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**UPOV**

INTERNATIONALER VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION  
FOR THE PROTECTION OF  
NEW PLANT VARIETIES

COUNCIL

Fifth Session

Geneva, October 13-15, 1971

THE PERIOD OF PROTECTION FOR NEW PLANT VARIETIES

Report by the Secretary General

1. The Delegation of Germany (Federal Republic) has asked the Council to consider the question of the protection period and has presented a working paper which is attached to this report as an Annex.
2. The paper was presented with the following comments:

The question of a possible prolongation of the standard protection period to 25 years was put before the Working Committee at its fourth meeting on May 6 and 7, 1971. After a brief discussion it was agreed that this question should be included in the agenda of the next Council meeting and that the German Delegation should be requested to prepare a working paper on the subject.
3. Attention is drawn to Article 8(1) of the Convention which prescribes minimum periods of fifteen years and--for some woody species--eighteen years, and to paragraph (3) of the same Article which allows each member State to adopt longer periods.
4. Attention is further drawn to Article 5(4), which provides for the possibility of giving breeders more extensive rights than the minimum rights prescribed by the Convention, allowing the member States who do so to limit the benefit of such extension--as far as foreign breeders are concerned--to breeders being

nationals of those of the other member States which grant identical rights. Article 8(3) on the extension of the protection period contains no such provision.

5. The Council is invited to study the question raised by the Delegation of Germany (Federal Republic).

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Annex follows/

## Annex to document UPOV/C/V/13

Working Paper of the German Delegation  
(Original: German)Subject: Period of protection for plant varieties

## I

1. At the fourth session of the Working Committee on May 6 and 7, 1971, the German Delegation announced that German breeders' associations had proposed the establishment of a standard 25-year variety protection period for all botanical species. At the present time the protection period is 25 years for hops, potatoes, graft and root vines, fruit trees and their root stocks, as well as for ornamental trees and trees for wood production, and 20 years for all other species.

2. The German Delegation publicized the wishes of the German breeders' associations in order to obtain the views of other UPOV member States on the question of a generalized 25-year protection period. In the course of the discussion it was agreed that the question would be placed on the agenda of the fifth Council meeting in October 1971, for the purposes of which the German Delegation would prepare and submit a short working paper.

## II

1. In the Federal Republic of Germany protection has been afforded to varieties of the more important agricultural and vegetable species since 1953. Under the previous seed law the variety protection period was 15 years, with the possibility of prolonging protection of the variety, on request, for a maximum of 12 additional years. In connection with this ruling and the new law on the protection of plant varieties, based on the Convention, which entered into force in 1968, the protection period prescribed by the law has in fact not yet expired for any protected variety.

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This will come about on December 31, 1974, for a series of varieties, especially varieties of cross-fertilized species.

2. It was on the basis of this situation that the German breeders' associations made their proposal of a standard 25-year protection period for all botanical species under the German law on the protection of plant varieties. Consequently the German Delegation considers that the problem is one which concerns only its own country. If one disregards the rules governing breeders' rights in the Netherlands, there is no UPOV country which has afforded special legal protection to new plant varieties for as long as the Federal Republic of Germany. Moreover, for a long time the Netherlands law provided no variety protection for a group of important cross-fertilized agricultural species.

3. From a legal and technical viewpoint the opinions of the German breeders' associations give rise to the following comments:

(a) Article 8(1) of the Convention does not preclude a 25-year protection period.

(b) The period of legal protection in the various UPOV States has not been standardized, owing to the different situations existing in those States.

(c) Experience with the legal protection of plant varieties as instituted in the Federal Republic in 1953 has shown that the beneficiaries of such protection have not misused their rights in a manner which might have been detrimental to economic groups. On the contrary, there is evidence that with certain cultivated species the legal protection of plant varieties has helped to bring about rational solutions on a commercial basis.

(d) Generally speaking, new varieties of agricultural and vegetable species rarely achieve a life-span of 25 years. Only a certain number of older varieties can be expected to have any importance on the market for the next ten years or so.

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