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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Seventeenth Ordinary Session
Geneva, October 12 to 14, 1983**PROGRESS REPORT ON THE WORK
OF THE ADMINISTRATIVE AND LEGAL COMMITTEEprepared by the Office of the Union

1. Since the sixteenth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held two sessions, namely its tenth on November 16 and 17, 1982, and its eleventh on April 26 and 27, 1983. A joint meeting with the Technical Committee was held on the afternoon of November 17, 1982, pursuant to the decision taken by the Council at its sixteenth ordinary session (see paragraph 14(i) of document C/XVI/20).

2. In its main activities, the Committee worked towards two complementary objectives, namely the completion of the work started at the previous sessions and the preparation of the meeting with international organizations, which will take place on November 9 and 10, 1983. An account of the work is given below.

Variety Denominations

3. As part of its work on the revision of the Guidelines for Variety Denominations, adopted by the Council in 1973, the Committee drew up a draft of "UPOV Recommendations on Variety Denominations." This draft will be submitted for discussion at the meeting with international organizations on November 9 and 10, 1983. It will be remembered that the draft in question is intended to replace not only the Guidelines for Variety Denominations but also the Provisional Rules of Procedure for the Exchange of Variety Denominations, adopted by the Council in 1971. It also has annexes containing a revised list of classes for variety denomination purposes and the UPOV Form for the Transmittal of Observations on a Submitted Variety Denomination.

4. A request made by an International Registration Authority for cultivar names, set up under the International Code of Nomenclature for Cultivated Plants, had previously been referred to the Committee. According to that request, the authorities of member States should cooperate more with International Registration Authorities in checking proposed denominations against prior denominations. The request was accompanied by an offer of services. In view of the fact that the Symposium organized in the framework of the present session of the Council would provide an opportunity for views to be exchanged with those Authorities, the Committee adjourned consideration of the matter. It should be mentioned that the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences has also been invited to take part in the meeting with international organizations, which will provide another such opportunity.

5. The Committee started to consider the question of procedures for the examination of proposed variety denominations, more specifically in relation to conflict with preexisting denominations. While complete centralization of that examination seemed to be an impossible ideal owing to the language difficulties that would have to be overcome, the Committee felt that it might be worth considering centralization of the computer searching of preexisting denominations liable to make a proposed denomination unsuitable. There does seem to be some interest in such a system, both among States that have computer facilities at their disposal and among those that do not.

6. The Committee considered that a more promising course of action for the time being was on the one hand for authorities to be informed on software used, and on the other hand for basic data to be exchanged. Savings could be made in the constitution and permanent updating of national data bases by making them compatible. In view of the fact that those problems had been placed on the agenda of the Technical Working Party on Automation and Computer Programs, which met from May 17 to 19, 1983, the Committee decided to postpone the work until the findings of the Technical Working Party were available, and to place the question periodically on the agenda of its meetings, in order that developments in that area could be followed.

Minimum Distances Between Varieties

7. The question examined under this heading is that of the distance that there has to be between two varieties--for instance a purported variety for which an application for protection has been filed and a variety whose existence is a matter of common knowledge--expressed in the form of differences in respect of one or more "important" characteristics, for protection to be granted. A similar question arises in legal areas other than that of actual plant variety protection, for instance in the recording of varieties in catalogues of varieties approved for commercialization, and also in both the conceptual and the practical field, as it is at the very root of the variety notion. It has recently acquired considerable importance, notably on account of the intensification of plant improvement work and the use of plant breeding techniques such as the exploitation of natural or induced mutations and backcrosses (which produce types of material that differ little from each other), and also on account of the progress made in examination techniques (which enable more and finer differences to be found). In view of this trend, the Council had decided at its sixteenth ordinary session in 1982 to undertake a consultation of international organizations on the subject.

8. In the course of the joint meeting held with the Technical Committee on November 17, 1982, it was decided that the technical questions raised by the problem of minimum distances between varieties should be separated from the legal questions arising more specifically out of the law of plant variety protection. The latter questions were given a first examination at the eleventh session of the Committee. A second examination and the consideration of a complementary question were placed on the agenda of the twelfth session of the Committee. With regard to the meeting with international organizations, the Consultative Committee endorsed the Committee's recommendation according to which the discussions at that meeting should relate to the technical aspects of the question only, on the understanding however that the organizations themselves would perhaps raise questions of a legal nature.

Varieties Originating from Natural Mutations

9. At its eleventh session, the Committee was presented with a series of proposals by the Delegation of France with a view to the improvement of the position of breeders of varieties of genetically unstable, vegetatively propagated species. Such species are subject to frequent spontaneous mutation, so that a competitor can bypass with relative ease the protection of a variety that has proved its worth on the market, by looking for and marketing a mutant distinguished from that variety only by a commercially unimportant characteristic. The introduction of a "right of access," in other words a right that would make the filing of an application for protection for a mutant subject to authorization by the owner of the protection of the parent variety, would call for amendment of the Convention and was therefore considered undesirable. The introduction of variety registers and repositories determining common knowledge was regarded as a partial solution, inasmuch as it would make it possible to

prevent the protection of a mutant, but without prohibiting its commercialization by a third party. Moreover such a system already existed in certain States. The last proposal consisted in the introduction of a streamlined examination, offering the advantage of reduced fees, which the breeder of the parent variety could make use of in order to secure protection for a mutant distinguishable from the parent variety by one or more characteristics entered in a limitative list. This proposal, in the view of the Committee, raises a certain number of practical problems (unsuitability for certain species with which spontaneous mutations affect a whole set of characteristics, distinction between natural and induced mutations, longer period for examination of the parent variety than that required for discovery and examination of the mutant, etc.). The Committee therefore decided that the Delegation of France should introduce the streamlined examination system as an experiment, and that it should report to a subsequent session on whatever experience had been gained from its practical application, after which the Committee would consider whether there was any purpose in extending the system to other species and other States.

Program of Future Work

10. Subject to the decisions of the Council, the program of work will be as follows:

- (i) the Committee will complete the work mentioned above;
- (ii) at its twelfth session the Committee will consider the observations received from organizations in preparation for the meeting on November 9 and 10, 1983, and at subsequent sessions it will analyse those of the results of the meeting that fall within its area of concern;
- (iii) the Committee will resume examination of a system of cooperation going beyond the framework of variety examination at the appropriate time, that is to say "as soon as the Committee's work on particularly urgent matters permits" (paragraph 8(i) of document C/XIV/8, which is the progress report of the Committee submitted to the Council at its fourteenth ordinary session and approved by the latter).

The Council is invited:

- (i) to note the work done by the Committee;
- (ii) to take the necessary decisions on the future work of the Committee.

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