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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Nineteenth Session
Geneva, March 31 and April 1, 1987

ASSINSEL MOTION ON THE DEFINITION OF MAIZE HYBRIDS

Document prepared by the Office of the Union

1. By letter dated January 6, 1987, Mr. M. Besson, Secretary-General of ASSINSEL, submitted again, for consideration, the following motion adopted on May 31, 1984, in Copenhagen:

"Whereas the function of UPOV is to protect breeders of plant varieties,

- noting that the practical conditions for the application of the regulations had revealed as regards maize the necessity to specify the methods of granting protection, and in particular to define novelty better,
- underlining the importance of harmonizing between the member States of UPOV the legislation and conditions under which it is applied,
- referring to the motions passed by the ASSINSEL Congress in Venice and the ASSINSEL Congress in Budapest,

The Maize Section of ASSINSEL requests ASSINSEL to take all steps in front of UPOV to enable that

- the hybrids of maize are defined and distinguished by their constituents and the way they are associated."

2. The wish expressed by the Maize Section of ASSINSEL relates to a question which is dealt with as follows in Article 6(1)(a) of the UPOV Convention:

"... the new variety [being the subject of an application for protection] must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for."

3. This general definition of distinctness is binding on member States, at least as far as plant variety protection is concerned. (In fact, it states a condition which must be fulfilled by a set of plants or plant material to be considered as constituting a variety.) Therefore, it should be assessed whether the proposal by the Maize Section of ASSINSEL and the text of the Convention are equivalent.

4. It is quite possible to produce the same hybrid using different combinations of components. A theoretical example follows; it relates to a single-cross hybrid produced by means of two pairs of lines (one of each pair being isogenic of one in the other pair):

Line A (genotype AA, character. CC) x Line B (genotype BB, character. cc)



F₁ Hybrid (genotype AB, characteristic Cc)



Line A' (genotype AA, character. cc) x Line B' (genotype BB, character. CC)

5. In the opinion of the Office of the Union, the proposal by the Maize Section of ASSINSEL cannot therefore be accepted at its present state for the purposes of plant variety protection. It may perhaps be useful to inform ASSINSEL on this.

6. Moreover, it is likely that professional circles would not wish such a radical change of the variety notion in the case of maize hybrids. It should therefore be assessed whether the intention of the Maize Section of ASSINSEL was a different one, that had not been reflected with sufficient clarity in the motion. Therefore, the Office of the Union suggests that consideration be given to putting this issue on the agenda of the next Meeting with International Organizations (without restricting it, however, to the case of maize). In order to enable the members of ASSINSEL to reconsider if need be the motion well in advance, it would be useful to take a decision on this at this session of the Administrative and Legal Committee or at the thirty-fifth session of the Consultative Committee.

7. For the sake of information, it is recalled that the Test Guidelines for maize (document TG/2/4) state the following:

"10. A difference in the formula of a hybrid is not enough by itself and the protection of a hybrid variety requires that it be sufficiently different in its characteristics when compared with other varieties. If an application is filed for protection of a hybrid variety which is based on a formula already existing, the applicant should be informed of the fact and given the possibility of withdrawing his application. If he does not withdraw his application, the authority should test the variety.

"11. A reciprocal cross is acceptable as a new variety if it is distinct in its varietal characteristics. Hybrids can also be produced on a reciprocal basis as long as this does not change the characteristics of the plants of the hybrid; in this case only one

title of protection should be granted but the breeder has to indicate both formulas. If a reciprocal cross does not change the characteristics of the hybrid plants, but the seed to produce them is different, the breeder has to describe this difference (i.e. whether it is of flint, dent or intermediate type); the breeder also has to ensure that the type of sowing seed commercialised is always clearly indicated to the user."

8. The Committee is invited:

i) to give its advice on the compatibility of the motion of the Maize Section of ASSINSEL with Article 6(1)(a) of the UPOV Convention;

ii) to decide whether ASSINSEL should be informed on this without delay;

iii) to decide whether the question of the definition of hybrids should be put on the agenda of the next Meeting with International Organizations.

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