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UPOV

CAJ /XIV/ 6
ORIGINAL: French
DATE: February 27, 1985

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fourteenth Session
Geneva, November 8 and 9, 1984

REPORT

adopted by the Committee

Opening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its fourteenth session on November 8 and 9, 1984. The list of participants is given at Annex I to this document.

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

Adoption of the Agenda

3. The Committee adopted the agenda as given in document CAJ/XIV/1.

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

4. This report records only the information given at the session which supplements that already given at the eighteenth ordinary session of the Council (see paragraphs 8 to 75 of document C/XVIII/14).

5. The delegation of the Federal Republic of Germany announced that its parliamentary committee for food, agriculture and forestry was in the process of examining a draft law amending the plant variety protection law. It had proposed that the term of protection should be extended to 25 years as a general rule and to 30 years in the case of trees, vine, potatoes and hops.

6. The delegation of Belgium announced that the draft law amending the plant variety protection law envisaged the introduction of a one-year "period of grace" since the Belgian authorities had thought, on the basis of previous discussions, that its introduction would be practically general throughout UPOV. They were suprised that such was not the case.

7. The delegation of Denmark announced that the committee on the revision of plant variety protection legislation was to meet in the very near future and that the horticultural producers had submitted to it a large number of proposals, particularly the introduction of a system of provisional protection and also the limitation of licensing contracts to those clauses that derived from the plant variety protection law.

8. The delegation of the United States of America announced that there was an intention of amending the Plant Patent Act to provide protection for plant parts, including cut flowers and fruit. This amendment would settle the present legal uncertainty as to the scope of protection of a plant patent and would provide a remedy for plant patent owners against the importation of parts of patented plants.

9. The delegation of the Netherlands announced that the statutory provision on novelty, that had been adapted to the new content of Article 6 of the Convention, was yet to be put into force. Other amendments were being studied, but it was still premature to report on them.

10. The delegation of Sweden announced that it was envisaged to extend protection to further genera and species, including triticale.

Biotechnology and Plant Variety Protection

11. WIPO Committee of Experts on Biotechnological Inventions and Industrial Property. An interim report on the session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property, drawn up by those who represented UPOV as observers at the session, was read out at the meeting. This report is given at Annex II to this document. Attention was drawn in particular to the following comments made at the meeting of the WIPO expert committee, either by UPOV observers or by national delegates:

(i) there was no clear dividing line between "traditional" plant breeding and plant genetic engineering;

(ii) plant variety protection was not a cut price copy, providing second class protection, of the patent system; on the contrary, it had been set up for the very reason that patents were inadequate for protecting inventions in the field of living matter;

(iii) in view of the fact that it was specialized in the legal protection of inventive activity in the field of living matter, the plant variety protection system could serve as a model for the protection of strains of microorganisms;

(iv) the societal context prevailing when the plant variety protection system was instituted--and which still appplied--was explained at considerable length, particularly as regards the balance achieved between the interests of the breeders and the interests of the public and, above all, the need to preserve the freedom to breed varieties;

(v) a number of speakers stressed the need to avoid dual protection.

12. The final report on the session of the WIPO expert committee, adopted on November 9, 1984, will be distributed with this document.

13. Activities of the Organisation for Economic Co-operation and Development (OECD). The delegation of the Federal Republic of Germany announced that the OECD had instructed a group of experts to draw up an international report on patent protection and biotechnology. The report (OECD document SPT (84)12 of June 22, 1984) had been communicated to the governments for their comments. It had recently been examined by the Committee for Scientific and Technological Policy. Twenty-three States were represented, including 14 UPOV member States. The delegation of the Federal Republic of Germany included an expert in plant variety protection and a Japanese expert was also present in an observer capacity. The report, currently being finalized, was to be published under the responsibility of the Secretary General of the OECD clearly indicating that it reflected the views of the authors, that is to say with no binding nature for the member States.

14. General Discussion. A number of delegations emphasized the need for the plant variety protection experts to participate in the various discussions on the legal protection of the results of biotechnology, particularly through their inclusion in national delegations. The general trend of such participation should be towards concerted action, and not towards dispute, since it had to be admitted that the UPOV Convention was in some ways inadequate, particularly as regards its inability to provide protection for methods, and also because two complementary types of undertaking would probably exist in the

future: genetic engineering companies and "conventional" breeding companies, whereby the former would make available to the latter, on payment, the basic material. It was therefore necessary to achieve a balance between the respective needs and interests of the two parties. In any event, it appeared indispensable to maintain the freedom to breed varieties that was set out in Article 5(3) of the UPOV Convention.

15. One delegation, using the example of the insertion into existing varieties of herbicide resistence genes, an on-going aim for the large genetic engineering undertakings according to a report entitled "Commercial Biotechnology" published by the Congress of the United States of America, stated that it would be difficult for agricultural circles to accept that such type of breeding work, with very limited aims, could enjoy more extensive protection, through patents, than "conventional" plant breeding work.

16. It was emphasized that during the meeting of the WIPO Committee of Experts it had been stated on a number of occasions that biotechnology had to be offered protection commensurate with the investment that was involved. In the field of plant breeding, that demand was based on the--incorrect--assumption that "conventional" plant breeding did not require large investments and on the --equally incorrect--assumption that the plant variety protection system was not adequate to ensure the profitability of investments. A considerable amount of information work had therefore to be accomplished, particularly since the genetic engineering companies were advised by patent law specialists who knew little of the plant variety protection system or of its administrators. Since they were quite familiar with the patent system, and its administrators, it was quite natural for them to prefer it.

17. Biotechnology Subgroup. Discussions were based on document CAJ/XIV/5.

18. At its eighteenth ordinary session, the Council decided to set up a subgroup of the Administrative and Legal Committee, consisting of experts from member States and of the Vice Secretary-General (paragraph 14 of document C/XVIII/13 and paragraph 1 of document CAJ/XIV/5). The Committee designated the following experts, in a personal capacity: Miss N. Bustin (France), Mr. K.A. Fikkert (Netherlands), Mr. H. Kunhardt (Federal Republic of Germany) and Mr. S.D. Schlosser (United States of America) and an expert from Japan who remained to be designated, together with the Vice Secretary General, who could be assisted by members of the Office of the Union. Mr. Schlosser was invited to assume the chairmanship of the subgroup. In the event of his not being able to take on that duty, the subgroup would elect its chairman.[1]

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[1] The subgroup held its first session on November 9, 1984, under the chairmanship of Mr. M. Heuver, Chairman of the Administrative and Legal Committee. The participants at that meeting were those mentioned in paragraph 18 above and Mr. T. Kato (Japan) and Mr. A. Heitz and K. Shioya (Office of the Union). It was decided that the study to be drawn up by the subgroup would contain the following parts:

(i) a paper on the history of UPOV;

(ii) a paper on the techniques for plant breeding and recent developments in plant biotechnology;

(iii) a comparative study of plant variety protection and the patent systems in Europe, the United States of America and Japan, for instance in tabular form;

(iv) a study of conflicts, overlapping, loopholes, inadequacies, etc.

The drafting of the first two parts was entrusted to the Office of the Union. Comparison between the plant variety protection system and the patent system in Europe would be made jointly by Mr. Fikkert and Mr. Kunhardt and then distributed to enable the comparison to be extended to the United States of America and Japan. Correspondence would be channelled through the Office of the Union. The next session of the subgroup was planned for March 26, 1985.

Minimum Distances Between Varieties

19. Discussions were based on document CAJ/XIV/2.

20. The Committee took note of the conclusions reached by the Technical Committee on the questions set out in the annex to document CAJ/XIV/2. An extract from the report on the twentieth session of the Technical Committee, containing its conclusions, is given at Annex III to this report.

21. Under question 3 given in the Annex to document CAJ/XIV/2, the Committee discussed the concepts of distinctness and of identification. It was pointed out that, in order to facilitate discussion, the technical bodies of UPOV had used these terms in meanings that could lead to confusion. Following out-of-session discussions between members of the Technical Committee, it was agreed to propose to that Committee that, to avoid misunderstandings, the expression "characteristic suitable only for identification purposes" should no longer be used.

22. As regards question 12 set out in the annex to document CAJ/XIV/2, that is to say the possibility of introducing a droit de suite for the breeder of a variety on mutations of that variety, the Committee noted that the problem had also arisen in other contexts and would arise in future when genetic engineering enabled a given gene to be inserted into an existing variety. It also noted that, in some countries at least, the requirement to return a mutant to the breeder of the parent variety could not be validly incorporated in a licensing contract. Finally, the Committee noted that the general matter of mutations had already been raised in the past without real solutions having been proposed and that as things currently stood there was no reason to propose an amendment to the Convention. The Committee was reminded that the delegation of France was to submit to a forthcoming session its conclusions on the streamlined examination envisaged for mutants that differed from the parent variety in a limited number of the characteristics shown on the limitative list.

Harmonization of Lists of Protected Species

23. Discussions were based on document CAJ/XIV/3.

24. A number of delegations announced that, at present, extension of protection to all genera and species was either not possible in their country or not justified. For instance, one quarter only of the entries in the Belgian list had been the subject of applications for protection. In Ireland, there had been no interest in protection for horticultural species. Reasons of that kind also spelt doom for the earlier proposal made by CIOPORA that a member State should be required to give automatically protection to a genus or species for which any other member State was able to carry out examination.

25. As to the possibility of having the examination carried out by the breeder, one delegation doubted whether the breeders (and the producers) were ready to accept it, since the examination proposed by the official services was inexpensive and gave great assurance of exactness and therefore of reliability for the title of protection. A further delegation felt that the possibility should nevertheless be examined, at least for new ornamental plants for which there would be a limited number of applications. It was pointed out in this respect that the plant kingdom was currently being explored for new ornamental species that could be brought on to the market and it would be advisable to provide for protection of those species as soon as possible in order to encourage plant breeding and to enable its results to be protected. In view of the need in certain States to consult with the interested circles on extension of protection, it was important that the member States obtain early information on the development of plant breeding activities.

26. The Committee decided to enter a standing item on the agenda for its sessions to permit such an exchange of information. It also considered opportune that the Council recommend to the member States that they give favorable attention to requests for extension of protection to species on which considerable plant breeding work was being carried out.

Cooperation in Examination Between States Enjoying Very Different Climatic Conditions

27. Discussions were based on document CAJ/XIV/4 and on an oral report on the discussions held in the Technical Committee on the same subject at its twentieth session. The Technical Committee had concluded that the matter ought to be the subject of a more detailed study from the technical point of view.

28. From the legal point of view, it was emphasized by a number of delegations that since the laws were national ones, the prior conditions for granting a title of protection had to be satisfied at national level. In other words, the variety had to be distinct, homogeneous and stable at national level. (In the more particular case of distinctness, the variety had to be distinct in at least one examination location under the rules accepted at UPOV level and entered in the General Introduction to the Test Guidelines.) Consequently, the decision to grant a title of protection was always to be taken at national level, even if based, as a result of international cooperation in examination, on results obtained in a different State.

29. In the case of cooperation, the problem that arose was how to settle a dispute, particularly where the conclusion as to distinctness was contested. In some cases, it could be necessary to carry out a new examination. Such examination could be carried out in the country that had made the first examination or in the country in which the dispute had arisen. In that respect, no general rule could be set up. It was pointed out in that respect that a country not carrying out the examination itself, such as Switzerland in the case of certain species, had to accept the principle that the variety was distinct in its country once it had been found distinct in the country carrying out the examination. In the case of the description of the variety, that which may have been established in Switzerland, to use the preceding example again, would prevail in practice. However, in the case of a dispute, concerning infringement for instance, the disputed material would be compared with the sample deposited with the country that had carried out the examination prior to granting the title of protection, whereby the comparison would be made in the original examination location.

30. It was observed that the risk of disputes arising was not unreasonable when compared with that run in national examinations. Indeed, a dispute presupposed a "variety", for which an application for protection had been made or which was already protected, which was very close to an existing variety. Such a case was more of an exception than a rule. Indeed, to a large extent cooperation in examination concerned species that were in no way problematic from that point of view, whether examined under glass, under extensively controlled agro-climatic conditions, or which presented such great variability or which were the subject of such limited breeding work that problems were improbable. Finally, before entering into the system of cooperation--whether to entrust examination of a species to another member State or to utilize results of the examination of a variety--the authorities checked that such cooperation was compatible with national needs. In that respect, the essential element was that the foreign results (conclusions as to distinctness, homogeneity and stability and the description of the variety) were comparable with those obtained or which could have been obtained at national level.

31. It was likewise pointed out that a number of States had incorporated into their legislation a provision explicitly permitting cooperation in examination under Article 30(2) of the 1978 Act of the Convention. In practice, examination carried out abroad could be supplemented in certain specific cases by means of limited tests, mainly to give a more detailed description for the users. As an example, it was explained that in the Federal Republic of Germany the earliness of red clover varieties, in respect of which examination was entrusted to Denmark, was checked in varying locations. Where the results of an examination carried out abroad were adopted, the variety was added to the national reference collection and could be given a new description based on national experience (such as tests for value for cultivation and use) to fulfil the needs of users.

UPOV Recommendations for Variety Denominations

32. The Committee noted that the UPOV recommendations for variety denominations had been adopted by the Council at its eighteenth ordinary session, subject to formal revision of the text by the Office of the Union.

Any Other Business

33. Interpretation of Article 2(1) and related provisions of the Convention. The delegation of the Netherlands asked whether it was possible under the UPOV Convention to obtain industrial patents for plant varieties in addition to the titles based on the rules and principles of the Convention.

34. It was pointed out that Article 2(1) of the Convention resulted from two specific situations that had prevailed at the time the Convention was drafted: firstly, the delegation of Italy to the Diplomatic Conference in 1957-1961 had insisted that protection of plant varieties should be secured by means of a patent and therefore an alternative was provided for in the first sentence of Article 2(1) of the Convention. Secondly, there existed at that time a certain number of countries in which the patent office issued patents--whose validity was doubtful in some cases--for plant varieties, at least in the case of certain species. Among those countries, the Federal Republic of Germany should be specially mentioned since it also possessed at the time a seed law giving some degree of protection to breeders of varieties of crop plants and providing for a demarcation between the field of the patent law and the field of the seed law. This precedent, together with the fact that the Convention was to be applied gradually to the genera and species of the plant kingdom--thus justifying maintenance of the patent alternative for want of anything better in those States where it already existed--influenced the drafting of the rule contained in the second sentence of Article 2(1) of the Convention.

35. It was deduced from this background that the title of protection based on the UPOV Convention could coexist within a country with an industrial patent on condition that they did not apply to the same genus or to the same species. That of course meant that industrial patents could be granted for plant varieties. However, that deduction warranted a more detailed examination in view both of the differing types of patent and also of the other provisions of the Convention (Articles 2(2), 37 and 39 of the 1978 Act, in particular).

36. The Committee decided to enter the above matter on its agenda for the forthcoming session.

37. Departures. The Committee was informed that Mr. L. Donahue (United States of America), Mr. J. Le Roux (South Africa) and Mr. K. Shioya (Office of the Union) were attending a UPOV meeting for the last time. On behalf of the Committee, the Chairman thanked them for their activities in favor of UPOV and conveyed to them the Committee's best wishes for the future.

Program for the Fifteenth Session of the Committee

38. Subject to any new matters that might arise, the agenda for the fifteenth session of the Committee would include the following items:

(i) intentions of member States regarding amendment of national plant variety protection law (reports on any new event);

(ii) trends in plant breeding work and intended extension of protection to new species;

(iii) recommendation on the harmonization of lists of protected species;

(iv) progress report on the work of the Biotechnology Subgroup;

(v) interpretation of Article 2(1) and related provisions of the Convention;

(vi) preparation of the second meeting with international organizations.

39. This report has been adopted by correspondence.

[Annexes follow]

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/ TEILNEHMERLISTE

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III. OFFICERS/BUREAU/VORSITZ

Mr. M. HEUVER, Chairman
Mr. F. ESPENHAIN, Vice-Chairman

IV. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

Dr. H. MAST, Vice Secretary-General
Dr. M.-H. THIELE-WITTIG, Senior Counsellor
Mr. A. HEITZ, Senior Officer
Mr. A. WHEELER, Senior Officer
Mr. K. SHIOYA, Associate Officer

[Annex II follows/
L'annexe II suit/
Anlage II folgt]

Interim Report

on the session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property

1. At the session, which is currently in progress, 22 member States of the Paris Union, 5 intergovernmental organizations and 11 international non-governmental organizations, are represented. Among the member States represented are Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Italy, Japan, Netherlands, Spain, Sweden, Switzerland, United Kingdom and the United States of America, in other words 13 of the 17 member States of UPOV. In addition to UPOV, the following intergovernmental organizations are represented: Commission of the European Communities, European Patent Organization, United Nations Conference on Trade and Development and the World Health Organization. Among the international non-governmental organizations represented are: AIPPI, ASSINSEL and COMASSO.

2. The session elected as its chairman Mr. J.-L. Comte, Director Designate of the Swiss Federal Office of Intellectual Property.

3. Mr. Skov represented Denmark and the following formed part of their national delegations: Messrs. Elena Rossello, Fikkert, Kunhardt and Mejegård.

4. Every opportunity has been afforded to the representatives of UPOV member States, to the Vice Secretary-General who is representing UPOV at the session and to the representatives of the international non-governmental organizations interested in the work of the Union to fully participate in the discussion of the proposal before the session, namely that WIPO should prepare a study on "the existing situation concerning the protection, by patents or by other means, of inventions in the field of biotechnology (including 'genetic engineering') and possible means of providing for industrial property protection for such inventions, both at the national and international level." Those proposals are set out in the WIPO document Biot/CE/I/2.

5. A report will be presented to the session for adoption during the afternoon of Friday, November 9.

6. The purpose of this interim report is to highlight matters of particular interest to UPOV member States.

7. There seems to be no doubt that the report on the session will conclude that the view of the Committee of Experts is that the proposed study should be made.

8. Many times in the discussion of representatives of national patent offices referred to the importance of not departing from the traditional and long established principles governing patentability of inventions, unless it could be shown that there was an absolute need to do so.

9. Various industry representatives stressed that the potential benefits to society of the application of biotechnology and the considerable risk capital involved in research and development in that field made it extremely important to ensure that appropriate protection was available for biotechnological inventions.

10. A statement was made by the Delegation of the United States of America that it understood that the plant breeding industry in its country would prefer to have new varieties protected by utility (industrial) patents rather than by plant patents or plant variety protection certificates.

11. It was noted that many bodies and organizations were currently producing studies regarding the patenting of biotechnological inventions. It was considered that this should be discouraged and that the only intergovernmental bodies that were really competent to discuss the question were WIPO and UPOV.

12. Plant breeding representatives drew attention very strongly to the need to consider the "social" consequences of the application of patenting to plants and varieties of plants. Although it was not accepted that the study should concern itself too deeply with this question, it was agreed that the study should contain information on the historical background to the establishment of the UPOV Convention.

13. The WIPO document suggests that a distinction exists between new plant varieties obtained by traditional breeding methods and those obtained by genetic engineering. The fact that it was not possible to make such a distinction was emphatically stated. It was explained that genetic engineering, whilst it might give rise to inventions that would be extremely helpful to plant breeding, could not be expected to result directly in new varieties. The plants obtained with the help of genetic engineering would in any case be developed by "traditional" breeding methods. It was also explained that the UPOV Convention did not concern itself with the "method" of breeding used.

14. The point was made that if the extent of protection available under the UPOV Convention was found to be insufficient to encourage the necessary investment in biotechnological research and development in relation to plant varieties, then, rather than seek to correct the situation by the patent route, consideration should in the first place be given to using the opportunities that existed under Article 5(4) of the UPOV Convention to grant "more extensive rights".

15. Attention was drawn on a number of occasions, where it appeared there might be difficulties in applying normal patentability criteria to biotechnological inventions, to the fact that the UPOV Convention was more adapted to the protection of living material. UPOV recommended the Committee of Experts to look closely at the UPOV Convention and at some of the solutions found therein.

16. The point was also made that disturbance of the existing balance between the rights of the breeders and the needs of agriculture and horticulture by the introduction of too far-reaching monopoly rights could cause an overreaction leading to a demand that there should be no protection for plant varieties.

17. The WIPO document proposes that the study should consider whether it is justified that some kinds of biotechnological inventions are excluded from patent protection, as is currently the case in a number of laws. In this connection, the exclusion of plant varieties, animal varieties and essentially biological processes for the production of plants or animals was mentioned as requiring further consideration. UPOV suggested, without making a specific reference to genes, that the question should be studied whether there might be other kinds of biotechnological inventions that needed to be excluded from patent protection.

18. During a discussion of the rights conferred by titles of protection in respect of biotechnological inventions, it was noted that the study should consider not only patents but also plant breeders' rights. The point was made that thought should be given in particular to the scope of the protection granted by a patent. Reference was, of course, made to Article 5(3) of the UPOV Convention regarding the freedom to use the protected variety as the initial source of variation for the purpose of creating further varieties.

19. It was noted that if the owner of a patented gene could block breeding work, this would be a negation of the purpose of protection, namely to encourage development.

20. The WIPO document includes a brief summary of international treaties having a bearing on the protection of biotechnological inventions. It was noted that the information given on the UPOV Convention could be improved and it was agreed that the WIPO secretariat should do that in cooperation with the Office of the Union.

21. At the close of the discussions, the WIPO Secretariat reserved its position regarding the eventual use of consultants to assist in the preparation of its study. It indicated that an interim report would be made to the 1985 meeting of the WIPO Governing Bodies and that a specific budget item would be included in the draft program and budget for the 1986/1987 biennium.

[Annex III follows]

Extract from the Report on the Twentieth Session of Technical Committee held from October 17 to 19, 1984 (Document TC/XX/12 Prov.)

Minimum Distances Between Varieties

49. The Committee based its discussion on documents TC/XX/6, TC/XX/7 and paragraph 22 of document TC/XX/3 Add. It checked the answers given so far by the Administrative and Legal Committee and the Technical Working Parties on the 13 questions listed in Part I of document CAJ/XIII/2, question by question, and came to the following conclusions:

Question 1: There was no need to modify the interpretation of the notion ".... clearly distinguishable by one or more important characteristics ...." used in the Convention. It would, however, have to be kept in mind that the requirement had been included by the member States in their national laws with slightly different wording, as for example by ".... at least one important characteristic."

Question 2: There was no need for further interpretation of the notion "important characteristics."

Question 3: From the technical point of view, there was no difference between characteristics suitable only for identification and those also suitable for assessing distinctness. Other aspects, however, as for example juridical ones, or the uncertainty of the consequences of the acceptance of a characteristic for distinctness, did not at present allow certain characteristics to be admitted for distinctness purposes, although they were accepted for identification purposes.

Question 4: UPOV had at present rules in the General Introduction to the Test Guidelines and the individual Test Guidelines. UPOV would collect experience, species by species, which would then be reflected in these Test Guidelines. It was not meaningful to indicate minimum distances in the Test Guidelines for each characteristic.

Question 5: It was difficult to cover all situations in detail in advance. Therefore only the three main criteria agreed upon during the eighteenth session of the Technical Committee and reproduced in document TC/XVIII/13, paragraph 39, were reconfirmed:

(i) whether the characteristic could be considered an important characteristic and whether varieties that could be identified by that characteristic could be expected to have a sufficient minimum distance from other varieties to justify the grant of plant variety protection.

(ii) whether varieties could be expected to be homogeneous in the characteristic concerned, and

(iii) whether harmonized and standardized methods existed to observe that characteristic.

Question 6: Phenotypical differences which cannot be verified according to the basic testing principles as laid down in the General Introduction or the individual Test Guidelines should not be taken into account. Sophisticated methods, as for example electrophoresis, are so far not considered to fulfil the basic testing principles.

Question 7: Additional efforts to distinguish a variety should be undertaken if the authority was convinced of the originality of the variety or if the breeder furnished further proof of it. Even in these cases, however, no sophisticated method should be accepted.

Question 8: Parent lines should not automatically be examined in each and every case. It would depend on the species concerned whether the breeding formula had to be examined and/or the lines tested.

Question 9: The eligibility for protection should not be limited to lines alone.

Question 10: It was confirmed that the Test Guidelines were established for describing varieties and for the testing of distinctness, homogeneity and stability, as already mentioned in the General Introduction to the Test Guidelines.

Question 11: It was recommended that, in order to improve contacts with breeders, more meetings with them at the national level and not at the level of the Technical Working Parties should be foreseen.

Question 12: Minimum distances should not be enlarged for species where mutants frequently occur since it was not possible as yet to prove that a mutant really was a mutant. Without a change in the UPOV Convention a droit de suite could not be admitted. It was noted that difficulties existed at present and as so far no solutions had been found they had to be kept in mind for the future.

Question 13: In looking for new distinct characteristics, in the first instance new characteristics should be searched for if the existing characteristics did not enable a variety to be distinguished. The reduction of the minimum distances in characteristics would be rather difficult.

50. Having noted the difficulty in dealing with minimum distances without specific cases, the Committee decided not to continue discussing this item unless new developments changed the present situation.

51. During the discussions on minimum distances between varieties, the Committee noted document TC/XX/7 containing a motion on maize hybrids from ASSINSEL. In answer to the motion, it was noted that within UPOV it had so far not been possible to agree upon a common approach as to what defined a maize hybrid.

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