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

GENEVA

## COUNCIL

Twenty-eighth Ordinary Session

Geneva, November 9, 1994

REPORT ON THE PROGRESS OF THE WORK OF  
THE ADMINISTRATIVE AND LEGAL COMMITTEEDocument prepared by the Office of the UnionGeneral

1. Since the twenty-seventh ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held one session only, the thirty-fourth, on November 7 and 8, 1994.

2. The Committee devoted its session to the following matters:

(i) Model law on plant variety protection;

(ii) List of classes for variety denomination purposes;

(iii) TRIPS Agreement and plant variety protection;

(iv) Central CD-ROM data base on plant variety protection and related matters.

Model Law on Plant Variety Protection

3. The Committee had a first reading of a draft for a model law prepared by the Office of the Union. The draft had been conceived as a self-contained law, covering all provisions that may be included in national legislation, although the model law would essentially serve as a guide for States wishing to adopt plant variety protection legislation. It had been planned that a subsequent commentary would indicate which provisions are indispensable and, where necessary, propose alternatives for certain provisions and set out the circumstances under which a particular alternative would be preferable.

4. All delegations which took the floor congratulated the Office of the Union on the comprehensive work it had undertaken. However, the proposed content was not agreeable to the Committee. The Committee expressed a preference for a model containing the "core provisions" that should be included in any national law, i.e., the provisions required by the UPOV Convention and those that are otherwise indispensable. As to the other provisions, the following proposals were variously made: (i) to omit certain proposals altogether; (ii) to use them as the basis for establishing a "checklist"; (iii) to include references to them in the commentary; (iv) to establish a compendium of model provisions.

5. Concerning future work on this item, it was decided that the Office of the Union should prepare a revised draft, for consideration by a group of experts (to be approached by the Office of the Union) at the end of February 1995. The revised draft would then be considered by the Committee at its next session.

#### List of Classes for Variety Denomination Purposes

6. According to the fourth sentence of Article 20(2) of the 1991 Act of the Convention (which is substantially identical with the fourth sentence of Article 13(2) of the 1978 Act), the denomination of a variety

"... in particular, ... must be different from every denomination which designates, in the territory of a Contracting Party, an existing variety of the same plant species or of a closely related species."

7. The notion of "variety of the same plant species or of a closely related species" has been the subject of the following interpretation for the purpose of achieving harmonization within UPOV (Recommendation 9 of the UPOV Recommendations on Variety Denominations, adopted by the Council in October 1987 and amended in October 1991--document INF/12 Rev.):

"For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered closely related that belong to the same botanical genus or are contained in the same class in the list in Annex I to these Recommendations."

8. Different opinions were expressed as to the need for and desirability of reviewing the List of Classes. They suggested the following conclusions:

(i) As regards existing classes, experience should be gathered first from the operation of the proposed central CD-ROM data base on plant variety protection and related matters;

(ii) As regards possible new classes (arising in particular from the fact that protection is increasingly extended to the whole plant kingdom), the matter should be referred to the Technical Committee and, through it, to the Technical Working Parties;

(iii) On the basis of the feedback, a decision would be made as to the need for convening a joint meeting of the Committee and Technical Committee in the autumn of 1996.

9. The delegation of France, supported by the delegations of Sweden and Switzerland, emphasized the need for a more global reflection on the role of the variety denomination, in particular in the light of the fact that samples of varieties stored in a genebank had to be identified with precision for a long period of time.

**TRIPS Agreement and Plant Variety Protection**

10. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations--conducted among the Contracting Parties of the General Agreement on Tariffs and Trade (GATT)--which was adopted in Marrakesh on April 15, 1994--contains:

(i) an Agreement Establishing the World Trade Organization (the "WTO Agreement"); and

(ii) an Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement").

11. Section 5 of the TRIPS Agreement relates to patents. Its Article 27 provides:

(i) in paragraph 1, that "... patents shall be available for any inventions, whether products or processes, in all fields of technology ..."; and

(ii) in paragraph 3, that

"Members [of the WTO] may also exclude from patentability:

"(a) ...

"(b) plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement."

12. The Committee was asked to consider a series of questions pertaining to the relationship between the UPOV Convention and the Trips Agreement and to policies with regard to contacts with the GATT Secretariat and the WTO Preparatory Committee.

13. The discussions lead to the following conclusion:

(i) Plant variety protection is generally regarded as a form of intellectual property;

(ii) Plant variety protection according to the UPOV Convention (whether granted in the form of a special title of protection or of a patent) is an effective sui generis system of protection;

(iii) UPOV is not in a position to unilaterally determine whether plant variety protection under the UPOV Convention would fall under the TRIPS Agreement;

(iv) In a number of member States, the analysis of the situation has not yet been concluded; in others it has led to different conclusions;

(v) The Office of the Union is already entertaining informal contacts with the GATT Secretariat (and GATT has observer status in the UPOV Council);

(vi) As to the questions referred to in subparagraphs (i) to (iv), the Office of the Union should adopt a cautious approach based upon informal approaches;

(vii) Consideration should be given to whether the positions of UPOV and WIPO can be concerted.

**Central CD-ROM Data Base on Plant Variety Protection and Related Matters**

14. Two WIPO experts gave a demonstration of the first CD-ROM prototype (a "CD-WORM" (write once, read many)) prepared on the basis of data from six countries and answered a number of technical questions.

15. Two delegations reported on the findings of their experts who had checked the prototype: the Delegation of the United Kingdom reported that the product was excellent, and the Delegation of Spain only had some minor technical comments.

16. The Committee noted the proposed timetable for future action, which provides in particular that the Council would take the final decisions on the eventual production of the regular CD-ROMs at its next ordinary session, in October 1995.

17. The Council is invited to note and approve this report.

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