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UPOV

CAJ/XX/ 9

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twentieth Session
Geneva, June 17 and 18, 1987

REPORT

adopted by the CommitteeOpening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its twentieth session on June 17 and 18, 1987. The list of participants is given in the Annex to this report.
2. The session was opened by Mr. F. Espenhain (Denmark), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as set out in document CAJ/XX/1 although it agreed to postpone the adoption of the report on the nineteenth session of the Committee (agenda item 3) until the afternoon of June 18.

New Developments in the Field of Plant Variety Protection

4. The representative of South Africa said that there was at present no intention to amend the legislation on plant variety protection.

5. Twelve further taxa would become eligible for protection in South Africa. The list of these taxa would be published in the gazette.
6. The representative of Denmark said that a new list of species eligible for protection would be issued which would include Buckwheat and Chinese Cabbage.
7. A new bilateral agreement had been concluded with the Federal Republic of Germany.
8. There would be a new structure for the variety testing system. This would be published in the October edition of the gazette.
9. The representative of Spain stated that the Board of Plant Breeders' Rights was continuing to work on a draft amendment to the Plant Breeders' Rights Law.
10. It might be that the following month's meeting of the Board might decide to add further species to those eligible for protection.
11. The representative of the United States of America said that there had been a decision of the Patent Office Board of Appeals holding that animal forms were patentable. All forms of biotechnology, except humans, were therefore now patentable in the United States of America.
12. The representative of Hungary stated that all taxa could be protected in her country. In response to the question of whether there had been any patents for animals in Hungary, the representative said that since 1969 it had been possible to obtain patents for plant and animal material, but she did not think that there had been any patents for animal material as yet since it was only recently that there had been any patenting activity in this area.
13. The representative of Israel said that the list of protected species had been extended and that fees for variety testing had been increased.
14. The representative of Switzerland said that work was proceeding on extension of the list of protected taxa.
15. The representative of the European Communities said that talks were being held on the proposed scheme of plant variety protection in the European Communities but there were no definite results to report at the present time.
16. The Vice Secretary-General reported that he was on the organizing committee of the first International Exhibition of New Varieties of Plants--"Expoflore," which was to take place in Geneva in April 1988. The exhibition was originally to be called "Florexpo," but it was found that this name was already used for another exhibition so it was decided to change the name to "Expoflore." The organizing committee had so far sent out about 1,700 letters to plant breeders around the world informing them of this event.

List of the Organizations to be Invited to the Third Meeting with International Organizations (hereinafter referred to as "the IOM meeting")

17. Discussions were based on document CAJ/XX/2.
18. The Vice Secretary-General apologized for the fact that document CAJ/XX/2 and three other documents for the present session were not available in the

German language. He explained that this was because of the short period of time between the last session of the Committee and the present session.

19. On the question of whether national as well as international non-governmental organizations should be invited to the IOM meeting, the Committee agreed that the general rule should be that only international non-governmental organizations would be invited. However, the representative of the United States of America expressed the view, with which the Committee concurred, that there might be times when it would be wise also to invite national organizations.

20. The Vice Secretary-General stated that some proposals for revision of the Convention had been received from national organizations although only international organizations had been invited to make such proposals. The Committee decided that the Office of the Union should write to the national organizations concerned to thank them for their contributions but also to tell them that in future the Committee wished to consider only the proposals coming from international organizations because any other way of proceeding would be impractical.

21. On the question of which international organizations should be invited to the IOM meeting, most of the representatives were of the opinion that, in view of the importance of the issues to be dealt with, it would be wise to invite only a small group of organizations, namely, those that had been associated with UPOV over a long period. As work on revision of the Convention proceeded, it would be possible later to widen the group of organizations invited to participate in the revision work. The representative of the United States of America said that he would prefer, at the beginning of work on the revision of the Convention, to hear a large number of views, so he was in favor of having a large group of invited organizations. This group could then be narrowed as revision work progressed.

22. Some representatives, although being in favor of inviting a small group at the present time, nevertheless were of the view that if an organization was particularly interested in the revision work then it should be invited.

23. The Committee decided that only those organizations listed in paragraphs 1 and 3(i) of document CAJ/XX/2 should be invited to the IOM meeting.

24. The Committee agreed that WIPO should be officially invited to the IOM meeting and to all meetings concerning revision of the Convention.

Report of the Subgroup Biotechnology

25. Discussions were based on document CAJ/XX/3. The Subgroup agreed to re-draft some parts of the document in the light of the comments made by the Committee. Subject to such re-drafting being done, the Committee agreed that the document could be presented to the IOM meeting as an official document of the Administrative and Legal Committee. The Committee's discussions concerning the document are reflected below.

26. With respect to paragraph 1 (Biological Taxa Eligible for Protection), the representatives of Sweden, Netherlands, and the Federal Republic of Germany were in favor of the proposal that the Convention should require member States to allow protection of all taxa. The representative of Spain, however, said

that some countries might have difficulties with this proposal. The Chairman recalled that one of the reasons why, at the 1978 revision of the Convention, an obligation to protect more taxa was not introduced was that it was thought this might discourage countries from joining the Union.

27. With respect to paragraph 2(a) (Subject of Protection--Plant Material other than Varieties of Plants), the representatives of Sweden and the Federal Republic of Germany explained that in their countries there had already been some movement towards the protection of plant material other than varieties of plants. The representative of Japan said that there might be difficulties in doing D.U.S. testing for botanical material other than plant varieties. Representatives of other member States felt that such difficulties could be overcome.

28. With respect to paragraph 2(c) (Subject of Protection--Genetic Components), the representative of Switzerland said that most patent offices regarded genes as chemical compounds.

29. With respect to paragraph 3 (Requirements for Granting Protection), the representative of the United States of America stated that he could not agree with the statement that "the requirement of inventive step is not appropriate for the results of breeding activities" since his country's patent law included a requirement for "inventive step." Concerning the Subgroup's recommendation, several representatives said that D.U.S. testing other than by an official authority could be agreed to, and there was in fact a Council decision to this effect in 1976.

30. With respect to paragraph 4 (Scope of Protection), the representative of Denmark stated that horticultural and agricultural producers in his country were not against discussing the issues raised here and they were in favor of widening protection. Thus, the "farmers' privilege" should be removed without creating monopolies and while still ensuring that there were sufficient supplies to the farmers. There should be a solution to the problem of import of products from third countries. The representative of the Netherlands stated that the scope of protection was an important issue for discussion in his country. The representative of Japan said that there needed to be careful consideration of the right to use a protected variety and of reform of the "farmers' privilege."

31. With respect to paragraph 7 (Interaction between Different Kinds of Protection), the Committee discussed the issues raised by a possible overlap of patent protection and plant variety rights protection.

32. With respect to paragraph 9 (Protection of Animals), the representative of Denmark said that this was a new field within UPOV, but it had in fact been discussed in his country. The representative proposed that some of the wording used in the paragraph such as "protection of animals" could be softened. The representative of the European Communities stated that it would be a very radical departure to protect animals in a Convention concerning plants.

Proposals of Member States for Revision of the Convention

33. Discussions concerned document CAJ/XX/4. The Committee decided that the proposals made by France and the Netherlands contained in document CAJ/XX/4 should not be put forward to the IOM meeting. The proposals would be kept for the Committee's own purposes. The representative of the Netherlands asked that

other countries would submit proposals. These could then be compiled into an updated version of document CAJ/XX/4.

Proposals of Non-governmental Organizations for Revision of the Convention

34. Discussions concerned document CAJ/XX/5. The Committee decided that this document should be presented to the IOM meeting and it asked the Office of the Union to modify the document slightly to provide a table of contents and to put the list of abbreviations immediately after the table of contents. It was decided that the proposals of national organizations should be deleted, as should those of GIFAP since that organization was not to be invited to the IOM meeting.

UPOV Recommendations on Variety Denominations

35. Discussions were based on document CAJ/XX/6.

36. The Committee decided that the new draft UPOV Recommendations on Variety Denominations should be presented to the IOM meeting as appearing in the annex to document CAJ/XX/6, subject to the deletion of the words "which are self-explanatory" at the end of paragraph 6 of the introduction.

37. The Committee did not come to any general decision on the suitability of CIOPORA's denomination code system under the new draft UPOV Recommendations on Variety Denominations. The Representatives of the Federal Republic of Germany, Netherlands and Denmark said that in their countries denominations of the type provided by the CIOPORA system would be examined on a case by case basis to determine whether they were suitable denominations.

Definition and Examination of Hybrid Varieties

38. Discussions were based on document CAJ/XX/7.

39. The representative of France introduced the paper, prepared by his Delegation, which is reproduced in the annex to document CAJ/XX/7. Article 7 of the UPOV Convention required that examination of applications for plant variety rights should be appropriate to the botanical genus or species concerned. In the case of hybrid varieties of maize, the French authorities used a method of examination which involved examining the parental lines. However, it was important to use a list of characteristics which would give sufficient "minimum distances" at the hybrid level. The list of characteristics used by the French authorities was given at the end of the annex to document CAJ/XX/7.

40. The representative of Spain said that his country used a similar system for the testing of hybrid varieties.

41. The representative of the Federal Republic of Germany said that the issues raised should be discussed in the context of hybrid varieties in general rather than only hybrid varieties of maize. These issues were for both the Administrative and Legal Committee and the Technical Committee to consider and they brought in the question of "minimum distances." Breeder's views on "minimum distances" had changed over the last 15 years and they now were asking for greater "minimum distances."

42. The representative of the Netherlands said that the question of "minimum distances" should be discussed in the IOM meeting and that it may be necessary to revise the Convention as far as "minimum distances" were concerned. The representative suggested setting up a subgroup to deal with the question of "minimum distances." The representative of Ireland supported this suggestion.

43. The representative of the United Kingdom said that it was important to consider in this context the question of whether new methods, such as electrophoresis, should be used for the testing for distinctness.

44. The Committee decided that it would hold a joint session with the Technical Committee on the morning of October 15, 1987,¹ at which the subjects of "definition and examination of hybrid varieties" and "minimum distances" would be discussed. The Committee was of the view that the issues raised at the present session in the context of document CAJ/XX/7 should be discussed at the national level before the next session. It therefore asked the Office of the Union to prepare and send a letter to delegates setting out exactly the issues for discussion at the national level, in order that all such national discussions would relate to the same issues.

45. Some delegations were asked to make a list, for certain species, trying to group the characteristics used into two categories, namely, those characteristics used for the distinguishing of varieties and those characteristics used for identification of seed and plant material samples. The species for which the delegations agreed to carry out this study were as follows:

<u>Country</u>	<u>Species</u>
Denmark	Sour Cherry and/or Christmas Cactus
France	Maize Sunflower Lucerne
Germany (Federal Republic of)	Rye Pelagonium or Elatior Begonia
Netherlands	Perennial Ryegrass Gerbera Lettuce
United Kingdom	Chrysanthemum Pea

Agenda for the Third Meeting with International Organizations

46. Discussions were based on document CAJ/XX/8.

¹ New date: October 8, 1987

47. The Committee agreed that Mr. Schlosser (United States of America) would open the IOM meeting, chair it and close it. The Committee decided that item 2 of the agenda for the IOM meeting should be called "Proposals for Possible revision of the Convention." Under this item, two documents would be presented, namely IOM/III/2 (Possible Consequences of Biotechnology in the Field of Intellectual Property Protection) and IOM/III/3 (Proposals of International Non-governmental Organizations for Revision of the Convention). Document IOM/III/3 would be discussed first, taking it article by article, and then document IOM/III/2 would be discussed.

48. The discussions under item 3 of the agenda for the IOM meeting would be based on document IOM/III/4 which would reproduce the UPOV Recommendations on Variety Denominations set out in the annex to document CAJ/XX/6.

49. For item 4 of the agenda of the IOM meeting, the Committee agreed that the paper of the French Delegation, "Definition and Examination of Hybrid Varieties," would be presented as an information paper numbered IOM/III/5.

Dates of UPOV meetings in October 1987

50. The Committee noted that, by a circular dated May 5, 1987, the Office of the Union had proposed that the dates of the UPOV meetings in October 1987 should be changed. The Vice Secretary-General explained that this was to enable the Secretary-General to be present when the Council discussed the budget. In response to the question of whether there had been any replies to the circular objecting to the changes, the Vice Secretary-General said that there had been one such reply. The Committee was reluctant to change the dates, but it noted the exceptional reasons for doing so and agreed that the dates should be set as communicated by the circular of May 5, 1987.

Subgroup Biotechnology

51. Mr. Heuver (Netherlands, Chairman of the Subgroup) stated that it would not be necessary to have a session of the Subgroup on Saturday, October 17, 1987, as originally foreseen.

Adoption of the Report of the Nineteenth Session of the Committee

52. The Committee adopted the report of the nineteenth session as set out in document CAJ/XIX/11 Prov., subject to certain amendments.

Program for the Twenty-First Session of the Committee

53. The Committee decided that it would hold a joint session with the Technical Committee on the morning of October 15, 1987,¹ at which the subjects of "definition and examination of hybrid varieties" and "minimum distances" would be discussed. With respect to the part of the session that the Committee would hold without the Technical Committee, it was decided that items 1 to 4 of the agenda for the twentieth session would again be on the agenda for the twenty-first session. The preparations for the IOM meeting would also be discussed.

¹ New date: October 8, 1987

Transfers

54. The Chairman stated that Mr. Simon (France) was leaving his position as Secretary-General of the Committee for the Protection of New Plant Varieties of France. The Committee thanked Mr. Simon for all that he had done for UPOV while he had held that position.

55. This report was unanimously adopted by the Committee at its twenty-first session, on October 9, 1987.

[Annex follows]

CAJ/XX/9
ANNEX/ANNEXE/ANLAGE

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

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- Mr. D. PORTER, General Counsel, Pioneer Hi-Bred International Inc., 700 Capital Square, Des Moines, Ia. 50310

II. INTERGOVERNMENTAL ORGANIZATIONS/
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ZWISCHENSTAATLICHE ORGANISATIONEN

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EUROPEAN FREE TRADE ASSOCIATION (EFTA)/ASSOCIATION EUROPEENNE DE LIBRE-ECHANGE (AELE)/EUROPAEISCHE FREIHANDELSASSOZIATION (EFTA)

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Mr. M. SIMON, Vice-Chairman

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

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Mr. M. TABATA, Associate Officer

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