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UPOV

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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Fifth Session

Geneva, April 17 and 18, 1980

## DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The fifth session of the Administrative and Legal Committee (hereinafter referred to as "the Committee") was held in Geneva on April 17 and 18, 1980. All the member States were represented. The following States were represented by observers: Canada, Ireland, Japan, Poland, Spain, United States of America. The Commission of the European Communities was represented by an observer. The list of participants is annexed to this document.
2. The session was opened by Dr. D. Böringer (Federal Republic of Germany), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as appearing in document CAJ/V/1, subject to the addition of the following item:

"Computerization at the Office of the Union of the descriptions of protected varieties."

Adoption of the Report on the Committee's Fourth Session

4. The Committee unanimously adopted the report on its fourth session as appearing in document CAJ/IV/8, subject to the amendment of paragraph 7 to read as follows:

"7. In the course of the general discussion, all speakers expressed the opinion that the introduction of a system of closer cooperation deserved consideration."

Development of the Union

5. Comparative Study of Certain Aspects of the Legislation of Member States and of Spain with a View to the Evaluation of the Possibilities for Harmonization of that Legislation. Discussions were based on document CAJ/V/2.

6. The Vice Secretary-General introduced document CAJ/V/2 and drew attention to the fact that the short time available and the limited technical means had not permitted the Office of the Union to produce the translations of that document and of document CAJ/V/3 with the customary accuracy and in the usual presentation. Besides, a study on legislative texts made in a language other than that in which they were drafted unavoidably encountered the difficulty, and was sometimes confronted with the impossibility, of finding strict equivalents, especially for legal words and expressions. Therefore, the document had to be regarded as a guide to the legal situation in the States concerned, rather than an absolutely faithful description of that situation.

7. All speakers pointed out that the document was very useful in many respects, notably in view of the fact that several member States had to update their legislation and intended, at the same time, to harmonize it, as far as possible, with that of other States. It was therefore proposed that the document be transformed into a reference document usable over a longer period and not specifically for the purpose of evaluating the possibilities for harmonization of plant variety protection legislation. More precisely, it was suggested that the study be extended to further States--where necessary in cooperation with the States concerned--particularly the signatory States of the 1978 text of the UPOV Convention, and that it be drafted in a manner permitting periodical updating.

8. Closer Cooperation Among Member States. Discussions were based on document CAJ/IV/2, entitled "Closer Cooperation Among Member States Concerning Applications Effective in Several States" and containing a draft Special Agreement on International Procedure Concerning New Varieties of Plants (PICOV).

9. The general discussion led to the following conclusions:

(i) All participants were satisfied with the thoroughness and the broad scope of document CAJ/IV/2, which showed all possibilities for closer cooperation and a great number of points that deserved consideration.

(ii) All delegations wished to continue work on the topic. Whereas certain delegations, among them the Delegation of Switzerland, would regret any delay in the consideration of a system such as that outlined in the above-mentioned draft special agreement, the majority considered that the activities of the Union should for the time being concentrate on more urgent objectives.

(iii) Three main fields of activity were identified:

(a) intensification of the existing cooperation based on bilateral administrative agreements, for instance by means of multilateral concerted action with a view to further centralizing the examination of varieties and facilitating the taking over of examination results, thereby reducing the cost of plant variety protection;

(b) harmonization of national legislation, procedures, forms, etc.

(c) examination of a system--or systems--of cooperation as outlined in document CAJ/IV/2.

It was noted in this respect that any activity in one of those fields would have bearings on the others and, in particular, that the solution of any issue falling within one of the first two fields was likely to facilitate work on the third.

10. The Committee then decided that its subgroup which was to meet from June 23 to 25, 1980, according to the decisions taken by the Council at its thirteenth ordinary session should draw up, in cooperation with the Office of the Union, a list of issues to be discussed and an order of priority, to constitute a basis for the Committee's discussions at its next session. The subgroup should not restrict its investigations to the normal field of competence of the Committee. The subgroup should be composed of one expert from each member State. Finally, the States represented on the Committee were asked to send to the Office of the Union a list of such issues in preparation for the meeting of the subgroup or, if time did not permit them to do so, in preparation for the Committee's next session.

#### UPOV Model Law on Plant Variety Protection

11. Discussions were based on document CAJ/V/3.

12. The Committee examined the draft Model Law article by article and made a number of suggestions for consideration by the Office of the Union. It agreed to the Office of the Union finalizing the Model Law under its own responsibility and urged that the Model Law be published, and translated into Spanish, as soon as possible. It noted the intention of the Office of the Union to publish the Model Law for the time being in typed form and to send it to all States likely to be interested and, on request, to any other State.

#### Recommendation on Fees in Relation to Cooperation in Examination

13. Discussions were principally based on Annex III of document CAJ/IV/8 and on document CAJ/V/4.

14. The Committee agreed that the draft prepared at its fourth session and appearing in Annex III of document CAJ/IV/8 satisfactorily described the system of fees and considerations which member States would be recommended to apply in the future and that the procedure to be followed in special cases, such as those where the application for protection which gave rise to cooperation in examination was withdrawn, would best be dealt with in an explanatory note on the recommendation. It therefore decided the following:

(i) the draft Recommendation on Fees in Relation to Cooperation in Examination appearing in Annex III of document CAJ/IV/8 should be submitted to the Council for adoption, in order to enable member States to take as soon as possible the measures necessary for the implementation of the recommendation;

(ii) at its next session, it would consider the establishment of the above-mentioned explanatory note and, in preparation, member States should send, by July 1, 1980, information to the Office of the Union on the difficulties experienced so far (or apt to occur in the future) and on the way in which they had been (or could be) solved.

#### Variety Denominations

15. The Committee noted document CAJ/V/6 and decided that the matter of variety denominations should be discussed at its next session on the basis of that document and that the Guidelines for Variety Denominations should be reviewed with a view to determine what future activities should be undertaken in this area.

#### Annual Publication by Each Member State of a List of the Protected Varieties

16. Time not having permitted detailed consideration of the matter, the Committee decided to take up such consideration at its next session on the basis of a document to be prepared by the Office of the Union.

#### Computerization at the Office of the Union of the Descriptions of Protected Varieties

17. The Delegation of Denmark withdrew its proposal to examine whether the descriptions of protected varieties could be computerized at the Office of the Union.

#### Program for the Sixth Session of the Committee

18. The Committee agreed to discuss the following items at its sixth session, to be held on November 13 and 14, 1980:

- (i) Variety denominations;
- (ii) Development of the Union;
- (iii) Annual publication by each member State of a list of the protected varieties;
- (iv) Explanatory note on the Recommendation on Fees in Relation to Cooperation in Examination.

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