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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Eighth Session

Geneva, October 12 to 14, 1981

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its eighth session from October 12 to 14, 1981. The list of participants appears in the Annex to this document. On October 14 the Committee held a joint meeting with the members of the Technical Committee. The reader is referred to document TC/XVII/4 for the list of those members.

2. The session was opened by Mr. P.W. Murphy (United Kingdom), Chairman of the Committee, who welcomed the participants.

3. The Vice Secretary-General informed the Committee that on October 8, 1981, Denmark had deposited its instrument of ratification of the 1978 Revised Act of the Convention. The Act will now enter into force, pursuant to its Article 33(1), on November 8, 1981. The following six States will be bound by the Act: Denmark, Ireland*, New Zealand*, South Africa, Switzerland, United States of America*.

Adoption of the Agenda

4. The Committee adopted the agenda as appearing in document CAJ/VIII/1.

Adoption of the Report of the Seventh Session of the Committee

5. The Committee unanimously adopted the report of its seventh session as appearing in document CAJ/VII/11.

Access for Breeders to Tests

6. The Committee noted that the international professional organizations were unable to give their opinion on the above matter in time for the current session, and that they had requested an extension of the reply period. It therefore decided to postpone consideration of the item.

* These States will become members of UPOV on November 8, 1981.

Reciprocity in All Respects

7. Discussions were based on document CAJ/VIII/3.

8. The Committee noted the drawbacks of reciprocity in all respects described in document CAJ/VIII/3, and the fact that South Africa and Switzerland --which had provided for such reciprocity in respect of protection of the final product in the case of ornamental plants--as yet had no experience on the subject.

Protection, in the Case of Maize, of Lines and Commercial Hybrids, Excluding Parent Hybrids

9. Discussions were based on documents CAJ/VIII/4 and CAJ/VIII/9.

10. The Committee considered it desirable that protection of inbred lines and commercial hybrids be maintained. In the case of parental hybrids, it was aware that protection could reward genetic progress that was the result of genuine plant improvement work; it was also aware, however, that problems could arise, but so far only France had already been confronted with cases: two applications for protection had been filed for hybrids of the $(A \times B) \times B$ and $[(A \times B) \times B] \times B$ types, made up from public domain lines. Moreover, in order to block the private appropriation of certain single cross hybrids resulting from their protection, two pseudo-offers for sale had been made in order to make the existence of the hybrids a matter of common knowledge and thereby prevent their protection. In view of the interests at stake, the Delegation of France stated that it was very concerned by the fact that the protection of parental hybrids allowed astute breeders to eliminate their less well-equipped competitors. It was therefore a question of choosing the direction that presented the fewest drawbacks.

11. With regard to the abolition of the protection of parental hybrids, the Delegation of France confirmed that it would apply also to parental hybrids made up from protected lines. In the case of commercial hybrids used also as parent material, the effect of the planned abolition would be that fees would be charged for seed produced for agricultural use, but not for seed produced and used in the production cycle of the more complex commercial hybrid.

12. From the standpoint of treaty obligations, the Committee considered that the action planned by France was not compatible with the letter of the 1961 text, and certain delegations expressed misgivings as to its compatibility in all respects with the 1978 text.

Scope of Protection in the Case of Ornamental Plants and Fruit Trees

13. Discussions were based on document CAJ/VIII/5.

14. The Committee considered that, apart from the case of plantlets, extension of protection should be contemplated only in the case of ornamental and fruit plants, its purpose being to safeguard the interests of breeders and also those of producers who paid fees and faced competition from products not subject to the payment of royalties. In that respect it was generally accepted that protection should be extended to the multiplication of plants for the production of the final product (cut flowers or fruit). As for the protection of the final product itself, in the case of ornamental plants, certain delegations expressed reservations, mainly owing to the political difficulties that its introduction would create, and also the possibility of solving the problem differently, with the agreement of the parties concerned, due account being taken of the specific organization of the domestic market concerned. In that case a solution would have to be found for the problem raised by the import, by the producer of cut flowers, of the plants from which those flowers were to be taken.

15. The Committee also noted that, where protection was extended to the final product, practical problems arose when rights had to be asserted in relation to a product originating in the country itself on the one hand, or, on the other hand, in a country in which protection was confined to what was provided in Article 5(1) of the Convention. In both situations it was essentially for the owner of protection, and not the competent service, to find a solution. In the second situation, however, a large proportion of the problems would be eliminated by harmonization of national laws.

16. The Committee finally noted that some member States had based their national laws on an interpretation of Article 5(1) of the Convention that substantially reduced the scope of protection, notably with regard to fully grown plants sold to the final user; it invited them to reconsider their attitude.

Plant Variety Protection and Developing Countries

17. Discussions were based on document CAJ/VIII/6, and on an oral report on the action that the representatives of the Netherlands within the Technical Advisory Committee (TAC) of the Consultative Group on International Agricultural Research (CGIAR) had been led to take (in this connection see document CAJ/VIII/6, paragraph 3).

18. It transpired from the statements made by the delegations that took the floor that there was a general attitude of reserve regarding the adoption by UPOV, as an organization, of too ambitious a course of action in support of the introduction of plant variety protection systems by developing countries that did not possess the necessary infrastructures for their operation. It was pointed out that developing countries, almost by definition, lacked means such as qualified staff and administrative systems, and it was felt that those limited means should not be applied to the implementation of a project such as the introduction of plant variety protection--which might divert those means away from more productive activities--until the countries had reached a certain level of development. A careful policy had therefore to be adopted, and developing countries should not be encouraged to proceed along a path that would require them to overstep their means. Such an attitude did not mean, however, that the opinion was accepted according to which the concept of plant variety protection should be ignored, and still less that it should be rejected by the countries concerned. In that respect document CAJ/VIII/6 was considered very useful inasmuch as it enlarged upon certain considerations that UPOV had to take into account.

19. In that context, attention was also drawn to the following:

(i) when presenting the advantages afforded by plant variety protection, it was important also to mention its role in furthering the ethics of the seed trade;

(ii) a study should be made of the action that member States had to take from the plant variety protection standpoint with regard to genetic material, including varieties, produced by international plant improvement centers and introduced into member States.

Revision of the Guidelines for Variety Denominations

20. Discussions were based on documents CAJ/VIII/7 and CAJ/VIII/8.

21. With regard to the draft revised version of the Guidelines for Variety Denominations (Annex I to document CAJ/VIII/7), the Committee decided as follows:

(i) member States were asked to convey their observations on the principle governing the choice of variety denominations and on the draft to the Office of the Union by December 15, 1981;

(ii) the Office of the Union would revise the draft for the next session and, at the same time, change the title (as the question was no longer one of guidelines but of guidance for the interpretation of Article 13 of the Convention), simplify its provisions and add examples.

22. With regard to the principles governing the choice of variety denominations, the results of the discussion were as follows:

(i) member States were prepared to accept combinations of letters and figures (in that order) in the case of species for which that type of denomination corresponded to an established international practice, in other words essentially for maize and sorghum; the same applied to series of denominations embodying one and the same alphabetical component, on the understanding that no breeder would have an exclusive right to such a component;

(ii) the majority of the member States considered that denominations should not contain the name of the breeder, and that present practice should be maintained;

(iii) where a family of denominations existed that were all made with one fanciful word, any new denomination should not constitute a simplification in relation to corresponding earlier denominations (for instance, if 'White Snapper' were approved, 'Snapper' could not be approved afterwards);

(iv) it might be useful to exchange information, for instance annually, on decisions on proposed denominations that were on the borderline of acceptability and unacceptability, so that the attitudes of member States might be harmonized.

List of Classes for Variety Denomination Purposes

23. The consultation of national professional organizations that had been made pursuant to the Committee's decision at its seventh session (see document CAJ/VII/11, paragraph 22(i)) had revealed that the present list of classes was on the whole satisfactory. The Committee therefore considered that it had only to be completed and amended with regard to certain points of detail. To that end, the Office of the Union would prepare a draft to be submitted for consideration to a subgroup of the Technical Committee that would meet on the occasion of the Technical Committee's next session.

"Conversion" of Lines

24. Discussions were based on document CAJ/VIII/8.

25. It was pointed out that the problem arose from the fact that, where a line had been protected in favor of a breeder, the breeders of hybrids that made use of that line could escape the payment of royalties by altering certain characteristics of the line (color of stigmas, roots, anthers, etc.) thereby creating a new line. The Committee noted the fact that the International Federation of the Seed Trade (FIS) would proceed with the consideration of the matter.

Retirement of Mr. van der Meeren

26. The Chairman announced that Mr. van der Meeren (Netherlands) would shortly be retiring, and that he was taking part for the last time in a UPOV meeting. He recalled that Mr. van der Meeren had spent some 30 years in the service of the Netherlands Board for Plant Breeders' Rights, first as Deputy Secretary then as Secretary, and that he had given UPOV the benefit of his help and long experience for about ten years. On behalf of the Committee, the Chairman wished him a long and happy retirement.

Program for the Ninth Session of the Committee

27. Subject to the emergence of new items during the intervening period, the agenda of the ninth session of the Committee will include the following:

- (i) Access for breeders to tests;
- (ii) Recommendations concerning Article 13 of the Convention;
- (iii) Harmonization of procedures for the examination of proposed variety denominations;
- (iv) Periodical publication of fees payable.

With regard to item (iii) above, member States were requested to send a brief description of the procedure observed by them and the resulting costs to the Office of the Union by December 31, 1981.

ANNEX

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTEI. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATENBELGIUM/BELGIQUE/BELGIEN

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