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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Tenth Session

Geneva, November 16 and 17, 1982

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 tenth session on November 16 and 17, 1982. The list of participants is given in the annex to this document.

2. The session was opened by Mr. M. Heuver (Netherlands), Chairman of the Committee, who welcomed the participants.

3. Pursuant to a decision taken by the Council at its sixteenth ordinary session, held from October 13 to 15, 1982 (see paragraph 14(i) of document C/XVI/19), the Committee and the Technical Committee held a joint meeting in the afternoon of November 17 to examine the following two points:

(i) Minimum distances between varieties

(ii) List of classes for variety denominations.

Discussions in the joint meeting were chaired by Mr. C. Hutin (France), Chairman of the Technical Committee.

Adoption of the Agenda

4. Subject to the above paragraph, the Committee adopted the agenda as given in document CAJ/X/1.

Adoption of the Report on the Ninth Session of the Committee

5. The Committee unanimously adopted the report on its ninth session as given in document CAJ/IX/10.

Report on the Information Meeting with Representatives of the International Non-Governmental Organizations held on November 15, 1982

6. The Vice Secretary-General explained that the following organizations had been invited to send representatives to an information meeting on November 15, 1982: International Association of Horticultural Producers (AIPH), International Association for the Protection of Industrial Property (IAPIP), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Chamber of Commerce (ICC), Association of Plant Breeders of the European Economic Community (COMASSO), International Community of Breeders of Asexually Reproduced Fruit Trees and Ornamental Plants (CIOPORA), International Federation of the Seed Trade (FIS), National Association of Plant Patent Owners (NAPPO). All those organizations were represented, with the exception of IAPIP and ICC.

7. The Vice Secretary-General summarized the results of the information meeting as follows:

(i) The organizations had expressed their satisfaction at having been invited to the information meeting and hoped that other meetings of the same kind would be convened in the future, possibly with some modifications (longer duration and non-limitative agenda).

(ii) The organizations had expressed the wish to have the possibility of participating in the work--and therefore the sessions--of the Administrative and Legal Committee, the Technical Committee and the Technical Working Parties, and to be represented by observers at Council sessions. They felt that such participation would be mutually beneficial and would give UPOV the particular advantage of being able to obtain, at the most useful moment, the viewpoint of the professional circles at international level whereas at present the delegations of the member States had sometimes to compare the points of view of national circles. In addition, under the existing cooperation procedure, the organizations could not submit their comments on a draft until it had already reached an advanced stage, that is to say when it was sometimes too late for them to be taken into consideration. The organizations had remarked in that context that they participated in the work of various other international bodies, such as OECD, and that the delegations representing various of the member States in one or the other body of UPOV already comprised representatives of the national professional circles.

(iii) The organizations would have liked more UPOV documents to be made available to them.

(iv) The organizations held in high esteem the annual symposiums and were in favor of continuing the custom begun in 1980.

(v) Some of the organizations had let it be known--without meeting opposition from the other organizations--that the breeders would like an international system of protection to be established, featuring, in particular, a single application, a single examination and a single title of protection, which would be applicable for all member States or at least for a group of member States. The breeders were aware that it was a long term aim and therefore attached great importance to developing the current system of cooperation in examination. In that respect, they considered that the procedure of bilateral agreements tended to be cumbersome and could usefully be replaced by a multilateral system. In addition, some circles felt that the cost of protection was still too high despite cooperation in examination and that that factor was also creating difficulties for some member States wishing to extend protection to certain species. It had therefore been proposed that the member States should make a comparison of the various examination systems (examination carried out by an official service and examination carried out by the applicant). One organization had announced that it would be proposing a pilot project in respect of one species, for instance radish.

(vi) The wish had been expressed that protection be afforded to the largest possible number of genera and species since all breeders should be able to enjoy protection. An immediate measure would be for the member States to endeavor to extend protection to a genus or species within the shortest possible time once one of them had taken the initiative and set up examination facilities.

(vii) Some user circles were concerned at the fact that breeders concluded licenses on the basis of a plant variety protection title and of a trademark and maintained their demands based on the trademark once the plant variety protection had come to an end. In view of that situation, their organization was currently conducting a study into the implications of plant variety protection for breeders and producers, particularly a study of the national legislative provisions that corresponded to Article 5 (rights protected; scope of protection) and Article 9 (restrictions in the exercise of rights protected) of the Convention.

(viii) The organizations had been informed of the conclusions reached by the Council at its last ordinary session as regards varieties and quasi-varieties released by the International Agricultural Research Centers (IARCs) such as the International Center for the Improvement of Maize and Wheat (CIMMYT), and particularly of the Council's view that the professional organizations could draw up a code of conduct in respect of use of varieties and quasi-varieties from the IARCs by private sector breeders.

(ix) The organizations had expressed the wish that the following matters be examined or that examination of them be continued: minimum distances between varieties (including problems arising from mutation breeding); variety examination (including economic and financial aspects and the limiting effect of official growing tests on the number of protected genera and species); scope of protection (including inadequacies in the case of fruit plants and including the interpretation and application of Articles 5 and 9 of the Convention); exploitation of varieties (relations between breeders and users); implications of genetic engineering; International Agricultural Research Centers.

8. The Committee took note of the report and decided as follows:

(i) The question of participation of international non-governmental organizations in the work of the Committee would be submitted to the Consultative Committee.

(ii) As regards making available the Committee's working documents to the organizations, the current practice should be maintained, that is to say to transmit to them only those documents on which their opinion was to be obtained, taking account of the fact that the Consultative Committee's decision on the preceding question would affect the present question.

(iii) Initially, the proposal to carry out a comparative study of the various variety examination systems would have to be submitted to the Technical Committee. The Committee could return to that matter, if appropriate, to examine the administrative and legal aspects, for instance that of cost.

Intentions of Member States Regarding Amendment of National Plant Variety Protection Law

9. The Delegation of Spain announced that the legislation of its country was under revision in order to adapt it to the 1978 Revised Act of the Convention, to update it as regards certain details and to amend the scale of fees.

10. The Delegation of the United States of America announced that the Department of Agriculture of that country was currently drawing up implementing regulations to the Plant Variety Protection Act needed to bring the system of protection based on that Act and applicable to sexually reproduced varieties into line with the 1978 Revised Act of the Convention.

11. The Delegation of Sweden announced that the Parliament of its country had just approved, on November 10, the draft law tabled by the Government for ratification of the 1978 Revised Act of the Convention. It was expected that the instrument of ratification would be deposited on December 1, 1982. In addition to the amendments to the law required to adapt it to the 1978 Revised Act of the Convention, the term of protection had been increased and was now set at twenty years for all species.

List of Routine Information Required by the Office of the Union

12. The Committee noted document CAJ/X/2 and invited member States to respond to the wishes expressed by the Office of the Union in that document in order to ease its task.

Recommendations Concerning Article 13 of the Convention

13. Discussions were based on document CAJ/X/3 and, at second reading, on a working document that had been amended pursuant to the decisions taken at the first reading. Account had also been taken of the comment made by an officer of an International Registration Authority in respect of recommendation 8, reproduced in document CAJ/X/4, and of observations by the authorities of New Zealand communicated by letter to the Office of the Union. Finally, the Committee took note of document CAJ/X/6.

14. The Committee adopted the version of the UPOV Recommendations on Variety Denominations contained in document CAJ/X/9--subject to a further examination, at its following session, of the questions arising from Recommendation 6 (according to the new numbering). The document would be submitted to the Consultative Committee for its decision, in accordance with the decision taken by the Council at its sixteenth ordinary session (see paragraph 14(ii) of document C/XVI/19) as regards the consultation of international non-governmental organizations, and subsequently to the Council for approval.

15. During the discussions, it was stated that the member States did not always examine the proposed denominations in accordance with criteria such as similarity with trademarks. Such was the case, in particular, in Japan, whose Delegation also pointed out that the denominations proposed in the other member States would not be compared with the already existing denominations in the case of genera and species not protected in Japan.

Harmonization of Procedures for the Examination of Proposed Variety DenominationsCooperation with International Registration Authorities

16. Examination of these items was postponed to the following session.

List of Classes for Variety Denominations

17. Discussions were held in a joint meeting with the Technical Committee on the basis of documents TC/XVIII/9 and 9 Add.

18. It was decided that new proposals were to be made by the experts from the member States in accordance with the following basic principles established during the discussions:

(i) As a general rule, a genus was to constitute a class for the purpose of variety denomination (in other words, the phrase "of the same botanical species or of a closely related species" contained in the last sentence of Article 13(2) of the 1978 Revised Act of the Convention would normally cover a genus).

(ii) A number of genera could be grouped together in one class in the following cases:

- (a) where intergeneric hybridization blurred the boundaries between those genera and they together constituted a practical reference unit (examples: ornamental bromeliaceae and orchids);
- (b) where the nomenclature was not clear, particularly in the case of synonyms (example: tomato was generally placed in the genus *Lycopersicon*, but was also placed by some people in the genus *Solanum*);
- (c) where the genera were known under the same or similar common names and the representatives (species, subspecies, varieties, etc.) of those genera were used for the same purpose (example: *Erica* and *Calluna*);
- (d) where the representatives of the genera were marketed as a mixture (example: the gramineae contained in lawn mixtures).

(iii) A genus could be divided into a number of classes where the representatives of such genera were very different as regards their botanical features and their use (example: the genus *Solanum* within which potato could be separated from the species propagated in practice by seed and of which the fruits were used).

From a practical point of view, the classes could also be defined by stating the relevant taxonomic unit followed by the smaller units excluded from it (example: "genus *Solanum* except *Solanum tuberosum* [potato]"). In the current list, the classes that constituted exceptions were defined in the form of limitative lists of taxa.

Minimum Distances between Varieties

19. Discussions were held in a joint meeting with the Technical Committee on the basis of document TC/XVIII/7.

20. A detailed study of the annex to document TC/XVIII/7--during which improvements were proposed from the point of view of using the annex as a basis for the hearing of international non-governmental organizations that was to be held on November 9 and 10, 1983--revealed that member States were not as yet ready to discuss with those organizations the legal matters raised by the problem of minimum distances between varieties, in view of their complexity and of their relative novelty. Consequently, it was decided as follows:

(i) The Administrative and Legal Committee would examine at its following session the legal questions raised in the annex to document TC/XVIII/7 and also the question raised during the discussions, that is to say whether the use of a line in the commercial production of a hybrid would destroy or not the novelty of the line within the meaning of Article 6(1)(b) of the Convention in those cases where the line itself had not been marketed. Examination would be based on the annex to document TC/XVIII/7 and on the member States' replies to a questionnaire to be drawn up and distributed by the Office of the Union.

(ii) Unless the progress of the work of the Administrative and Legal Committee set out in the above paragraph made it possible to act differently, the international non-governmental organizations would be heard solely on the technical aspects of minimum distances between varieties. On that assumption, the hearing would be based on a new document. That document would be drawn up by the Office of the Union on the basis of further discussions to be held by the Technical Committee at its meetings on November 18 and 19, 1982, and reviewed by the Consultative Committee and, possibly, also by the Administrative and Legal Committee at their following sessions. It was to contain a recapitulation of the provisions of the Convention and the standards adopted by UPOV for examination, particularly of those given in the General Introduction to the Test Guidelines and also a recapitulation of the areas in which special problems had arisen (for example: mutations, conversion of lines, sophisticated examination methods). The organizations would also be requested to present their opinions, criticisms, solutions and proposals. The latter were to be supplied in writing to enable the Technical Committee to study them and prepare the hearing at its session on October 3 and 4, 1983.

Program for the Eleventh Session of the Committee

21. Subject to subsequent developments, particularly the results of the discussions at the eighteenth session of the Technical Committee, the agenda for the eleventh session of the Committee was to contain the following items:

(i) Intentions of member States regarding amendment of national plant variety protection law (reports on new developments);

(ii) Variety denominations

(a) Recommendation 6

(b) Harmonization of procedures for the examination of proposed variety denominations

(c) Cooperation with International Registration Authorities;

(iii) Legal problems raised by the question of minimum distances between varieties (and possibly preparation of the hearing of international non-governmental organizations).

Retirements and Transfers

22. The Committee thanked Miss E.V. Thornton (United Kingdom) and Messrs. R. Derveaux (Belgium), R. D'Hoogh (Belgium) and A.F. Kelly (United Kingdom) for their activities devoted to the protection of plant varieties and wished them a long and happy retirement. The Committee also thanked Mr. J. Mullin and wished him satisfaction and success in his new task.

[Annex follows]

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