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UPOV

CAJ/XVII/5

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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

Seventeenth Session  
Geneva, April 16 and 17, 1986

## SCOPE OF PROTECTION

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## POINTS OF VIEW OF THE ASSINSEL VEGETABLE SECTION

Document prepared by the Office of the Union

1. The annex to this document contains an excerpt from a letter, dated November 18, 1985, from Mr. T.M. Clucas, President of the Vegetable Section of ASSINSEL, to the Vice Secretary-General.

2. That letter raises three issues for which the Administrative and Legal Committee is competent:

(i) The application of the Convention to the botanical genera and species: that issue will be discussed at the next (autumn) session of the Committee on the basis of lists of priorities to be submitted by the international organizations in the field of plant breeding and the seed trade;

(ii) The exclusion of hybrids from protection: that issue was discussed at the last session of the Committee (see documents CAJ/XVI/2, paragraphs 11 to 16, and CAJ/XVI/8, paragraphs 55 and 56);

(iii) the scope of protection: that issue is to be discussed at the present session. It will be recalled in this respect that the Office of the Union has prepared a general study which is to be found in document CAJ/XVI/3.

[Annex follows]

**ASSINSEL**

Association Internationale des Sélectionneurs pour la Protection des Obtentions Végétales  
*International Association of Plant Breeders for the Protection of Plant Varieties*  
Internationaler Verband der Pflanzenzüchter für den Schutz von Pflanzenzüchtungen



Dr. H. Mast  
UPOV  
34 Chemin des Colombettes  
1211 Geneva 20  
SWITZERLAND

Our Ref: TMC/MAB  
18th November 1985

Dear Dr. Mast,

I am pleased to inform you that, at its meeting on 6th June during this year's Congress in Killarney, Ireland, the ASSINSEL Vegetable Section decided to devote special attention to the following areas of concern:-

- (a) The value and scope of current Plant Breeders Rights Legislation.
- (b) The implication of the new technologies applicable to plant improvement and multiplication, and
- (c) The needs, in terms of protection, for vegetables and flower varieties in the future.

The specific problem causing increasing concern amongst breeders of traditionally seed raised horticultural crops, especially vegetables, is as follows:-

It is becoming apparent that the moment is rapidly approaching when, for certain higher value space planted vegetable crops, micropropagation/tissue culture techniques may well become a viable alternative to seed as a means of multiplying material suitable for sale to commercial growers and home gardeners.

Such a development would totally destroy the "in-built" biological/genetic protection currently intrinsic to F1 Hybrid varieties. Furthermore, fears have been expressed that the commercial application of such techniques could seriously endanger the integrity and

might even negate the value of the protection presently afforded by Plant Breeders Rights to open-pollinated varieties.

This technological revolution, which is already upon the plant breeding industry, raises a number of fundamental issues as follows:-

- (1) Although many member states do provide for the protection of F 1 Hybrids, certain member states already exclude (or are considering so doing) such varieties from protection under Plant Breeders Rights, on the grounds of the 'natural' protection factor. Clearly, that state of affairs no longer prevails and therefore it is appropriate that the UPOV Council urges member states to re-consider their position in the light of the technological advances.

In addition to the foregoing, it is likely that Breeders will be asking for the range of vegetable species covered by Plant Breeders Rights schemes to be extended to include those where there has not been any such requirement in the past because F 1 Hybrid varieties predominated.

- (2) The UPOV Convention and certain National legislation provides for an extension of protection to include the "final" product. Thus far however, such extensions have been confined largely to ornamental species ie. cut-flower subjects.

In view of the developments in tissue culture, it would seem appropriate that the UPOV Council should give a lead and strongly recommend member states take advantage of the possibility of extension by enacting changes to their legislation to include within the protection afforded plants or parts of plants which have the potential to be used for multiplication/reproduction by what ever means. A wide range of species are considered endangered by micropropagation developments including Potato, Sugar Beet and the major proportion of Vegetable and Decorative Species; amongst these species some are more vulnerable than others and in certain specific cases it may be essential to protect the "final" product if the plant breeders "Rights" are to be adequately secured.

## (2) cont.

Current plans by the government of Switzerland directed towards extending protection to "all propagatable material" would seem to be a precedent which all other signatories to the Convention should follow.

- (3) The so-called "farmer's privilege" is a highly sensitive issue which emerges once again as an area of deep concern to Plant Breeders as they assess the implications of micropropagation. Even given the extension of protection sought in (2) above, the opportunity for those who so wish, to circumvent the Rights of the plant breeder remain boundless.

This "grey area" requires an in-depth study followed by a solution which secures for the breeders (a) adequate control of his property, and (b) the means to earn an appropriate reward whenever his property is propagated for resale or transfer to another end-user in what is in effect a commercial transaction, no matter whether or not money or ownership changes hands.

The ASSINSEL Vegetable Section holds these matters to be of substantial and immediate importance; to summarise we seek a positive initiative and clear directive from UPOV to all member states on the following:-

- (1) A comprehensive expansion of Plant Breeders Rights Schemes so that a grant of Rights can be obtained for all vegetable and seed raised decorative species.
- (2) The elimination of any discrimination against F 1 Hybrid varieties within any Plant Breeders Rights legislation where ever this prevails or is a potential threat.
- (3) The extension of the scope of Plant Breeders Rights legislation to include all propagatable material i.e. plants or parts of plants having the potential to be multiplied/reproduced by what ever means and, where it is shown to be essential, the "final" product.

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