at least," and stressed the importance of this Article. It was agreed that a provision placing a flexible obligation upon Contracting Parties to provide provisional protection was necessary, so that, for example, a Contracting Party might require notice to be given before provisional protection arose.

**Draft Article 15 - Duration of the Breeder's Right**

80. The substance of the text of the Draft was generally accepted, but it was proposed that the word "limited" should be replaced in paragraph (1), e.g. by "fixed," and that paragraph (2) should read "protection shall not end earlier than the expiration of [twenty] years counted from the date of grant..." However, it was noted that the Delegation of Sweden wished to see the minimum fixed-term remain at twenty years.

**Draft Article 16 - Nullity and Forfeiture of the Breeder's Right**

81. It was noted that in the English text of paragraph (3) "may" should be replaced by "shall."

82. The Delegation of the Federal Republic of Germany proposed that paragraphs (1) and (2), dealing with annulment, should be merged into one paragraph having three subparagraphs dealing, respectively, with lack of novelty or distinctness (present paragraph (1) of Article 10 and proposed paragraph (1), first part), with non-entitlement (proposed paragraph (1), second part) and with lack of homogeneity or stability in the case of a grant essentially based on the breeder's information and documents (proposed paragraph (2)).

83. In relation to paragraph (3), the Delegation of the Federal Republic of Germany proposed that it refer specifically to a lack of homogeneity or stability appearing subsequently to the grant of the breeder's right, with the introductory part of the paragraph being formulated in a way similar to that of paragraph (1).

84. The Secretary-General suggested that the new case of annulment contemplated in paragraph (2) could be dealt with as a case of fraud, e.g. by making a reservation in relation to such cases in paragraph (4).

85. It was agreed that the next draft should contain three alternatives: the proposal by the Delegation of the Federal Republic of Germany; the proposal by the Secretary-General; a proposal to retain the present text.

**Draft Article 19 - Variety Denomination**

86. Subject to the observations in the next paragraph, the text of the Draft was generally accepted.

87. The Delegation of the Federal Republic of Germany proposed the following drafting changes. References to "protection" in paragraphs (1) and (7) should, for consistency, be replaced by references to breeders' rights. References in paragraph (3), (5) and (6) to the submission of denominations should be replaced by references to the "proposing" of denominations. The final sentence of paragraph (3) and its cross reference to Article 14 was unnecessary and should be deleted. In paragraph (4), the authority must mandatorily require the breeder to submit another denomination. In the last sentence of paragraph (5), the word "may" should be replaced by "shall" to make this provision mandatory also.

88. It was agreed that the provisions of Article 19 should be associated with the provisions of Article 11 dealing with denominations as a condition for protection, if the restructuring of the Articles was attempted.

General

89. As far as the order of the Articles is concerned, it was decided to generally retain the existing order for the time being. A proposal for a revised order for the Articles, proposed by the Delegation of the Federal Republic of Germany, is set out in Annex III.

90. Finally, it was agreed that the Secretariat would make such supplementary changes in drafting as would clarify and harmonize the provisions of the next draft.

91. This report was unanimously adopted by the Committee at its meeting of April 26, 1990.

[Annex I follows]

ANNEX I/ANNEXE I/ANLAGE I

LISTE DES PARTICIPANTS\*/LIST OF PARTICIPANTS\*/TEILNEHMERLISTE\*

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\* in the alphabetical order of the French names of States and organizations/Dans l'ordre alphabétique des noms français des Etats et des organisations/In alphabetischer Reihenfolge der französischen Namen der Staaten und Organisationen

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[Annex II follows/  
Annexe II suit/  
Anlage II folgt]

## DEVELOPMENTS IN THE FIELD OF PLANT VARIETY PROTECTION\*

Statements by Delegations of Member States

1. Belgium.- Consultations regarding the extension of the list of protected taxa have been completed and the supplementary list, which comprises 108 taxa, has been established.
2. Denmark.- Protection has been extended to Aster L. and contacts have been made with Israel with a view to have varieties of that genus examined in that country.
3. The new tariff of fees, which represents the first step towards a self-financed examination system, has been published in issue No. 1 of 1990 of the Gazette. Issue No. 2 will contain information on the consequences of the savings which had to be made to achieve the goal of self-financing.
4. Federal Republic of Germany.- Consultations are taking place between the various competent ministries in relation to the amendment of the plant variety protection law. It is proposed to eliminate the list of species and to extend protection to the whole plant kingdom, and also to extend the scope of protection (see paragraph 10 of document C/XXIII/14 Prov. in this respect).
5. Italy.- An extension of protection to 18 taxa is in the course of being published.
6. Netherlands.- Protection is expected to be extended to the whole plant kingdom in the near future.
7. Spain.- An extension of protection to cherry and cotton is under consideration. Fees have been increased by 5% as of January 1, 1990.
8. Switzerland.- A proposal to extend protection to all varieties meeting the conditions for protection, and for which examination could be carried out in any one of the member States could not be carried for constitutional reasons, because the law provides for a list of species. It is now proposed to extend protection to 144 families.
9. United Kingdom.- Protection is expected to be extended next July to borage, Christ's thorn, coriander, Cornus L., x Festulolium, Impatiens L., Kalanchoë Adans., Scaevola aemula, sunflower and turnip-rape.
10. Fees have increased by 28% on an average on April 6, 1990, as a step towards a self-financed examination system. The increases are variable at the level of the species, as a result of the intended removal of cross-subsidization.

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\* Report not approved by the relevant delegations.

11. The examination of fruit varieties is being transferred from Brogdale to Wye College. Although the transfer of the collections will take some years, there will be no disruption of the examination work.

Statements by Delegations of Non-member States

12. Bulgaria.- Work has now started on the preparation of a new patent law. The new law will comprise a special chapter on the protection of new plant varieties which will conform to the Convention. It may be passed in the middle of next year and Bulgaria may become a member of UPOV by the end of next year.

13. Finland.- The Committee which has been entrusted with the drafting of a plant variety protection Bill in accordance with the Convention has been given the mandate to draft the Bill as soon as possible to enable accession to the Convention as soon as possible. The drafting is expected to be completed within the next two months and the Bill might be introduced in Parliament this year.

[Annex III follows]

PROPOSAL  
FOR A NEW STRUCTURE OF THE CONVENTION

Submitted by the Delegation of the Federal Republic of Germany

New Articles	Title	Previous Articles <sup>1</sup>
<b><u>Part One: General Provisions</u></b>		
Article 1	International Union	Article 1
Article 2	Legal Status; Organs; Seat	Articles 24*, 15* and 1(3)*
Article 3	Definitions	Article 2
Article 4	Field of Application	Article 4
Article 5	National Treatment	Article 3
<b><u>Part Two: Substantive Law</u></b>		
<b><u>Chapter I: Conditions for the Granting of a Breeder's Right</u></b>		
Article 6	Protectable Varieties	Article 6(1), Introduction, (2) (requirements of distinctness, homogeneity, stability, novelty, variety denomination) and (3); Article 13(1)
Article 7	Distinctness	Article 6(1)(b)
Article 8	Homogeneity	Article 6(1)(c)
Article 9	Stability	Article 6(1)(d)
Article 10	Novelty	Articles 6(1)(a) and 38*
Article 11	Variety Denomination	Article 13(2) to (6)

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<sup>1</sup> In the text proposed in document IOM/IV/2 or, if marked with an asterisk, in the present text of the Convention.

New Articles	Title	Previous Articles
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Chapter II: Application for the Grant of a Breeder's Right

Article 12	Free Choice of the Member State in which the First Application is Filed	Article 11(1) and (2)
Article 13	Priority	Article 12(1), (2) and (4)
Article 14	Examination of the Application	Article 7(1) to (3)
Article 15	Period for Submission in the Case of Priority	Article 12(3)
Article 16	Joint Utilization of Examining Authorities	Article 30(2)*
Article 17	Provisional Protection	Article 7(4)

Chapter III: Effects of the Breeder's Right

Article 18	Content of the Breeder's Right	Article 5(1) and (5)
Article 19	Restrictions on the Effects of the Breeder's Right	Article 5(2)(ii) to (iv), (3) and (4); Article 9
Article 20	Exhaustion of the Breeder's Right	Article 5(2)(i)
Article 21	Use of the Variety Denomination	Article 13(7) and (8)
Article 22	Independence of Protection in Several Member States	Article 11(3)(a)
Article 23	Agreements on Protection	Article 11(3)(b) and (c)

Chapter IV: Duration and Termination of the Breeder's Right

Article 24	Duration of the Breeder's Right	Article 8
Article 25	Nullity of the Breeder's Right	Article 10(1) and (4)
Article 26	Forfeiture of the Breeder's Right	Article 10(2), (3) and (4)

Part Three: Institutional Provisions

Chapter I: The Council, the Office of the Union

Article 27	Composition of the Council	Article 16*
Article 28	Presidence	Article 18*

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New Articles	Title	Previous Articles
Article 29	Sessions	Article 19*
Article 30	Observers	Article 17*
Article 31	Tasks	Articles 21* and 20*
Article 32	Voting	Article 22*
Article 33	Office of the Union	Article 23*
Article 34	Languages	Article 28*
<u>Chapter II: Financial Provisions</u>		
Article 35	Meeting of Expenses	Article 26(1)*
Article 36	Contributions of Member States	Article 26(2) to (5)*
Article 37	Auditing of Accounts	Article 25*
<u>Part Four: Effects on the Member States</u>		
Article 38	Implementation of Convention on the Domestic Level	Article 30*
Article 39	Relations Between States Bound by Different Texts	Article 34*
Article 40	Special Agreements	Article 29*
<u>Part Five: Final Provisions</u>		
Article 41	Signature	Article 31*
Article 42	Ratification, Acceptance or Approval	Article 32*
Article 43	Reservations	Article 40*
Article 44	Territorial Field of Application	Article 36*
Article 45	Communications	Article 35*
Article 46	Exceptional Rules for Protection Under Two Forms	Article 37*
Article 47	Entry into Force	Article 33*
Article 48	Duration of of the Convention	Article 41(1)*
Article 49	Revision	Article 27*



New Articles	Title	Previous Articles
Article 50	Denunciation	Article 41(2) to (4)*
Article 51	Preservation of Existing Rights	Article 39*
Article 52	Languages of the Convention; Depositary Functions	Article 42(1) and (3)*
Article 53	Transmission and Notifications	Article 42(2), (5) and (4)*

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