

**RECORDS
OF THE GENEVA DIPLOMATIC CONFERENCE
ON THE REVISION
OF THE INTERNATIONAL CONVENTION
FOR THE PROTECTION OF NEW VARIETIES
OF PLANTS**

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INTERNATIONAL UNION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS
(UPOV)

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1978

UPOV

GENEVA

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EDITOR'S NOTE

The "Records" of the Geneva Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants contain all the documents of lasting importance relating to that Conference which were issued before, during and after it.

The purpose of the Diplomatic Conference was the revision of the International Convention of December 2, 1961, as amended by the Additional Act of November 10, 1972.*

The Diplomatic Conference took place from October 9 to October 23, 1978, at the headquarters of the International Union for the Protection of New Varieties of Plants (UPOV) in the building of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.

The first part of this volume (pages 11 to 76) contains a consolidated text of the International Convention of 1961 as amended by the Additional Act of 1972, and the basic proposal for a revised text and explanatory notes thereon, as presented to the Diplomatic Conference.

The part entitled "Conference Documents" (pages 79 to 122) contains the full text of, or other relevant indications concerning, the 92 documents which were issued before or during the Diplomatic Conference. They include, in particular, all the written proposals for amendments submitted by delegations. Such proposals are frequently referred to in the summary minutes (see below) and are indispensable for the understanding of the latter. The Rules of Procedure of the Diplomatic Conference appear on pages 102 to 107.

The part entitled "Summary Minutes" (pages 125 to 191) contains the summary minutes of the plenary meetings of the Diplomatic Conference. These minutes were first prepared in provisional form by the Office of the Union on the basis of transcripts of the tape recordings made of all interventions in the sixteen plenary meetings of the Diplomatic Conference. The transcripts are preserved in the archives of the Office of the Union. The provisional minutes were then made available to all speakers with the invitation to make suggestions for changes where desired in their interventions. The final minutes, published in this volume, take such suggestions into account.

The part entitled "Signed Text" (pages 195 to 270) contains the text of the International Convention as adopted by the Diplomatic Conference on October 23, 1978, in the English, French and German languages. At the end of this part, there is a list of all the Signatory States, giving the names of the persons signing and the dates of signature.

Pages 273 and 274 contain the texts of the two recommendations adopted by the Diplomatic Conference.

The part entitled "Pre-Conference and Post-Conference Documents" (pages 277 to 288) contains a review of the preparatory work for the Diplomatic Conference by the Chairman of the Committee of Experts charged with that work, followed by a draft preamble to the Convention. This review and the draft preamble originally formed an Annex to the Basic Proposal for a Revised Text as presented to the Conference. The part in question also contains the full texts of two documents published in March, 1979, entitled "Summary of the Main Amendments to the Convention Incorporated in the Revised Text of 1978" and

* The "Records" of the Diplomatic Conferences leading to the adoption of the International Convention of 1961 and of the Additional Act of 1972 are published in UPOV publication No. 316, in French ("Actes des conférences internationales pour la protection des obtentions végétales, 1957-1961/1972").

"Summary of the Convention as Revised". The first summary was intended for persons wishing to be informed on the differences between the original text and the revised text of the Convention; the second summary was intended for persons wishing to be informed on the revised text as such.

The part entitled "Participants in the Conference" (pages 291 to 296) lists the individuals who represented member States of the Union, observer (non-member) States, observer organizations, the Office of the Union and the International Bureau of the World Intellectual Property Organization. (The report of the Credentials Committee appears on page 121, supplemented by paragraphs 1016 to 1019 and 1095 to 1098 of the summary minutes of the Conference, on pages 186 and 191 respectively). This part also lists the Officers of the Conference and the committees and working groups established by it.

Finally, these "Records" contain five different indexes.

The first two (pages 299 to 308) are indexes relating to the subject matter of the Revised Text of the Convention. The first of those two indexes lists by number each Article and indicates, under each of them, the number which the Article had in the Basic Proposal presented to the Conference, the pages where the text of the Basic Proposal and the final text of the Article appear, the reference numbers of the documents containing written observations or written proposals for amendments to the Article, the serial numbers of those paragraphs of the summary minutes which reflect the discussion on and adoption of the Article, and any other references that may assist the user of these Records. The second index is a catchword index, which lists alphabetically the main subjects dealt with in the Revised Text of the Convention. After each catchword, the number of the Article in which the particular subject is dealt with is indicated. By consulting the first index under the Article thus indicated, the reader will find the references to the pages or—in the case of the minutes—the paragraph numbers where the particular subject is treated.

The third index (pages 309 to 311) is an alphabetical list of States showing, under the name of each State, where to find the names of the members of its delegation, as well as the written observations or proposals for amendments submitted and the interventions made on behalf of that State.

The fourth index (page 312) is an alphabetical list of Organizations showing, under the name of each Organization, where to find the names of the observers representing it, as well as the written observations submitted and the interventions made on its behalf.

The fifth index (pages 313 to 316) is an alphabetical list of the participants indicating, under the name of each participant, the State or Organization which he represented as well as the place in these "Records" where his name appears together with that of his delegation, as an officer of the Conference or of a Committee, as a speaker in the Plenary, or as a plenipotentiary signing the Revised Text of the Convention.

The present "Records" exist also in French and German.

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BASIC TEXTS

**CONSOLIDATED TEXT OF THE INTERNATIONAL CONVENTION
OF 1961 AS AMENDED BY THE ADDITIONAL ACT OF 1972,
AND BASIC PROPOSAL FOR A REVISED TEXT
AND EXPLANATORY NOTES THEREON,
AS PRESENTED TO THE DIPLOMATIC CONFERENCE**

Conference Document DC/3

Consolidated Text (1961 and 1972) of the International Convention for the Protection of New Varieties of Plants (subsequently referred to in this part as “Present [1961/1972] Text”)

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- Article 5: Rights Protected; Scope of Protection
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- Article 12: Right of Priority
- Article 13: Denomination of New Varieties of Plants
- Article 14: Protection Independent of Measures Regulating Production, Certification and Marketing
- Article 15: Organs of the Union
- Article 16: Composition of the Council; Votes

Basic Proposal for a Revised Text of the International Convention for the Protection of New Varieties of Plants (subsequently referred to in this part as “New [Proposed] Text”)

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- Article 2: Forms of Protection; Varieties
- Article 3: National Treatment; Reciprocity
- Article 4: Botanical Genera and Species Which Must or May be Protected;
- Article 5: Rights Protected; Scope of Protection
- Article 6: Conditions Required for Protection
- Article 7: Official Examination of Varieties; Provisional Protection
- Article 8: Period of Protection
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- Article 10: Nullity and Forfeiture of the Rights Protected
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Editor's Note:

Neither the Convention as signed on December 2, 1961, nor the Additional Act of November 10, 1972, contains a Table of Contents or Article headings. They were added in UPOV publications by the Office of the Union and reproduced in document DC/3.

Present [1961/1972] Text

New [Proposed] Text

Article 1*[Purpose of the Convention; Constitution of a Union; Seat of the Union]*

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety, or to his successor in title, a right the content and the conditions of exercise of which are defined hereinafter.

(2) The States parties to this Convention, hereinafter referred to as member States of the Union, constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 1*Purpose of the Convention; Constitution of a Union; Seat of the Union*

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both herein-after referred to as "the breeder") a right under the conditions hereinafter defined.

(2) [No change]

(3) [No change]

Explanatory Notes

Ad paragraph (1): The present text says that the subsequent provisions of the Convention define the *content* of the breeder's right and the *conditions of exercise* of that right. It is proposed to refer to the subsequent provisions in a more general way.

Also it is proposed to clarify that the term "breeder," wherever used in the subsequent provisions, is to be understood as referring either to the breeder himself or to his successor in title. It would thus be possible to avoid the use of the term "successor in title" in a number of provisions in order to simplify the text.

In subsequent provisions, it is proposed to omit the word "new" in the expression "new plant variety" since it no longer seems to be necessary. Furthermore, in subsequent provisions, where the present text uses the expression "plant variety," it is proposed to leave out the word "plant" since, in the context of the Convention, a variety can only be understood as meaning a plant variety. Nevertheless, both in Article 1 and in the title of the Convention, the words "plant" and "new" have been maintained in the English text: the word "plant," since, at the beginning of the text, the context is not yet established, and the word "new," for the purposes of emphasis. Furthermore, in the English text the word "new" has been maintained in the expression "new varieties of plants" as used in Articles 29(1) and 30(1), in view of the wording of the French and the German texts and in order to avoid any misunderstanding.

Ad paragraph (2): No amendment is proposed in this paragraph.

Ad paragraph (3): No amendment is proposed in this paragraph.

Present [1961/1972] Text

Article 2*[Forms of Protection; Meaning of "Variety"]*

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) For the purposes of this Convention, the word "variety" applies to any cultivar, clone, line, stock or hybrid which is capable of cultivation and which satisfies the provisions of subparagraphs (1)(c) and (d) of Article 6.

[There is no provision in the present text corresponding to paragraph (3) in the new text.]

New [Proposed] Text

Article 2*Forms of Protection; Varieties*

(1) [No change]

(2) For the purposes of this Convention, the word "variety" is applicable to any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 6.

(3) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph. However, attention is drawn to the proposed new Article 34A(1), which would allow certain States not to comply with the requirement provided for in this paragraph.

Ad paragraph (2): In the present text, this paragraph attempts to define the term "variety" by listing a number of types of varieties. It is proposed to replace this enumeration by the general term "assemblage of plants" in order to include in the definition all categories of varieties which have been developed since the adoption of the Convention and may be developed in the future as a result of the progress made in the field of plant breeding.

Ad paragraph (3): It is proposed that a new paragraph (3) be added clarifying that a member State may apply the Convention to only part of the varieties of a genus or species. Such a part can be defined on the basis of the manner of reproduction or multiplication; for instance: sexually reproduced varieties and vegetatively propagated varieties; pure lines, hybrids, open-pollinated varieties, apomictic varieties, etc. It may also be defined by the intended use of the varieties, for instance: forest varieties, ornamental varieties, fruit varieties, rootstocks, etc.

Present [1961/1972] Text

Article 3*[National Treatment]*

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their headquarters in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their headquarters in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the new varieties which they have bred to be examined and the multiplication of such varieties to be controlled.

[See Article 4(4) of the present text.]

New [Proposed] Text

Article 3*National Treatment; Reciprocity*

(1) [No change, except replace the word "headquarters" by the words "registered office" in the English text.]

(2) [No change, except omit the word "new."]

(3) Notwithstanding paragraphs (1) and (2), any member State of the Union applying the Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply the Convention to the same genus or species and to natural and legal persons resident or having their registered office in any of those States.

Explanatory Notes

Ad paragraph (1): The only amendment proposed is to replace the word "headquarters" by "registered office" in the English text.

Ad paragraph (2): The only amendment proposed is to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (3): This proposed new paragraph corresponds to the first part of paragraph (4) of Article 4 in the present text which it is to replace. It would allow member States to replace under certain conditions the national treatment principle, embodied in the provisions of paragraphs (1) and (2) of Article 3, by the reciprocity rule. The new paragraph would differ, however, from the first part of paragraph (4) of Article 4 in the present text in so far as it refers to *any* genus or species and not only to those genera or species which are not included in the list presently annexed to the Convention. This difference is a consequence of the proposed deletion of that list (see the Explanatory Notes under Article 4(4)). The proposal to add this provision in Article 3 rather than leave it in Article 4 has been made since it authorizes member States to derogate from the first two paragraphs of Article 3 while the present links with Article 4 will no longer exist once the list has been deleted.

The second part of paragraph (4) of Article 4 in the present text is omitted since, as far as nationals, etc., of other member States of UPOV are concerned, the national treatment applies (unless the reciprocity rule referred to above is applicable and is applied) *automatically*, that is, does not require an extension (as provided in the present text), and, as far as nationals, etc., of member States of the Paris Union (not members of UPOV) are concerned, there is nothing in the UPOV Convention which would prevent a member State of UPOV from protecting them, or, for that matter, the nationals of any State.

Paragraph (5) of Article 4 of the present text is omitted because experience has shown that it is no longer necessary.

Present [1961/1972] Text

New [Proposed] Text

Article 4

[Botanical Genera and Species Which Must or May Be Protected; Reciprocity; Possibility of Declaring that Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property Are Applicable]

-) This Convention may be applied to all botanical genera and species. (1) [No change]
-) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species. (2) [No change]
-) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of the Convention to at least five of the genera named in the list annexed to the Convention. (3)(a) Each member State of the Union shall, on the entry into force of the Convention in its territory, apply the provisions of the Convention to at least five genera or species.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2): No amendment is proposed in this paragraph.

Ad paragraph (3): In the present text, this paragraph obliges member States to apply the Convention progressively to thirteen genera and species listed in the Annex to the Convention.¹ It is proposed to delete this Annex as well as the reference to it in the paragraph under consideration for the following reasons: the list of genera and species in the Annex was fixed mainly with regard to the situation prevailing in countries of the temperate climatic zone; it would be unreasonable to require countries belonging to other climatic zones to apply the Convention to the same genera or species (i.e., those listed); in order to allow all States to join the Union, it would therefore be necessary to amend the said list or to delete it; as it would hardly be possible to agree on a list suitable for all countries, the only practical solution is to abandon it completely. (See also next page.)

Editor's Note: ¹ The Annex to the Convention was not included in the documents submitted to the Diplomatic Conference. For the convenience of the reader the contents of that Annex are reproduced below:

"List referred to in Article 4, paragraph (3)

Species to be protected in each genus

1. Wheat	Triticum aestivum L. ssp. vulgare (VILL, HOST) MAC KAY Triticum durum DESF.
2. Barley	Hordeum vulgare L. s. lat.
3. Oats	Avena sativa L. Avena byzantina C. KOCH
or Rice	Oryza sativa L.
4. Maize	Zea Mays L.
5. Potato	Solanum tuberosum L.
6. Peas	Pisum sativum L.
7. Beans	Phaseolus vulgaris L. Phaseolus coccineus L.
8. Lucerne	Medicago sativa L. Medicago varia MARTYN
9. Red Clover	Trifolium pratense L.
10. Ryegrass	Lolium sp.
11. Lettuce	Lactuca sativa L.
12. Apples	Malus domestica BORKH
13. Roses	Rosa hort. Dianthus caryophyllus L.

If two optional genera are chosen—numbers 3 or 13 above—they shall be counted as one genus only."

Present [1961/1972] Text

Article 4

Each member State further undertakes to apply the said provisions to the other genera in the list, within the following periods from the date of the entry into force of the Convention in its territory:

- (a) within three years, to at least two genera;
- (b) within six years, to at least four genera;
- (c) within eight years, to all the genera named in the list.

[There is no provision in the present text corresponding to subparagraph (c) in the new text.]

New [Proposed] Text

Article 4

(3)(b) Subsequently, each member State shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of the Convention in its territory:

- (i) within three years, to at least ten genera or species in all;
- (ii) within six years, to at least eighteen genera or species in all;
- (iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of the Convention within a genus or species in accordance with the provisions of paragraph (3) of Article 2, such genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b) of the present paragraph, be considered as one genus or species.

Explanatory Notes

Ad paragraph (3) continued: Once the list is deleted, each member State will be free to choose the genera and species which it will make eligible for protection in order to fulfil its obligation under the Convention. Such freedom justifies an increase in the minimum numbers of genera or species to which member States have to apply the Convention within certain periods. The proposed amendment would increase the minimum number (to be reached within eight years) from 13 to 24.

Under the proposed new Article 2(3), member States will be able to apply the Convention to only a part of a genus or species. The new subparagraph (c) which is proposed to be added would clarify that, when counting the number of genera or species to which a member State applies the Convention, a genus or species in respect of which that State has availed itself of the possibility provided for in Article 2(3) (that is, to apply the Convention only to a part of its varieties) is nevertheless to be counted as one genus or species.

Present [1961/1972] Text

Article 4

[There is no provision in the present text corresponding to paragraph (4) in the new text.]

[There is no provision in the present text corresponding to paragraph (5) in the new text.]

(4) Any member State of the Union protecting a genus or species not included in the list shall be entitled either to limit the benefit of such protection to the nationals of member States of the Union protecting the same genus or species and to natural and legal persons resident or having their headquarters in any of those States, or to extend the benefit of such protection to the nationals of other member States of the Union or of the member States of the Paris Union for the Protection of Industrial Property and to natural and legal persons resident or having their headquarters in any of those States.

(5) Any member State of the Union may, on signing this Convention or on depositing its instrument of ratification or accession, declare that, with regard to the protection of new varieties of plants, it will apply Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property.

New [Proposed] Text

Article 4

(4) At the request of any State intending to ratify or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purposes of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State, the Council may, in order to take account of special difficulties encountered by such State in the fulfilment of the obligations under subparagraph (b) of paragraph 3 of this Article, decide, for the purposes of that State, to extend the periods referred to in that subparagraph.

[See Article 3(3) of the new text.]

[There is no provision in the new text corresponding to paragraph (5) in the present text.]

Explanatory Notes

Ad paragraph (4) in the new text: Certain States which wish to join the Union might not be able to fulfil the obligations provided for in paragraph (3). It is therefore proposed that the Council be authorized to reduce, for the purposes of such States, the said minimum numbers of genera or species to be protected or to extend the periods within which such States would have to apply the Convention to them. The majority which is necessary for a Council decision of this kind is prescribed in Article 22. The wording of the proposed new paragraph in question is similar to that of Article 26(5) as contained in Article II of the Additional Act.

Ad paragraph (5) in the new text: This new paragraph has been introduced for the purposes of States which, after having ratified or acceded to the Convention, find unexpected difficulties in complying with the obligation provided for in paragraph (3)(b) within the prescribed periods. The present paragraph would authorize the Council to extend, in such cases, the periods set forth in paragraph (3)(b).

Ad paragraphs (4) and (5) in the present text: See the Explanatory Notes on Article 3(3) in the new text.

Present [1961/1972] Text

Article 5*[Rights Protected; Scope of Protection]*

(1) The effect of the right granted to the breeder of a new plant variety or his successor in title is that his prior authorisation shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the new variety, and for the offering for sale or marketing of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder or his successor in title may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder or his successor in title shall not be required either for the utilisation of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1) of this Article, extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their headquarters in any of those States.

New [Proposed] Text

Article 5*Rights, Protected; Scope of Protection*

(1) [No change, except omit the words "new plant" and "new" and the words "or his successor in title."]

(2) [No change, except omit the words "or his successor in title."]

(3) [No change, except omit the word "new" in all cases in which it appears and the words "or his successor in title."]

(4) [No change, except replace the word "headquarters" by the words "registered office" in the English text.]

Explanatory Notes

Ad paragraph (1): It is proposed to omit the words "new plant" and "new" when they appear before the word "variety" and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (2): It is proposed to omit the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (3): It is proposed to omit the word "new" (three times) and the words "or his successor in title" (once). For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (4): The only amendment proposed is to replace the word "headquarters" by the words "registered office" in the English text.

Present [1961/1972] Text

Article 6*[Conditions Required for Protection]*

(1) The breeder of a new variety or his successor in title shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the new variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication.

A new variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise description and recognition.

New [Proposed] Text

Article 6*Conditions Required for Protection*

(1) The breeder of a variety shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication. A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise recognition and description.

Explanatory Notes

Ad paragraph (1), introductory lines: It is proposed to omit the word "new" and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (1)(a): It is proposed to omit the word "new" in the first and in the third sentences. For explanations, see the Explanatory Notes on Article 1(1). It is further proposed to merge the—present—two unnumbered subparagraphs into a single paragraph (a) and to invert in the last sentence the words "description" and "recognition."

Present [1961/1972] Text

Article 6

(1)(b) The fact that a variety has been entered in trials, or has been submitted for registration or entered in an official register, shall not prejudice the breeder of such variety or his successor in title.

At the time of the application for protection in a member State of the Union, the new variety must not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of that State, or for longer than four years in the territory of any other State.

New [Proposed] Text

Article 6

(1)(b) At the date on which the application for protection in a member State of the Union is filed, the variety

(i) must not—or, where the law of that State so provides, must not for longer than one year—have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and

(ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

Explanatory Notes

Ad paragraph (1)(b): In at least one non-member State of UPOV, the United States of America, breeders are granted a period of one year, expiring on the date of the filing of the application for protection in that country, in which they can use and sell the variety without thereby causing prejudice to their right to obtain protection. Other non-member States plan to follow this example. The period of one year, called "period of grace," is favorable to breeders in so far as it allows them a certain time in which to test the economic value of the variety and its suitability for being protected in the country in question before taking a decision on whether it is worth applying for protection there. The period of grace being a well-established tradition of most patent laws, some non-member States would encounter unsurmountable difficulties in acceding to the Convention if the Convention did not permit them to maintain—or to introduce—such a period. It is therefore proposed to amend the wording of subparagraph (b) so that it allows member States to grant a period of grace of up to one year.

In addition, it is proposed that the period of four years expiring at the filing date of the application, during which the variety may have been offered for sale or marketed in a State other than the State in which the application is filed, be extended to a period of six years in the case of certain groups of plants which are usually slow-growing and for which Article 8 of the present text already envisages a longer minimum period of protection. The reference to these groups of plants has been adapted to the new draft of Article 8 (see the Explanatory Notes on Article 8).

The order of the two sentences has been changed so that the basic rule appears first and the rule of interpretation is stated afterwards. The drafting of the—present—second subparagraph has been amended to clarify its meaning and the words "or his successor in title" have been omitted. For explanations of the latter change, see the Explanatory Notes on Article 1(1).

It is further proposed to state in the part corresponding to the—present—first subparagraph (the last two sentences of subparagraph (b) of the new text) that only common knowledge established by offering for sale or marketing of the variety, or by trials involving such offering for sale or marketing, shall prevent the breeder from obtaining protection for such variety.

Attention is drawn to the proposed new Article 34A(2), which would allow certain States to apply in certain cases novelty criteria different from those provided for in this paragraph.

Present [1961/1972] Text

New [Proposed] Text

Article 6

(1)(c) The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The new variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The new variety shall be given a denomination in accordance with the provisions of Article 13.

(2) Provided that the breeder or his successor in title shall have complied with the formalities provided for by the national law of each country, including the payment of fees, the grant of protection in respect of a new variety may not be made subject to conditions other than those set forth above.

Article 6

(1)(c) [No change, except omit the word "new."]¹

(d) [No change, except omit the word "new."]¹

(e) [No change, except omit the word "new."]

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the State in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Explanatory Notes

Ad paragraph (1)(c), (d) and (e): The only amendment proposed in each of these subparagraphs is to omit the word "new". For explanations, see the explanatory Notes on Article 1(1).

Ad paragraph (2): It is proposed to omit the words "in respect of a new variety" and the words "or his successor in title." For explanations of the latter omission, see the Explanatory Notes on Article 1(1). It is further proposed to replace the words "the national law of each country" by "the national law of the State in which the application for protection was filed."

Editor's Note: ¹ During the discussion on Article 6(1)(d) in the Plenary of the Diplomatic Conference (see paragraphs 377 to 381 on page 153 in the part of these Records entitled "Summary Minutes") it was suggested that the last phrase of the Article in the English version might be made more clear. The discussion also concerned the French and German versions. For the sake of completeness the French and German versions of the Basic Proposal for a Revised Text of Article 6(1)(d) are reproduced below:

"La variété doit être stable dans ses caractères essentiels, c'est-à-dire rester conforme à sa définition, à la suite de ses reproductions ou multiplications successives, ou, lorsque l'obtenteur a défini un cycle particulier de reproductions ou de multiplications, à la fin de chaque cycle."

"Die Sorte muss in ihren wesentlichen Merkmalen beständig sein, d.h. nach ihren aufeinanderfolgenden Vermehrungen oder, wenn der Züchter einen besonderen Vermehrungszyklus festgelegt hat, am Ende eines jeden Zyklus weiterhin ihrer Beschreibung entsprechen."

Present [1961/1972] Text

Article 7*[Official Examination of New Varieties;
Provisional Protection]*

(1) Protection shall be granted only after examination of the new plant variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.

(2) For the purposes of such examination, the competent authorities of each country may require the breeder or his successor in title to furnish all the necessary information, documents, propagating material or seeds.

(3) During the period between the filing of the application for protection of a new plant variety and the decision thereon, any member State of the Union may take measures to protect the breeder or his successor in title against wrongful acts by third parties.

New [Proposed] Text

Article 7*[Official Examination of Varieties;
Provisional Protection]*

(1) [No change, except omit the words "new plant."]

(2) [No change, except omit the words "or his successor in title."]

(3) [No change, except omit the words "of a new plant variety" and the words "or his successor in title."]

Explanatory Notes

Ad paragraphs (1) to (3): It is proposed to omit the words "new plant" in paragraph (1), the words "of a new plant variety" in paragraph (3) and the words "or his successor in title" in paragraphs (2) and (3). For explanations, see the Explanatory Notes on Article 1(1).

It is recalled that during the preparatory discussions a statement was agreed upon which was noted with approval by the Council at its tenth ordinary session. This statement reads as follows:

"(1) It is clear that it is the responsibility of the member States to ensure that the examination required by Article 7(1) of the UPOV Convention includes a growing test, and the authorities in the present UPOV member States normally conduct these tests themselves; however, it is considered that, if the competent authority were to require these tests to be conducted by the applicant, this is in keeping with the provisions of Article 7(1), provided that:

"(a) the growing tests are conducted according to guidelines established by the authority, and that they continue until a decision on the application has been given;

"(b) the applicant is required to deposit in a designated place, simultaneously with his application, a sample of the propagating material representing the variety;

"(c) the applicant is required to provide access to the growing tests mentioned under (a) by persons properly authorized by the competent authority.

"(2) A system of examination as described above is considered compatible with the UPOV Convention."

Present [1961/1972] Text

Article 8*[Period of Protection]*

(1) The right conferred on the breeder of a new plant variety or his successor in title shall be granted for a limited period. This period may not be less than fifteen years. For plants such as vines, fruit trees and their rootstocks, forest trees and ornamental trees, the minimum period shall be eighteen years.

(2) The period of protection in a member State of the Union shall run from the date of the issue of the title of protection.

(3) Each member State of the Union may adopt longer periods than those indicated above and may fix different periods for some classes of plants, in order to take account, in particular, of the requirements of regulations concerning the production and marketing of seeds and propagating material.

New [Proposed] Text

Article 8*Period of Protection*

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including their rootstocks, the minimum period shall be not less than eighteen years computed from the said date.

Explanatory Notes

It is proposed that this Article be redrafted so as to consist of only one paragraph which would, however, include the main contents of paragraphs (1) and (2) of the present text but omit the words "or his successor in title." For explanations of this omission, see the Explanatory Notes on Article 1(1). It seems to be unnecessary to state expressly (as does paragraph (3) of the present text) that member States may fix different periods of protection for different classes of plants since no provision of the Convention obliges the member States to fix the same period for all classes of plants.

The reference to certain groups of normally slow-growing plants has been amended. Furthermore, the order of the groups of plants has been changed to clarify that rootstocks of all groups—and not only of the groups of vines and fruit trees—would enjoy a longer period of protection.

Attention is drawn to the proposed new Article 34A(2), which would allow certain States to maintain a period of protection which would be shorter than the relevant minimum period provided for in Article 8.

Present [1961/1972] Text

Article 9*[Restrictions in the Exercise
of Rights Protected]*

The free exercise of the exclusive right accorded to the breeder or his successor in title may not be restricted otherwise than for reasons of public interest.

When any such restriction is made in order to ensure the widespread distribution of new varieties, the member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

New [Proposed] Text

Article 9*Restrictions in the Exercise
of Rights Protected*

(1) [No change, except that the paragraph should receive the number "(1)" and that the words "or his successor in title" should be omitted.]

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Explanatory Notes

It is proposed that the two paragraphs of the present text be numbered and that the words "new varieties" be replaced by "the variety" and the words "or his successor in title" be omitted in all cases where they appear. As far as the deletion of the word "new" and the words "or his successor in title" are concerned, see the Explanatory Notes on Article 1(1). The use of the singular and the definite article has been proposed in order to clarify that the provision refers only to restrictions made in order to ensure the widespread distribution of a specific variety.

Present [1961/1972] Text

Article 10*[Nullity and Forfeiture
of the Rights Protected]*

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in subparagraphs (a) and (b) of paragraph (1) of Article 6 were not effectively complied with at the time when the title of protection was issued.

(2) The breeder or his successor in title shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the new variety with its morphological and physiological characteristics as defined when the right was granted.

(3) The right of the breeder or his successor in title may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the new variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled and the right of the breeder or his successor in title may not become forfeit except on the grounds set out in this Article.

New [Proposed] Text

Article 10*Nullity and Forfeiture
of the Rights Protected*

(1) [No change]

(2) [No change, except omit the word "new" and the words "or his successor in title."]

(3) [No change, except omit the word "new" and the words "or his successor in title."]

(4) [No change, except omit the words "or his successor in title."]

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2): It is proposed to omit the word "new" and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (3): It is proposed to omit, in the introductory lines, the words "or his successor in title" and, in subparagraph (a), the word "new." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (4): It is proposed to omit the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Present [1961/1972] Text

Article 11

[Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States]

- (1) The breeder or his successor in title may choose the member State of the Union in which he wishes to make his first application for protection of his right in respect of a new variety.
- (2) The breeder or his successor in title may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.
- (3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same new variety in other States whether or not such States are members of the Union.

New [Proposed] Text

Article 11

Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

- (1) The breeder may choose the member State of the Union in which he wishes to make his first application for protection.
- (2) [No change, except omit the words "or his successor in title."]
- (3) [No change, except omit the word "new."]

Explanatory Notes

Ad paragraph (1): It is proposed to omit the words "of his right in respect of a new variety" and the words "or his successor in title." For explanations of the latter omission, see the Explanatory Notes on Article 1(1).

Ad paragraph (2): It is proposed to omit the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (3): The only amendment proposed is to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1).

Present [1961/1972] Text

Article 12*[Right of Priority]*

(1) Any breeder or his successor in title who has duly filed an application for protection of a new variety in one of the member States of the Union shall, for the purposes of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall run from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection of the new variety, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State.

New [Proposed] Text

Article 12*Right of Priority*

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) [No change, except omit the words "of the new variety."]

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished, within an adequate period, in the case where the application whose priority is claimed is rejected or withdrawn.

Explanatory Notes

Ad paragraph (1): It is proposed to omit the words "of a new variety" and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1). Furthermore, the wording of the second sentence has been slightly changed for the sake of consistency with other provisions of the Convention.

Ad paragraph (2): The only amendment proposed is to omit the words "of the new variety."

Ad paragraph (3): It is proposed to delete the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1). Furthermore, it is proposed to add to this paragraph a sentence (starting with the word "Nevertheless") which would allow member States to shorten the four-year period which is normally granted to applicants benefiting from the right of priority for furnishing any "additional documents" (that is, other than the certified copy of the priority application) and "material" (that is, a sample of the variety) to the office with which the subsequent application is filed, where the priority application has been rejected or withdrawn. In this case, it is almost certain that the authority with which the priority application has been filed will destroy all or most documents or material received from the applicant some time after that rejection or withdrawal has taken place. Such destruction means that neither the office with which the subsequent application has been filed nor courts nor private parties in the country of the subsequent application can rely, as a possible source of evidence, on the files, the growing fields, the reference collections or the sample collections of the office with which the priority application has been filed, should the validity of the priority claim be in dispute. Under such circumstances, the office of the subsequent filing should be given a chance to ask for samples of the propagating material immediately because the sooner the applicant is obliged to furnish them the more likely it is that they will be the same as those which were given to the office with which the priority application was filed.

Present [1961/1972] Text

New [Proposed] Text

Article 12**Article 12**

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Explanatory Notes

Ad paragraph (4): No amendment is proposed in this paragraph.

Present [1961/1972] Text

Article 13*[Denomination of New Varieties of Plants]*

(1) A new variety shall be given a denomination.

(2) Such denomination must enable the new variety to be identified; in particular, it may not consist solely of figures.

The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the new variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, existing varieties of the same or a closely related botanical species.

(3) The breeder or his successor in title may not submit as the denomination of a new variety either a designation in respect of which he enjoys the protection, in a member State of the Union, accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, unless he undertakes to renounce his right to the mark as from the registration of the denomination of the new variety.

If the breeder or his successor in title nevertheless submits such a denomination, he may not, as from the time when it is registered, continue to assert his right to the trade mark in respect of the above-mentioned products.

New [Proposed] Text

Article 13¹*Denomination of Varieties of Plants*

(1) [No change, except omit the word "new."]

(2) Such denomination must enable the variety to be identified; in particular, it may not consist solely of figures. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same or a closely related botanical species.

(4) If the breeder submits as the denomination of the variety either a designation in respect of which he enjoys the protection accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, he may not, as from the time when it is registered, continue to assert his right to the trade mark, in respect of the above-mentioned products, in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs.

Explanatory Notes

Ad paragraph (1): The only amendment proposed is to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (2): It is proposed to omit the word "new"; for explanations, see the Explanatory Notes on Article 1(1). Furthermore, it is proposed that the expression "existing varieties" be put into the singular in view of the fact that any given denomination normally designates only one variety, and not several. Finally, it is proposed to combine both subparagraphs in one paragraph.

It is to be noted that the rule contained in this paragraph and according to which a denomination "may not consist solely of figures" may be subject to an exception, namely, where the proposed new Article 36A applies (see that Article).

Ad paragraph (3) in the present text (paragraph (4) in the new text): It is proposed to omit the words "or his successor in title" wherever they appear. For explanations, see the Explanatory Notes on Article 1(1). Furthermore, it is proposed that this paragraph be amended in two respects. (See also next page.)

Editor's Note: ¹ An alternative proposal for Article 13, submitted by the Administrative and Legal Committee of UPOV, was distributed in preparation for the Diplomatic Conference. That proposal is reproduced in document DC/4 and is to be found under that reference on page 83 in the part of these Records entitled "Conference Documents."

Present [1961/1972] Text

Article 13

(4) The denomination of the new variety shall be submitted by the breeder or his successor in title to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraphs, the authority shall refuse to register it and shall require the breeder or his successor in title to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

New [Proposed] Text

Article 13

(3) [Same as paragraph (4) of the present text, except omit the word "new," replace "paragraphs" by "paragraph" and omit the words "or his successor in title" wherever they appear.]

Explanatory Notes

Ad paragraph (3) in the present text (paragraph (4) in the new text) continued: According to the present text, any applicant who wishes to use as a denomination a sign which is one of his trade marks is obliged to undertake to renounce his right to the trade mark and—if he does not comply with this obligation—he may not, as from the time of the registration of the denomination, continue to assert his right to the trade mark in respect of products identical or similar to the plant variety. It is proposed merely to provide in the Convention that the applicant be prevented, in the above-mentioned situation, from asserting his right to the trade mark in respect of the above-mentioned products. The proposed solution would simplify the procedure before the plant variety rights offices of member States since such offices would no longer be required to compel the applicant to renounce his right in a trade mark and the applicant would no longer be required to attach a declaration of renunciation to his application. The proposed solution would not, on the other hand, prevent a member State from requiring under its domestic law the renouncement of the right to the trade mark.

The other proposed amendment would be the following. The present text provides, in effect, that the applicant who continues to use the denomination as a trade mark cannot assert his right to the trade mark (as far as certain products are concerned) in any member State; the proposed new text would limit the application of this sanction to those member States in which the genus or species to which the variety in question belongs is eligible for protection. The reason for such an amendment lies in the belief that it does not seem to be justified to deprive the applicant of the rights and advantages conferred upon him by a trade mark in member States in which he is not in a position to enjoy plant variety protection because such protection is simply not available, as the national laws do not offer the possibility of protection to the genus or species in question. In such States, because of the lack of plant variety protection, breeders can neither control the sale of propagating material of their varieties nor enforce the payment of royalties for their use; in such States, they should at least not be deprived of the exercise of any rights they may derive from their trade marks when their varieties are sold under such marks.

It is proposed to interchange paragraphs (3) and (4) in the new text in view of the fact that the case treated in paragraph (3) of the present text would no longer be a reason for a national authority to refuse registering a proposed denomination.

Ad paragraph (4) in the present text (paragraph (3) in the new text): It is proposed to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1). It is further proposed to put the expression "of the preceding paragraphs" into the singular, as a consequence of the proposed amendment of paragraph (3) in the present text and of the interchanging of paragraphs (3) and (4): in the new text, the proposed denomination would have to satisfy the requirements of only one paragraph (namely, paragraph (2)).

Present [1961/1972] Text

Article 13

(5) A new variety must be submitted in member States of the Union under the same denomination. The competent authority for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder or his successor in title to submit a translation of the original denomination or another suitable denomination.

(6) When the denomination of a new variety is submitted to the competent authority of a member State of the Union, the latter shall communicate it to the Office of the Union referred to in Article 15, which shall notify it to the competent authorities of the other member States of the Union. Any member State of the Union may address its objections, if any, through the said Office, to the State which communicated the denomination.

The competent authority of each member State of the Union shall notify each registration of the denomination of a new variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union. Registrations shall also be communicated by the Office to the member States of the Paris Union for the Protection of Industrial Property.

(7) Any person in a member State of the Union who offers for sale or markets reproductive or vegetative propagating material of a new variety shall be obliged to use the denomination of that new variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (10), prior rights do not prevent such use.

New [Proposed] Text

Article 13

(5) [No change, except omit the word "new" and the words "or his successor in title."]

(6) [Same as the first subparagraph of paragraph (6) of the present text, except omit the word "new."]

(7) The competent authority of each member State of the Union shall notify each registration of the denomination of a variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union.

(8) [Same as paragraph (7) of the present text, except omit the word "new" in all cases in which it appears and change "(10)" to "(11)".]

Explanatory Notes

Ad paragraph (5): It is proposed to omit the word "new" and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (6), first subparagraph, in the present text (paragraph (6) in the new text): The only amendment proposed is to omit the word "new". For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (6), second subparagraph, in the present text (paragraph (7) in the new text): It is proposed to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1). It is furthermore proposed to delete the last sentence.

Ad paragraph (7) in the present text (paragraph (8) in the new text): It is proposed to omit the word "new" in all cases in which it appears. For explanations, see the Explanatory Notes on Article 1(1). It is furthermore proposed to change the reference to paragraph (10) to a reference to paragraph (11) since the numbering of the subparagraphs has been changed in the new text.

Present [1961/1972] Text

New [Proposed] Text

Article 13

(8) From the date of issue of a title of protection to a breeder or his successor in title in a member State of the Union:

(a) the denomination of the new variety may not be used, in any member State of the Union, as the denomination of another variety of the same or a closely related botanical species;

(b) the denomination of the new variety shall be regarded as the generic name for that variety. Consequently, subject to the provisions of paragraph (10), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law.

(9) It shall be permitted, in respect of the same product, to add a trade mark to the denomination of the new variety.

(10) Prior rights of third parties in respect of signs used to distinguish their products or enterprises shall not be affected. If, by reason of a prior right, the use of the denomination of a new variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall, if need be, require the breeder or his successor in title to submit another denomination for the new variety.

Article 13

(9) [Same as paragraph (8) of the present text, except omit the word "new" in all cases in which it appears and the words "or his successor in title."]

(10) [Same as paragraph (9) of the present text, except omit the word "new."]

(11) [Same as paragraph (10) of the present text, except omit (twice) the word "new," change "(7)" to "(8)", omit the words "if need be" and the words "or his successor in title."]

Explanatory Notes

Ad paragraph (8) in the present text (paragraph (9) in the new text): It is proposed to omit the word "new" in all cases in which it appears and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (9) in the present text (paragraph (10) in the new text): The only amendment proposed is to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1). It is understood that this paragraph permits the addition to a variety denomination not only of a trade mark, but also of other indications, names and signs such as a trade name, a brand name, etc.

Ad paragraph (10) in the present text (paragraph (11) in the new text): It is proposed to omit the word "new" in all cases in which it appears and the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1). Furthermore, it is proposed to replace "paragraph (7)" by "paragraph (8)" and to omit the words "if need be."

Present [1961/1972] Text**Article 14****[Protection Independent of Measures Regulating Production, Certification and Marketing]**

- (1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.
- (2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

New [Proposed] Text**Article 14*****Protection Independent of Measures Regulating Production, Certification and Marketing***

- (1) [No change]
- (2) [No change]

Explanatory Notes

No amendment is proposed in this Article.

Present [1961/1972] Text

Article 15*[Organs of the Union]*

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants. That Office shall be under the high authority of the Swiss Confederation.

New [Proposed] Text

Article 15*Organs of the Union*

The permanent organs of the Union shall be:

- (a) the Council, and
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Explanatory Notes

In 1961, when the UPOV Convention was concluded, it was planned that some aspects of the administration of UPOV should, to a certain extent, be the subject of cooperation with the United International Bureaux for the Protection of Intellectual Property (BIRPI). This plan found its expression in Article 25 of the 1961 Convention, which provides that "the procedures for technical and administrative cooperation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property shall be governed by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned."

At that time, that is, in 1961, BIRPI was under the supervision of the Swiss Government. It is to be presumed that it was because it was found desirable to establish the same kind of relationship between UPOV and the Swiss Government as existed at that time between BIRPI and the Swiss Government that a certain role is specified in the last sentence of the Article under consideration (Article 15), which provides that the UPOV Office "shall be under the high authority of the Swiss Confederation," and in Articles 20(2), 21(g), 23, 24, 25, 32(2) and (4), 33(1) and (2), 34(1) and 40(2) of the 1961 Convention.

In 1967, however, the Convention Establishing the World Intellectual Property Organization (WIPO) was adopted. That Convention provided for the replacement of BIRPI by WIPO. The said Convention came into effect in 1970. Although still existing on paper for those few countries which have not yet ratified or acceded to the Stockholm texts of 1967 of the intellectual property conventions, BIRPI has in fact ceased to exist.

Contrary to the situation vis-à-vis BIRPI, the Swiss Government has no supervisory functions over WIPO. WIPO is supervised by all the Member States, and none of them has a special role or status such as Switzerland had vis-à-vis BIRPI.

Since its creation, the Council of UPOV—in which all member States are represented—has proved that it can effectively control the programme, the budget and the Office of UPOV and that it can do so alone. As a matter of fact, the role of the Swiss Government proved to be largely formal. In other words, UPOV does not seem to need any special supervision by one of its member States; it can be supervised through its own Council. Furthermore, UPOV's continued supervision by the Swiss Government places it in an inferior situation vis-à-vis WIPO, whose intergovernmental organs are sovereign. Equality in status between UPOV and WIPO would require that the Council of UPOV become sovereign and that the supervisory role of the Swiss Government cease.

These are the reasons for which it is proposed that the last sentence of the Article under consideration be omitted.

For the same reasons, amendments will be proposed in this document to other Articles of the present text in which reference is made to the role of the Swiss Government as supervisory authority. The present text contains such references in Articles 20, 21, 23, 24, 25, 32, 33, 34 and 40.

It is to be noted that the Government of Switzerland has declared in writing that it had no objections to the proposed changes.

Present [1961/1972] Text**Article 16***[Composition of the Council; Votes]*

(1) The Council shall consist of representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.

(2) Representatives or alternates may be accompanied by assistants or advisers.

(3) Each member State of the Union shall have one vote in the Council.

New [Proposed] Text**Article 16***Composition of the Council; Votes*

(1) [No change, except insert the word "the" before the word "representatives."]

(2) [No change]

(3) [No change]

Explanatory Notes

The only amendment proposed is to add in paragraph (1) the word "the" before the word "representatives" since the Council does not consist of all representatives, but of those representatives who have been duly appointed by the member States as such (or as alternates).

Present [1961/1972] Text

Article 17*[Observers in Meetings of the Council]*

- (1) States which have signed but not yet ratified this Convention shall be invited as observers to meetings of the Council. Their representatives shall be entitled to speak in a consultative capacity.
- (2) Other observers or experts may also be invited to such meetings.

New [Proposed] Text

Article 17*Observers in Meetings of the Council*

- (1) States not members of the Union which have signed but not yet ratified this Act shall be invited as observers to meetings of the Council.
- (2) [No change]

Explanatory Notes

Ad paragraph (1): As in the original 1961 version of the Convention, the proposed new text provides that the States which have signed but not yet ratified the new text will have an *ex officio* observer status and will be invited to meetings of the Council. It was not felt necessary to mention expressly that they have the right to speak in a consultative capacity.

The provision in this paragraph refers only to States not members of the Union. The status of the present member States is not affected should they not sign, or sign but not ratify, the new text.

Ad paragraph (2): No amendment is proposed in this paragraph.

Present [1961/1972] Text**Article 18***[Officers of the Council]*

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

New [Proposed] Text**Article 18***Officers of the Council*

(1) [No change]

(2) [No change]

Explanatory Notes

No amendment is proposed in this Article.

Present [1961/1972] Text

New [Proposed] Text

Article 19*[Meetings of the Council]***Article 19***Meetings of the Council*

(1) Meetings of the Council shall be convened (1) [No change]
by its President.

(2) A regular session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if a third of the member States of the Union so request.

Explanatory Notes

No amendment is proposed in this Article.

Present [1961/1972] Text

Article 20

*[Rules of Procedure of the Council;
Administrative and Financial
Regulations of the Union]*

(1) The Council shall lay down its rules of procedure.

(2) The Council shall adopt the administrative and financial regulations of the Union, after having consulted the Government of the Swiss Confederation. The Government of the Swiss Confederation shall be responsible for ensuring that the regulations are carried out.

(3) A majority of three-quarters of the member States of the Union shall be required for the adoption of such rules and regulations and any amendments to them.

New [Proposed] Text

Article 20

*Rules of Procedure of the Council;
Administrative and Financial
Regulations of the Union*

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

[There is no provision in the new text corresponding to paragraph (3) in the present text.]

Explanatory Notes

Ad paragraphs (1) and (2) in the present text: As to form, it is proposed to combine paragraphs (1) and (2) of the present text in one new paragraph in the new text. As to substance, it is proposed to delete the references to the Swiss Government, which means the final part of the first sentence of paragraph (2) and the second sentence of paragraph (2) in the present text. For the reasons behind this proposal, see the Explanatory Notes on Article 15.

It is to be noted that, according to Article 22, the majority required for a decision under this paragraph is three-fourths.

Ad paragraph (3) in the present text: It is proposed to delete this paragraph. The required majority (three-fourths) would be provided for in Article 22 (see that Article).

Present [1961/1972] Text

Article 21*[Duties of the Council]*

The duties of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (c) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national authorities;
- (d) examine and approve the budget of the Union and fix the contribution of each member State in accordance with the provisions of Article 26;
- (e) examine and approve the accounts presented by the Secretary-General;
- (f) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) make proposals to the Government of the Swiss Confederation concerning the appointment of the Secretary-General and senior officials; and
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

New [Proposed] Text

Article 21*Tasks of the Council*

The tasks of the Council shall be to:

- (a) [No change]
- (b) [No change]
- (c) [No change]
- (d) [No change]
- (e) [No change]
- (f) [No change]
- (g) appoint the Secretary-general; if it finds it necessary, appoint a Vice Secretary-General, after consultation with and the agreement of the Secretary-General; determine the terms of appointment of each;
- (h) [No change]

Explanatory Notes

No amendment is proposed in this Article except to replace in the introductory line the word "duties" by the word "tasks" and to change the wording of paragraph (g).

As to paragraph (g), it is proposed, for the reasons stated in the Explanatory Notes on Article 15, to omit the reference to the Swiss Government. The new text would vest in the Council, and only in the Council, the right to appoint the Secretary-General and a Vice Secretary-General if the Council finds it necessary to have also a Vice Secretary-General, as it does under the present system of cooperation with the World Intellectual Property Organization (WIPO). Before appointing a Vice Secretary-General, the Council has to consult the Secretary-General and has to obtain his agreement on the candidate chosen. The terms of appointment of the Secretary-General and of the Vice Secretary-General will, according to the proposal, be determined by the Council. As to the other staff, see Article 23(3).

It is to be noted that the majority required for a decision under paragraph (d) (approval of the budget, fixing of the contributions) would, according to Article 22, be three-fourths.

Present [1961/1972] Text	New [Proposed] Text
Article 22¹	Article 22
<i>[Majorities Required for Decisions of the Council]</i>	<i>[Majorities Required for Decisions of the Council]</i>

Decisions of the Council shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, for the vote on the budget, for the fixing of the contributions of each member State of the Union, for the faculty provided for in paragraph (5) of Article 26 concerning payment of one-half of the contribution corresponding to Class V and for any decision regarding voting rights under paragraph (6) of Article 26. In these last four cases, the majority required shall be three-quarters of the members present.

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(d), 26(5), 27(1), 28(3) and 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Explanatory Notes

The rule in both the present text and the proposed new text is that the majority required for the decisions of the Council is a simple one. Both texts provide for exceptions. A majority of three-quarters is required in both the present text and the proposed new text for decisions made under:

- Article 20: adoption of the rules of procedure of the Council and of the administrative and financial regulations of the Union (in the present text, by the member States; in the proposed new text, by the member States present and voting);
- Article 21(d): approval of the budget and fixing of the contributions;
- Article 26(5): restoration of voting rights;
- Article 28(3): designation of further languages for use by the Office and in certain meetings.

The same qualified majority is also provided for in the new text for decisions in the following case not provided for in the present text:

- Article 4(4): lowering the obligations of certain States in respect of the minimum number of genera or species to be made eligible for protection.

As to Article 27(2), it is to be noted that any departure from the five-year periodicity of revision conferences provided for in the present text requires a five-sixths majority; in the proposed new text, the convocation of a revision conference would require a three-fourths majority.

As to Article 32(3), it is to be noted that the present text provides for a majority of four-fifths for decisions on the accession of a non-member State to the Convention; in the proposed new text, decisions of a comparable nature would require a three-fourths majority.

The proposed new text makes it clear that abstentions are not to be considered votes. Such a rule is already contained in Section II, second subparagraph, of the Rules of Procedure of the Council, as adopted on November 27, 1968 (document UPOV/INF/4).²

It is not proposed to provide for a quorum requirement in the Convention. The Council will establish the quorum for its decisions in its Rules of Procedure, and it does not seem to be necessary to state in the Convention that it will have to do so.

Editor's Notes:

¹ Article I of the Additional Act of 1972.

² Section II of the said Rules of Procedure of the Council of UPOV reads as follows:

"During meetings voting shall be by show of hands, unless a member should request that votes be taken by roll-call.
An abstention shall not be considered a vote."

Present [1961/1972] Text

Article 23

*[Tasks of the Office of the Union;
Responsibilities of the Secretary-General;
Appointment of Staff]*

(1) The Office of the Union shall have the task of carrying out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) The Secretary-General and the senior officials shall be appointed, on the proposal of the Council, by the Government of the Swiss Confederation, which shall determine the terms of their appointment.

The terms of service and the remuneration of other grades in the Office of the Union shall be determined by the administrative and financial regulations.

New [Proposed] Text

Article 23

*[Tasks of the Office of the Union;
Responsibilities of the Secretary-General;
Appointment of Staff]*

(1) [No change]

(2) [No change]

(3) Subject to the provisions of Article 21(g), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2): No amendment is proposed in this paragraph.

Ad paragraph (3): Article 21(g) deals with the Secretary-General and the Vice Secretary-General. As for the other staff, it is proposed that the conditions of appointment and employment be fixed in the administrative and financial regulations which are to be adopted by the Council by a three-fourths majority, according to Articles 20 and 22.

As for the reasons for no longer mentioning the Swiss Government, see the Explanatory Notes on Article 15.

Present [1961/1972] Text

New [Proposed] Text

Article 23A*Legal Status*

[There is no Article 23A in the present text.]

- (1) The Union shall have legal personality.
- (2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Union's objectives and for the exercise of its functions.

Explanatory Notes

There is no Article or other provision in the present text that would correspond to this proposed new Article.

Since it is proposed (see Article 15) that UPOV should no longer be under the supervision of the Swiss Government, it seems to be useful, if not necessary, to insert provisions, usual in comparable treaties, on UPOV's legal capacity. That is what this new Article is intended to achieve.

Present [1961/1972] Text

New [Proposed] Text

Article 24*[Supervisory Function of the Swiss Government]*

The Government of the Swiss Confederation shall supervise the expenditure and accounts of the Office of the International Union for the Protection of New Varieties of Plants. It shall submit an annual report on its supervisory function to the Council.

Article 24*Auditing of the Accounts*

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Explanatory Notes

For the reasons stated in the Explanatory Notes on Article 15, it is proposed that this Article no longer provide any special role for the Swiss Government. On the other hand, it is proposed that the auditing of the accounts be the responsibility of a member State designated, to that effect, by the Council. Such a State may be Switzerland, and it would have to be Switzerland as long as Switzerland remains (as it is today) the auditor of the accounts of WIPO and the administrative cooperation between UPOV and WIPO continues. The proposed new text follows closely Article 11(10) of the WIPO Convention.¹

Editor's Note: ¹ Article 11(10) of the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967, reads as follows: "The auditing of the accounts shall be effected by one or more Member States, or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the General Assembly."

Present [1961/1972] Text**New [Proposed] Text****Article 25***[Cooperation with the Unions
Administered by BIRPI]*

The procedures for technical and administrative cooperation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property shall be governed by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned.

[There are no provisions in the new text corresponding to Article 25 of the present text.]

Explanatory Notes

It is proposed that Article 25 of the present text be omitted. Once the supervisory role of the Swiss Government ceases—as it would, under the proposal explained in connection with Article 15—any agreement between UPOV and another organization “for technical or administrative cooperation” could be concluded without the agreement of the Swiss Government.

The conclusion of such an agreement could, as far as UPOV is concerned, be decided by the Council by virtue of the powers vested in it under Article 21(h).

In its December 1977 session, the Council of UPOV expressed the view that the omission of Article 25 of the present text of the UPOV Convention should not be interpreted as a sign of that Council's desire to discontinue the existing arrangements between UPOV and WIPO; on the contrary, the Council of UPOV concluded that, should the Diplomatic Conference of Revision decide to omit the said Article, it would promptly notify WIPO that it wished to continue the said arrangements under an agreement which would have to be negotiated and concluded between UPOV and WIPO once the revised new text of the UPOV Convention entered into force.

Present [1961/1972] Text

Article 26¹
[Finances]

(1) The expenses of the Union shall be met from:

- (a) annual contributions of member States of the Union;
- (b) payments received for services rendered; and
- (c) miscellaneous receipts.

(2) For the purpose of determining the amount of their annual contributions, the member States of the Union shall be divided into five classes:

Class I	5 units
Class II	4 units
Class III	3 units
Class IV	2 units
Class V	1 unit

Each member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of member States of the Union by the total number of units.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2): As to form, it is proposed that the two subparagraphs be identified by the letters "(a)" and "(b)."

As to substance, it is proposed to add to the present contribution classes I to V ten further classes, without, however, changing the numbers of the present five (I, II, III, IV, V) classes or the number of units presently attached to each of those five classes. (Not making changes in these respects would allow present member States to contribute the same number of units as they do now without having to change class.) The new classes (A, B, C, D, *Vbis*, *Vter*) would increase the proportion between the contributions in the highest and the lowest classes (instead of the present 1:5, the proportion would be 1:75) or would form intermediary classes (*Ibis*, *IIbis*, *IIIbis*, *IVbis*) between the present classes. All this should allow for a more equitable and flexible system in which each country could more easily choose an appropriate level of contributions.

No amendment is proposed in the second subparagraph (the new subparagraph (b)) of the present paragraph.

Ad paragraph (3): No amendment is proposed in this paragraph.

Editor's Note: ¹ Article II of the Additional Act of 1972.

New [Proposed] Text

Article 26
Finances

(2)(a) For the purpose of determining the amount of their annual contributions, the member States of the Union shall be divided into the following classes:

Class A	15 units
Class B	12.5 units
Class C	10 units
Class D	7.5 units
Class I	5 units
Class <i>Ibis</i>	4.5 units
Class II	4 units
Class <i>IIbis</i>	3.5 units
Class III	3 units
Class <i>IIibis</i>	2.5 units
Class IV	2 units
Class <i>IVbis</i>	1.5 units
Class V	1 unit
Class <i>Vbis</i>	0.6 unit
Class <i>Vter</i>	0.2 unit

(b) [Same as the (unnumbered) second subparagraph of paragraph (2) of the present text.]

(3) [No change]

Present [1961/1972] Text

Article 26

(4) Each member State of the Union shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.²

Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change of class is to take effect.

(5) At the request of a member State of the Union or of a State applying for accession to the Convention according to Article 32 and indicating the wish to be placed in Class V, the Council may, in order to take account of exceptional circumstances, decide to allow such State to pay only one-half of the contribution corresponding to Class V. Such decision will stand until the State concerned waives the faculty granted or declares that it wishes to be placed in another class or until the Council revokes its decision.

(6) A member State of the Union which is in arrears in the payment of its contributions may not exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years, but it shall not be relieved of its obligations under this Convention, nor shall it be deprived of any other rights thereunder. However, the Council may allow such a State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.³

New [Proposed] Text

Article 26

(4)(a) Each State shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

(b) [Same as the (unnumbered) second subparagraph of paragraph (4) of the present text.]

[There are no provisions in the new text corresponding to paragraph (5) in the present text.]

(5) [Same as paragraph (6) of the present text.]

Explanatory Notes

Ad paragraph (4): No amendment is proposed in this paragraph, except that its two subparagraphs would be identified by the letters "(a)" and "(b)" and that the words "member" and "of the Union" would be omitted in the first sentence since at the time the indication of the class is to be made the State is not yet a member of the Union.

Ad paragraph (5) in the present text: In view of the more differentiated system of contribution classes proposed under paragraph (2), it does not seem to be necessary to provide for a further reduction of contributions by a decision of the Council. It is therefore proposed to omit this paragraph.

Ad paragraph (6) in the present text (paragraph (5) in the new text): No amendment is proposed in this paragraph. Any decision of the Council under this paragraph would require a majority of three-fourths (see Article 22).

Editor's Notes:

² In this connection, Article IV of the Additional Act of 1972 provides as follows: "Member States of the Union shall be placed in the class under this Additional Act which contains the same number of units as the class they have chosen under the Convention, unless, at the moment of depositing their instrument of ratification or accession, they express the wish to be placed in another class under this Additional Act."

³ With regard to the applicability of this paragraph Article III of the Additional Act of 1972 provides as follows:

"The provisions of paragraph (6) of Article 26 shall apply only if all member States of the Union have ratified or acceded to this Additional Act."

Present [1961/1972] Text

Article 27
[Revision of the Convention]

(1) This Convention shall be reviewed periodically with a view to the introduction of amendments designed to improve the working of the Union.

(2) For this purpose, conferences shall be held every five years, unless the Council, by a majority of five-sixths of the members present, considers that the convening of such a conference should be brought forward or postponed.

(3) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it.

A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention

New [Proposed] Text

Article 27
Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) [Same as paragraph (3) of the present text, except that the two subparagraphs in the present text will constitute a single paragraph.]

Explanatory Notes

Ad paragraph (1): Experience has shown that rules which require periodic revisions—once every five years—are not practical since the need for revision may arise less frequently or more frequently than once every five years. Consequently, it is proposed to abandon the notion of periodicity contained in this paragraph and the rule according to which each period is generally five years long.

The rule concerning the required majority would be found in Article 22 (see that Article); it would lower the majority from five-sixths to three-fourths.

Ad paragraph (2) in the present text: It is proposed to omit this paragraph since its provisions will be contained in the new paragraph (1).

Ad paragraph (3) in the present text (paragraph (2) in the new text): No amendment is proposed in this paragraph other than to abandon its division into two subparagraphs, which is hardly justified by the content.

Present [1961/1972] Text**Article 27**

(4) The revised text shall enter into force, in respect of member States of the Union which have ratified it, when it has been ratified by five-sixths of the member States of the Union. It shall enter into force thirty days after the deposit of the last of the instruments of ratification. If, however, a majority of five-sixths of the member States of the Union represented at the conference considers that the revised text includes amendments of such a kind as to preclude, for member States of the Union which do not ratify the revised text, the possibility of continuing to be bound by the former text in respect of the other member States of the Union, the revised text shall enter into force two years after the deposit of the last of the instruments of ratification. In such case, the former text shall, from the date of such entry into force, cease to bind the States which have ratified the revised text.

New [Proposed] Text**Article 27**

[See Articles 32A and 32B of the new text.]

Explanatory Notes

Ad paragraph (4) in the present text: It is proposed to omit this paragraph, which, besides being unclear in several points, is unusual in international conventions. The conditions of the entry into force of revised texts of international conventions should be fixed by the revision conference since the composition and the will of the member States may well vary from one revision conference to another. It is to be noted that Article III of the Additional Act of 1972, which constituted the first revision of the Convention of 1961, already deviates from the rules contained in the paragraph under consideration.¹

Editor's Note: ¹ Article III of the Additional Act of 1972 reads as follows:
“The provisions of paragraph (6) of Article 26 shall apply only if all member States of the Union have ratified or acceded to this Additional Act.”

Present [1961/1972] Text**Article 28***[Languages To Be Used by the Office
and in the Council]*

- (1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
- (2) Meetings of the Council and of revision conferences shall be held in the three languages.
- (3) If the need arises, the Council may decide, by a majority of three-quarters of the members present, that further languages shall be used.

New [Proposed] Text**Article 28***Languages To Be Used by the Office
and in the Council*

- (1) [No change]
- (2) [No change]
- (3) If the need arises, the Council may decide that further languages shall be used.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2): No amendment is proposed in this paragraph.

Ad paragraph (3): The rule concerning the required majority would be transferred to Article 22 (see that Article).

Present [1961/1972] Text

Article 29*[Special Agreements for the Protection
of New Varieties of Plants]*

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Member States of the Union which have not taken part in making such agreements shall be allowed to accede to them at their request.

New [Proposed] Text

Article 29*Special Agreements for the Protection
of New Varieties of Plants*

[No change in the first (unnumbered) paragraph.]

[Omit the second (unnumbered) paragraph.]

Explanatory Notes

It is proposed to delete the second (unnumbered) paragraph since it is considered that the interests of the member States are already sufficiently safeguarded by the provisions of the first paragraph.

Present [1961/1972] Text

Article 30*[Implementation of the Convention
on the Domestic Level; Special
Agreements on the Joint Utilisation
of Examination Services]*

(1) Each member State of the Union shall undertake to adopt all measures necessary for the application of this Convention.

In particular, each member State shall undertake to:

(a)¹ ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of the rights provided for in this Convention;

(b) set up a special authority for the protection of new varieties of plants or to entrust their protection to an existing authority; and

(c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Special agreements may also be concluded between member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of new varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification or accession, each member State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

New [Proposed] Text

Article 30*[Implementation of the Convention
on the Domestic Level; Contracts
on the Joint Utilisation
of Examination Services]*

(1) [No change, except that the two subparagraphs in the present text will constitute a single paragraph.]

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilization of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) [No change, except omit the word "member" in the English text.]

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph, except to merge the two unnumbered subparagraphs in the present text.

Ad paragraph (2): It is proposed to omit the word "new." For explanations, see the Explanatory Notes on Article 1(1). Furthermore, the following drafting changes are proposed in the English text: "special agreements" is to be replaced by "contracts" and "member States of the Union" by "competent authorities of the member States of the Union."

Ad paragraph (3): It is proposed to omit the word "member" in the English text as that word has no counterpart either in the original French text or in the German text.

Editor's Note: ¹ During the discussion on Article 30(1)(a) in the Plenary of the Diplomatic Conference reference was made to the German and French versions of the Basic Proposal for a Revised Text of that Article (see paragraphs 662 and 665 respectively on page 167 in the part of these Records entitled "Summary Minutes"). For the sake of completeness the German and French versions of the Basic Proposal for a Revised Text of Article 30(1)(a) are reproduced below:

"den Angehörigen der übrigen Verbandsstaaten die geeigneten Rechtsmittel zu gewährleisten, die ihnen eine wirksame Wahrung der in diesem Übereinkommen vorgesehenen Rechte ermöglichen;"

"à assurer aux ressortissants des autres Etats de l'Union les recours légaux appropriés leur permettant de défendre efficacement les droits prévus par la présente Convention;"

Present [1961/1972] Text¹**Article 31***[Signature and Ratification;
Entry Into Force]*

(1) This Convention shall be open for signature until December 2, 1962, by States represented at the Paris Conference for the Protection of New Varieties of Plants.

(2) [See opposite Article 32 of the new text.]

(3) [See opposite Article 32A of the new text.]

New [Proposed] Text

Article 31*Signature*

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

[For the provision corresponding to paragraph (2) of the present text, see Article 32 of the new text.]

[For the provision corresponding to paragraph (3) of the present text, see Article 32A of the new text.]

Explanatory Notes

Ad paragraph (1): The proposed new text would enable any member State, and also any other State represented in the Diplomatic Conference adopting this Act, to sign the Act. This provision parallels the present text of the Convention, which enabled all States that were represented in the Diplomatic Conference in 1961 to sign the text of 1961. Allowing this category of non-member States to sign seems to be justified by the fact that most, if not all, of the States which are expected to fall into this category have actively participated in the preparatory work for the revision and, according to the proposed Rules of Procedure of the Diplomatic Conference, will have the possibility of actively participating in the said Conference.

Finally, States signing the new Act will rightly consider themselves authors of the new Act, and this fact may make it easier for them to ratify it in due course.

Considering that the Diplomatic Conference is scheduled for October 1978, the date proposed in the new text would leave the revised Act open for signature for roughly one year.

Ad paragraph (2) in the present text: There would be no paragraph (2) in the new text. The matters dealt with in paragraph (2) of the present text would be dealt with in Article 32 of the new text.

Ad paragraph (3) in the present text: There would be no paragraph (3) in the new text. The matters dealt with in paragraph (3) of the present text would be dealt with in Article 32A of the new text.

Editor's Note: ¹ The text reproduced is taken from Article 31 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961. The provisions contained in Article V of the Additional Act of 1972 are not taken into account, being administrative provisions relevant only to that Act.

Present [1961/1972] Text¹**Article 31**
[... *Ratifications* ...]

- (1) [See opposite Article 31 of the new text.]
- (2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the French Republic, which shall notify such deposit to the other signatory States.
- (3) [See opposite Article 32A of the new text.]

New [Proposed] Text

Article 32
Ratification; Accession

- (1) Any State shall express its consent to be bound by this Act by the deposit of
- (a) its instrument of ratification, if it has signed this Act, or

Article 32[*Accession; Entry Into Force*]

- (1) This Convention shall be open to accession by non-signatory States in accordance with the provisions of paragraphs (3) and (4) of this Article.

Explanatory Notes

Ad paragraph (1) in the new text: Paragraph (1) is in conformity with established practice.

Editor's Note: ¹ The text reproduced is taken from Articles 31 and 32 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961. The provisions contained in Article V of the Additional Act of 1972 are not taken into account, being administrative provisions relevant only to that Act.

Present [1961/1972] Text

Article 32

(2) Applications for accession shall be addressed to the Government of the Swiss Confederation, which shall notify them to the member States of the Union.

New [Proposed] Text

Article 32

(2) [See next page]

Explanatory Notes

Ad paragraph (2) in the new text: Whereas the present texts provide that the instruments of ratification or accession have to be deposited with the Government of France or Switzerland (see Articles 31(2) and 32(4) of the 1961 Convention and Article V(5)² of the 1972 Additional Act), it is proposed that, *in respect of the new Act*, they be deposited with the Secretary-General. The other depositary functions (see Articles 32(4), 33(1) and (2), 34(1) and 40(2) of the Convention of 1961 and Articles V(5) and VIII(1)³ and (5)⁴ of the Additional Act of 1972) should also be entrusted to the Secretary-General to the extent that there are corresponding functions *in the new Act*.

Such a change is proposed mainly for the following reasons:

(i) The prevailing contemporary practice is that, as regards treaties concluded under the aegis of an intergovernmental organization, the depositary functions are entrusted to the Head of the Secretariat of that organization. This is the case, for example, for most treaties concluded under the aegis of the United Nations and the specialized agencies, including the World Intellectual Property Organization (WIPO).

(ii) Entrusting the depositary functions to the Head of the Secretariat of the intergovernmental organization concerned is a highly practical solution. The receiving of instruments and their notification are routine matters in any international secretariat. Advice to governments intending to deposit instruments is readily available. Once the instrument is received, it can be notified not only to the Ministries of Foreign Affairs of the member States, but also directly to the services in charge of the plant variety protection.

Editor's Notes:

² Article V(5) of the Additional Act of 1972 reads as follows:
"Instruments of ratification of or accession to this Additional Act by States which have ratified the Convention or which ratify it at the same time as they ratify or accede to this Additional Act shall be deposited with the Government of the French Republic. Instruments of ratification of or accession to this Additional Act by States which have acceded to the Convention or which accede to it at the same time as they ratify or accede to this Additional Act shall be deposited with the Government of the Swiss Confederation."

³ Article VIII(1) of the Additional Act of 1972 reads as follows:
"This Additional Act shall be signed in a single original in the French language, which shall be deposited in the archives of the Government of the French Republic."

⁴ Article VIII(5) of the Additional Act of 1972 reads as follows:
"The Government of the French Republic shall notify the Secretary-General of the Union of the signatures of this Additional Act and of the deposit with that Government of instruments of ratification or accession. The Government of the Swiss Confederation shall notify the Secretary-General of the Union of the deposit with that Government of instruments of ratification or accession."

Present [1961/1972] Text

New [Proposed] Text

Article 32

(3) Applications for accession shall be considered by the Council having particular regard to the provisions of Article 30.

Having regard to the nature of the decision to be taken and to the difference in the rule adopted for revision conferences, accession by a non-signatory State shall be accepted if a majority of four-fifths of the members present vote in favour of its application.

Three-quarters of the member States of the Union must be represented when the vote is taken.

(4) In the case of a favourable decision, the instrument of accession shall be deposited with the Government of the Swiss Confederation, which shall notify the member States of the Union of such deposit.

Accession shall take effect thirty days after the deposit of such instrument.

Article 32

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

(2) Instruments of ratification or accession shall be deposited with the Secretary-General.

[For the provision corresponding to the second subparagraph of the present text, see Article 32A of the new text.]

Explanatory Notes

Ad paragraph (3) in the new text: This proposed new paragraph would apply to non-member States which have not signed the new Act. It would not apply to any member State, whether it has signed the new Act or not, and it would not apply to any non-member State which has signed the new Act. It would ensure that any non-signatory non-member State would have to seek and receive the advice of the Council as far as the conformity of its laws with the provisions of this Act are concerned and that the instrument of accession could only be deposited if the Council, by a majority of three-fourths (see Article 22 above), decides to give a positive advice in respect of the conformity of the laws of such State with the provisions of the Convention as amended by this Act.

Present [1961/1972] Text¹**Article 31**[... *Entry Into Force*]

- (1) [See opposite Article 31 of the new text.]
- (2) [See opposite Article 32 of the new text.]
- (3) When the Convention has been ratified by at least three States, it shall enter into force in respect of those States thirty days after the deposit of the third instrument of ratification. It shall enter into force, in respect of each State which ratifies thereafter, thirty days after the deposit of its instrument of ratification.

New [Proposed] Text

Article 32A*Entry Into Force; Closing of Earlier Texts*

- (1) This Act shall enter into force one month after the following two conditions are fulfilled:
 - (i) the number of instruments of ratification or accession deposited is not less than five,
 - (ii) not less than three of the said instruments are instruments deposited by States party to the Convention of 1961 as amended by the Additional Act of 1972.

Article 32[... *Entry Into Force*]

(1), (2), (3) and (4), first subparagraph [See opposite Article 32 of the new text.]

[(4), second subparagraph] Accession shall take effect thirty days after the deposit of such instrument [of accession].

- (2) In respect of any State depositing its instrument of ratification or accession after the conditions referred to in paragraph (1) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.
- (3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Explanatory Notes

Ad paragraph (1) in the new text: The Convention of 1961 required *three* ratifications for its entry into force. It is proposed that the new Act enters into force if *five* States have ratified or acceded to it. In order to ensure that this Act will not enter into force without having been ratified, or acceded to, by an adequate number of "old" member States, i.e., States party to the Convention of 1961, as amended by the Additional Act of 1972, it is proposed to provide that at least three of the States causing the entry into force of this Act must be such "old" member States.

Ad paragraph (2) in the new text: This paragraph would lead to practically the same results as Article 31(3), second sentence, and Article 32(4), of the present text.

Ad paragraph (3) in the new text: This paragraph would "close" the Convention of 1961, as amended by the Additional Act of 1972, once the new Act enters into force. Such closing seems to be desirable in order not to perpetuate the possibility of applying different texts among member States or, once the new Act applies among all member States, of reviving the old texts through accession to them by States which formerly were not members of UPOV.

Editor's Note: ¹ The text reproduced is taken from Articles 31 and 32 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961. The provisions contained in Article VI of the Additional Act of 1972 are not taken into account, being administrative provisions relevant only to that Act.

Present [1961/1972] Text

New [Proposed] Text

Article 32B*Relations Between States
Bound by Different Texts*

[There is no provision in the present text which would correspond to this Article.]

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

Explanatory Notes

This new Article would achieve two things: *first*, it would regulate the relations among States which became members of the Union by ratifying or acceding to the "old texts," that is, the Convention of 1961 as amended by the Additional Act of 1972 ("old members"), where some of them are already bound by the new Act but the others are not yet bound by the new Act; *second*, it would allow the establishment of treaty relations between old members not yet bound by the new Act and States which become members of UPOV by ratifying or acceding to the new Act (and the new Act only) ("new members").

As to the first relationship, the solution is proposed in paragraph (1). Simply stated, it means that, as between any old member already bound by the new Act and any old member not (yet) bound by the new Act, the old texts continue to apply.

Present [1961/1972] Text

New [Proposed] Text

Article 32B

(2) Any member State of the Union not bound by this Act but bound by the Convention of 1961 as amended by the Additional Act of 1972 ("the former State") may declare, in a notification addressed to the Secretary-General, that it shall apply the said Convention as amended by the said Additional Act in its relations with any State bound by this Act which becomes a member of the Union through ratification of or accession to this Act ("the latter State"); as from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972, in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

Explanatory Notes

As to the second relationship, i.e., the relationship between old members not yet bound by the new Act and new members, it has to be recognized that there is no legal basis for an automatic relationship since they are bound by different texts. Paragraph (2), however, would offer the possibility of creating a relationship. The initiative would lie with the old members. If an old member declares that it wishes to create such a relationship, then, such a relationship would come into existence and it would consist of the application

- (i) *of the old texts* by the old member not yet bound by the new Act in its relations with the new members;
- (ii) *of the new Act* by the new members in their relations with any old member which has made such a declaration.

Thus, there could be protection in both directions, although the content of such protection would differ slightly in each case.* The proposed solution would have the great advantage that protection among all the members of UPOV could start much earlier than would be the case if it were necessary to wait until all the old members became bound by the new Act.

As to the role of the Secretary-General as depositary, see the Explanatory Note on Article 32(2).

* The only situation in which there would be no protection would be that between old members not making the declaration and new members.

Present [1961/1972] Text

Article 33*[Communications Indicating the Genera and Species Eligible for Protection]*

(1) When ratifying this Convention, in the case of a signatory State, or when submitting an application for accession, in the case of any other State, each State shall give, in the first case to the Government of the French Republic and in the second case to the Government of the Swiss Confederation, the list of genera or species in respect of which it undertakes to apply the provisions of the Convention in accordance with the requirements of Article 4. In addition, it shall specify, in the case of genera or species referred to in paragraph (4) of that Article, whether it intends to avail itself of the option of limitation available under that provision.

New [Proposed] Text

Article 33*Communications Concerning the Genera and Species Protected; Information To Be Published*

(1) When depositing its instrument of ratification of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of the genera and species to which, on the entry into force of this Act in respect of that State, it will apply the provisions of this Convention.

Explanatory Notes

Ad paragraph (1): In the proposed new text, this paragraph deals only with States which become members of the Union through ratification of or accession to the revised Act ("new members") since those States which have become members of the Union through ratification of or accession to the existing texts ("old members") have already complied with the obligation of communicating the list of genera and species to which they apply the Convention. The reference to the admission procedure is omitted since the new Act would not provide for such a procedure (see the Explanatory Notes on Article 32(3)). The matters dealt with in the second sentence of paragraph (1) in the present text would be dealt with in paragraph (2)(ii) of the proposed new text. As to the words "on the entry into force of this Act," it is to be noted that, according to Article 4(3) of the proposed new text, any new member State must apply the provisions of the Convention to at least five genera or species on the date on which the Act enters into force on its territory. As to the transfer of the depositary functions to the Secretary-General, see the Explanatory Notes on Article 32(2).

Present [1961/1972] Text

Article 33

(2) Each member State of the Union which subsequently decides to apply the provisions of this Convention to other genera or species shall communicate the same information as is required under paragraph (1) of this Article to the Government of the Swiss Confederation and to the Office of the Union, at least thirty days before its decision takes effect.

(3) The Government of the French Republic or the Government of the Swiss Confederation, as the case may be, shall immediately communicate to all the member States of the Union the information referred to in paragraphs (1) and (2) of this Article.

New [Proposed] Text

Article 33

(2) The Secretary-General shall, on the basis of communications received from each member State concerned, publish information

(i) on the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act in respect of that State,

(ii) on any use of the faculty provided for in Article 3(3),

(iii) on the use of any faculty granted by the Council pursuant to Article 4(4) or (5),

(iv) on any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply,

(v) on any use of the faculty provided for in Article 5(4), second sentence,

(vi) on the fact that the law of the said State contains a provision allowed by Article 6(1)(b)(i), and the length of the period allowed by such provision,

(vii) on the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Explanatory Notes

Ad paragraph (2) in the new text: The introductory words correspond in substance to paragraph (3) of the present text. As to the transfer of the depositary functions to the Secretary-General, see the Explanatory Notes on Article 32(2).

Item (i) corresponds to paragraph (2) of the present text.

Item (ii) corresponds in substance to the second sentence of paragraph (1) of the present text. Paragraph (4) of Article 4 in the present text, or paragraph (3) of Article 3 in the proposed new text, deals with the possibility of establishing reciprocity among member States not protecting the same genus or species.

Item (iii) refers to Article 4(4) and (5) in the new text, by which the Council is authorized to decide to reduce, in special cases, the minimum numbers of genera or species to which States, when becoming members of the Union, and later within certain periods, must apply the Convention—or to prolong those periods—thus permitting States in whose favor such decisions have been taken to deposit their instruments of ratification or accession, or to remain members of the Union, without applying the Convention to the minimum numbers of genera or species within certain periods as provided for under paragraph (3) of Article 4 in the new text.

Item (iv) refers to Article 5(4), first sentence, which allows any Contracting State to grant rights more extensive than those requested by the Convention, particularly in connection with the “marketed product.”

Item (v) refers to Article 5(4), second sentence, which allows for reciprocity in the case of a State having made use of the faculty dealt with in the preceding item.

Item (vi) refers to Article 6(1)(b)(i), which, in the proposed new text, allows a member State to grant a “grace period” of one year (see the Explanatory Notes on Article 6(1)(b)).

Item (vii) refers to Article 8, which provides for the minimum terms of protection.

Present [1961/1972] Text

Article 34

[Territories]

(1) Every member State of the Union, either on signing or on ratifying or acceding to this Convention, shall declare whether the Convention applies to all or to a part of its territories or to one or more or to all of the States or territories for which it is responsible.

This declaration may be supplemented at any time thereafter by notification to the Government of the Swiss Confederation. Such notification shall take effect thirty days after it has been received by that Government.

(2) The Government which has received the declarations or notifications referred to in paragraph (1) of this Article shall communicate them to all member States of the Union.

[See Article 40(3) of the present text.]

[See the second sentence of second subparagraph of paragraph (1) above.]

[See Article 40(3) of the present text.]

New [Proposed] Text

Article 34*Territories*

(1) Any State may declare in its instrument of ratification or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

[See paragraph (5) of Article 41 of the new text.]

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

Explanatory Notes

It is proposed to adapt the provisions of this Article to similar, more recent provisions in other conventions in the field of intellectual property, in particular to Article 24 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.¹

Editor's Note: ¹ Article 24 of the said Convention reads as follows:

"(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General."

Present [1961/1972] Text

New [Proposed] Text

Article 34A*Exceptional Rules for Protection
Under Two Forms*

[There is no Article 34A in the present text.]

- (1) Notwithstanding the provisions of paragraph (1) of Article 2, any State which, at the date of opening for signature of this Act, provides for protection under different forms for sexually reproduced and for vegetatively propagated varieties of one and the same genus or species may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification of or accession to this Act, it notifies the Secretary-General of the Union of that fact.
- (2) Where, in a member State of the Union to which the preceding paragraph applies, protection is sought under patent legislation, the said State may apply the novelty criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6 and 8.
- (3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Explanatory Notes

This new Article would constitute a limited exception to the rules contained in the second sentence of Article 2(1), in Article 6(1) and in Article 8.

Ad paragraph (1): In the United States of America, two forms of plant breeders' rights are granted according to two different laws by two different authorities: special titles of plant protection are granted by the Plant Variety Protection Office for sexually reproduced plants on the basis of the Plant Variety Protection Act, whereas plant patents are granted by the Patent and Trademark Office for vegetatively propagated plants on the basis of the Patent Act. These two forms of protection are the result of historical developments. It would be hardly possible to change this system, which is working satisfactorily. Its maintenance would cause no inconvenience for other member States of UPOV should the United States of America itself become a member of UPOV. The proposed new provision would provide the possibility for the United States of America to become a member of UPOV without the need of changing its national law in this respect.

Ad paragraph (2): Where, as in the United States of America, plant patents are granted only for certain categories of plants, and special titles of protection for other plants, it hardly seems to be possible to amend the patent legislation so as to conform to the rules on novelty which are contained in paragraph (1) of Article 6 and to the rules on the minimum period of protection which are contained in Article 8. The corresponding rules of the patent legislation are applicable to the totality of patent applications, of which applications for the grant of plant patents form only an extremely small proportion. Moreover, it would be difficult to amend the patent legislation only as far as plant patent applications are concerned since the number of these applications is rather small. It is for this reason that it is proposed to allow such a State to continue the application of the novelty criteria and the term of protection of the patent legislation to the varieties protected in the form of patents.

Ad paragraph (3): This paragraph would allow the withdrawal of the notification provided for in paragraph (1).

Present [1961/1972] Text

Article 35*[Transitional Limitation of the Requirement of Novelty]*

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date of entry into force of this Convention in respect of such State.

New [Proposed] Text

Article 35*Transitional Limitation of the Requirement of Novelty*

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Explanatory Notes

This Article is intended to protect the interests of a breeder who has started the commercialization of a variety without knowing that such commercialization might destroy the novelty of the variety since he could not know in advance when the provisions of the Convention would be applicable to the genus or species to which that variety belongs. The present text makes an exception as to varieties (of recent creation) existing at the date of *entry into force of the Convention* in respect of the interested State; the proposed new text would make the exception as to varieties (of recent creation) existing at the date on which such State *applies for the first time* the provisions of the Convention to the genus or species to which the variety in question belongs. That date will be the date of entry into force of the Convention if the genus or species is among those which the State protects when it becomes a member of the Union; it will be a later date if the genus or species is one to which the State extends protection later.

Present [1961/1972] Text**Article 36***[Transitional Rules Concerning the Relationship Between Variety Denominations and Trade Marks]*

(1) If, at the date of entry into force of this Convention in respect of a member State of the Union, the breeder of a new variety protected in that State, or his successor in title, enjoys in that State the protection of the denomination of that variety as a trade mark for identical or similar products within the meaning of trade mark law, he may either renounce the protection in respect of the trade mark or submit a new denomination for the variety in the place of the previous denomination. If a new denomination has not been submitted within a period of six months, the breeder or his successor in title may not continue to assert his right to the trade mark for the above-mentioned products.

(2) If a new denomination is registered for the variety, the breeder or his successor in title may not prohibit the use of the previous denomination by persons obliged to use it before the entry into force of this Convention, until a period of one year has expired from the publication of the registration of the new denomination.

New [Proposed] Text**Article 36***Transitional Rules Concerning the Relationship Between Variety Denominations and Trade Marks*

(1) [No change, except omit the word "new" in the term "a new variety" and the words "or his successor in title" wherever they appear.]

(2) [No change, except omit the words "or his successor in title."].

Explanatory Notes

Ad paragraph (1): It is proposed to omit the word "new" in the term "a new variety" and the words "or his successor in title" wherever they appear. For explanations, see the Explanatory Notes on Article 1(1).

Ad paragraph (2): It is proposed to omit the words "or his successor in title." For explanations, see the Explanatory Notes on Article 1(1).

Present [1961/1972] Text

New [Proposed] Text

Article 36A*Exceptional Rules for the Use of
Denominations Consisting Solely of Figures*

[There is no Article 36A in the present text.]

- (1) Notwithstanding the provisions of paragraph (2) of Article 13, any State which, at the date of opening for signature of this Act, has the established practice of admitting variety denominations consisting solely of figures may continue such practice in respect of all or certain genera and species if, at the time of signing this Act or of depositing its instrument of ratification or accession to this Act, it notifies the Secretary-General of the Union of its intention to do so and, unless it intends to do so in respect of all genera and species, of the genera and species in respect of which it intends to continue the said practice.
- (2) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has made under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Explanatory Notes

This new Article would constitute a limited exception to the rule contained in Article 13(2), which provides that no denomination may "consist solely of figures."

Ad paragraph (1): In a number of States which are interested in joining the Union, breeders are allowed to designate their varieties by a series of figures. Such denominations have become customary in those States, at least with respect to certain genera and species, and any prohibition of such practice would probably constitute, for those States, an unsurmountable obstacle to joining the Union. It is therefore proposed that such States be permitted to derogate from the above-mentioned provision of Article 13(2).

The proposed permission would be as restricted as possible. The admission of numerical denominations must be established practice and not merely sporadic or exceptional. Such practice must be established at the date of opening the revised Act for signature. This date has been preferred to the date of ratification or accession by a State in order to avoid making numerical denominations established practice between the date of opening for signature of the revised Act and the date of ratification or accession.

Ad paragraph (2): This paragraph would allow the withdrawal of the notification provided for in paragraph (1).

Present [1961/1972] Text**Article 37***[Preservation of Existing Rights]*

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

New [Proposed] Text**Article 37***Preservation of Existing Rights*

[No change]

Explanatory Notes

No amendment is proposed in this Article.

Present [1961/1972] Text

New [Proposed] Text

Article 38*[Settlement of Disputes]*

(1) Any dispute between two or more member States of the Union concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of the States concerned, be submitted to the Council, which shall endeavour to bring about agreement between the member States concerned.

Article 38*Settlement of Disputes*

(1) [No change]

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Present [1961/1972] Text

Article 38

(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of one of the parties concerned.

(3) The tribunal shall consist of three arbitrators.

Where two member States are parties to a dispute, each of those States shall appoint an arbitrator.

Where more than two member States are parties to a dispute, two of the arbitrators shall be appointed by agreement among the States concerned.

If the States concerned have not appointed the arbitrators within a period of two months from the date on which the request for convening the tribunal was notified to them by the Office of the Union, any of the member States concerned may request the President of the International Court of Justice to make the necessary appointments.

In all cases, the third arbitrator shall be appointed by the President of the International Court of Justice.

If the President is a national of one of the member States parties to the dispute, the Vice-President shall make the appointments referred to above, unless he is himself also a national of one of the member States parties to the dispute. In this last case, the appointments shall be made by the member of the Court who is not a national of one of the member States parties to the dispute and who has been selected by the President to make the appointments.

(4) The award of the tribunal shall be final and binding on the member States concerned.

(5) The tribunal shall determine its own procedure, unless the member States concerned agree otherwise.

(6) Each of the member States parties to the dispute shall bear the costs of its representation before the arbitration tribunal; other costs shall be borne in equal parts by each of the States.

New [Proposed] Text

Article 38

(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of all the parties concerned.

(3) [There is no provision in the new text corresponding to paragraph (3) in the present text.]

(4) [There is no provision in the new text corresponding to paragraph (4) in the present text.]

(5) [There is no provision in the new text corresponding to paragraph (5) in the present text.]

(6) [There is no provision in the new text corresponding to paragraph (6) in the present text.]

Explanatory Notes

Ad paragraphs (2) to (6): Providing for compulsory arbitration, as does the present text, might be an insurmountable obstacle preventing certain States from ratifying or acceding to the UPOV Convention. In order to avoid this risk it is proposed to replace the present provisions in paragraph (2)—under which arbitration proceedings may be invoked by one of the parties concerned only—by a clause providing for arbitration on the request of all the parties concerned. Under these conditions, paragraphs (3) to (6) should be omitted.

Present [1961/1972] Text¹

New [Proposed] Text

Article 39**[Reservations]**

Signature and ratification of and accession to
this Convention shall not be subject to any reser-
vation.

Article 39***Reservations***

[No change]

Explanatory Notes

No amendment is proposed in this Article.

Editor's Note: ¹ The text reproduced is Article 39 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961. The provision contained in Article VII of the Additional Act of 1972 is not taken into account, being an administrative provision relevant only to that Act.

Present [1961/1972] Text

Article 40

*[Duration and Denunciation
of the Convention;
Discontinuation of the
Application of the
Convention to Territories]*

- (1) This Convention shall be of unlimited duration.
- (2) Subject to the provisions of paragraph (4) of Article 27, if a member State of the Union denounces this Convention, such denunciation shall take effect one year after the date on which notification of denunciation is made by the Government of the Swiss Confederation to the other member States of the Union.
- (3) Any member State may at any time declare that the Convention shall cease to apply to certain of its territories or to States or territories in respect of which it has made a declaration in accordance with the provisions of Article 34. Such declaration shall take effect one year after the date on which notification thereof is made by the Government of the Swiss Confederation to the other member States of the Union.
- (4) Such denunciations and declarations shall not affect rights acquired by reason of this Convention prior to the expiration of the time limit laid down in paragraphs (2) and (3) of this Article.
- (1) [No change]
- (2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of the notification of denunciation.
- (3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.
- [See Article 34(2) and (3)(b) of the new text.]
- (4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Explanatory Notes

Ad paragraph (1): No amendment is proposed in this paragraph.

Ad paragraph (2) in the new text: The proposed new text of this paragraph would no longer refer to Article 27(4), which is proposed to be omitted in the new text. The new text would expressly state the right of denunciation and the fact that any denunciation must be notified to the Secretary-General, who, in turn, would have to notify it to the member States. As to the depositary role of the Secretary-General, see the Explanatory Notes on Article 32(2).

Ad paragraph (3) in the new text: This paragraph would maintain the essence of paragraph (2) of the present text. Paragraph (2) of the present text provides that the denunciation takes effect one year after it is notified by the depositary; the paragraph under consideration would provide that the denunciation takes effect at the end of the calendar year following the denunciation; the latter solution appears to be of advantage for practical reasons since the obligation to pay contributions—which are fixed from one calendar year to the next calendar year—would, in the case of a denunciation, always expire at the end of a financial year in UPOV.

It is to be noted that the new text of Article 40 would contain no provisions corresponding to paragraph (3) of the present text since the content of that paragraph is dealt with in paragraphs (2) and (3)(b) of Article 34 itself.

Ad paragraph (4) in the new text: The essential part of this paragraph would be maintained without amendment in the new text.

New [Proposed] Text

Article 40

*[Duration and Denunciation
of the Convention]*

Present [1961/1972] Text¹

New [Proposed] Text

Article 41

*[Copies of the Convention;
Language and Official Translations
of the Convention]*

(1) This Convention is drawn up in a single copy in the French language. That copy is deposited in the archives of the Government of the French Republic.

(2) A certified true copy shall be forwarded by that Government to the Governments of all signatory States.

Article 41

Copies; Languages; Notifications

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which have been represented in the Diplomatic Conference that has adopted it and, on request, to the Government of any other State.

Explanatory Notes

Ad paragraph (1) in the new text: The original would be drawn up by the Diplomatic Conference in the three official languages referred to in Article 28. As to the role of the Secretary-General as depositary, see the Explanatory Notes on Article 32(2).

Ad paragraph (2) in the new text: This paragraph would follow established practice and would take into account the special status of States having been represented in the Diplomatic Conference as provided for in Article 31.

Editor's Note: ¹ The text reproduced is Article 41 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961. The provisions contained in Article VIII of the Additional Act of 1972 are not taken into account, being administrative provisions relevant only to that Act.

Present [1961/1972] Text

Article 41

(3) Official translations of this Convention shall be made in the Dutch, English, German, Italian and Spanish languages.

New [Proposed] Text

Article 41

(3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official texts in the Dutch, Italian and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, have been represented in the Diplomatic Conference that has adopted it of the signature of this Act, the deposit of instruments of ratification and accession and any denunciation, as well as of any notification received under Articles 32B, 34, 34A or 36A and of any declaration made under Article 34.

Explanatory Notes

Ad paragraph (3) in the new text: The languages mentioned in this paragraph are the same as in the present text of paragraph (3), except that English and German would now be referred to in paragraph (1). Otherwise, the Explanatory Notes given in the preceding paragraph apply here too.

Ad paragraph (4) in the new text: This paragraph corresponds to paragraph (4) of Article VIII of the Additional Act of 1972.²

Ad paragraph (5) in the new text: The Explanatory Notes on paragraph (2) apply here too. Article 32B deals with relations between States, Article 34 deals with the territories to which this Act applies or ceases to apply, Article 34A deals with protection under two forms and Article 36A deals with denominations consisting solely of figures.

Editor's Note: ² Article VIII(4) of the Additional Act of 1972 reads as follows:
"The Secretary-General of the Union shall register this Additional Act with the Secretariat of the United Nations."

CONFERENCE DOCUMENTS

LIST OF THE CONFERENCE DOCUMENTS

DC/1 to DC/92

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
1	The Council of UPOV	Provisional Agenda
2	The Council of UPOV	Provisional Rules of Procedure
3	The Council of UPOV	Draft Revised Convention
4	The Administrative and Legal Committee of UPOV	Draft Revised Convention: Alternative Proposal for Article 13
5	The Council of UPOV	Draft Revised Convention: Full text of the proposals
6	Barbados, Canada, Pakistan, South Africa, Sweden	Observations on documents DC/1 to DC/4
7	AIPH, AIPPI, ASSINSEL, CIOPORA, FIS	Observations on documents DC/1 to DC/4
8	Bangladesh, Sri Lanka	Observations on documents DC/1 to DC/4
9	Netherlands	Observations on documents DC/1 to DC/4
10	AIPH	Amended Observations on documents DC/1 to DC/4
11	Denmark	Observations on documents DC/1 to DC/4
12	United States of America	Proposal for the Amendment of Article 13
13	Federal Republic of Germany	Proposal for the Amendment of Rule 14(1) and (2) of the Provisional Rules of Procedure
14	Netherlands	Proposal for the Amendment of Article 1
15	United Kingdom	Proposal for the Amendment of Articles 2(2) and 6(1)(a)
16	The Plenary of the Diplomatic Conference	Rules of Procedure
17	France	Proposal for the Amendment of Article 5(1)
17 Rev.	France	Proposal for the Amendment of Article 5(1)
18	Federal Republic of Germany	Proposal for the Amendment of the First Sentence of Article 5(1)
19	Federal Republic of Germany	Proposal for the Amendment of the Introduction of Article 6(1)
20	United Kingdom	Proposal for the Amendment of the Second Sentence of Article 6(1)(a)
21	Federal Republic of Germany	Proposal for the Amendment of Article 6(1)(b)(ii)
22	Federal Republic of Germany	Proposal for the Amendment of Article 7
23	Federal Republic of Germany	Proposal for the Amendment of Article 8

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
24	United Kingdom	Proposal for the Amendment of Article 10(2)
25	United Kingdom	Proposal for the Amendment of the Second Sentence of Article 13(9)
26	Federal Republic of Germany	Proposal for the Amendment of Article 21(c) and (g)
27	South Africa	Proposal for the Amendment of the First Sentence of Article 23(1)
28	Federal Republic of Germany	Proposal for the Amendment of Article 26
28 Rev.	Federal Republic of Germany	Proposal for the Amendment of Article 26
28 Rev. 2	Federal Republic of Germany	Proposal for the Amendment of Article 26
29	Federal Republic of Germany	Proposal for the Amendment of Article 30(2)
30	South Africa	Proposal for the Amendment of Article 32A(2)
31	The Office of the Union	Provisional Outcome of the Discussions on Article 6(1)(a)
32	United States of America	Proposal for the Amendment of Article 34A(2)
33	Netherlands	Proposal for the Amendment of the Second Sentence of Article 5(1)
34	South Africa	Proposal for the Amendment of Article 11(2)
35	Belgium	Proposal for the Amendment of Article 4(4) and (5)
36	South Africa	Proposal for the Amendment of Article 21(c)
37	South Africa	Proposal for the Amendment of Article 30(1)
38	South Africa	Proposal for the Amendment of Article 34A(1)
39	Belgium	Proposal for the Amendment of Article 13(6)
40	France	Proposal for the Amendment of the Second Sentence of Article 7(1)
41	Italy	Proposal for the Amendment of the Third Sentence of Article 8
42	Federal Republic of Germany	Proposal for the Amendment of the First Part of Article 32B(2)
43	Netherlands	Proposal for the Amendment of Article 16(3)
44	Netherlands	Proposal for the Amendment of Article 17(1)
45	Netherlands	Proposal for the Amendment of Article 18
46	Netherlands	Proposal for the Amendment of Article 22
47	Netherlands	Proposal for the Amendment of Article 23A

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
48	Netherlands	Proposal for the Amendment of Articles 27 and 28
49	Netherlands	Proposal for the Amendment of Article 31(1)(a)
49 Rev.	Netherlands	Proposal for the Amendment of Article 30(1)(a)
50	The Office of the Union	Restatement of Comments of ASSINSEL and CIOPORA on Article 5
51	France	Proposal for the Amendment of Article 13(4)(a) and (8)(b) in the version of document DC/4
52	Denmark	Proposal for the Amendment of Article 12(4)
53	France	Proposal for the Amendment of the First Sentence of Article 12(1)
54	Netherlands	Proposal for the Amendment of Articles 31, 32, 32A and 33
55	Netherlands	Proposal for the Amendment of Article 32B
56	Netherlands	Proposal for the Amendment of Article 34
57	Netherlands	Proposal for the Amendment of Article 38
58	Netherlands	Proposal for the Amendment of Article 39
59	Netherlands	Proposal for the Amendment of Article 41
60	France	Proposal for the Amendment of Article 23A
61	France	Proposal for the Amendment of Article 38
62	Netherlands	Proposal for the Amendment of the Preamble
63	Netherlands	Proposal, as amended by the United Kingdom, for the Amendment of the Preamble
64	Netherlands	Proposal for the Amendment of the Title of the Convention
65	Mexico and Peru	Proposal for the Amendment of Article 28(1) and (2)
66	Mexico and Peru	Proposal for the Amendment of Article 41(1) and (3)
67	Italy	Proposal for the Amendment of Article 28(1) and (2)
68	Morocco	Proposal for the Amendment of Article 34(1)
69	Italy	Proposal for the Amendment of Article 30(1)(a)
70	The President of the Conference	Proposal for the Amendment of Article 30(1)(a)
71	Libyan Arab Jamahiriya	Proposal for the Admendment of Article 28(1) and (2)
72	Libyan Arab Jamahiriya	Proposal for the Amendment of Article 41(1) and (3)

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
73	Japan	Proposal for the Amendment of Article 34A(1)
74	United Kingdom	Proposal for the Amendment of Article 38 based on the Proposal of the Netherlands
75	The Office of the Union	Provisional Outcome of the Discussions on Article 34A(1)
76	The President of the Conference	Recommendation on Article 4
77	The President of the Conference	Recommendation on Article 5
78	The Chairman of the Working Group on Article 13	Report of the Working Group on Article 13
79	South Africa	Proposal for the Amendment of Article 30(1)(a) and of Article 3(1) and (2)
80	The Representative of AIPH	Comments on Article 5
81	Mexico	Statement
82	The Chairman of the Working Group on Article 5	Report of the Working Group on Article 5
83	The Credentials Committee	Report
84	The Drafting Committee	Draft Convention
85	The Secretariat	Adoption and Signature of the Convention: Date and Place
86	The Secretariat	Recommendation on Article 4: Text edited on the basis of the draft Convention
87	The Secretariat	Recommendation on Article 5: Text edited on the basis of the draft Convention
88	The Secretariat	Recommendation on Article 5: Text edited on the basis of the draft Convention
89	The Plenary of the Diplomatic Conference	Text of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and from October 9 to 23, 1978
90	The Plenary of the Diplomatic Conference	Recommendation on Article 4
91	The Plenary of the Diplomatic Conference	Recommendation on Article 5
92	The Secretariat	Signatures

TEXT OF THE CONFERENCE DOCUMENTS DC/1 TO DC/92

DC/1 January 30, 1978 (Original: English)
THE COUNCIL OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Provisional Agenda

1. Welcome address by the President of the Council of UPOV
2. Opening of the Conference by the Secretary-General of UPOV
3. Adoption of the Rules of Procedure (document DC/2)
4. Election of the President of the Conference
5. Adoption of the agenda (this document)
6. Election:
 - (i) of the Vice-Presidents of the Conference
 - (ii) of the members of the Credentials Committee
 - (iii) of the members of the Drafting Committee
7. Consideration of the first report of the Credentials Committee
8. Consideration of the draft of a revised text of the UPOV Convention (document DC/3)
9. Consideration of the second report of the Credentials Committee
10. Consideration and adoption of the draft of a revised text of the UPOV Convention submitted by the Drafting Committee
11. Consideration and adoption of any recommendation or resolution whose subject matter is germane to the revised text
12. Consideration and adoption of any statement to be included in the Records of the Conference
13. Adoption of a final act, if any, of the Conference
14. Closing of the Conference by the President

DC/2 January 30, 1978 (Original: English)
THE COUNCIL OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Provisional Rules of Procedure

Editor's Note: *The text of the Provisional Rules of Procedure was adopted without change, except for paragraph (2) of Rule 12 and paragraphs (1) and (2) of Rule 14.*

Paragraph (2) of Rule 12 in document DC/2 read as follows:

"The Drafting Committee shall consist of seven members elected by the Conference, meeting in Plenary; five of them shall be Member Delegations and two of them shall be Observer Delegations."

Paragraphs (1) and (2) of Rule 14 in document DC/2 read as follows:

"The Steering Committee of the Conference shall consist of the President of the Conference, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee.

If the President of the Conference or the Chairman of the Credentials Committee or the Chairman of the Drafting Committee finds it necessary to be absent during a meeting of the Steering Committee, one of the Vice-Presidents of the Conference or of the Vice-Chairmen of the Credentials Committee or of the Vice-Chairmen of the Drafting Committee, as the case may be, shall, in the order of precedence indicated in Rule 15(3), sit and vote in the Steering Committee."

The text of the Rules of Procedure, as adopted, is reproduced on pages 102 to 107 as document DC/16.

DC/3 January 30, 1978 (Original: English)
THE COUNCIL OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Draft Revised Convention

This document contains, pursuant to a decision taken by the Council of UPOV in its eleventh (December 1977) ordinary session:

(i) in Annex I,¹ the draft revised text of the International Convention for the Protection of New Varieties of Plants, prepared by the Committee of Experts on the Interpretation and Revision of the Convention and approved by the Council for distribution in preparation for the Diplomatic Conference scheduled to take place from October 9 to 23, 1978; the present text of the Convention (the Convention of 1961 as amended by the Additional Act of 1972); Explanatory Notes;

(ii) in Annex II,² a report on the work of the Committee of Experts on the Interpretation and Revision of the Convention and a Draft Preamble to the revised Convention prepared by Mr. H. Skov, Chairman of the above-mentioned Committee of Experts.

According to Rule 30(1) of the Provisional Rules of Procedure of the Diplomatic Conference (document DC/2),³ this document is to serve as the basis of the discussions in that Conference.

Editor's Notes:

¹ *The contents of Annex I to this document are reproduced, in an adjusted format, in the part of the Records entitled "Basic Texts" on pages 11 to 76.*

² *Annex II to this document is reproduced in the part of the Records entitled "Pre-Conference and Post-Conference Documents" on pages 278 to 281.*

³ *Document DC/2 is not reproduced in this volume. The text of the Rules of Procedure, as adopted, is reproduced on pages 102 to 107 as document DC/16.*

DC/4 May 8, 1978 (Original: English)
THE ADMINISTRATIVE AND LEGAL COMMITTEE OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Draft Revised Convention: Alternative Proposal for Article 13

1. Pursuant to the decision taken by the Council at its eleventh ordinary session in December 1977, the Administrative and Legal Committee reexamined, at its first session, held from April 17 to 19, 1978, the question of Article 13. It agreed that the text appearing in the Annex to this document be submitted to the Diplomatic Conference as an alternative proposal for the new text of Article 13 as published in document DC/3.¹

2. It is recalled that governments and organizations invited to the Diplomatic Conference are given the opportunity to comment on the documents which are submitted to them and to present alternative proposals for amendment of any Article of the Convention.

3. The Administrative and Legal Committee desires to emphasize the following points:

Editor's Note: ¹ See pages 32 to 35 in the part of the Records entitled "Basic Texts".

(i) Compared with the present text of Article 13, paragraphs (3) and (4) have been interchanged in order to avoid the competent authorities being bound by the Convention to check the proposed variety denominations against other rights of the breeder and of third parties which might prevent the free use of the said denominations. This inversion does not prevent, however, any authority from undertaking such check.

(ii) The addition of the words "When a variety is offered for sale or marketed" in paragraph (9) aims at ensuring that additional indications, in particular trademarks and trade names, are excluded from the designation of varieties in official documents issued by a government agency.

(iii) The second sentence of paragraph (9) aims at ensuring that the additional indication does not overshadow the variety denomination and that the denomination remains capable of fulfilling the functions assigned to it.

Annex

NEW TEXT OF ARTICLE 13 PROPOSED BY THE ADMINISTRATIVE AND LEGAL COMMITTEE

Article 13

Variety Denomination

(1) A variety shall be designated by a denomination.

(2) Such denomination must enable the variety to be identified; in particular, it may not consist solely of figures. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraph, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4)(a) If the breeder submits in a member State of the Union as the denomination of a variety a designation in respect of which he enjoys a right which could hamper the free use of the variety denomination, he may not, as from the time when the variety denomination is registered, continue to assert his right in order to hamper the free use of the variety denomination [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union].

(b) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority competent for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder to submit a translation of the original denomination or another suitable denomination.

(6) The competent authority of each member State of the Union shall ensure that the competent authorities of the other member States of the Union are informed of matters concerning variety denominations, including in particular the submission, registration and cancellation of such denominations. Any authority may address its objections, if any, to the

registration of a denomination to the authority which communicated that denomination.*

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4)(b), prior rights do not prevent such use.

(8) From the date of issue of a title of protection to a breeder in a member State of the Union:

(a) the denomination of the variety may not be used, in any member State of the Union, as the denomination of another variety of the same botanical species or of a closely related species;

(b) the denomination of the variety shall, [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union], be regarded as the generic name for that variety. Subject to the provisions of paragraph (4)(b), no person may, [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union], apply for, or obtain, a right which could hamper the free use of the denomination.

(9) [When a variety is offered for sale or marketed],** it shall be permitted, in respect of the same product, to add a trademark or a trade name to the denomination of the variety. [If such an indication is added, the denomination must be easily recognizable.]**

* This provision could be supplemented by adding to Article 21 an additional subparagraph according to which the duties of the Council would include the task of adopting procedures for the mutual information of authorities of member States on variety denominations.

** Some delegations prefer the omission of the words in square brackets.

DC/5

June 25, 1978 (Original: English)

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

Draft Revised Convention: Full text of the proposals

Editor's Note: *This document is not reproduced in this volume since the text appearing in it is essentially a combination of the texts contained in document DC/3 which appears in the part of the Records entitled "Basic Texts" on pages 11 to 76.*

DC/6

July 31, 1978 (Original: English)

BARBADOS, CANADA, PAKISTAN, SOUTH AFRICA, SWEDEN

Observations on documents DC/1 to DC/4

Barbados

March 10, 1978

The Ministry of Agriculture of Barbados has no comments to offer on documents DC/1 to DC/4. It is not foreseen that the Convention would have immediate benefits to Barbados.

Canada

June 22, 1978

Document DC/1

The Canadian Delegation wishes to make no amendments in the Provisional Agenda.

Document DC/2

The Canadian Delegation proposes no amendments to the "Provisional Rules of Procedure", UPOV Document DC/2.

Document DC/3

The Canadian Delegation has the following comments to make on Document DC/3:

1. As far as Canada is concerned, the proposed new Article 36A is unnecessary.
2. As the purpose of the "International Convention for the Protection of New Varieties of Plants" is to "ensure to the breeder of a new plant variety ... a right" (Article 1, paragraph (1)), the imposition of obligations in the field of trademarks is undesirable, and the proposed changes in Article 13 are not supported.

Document DC/4

The Canadian Delegation supports the proposed changes in Article 13, outlined in Document DC/4. Alternative 3 is preferred in paragraph (4)(a).

The Canadian Delegation supports the proposal made in the footnote to paragraph (6), i.e. that a sub-paragraph be added to Article 21 including in the duties of the Council the task of adopting procedures for the mutual information of authorities of member states on variety denominations.

Alternative 3 is preferred in both instances in paragraph (8)(b), and the omission of the reference to trade marks is supported.

The Canadian Delegation strongly urges that the second sentence in brackets in paragraph (9): "If such an indication is added, the denomination must be easily recognizable" is included.

Pakistan

July 11, 1978

The documents are closer to the needs of Western Europe and are barely applicable to the conditions prevailing in Pakistan, as Pakistan has no breeders' rights or royalty system on the new varieties of crop plants. The said documents deal mainly with the protection of plant varieties and rights of plant breeders, etc. Since in most of the Asian countries and more so in Pakistan, the work relating to breeding of crop varieties is essentially handled by the government departments, the system and procedures for payment of royalties to plant breeders is not of direct relevance to Pakistan.

South Africa

June 27, 1978

Article 1(1): Change as follows: "The purpose of this Convention is to recognise [and to ensure] to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right *and to ensure the protection of such right* under the conditions hereinafter defined."

Motivation: The two distinct steps involved in the granting of a right which is distinguished and to which frequent reference is made in the body of the Convention, namely:

- (a) *recognition of a right* which includes the application by the breeder, the examination of the application and the issuing of the title of protection, and
 - (b) *the protection of the right* which follows on recognition and includes i.a. the privileges of the holder of the title of protection and the duration of the protection,
- should be clearly indicated already in the first Article of the Convention.

Article 2(1): Insert the words, "and protect" after the word, "recognise".

Motivation: If the proposal for change of Article 1(1) is accepted this is a consequential change. Recognition is only one step in the granting of a right. Equally important is the protection of the right which means that without "and protect" this paragraph would be incomplete.

Article 5(1): Change as follows: "The effect of the protection of the right [granted to the breeder of a variety] is that the [his]

prior authorisation of the breeder shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of [the] his variety ... etc."

Motivation: A consequential change if the principle involved in the proposed change of Article 1(1) is accepted.

It is confusing when terms such as "right(s)" (see Articles 5(1), 5(4), 8, 14, 33(2)(iv), 40(4)), "protection" (see Articles 6(1) and (2), 7(1), 12(1), (2) and (3), 34A), "protection of (his) a right" (see Articles 11(1) and (2), 14(1)), "protect the breeder" (see Article 7(3)), "protection of the variety" (see Articles 13(7), 29, 30(1)(a)), and "right of the breeder" (see Articles 10(1), (3) and (4)) are used when from the context in which they are used it is clear that they have the same meaning namely, "protection of (a)(his) the right". In order to obtain uniformity of terms used and eliminate confusion it is suggested that the term "protection of (a)(the)(his) right" be used to indicate exactly what it means. What has been proposed for Article 5(1) will, therefore, also apply to those Articles which have been referred to in this motivation.

Article 5(4): Insert the words, "protection of a" before the word, "right".

Motivation: See remarks under Article 5(1).

Article 6(1) and (2): Insert the words, "of a right" after the word "protection", wherever it appears in the text.

Motivation: See remarks under Article 5(1).

Article 7(1) and (3): Insert the words, "of a right", after the word, "protection", where it appears in the text.

Motivation: See remarks under Article 5(1).

Article 7(3): Insert the words, "the right of" after "protect".

Motivation: See remarks under Article 5(1).

Article 8: Change as follows: "The protection of a right [conferred on the breeder] shall be [granted] for a limited period."

Motivation: See remarks under Article 5(1).

Article 10: Insert the words, "the protection of a" before the word "right", wherever it appears in the text.

Motivation: See remarks under Article 5(1).

Article 11(1): Add the words, "of his right", at the end of the sentence.

Motivation: See remarks under Article 5(1).

Article 11(2): Change as follows: "The breeder ... without waiting for the issue to him of a *special* title of protection or of a patent by the member State ... etc."

Motivation: According to Articles 2(1) and 34A, protection of a right may be granted either by means of a special title of protection or of a patent. It is, therefore, not entirely correct to refer in Article 11(2) to one of these forms only. For the sake of clarity the word "special" should be inserted before "title".

Article 11(3): Insert the words, "of the right" after the word, "protection".

Motivation: See remarks under Article 5(1).

Article 12(1), (2) and (3): Insert the words "of his right" after the word, "protection".

Motivation: See remarks under Article 5(1).

Article 13(7) (Text as it appears in Paper DC/4)

Change as follows: "Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety [protected] *in respect of which protection of a right is enjoyed* in that State ... expiration of the protection of the right *in respect* of that variety ... etc."

Motivation: See remarks under Article 5(1).

Article 14(1): Change as follows: "The protection of a right accorded [to the breeder] in pursuance ... etc."

Motivation: See remarks under Article 5(1). The words "to the breeder" appear to be superfluous.

Article 21, Heading and first sentence: Replace the word "tasks" with the word "functions".

Motivation: "Functions" appears to be a more appropriate word.

Article 21(c): Change as follows: "(c) give the Secretary-General ... all necessary directions including those concerning relations with national [authorities] and international bodies."

Motivation: UPOV will be dealing to an increasing extent with other international bodies and the Council may wish to instruct the Secretary-General in connection with such dealings. "National bodies" will include national authorities but UPOV may also need to deal with other national bodies than authorities.

Article 21(g): Delete the words, "after consultation" and "and" in the third line.

Motivation: These words appear to be superfluous as "with the agreement of" would always mean consultation before.

Article 23(1): Change as follows: "The office of the Union shall [have the task of] carry [ing] out all the duties ... etc."

Motivation: Simplification of text.

Article 29: Heading: Change as follows: "Special Agreements for the Protection of Rights [New Varieties of Plants]."

Motivation: See remarks under Article 5(1).

Article 29: Change first sentence as follows: "Member States of the Union reserve the right to conclude among themselves special agreements for the protection of rights in respect of new varieties of plants ... etc."

Motivation: See remarks under Article 5(1).

Article 31(1): Change second paragraph as follows: "In particular, each member State of the Union shall undertake to:

- (a) ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of [the] their protected rights, provided for in this Convention,
- (b) set up a special authority for the recognition and protection of rights in respect of new varieties of plants, or to entrust their protection to an existing authority; and
- (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of special titles of protection and of patents issued."

Motivation: (a) See remarks under Article 5(1).

- (b) See remarks under Articles 1(1) and 5(1).
- (c) In view of Articles 2(1) and 34A reference to both forms of protection should be made.

Article 32(3): Change as follows: "Any State which is not a member of the Union [and which has not signed this Act] shall before depositing its instrument of accession or ratification, ask the Council ... etc."

Motivation: It is not clear why States which have signed the Act are exempted from the said requirement. It is felt that the same need exists to scrutinise legislation of such States.

Article 32A(2): Change as follows: "In respect of ... conditions referred to in subparagraphs (i) and (ii) of paragraph 1 have been fulfilled ... etc."

Motivation: The change will make it quite clear to which conditions reference is made and eliminate the possibility that the introductory sentence be included for this purpose which, of course, is not the intention.

Article 33: Heading: Change as follows:

"Communications Concerning the Genera and Species [Protected:] in respect of which Protection of Rights is provided; Information to be Published."

Motivation: See remarks under Article 5(1).

Article 33(2)(iv): Change as follows: "(iv) on any use of the faculty provided for in Article 5(4), first sentence with an indication of the nature of the more extensive protection of rights and with a specification of the genera and species to which such extensive protection of rights apply."

Motivation: See remarks under Article 5(1).

Article 34A: Heading: Insert words "of Rights" after the word "Protection".

Motivation: See remarks under Article 5(1).

Article 34A(1): Change as follows: "Notwithstanding the provisions of paragraph (1) of Article 2, any State which at the date of opening for signature of this Act provides for protection of rights under the different forms of protection referred to in the said Article in respect of [for] sexually reproduced ... etc."

Motivation: See remarks under Article 5(1). Reference to the forms of protection of rights should be specific in order to eliminate any possibility of other forms of protection than those referred to in Article 2(1) being read into this paragraph.

Article 40(4): Insert the words "protection of" before the word "rights".

Motivation: See remarks under Article 5(1).

Sweden

July 7, 1978

General comments

The Swedish Government is in general satisfied with the present text of the Convention. Several of the proposed amendments do not, in the view of the Swedish Government, represent any improvement of the Convention. If the revised text is adopted, this may lead to a reduction of the uniformity of legislation in the member States. Some of the amendments, however, are proposed in order to make it easier for certain States at present not members of UPOV to adhere to the Convention. The Swedish Government considers it important that more States become parties to the Convention. For this reason, the Swedish Government can, except for one point, accept the draft revised text.

Article 6

Under the proposed text of this Article, the Convention will allow Contracting States to grant in their national laws a so called "period of grace" of one year (Art. 6(b)(ii)). The Swedish Government considers it a step backward to introduce this possibility in the Convention. It is aware, however, of the fact that some States might find it impossible to ratify the Convention unless they were permitted to provide in their national law for such a period of grace. For this reason the Swedish Government will not object to this amendment.

In the draft (Art. 6(b)(ii)) it is proposed to extend, in case of certain groups of plants (vines, forest trees, fruit trees and ornamental trees), from four to six years the period during which a variety may, without prejudicing its novelty, have been offered for sale or marketed in a State other than the State in which the application is filed. The Swedish Government does not consider such extension desirable. As the extension is proposed only for groups of plants which are usually slow-growing, the Swedish Government will, however, not oppose the amendment.

Article 13

Under the present text of the Convention (Art. 13(3)), any applicant who submits as a variety denomination a designation in respect of which he enjoys trademark protection in a Contracting State must renounce his right to the trademark. It is proposed (Art. 13(4)) that the Convention should not require such renunciation in the above-mentioned case; the applicant would in the future only be prevented from asserting his right to the trademark.

The Swedish Government can accept this amendment on the understanding that any Contracting State would be free

to require, also in the future, in its national law the renunciation of the right to the trademark in such cases.

A further amendment is proposed (Art. 13(4)) to the effect that the breeder would be prevented from asserting his trademark in the case referred to above only in those member States in which the genus or species to which the variety in question belongs is eligible for protection; under the present text (Art. 13(3)) the breeder is prevented from asserting his right to the trademark in any Contracting State. This amendment is not acceptable to the Swedish Government.

It is clear from Article 13, paragraph 8, that the variety denomination is the generic name of the variety. In the view of the Swedish Government it is evident that a generic name cannot be subject of any rights as a trademark with regard to products which are identical or similar to the product for which the designation is a generic name. This applies not only in States where the variety in question is eligible for protection, but in any State. The Swedish Government considers, therefore, that the proposed amendment in this respect is contrary to a basic principle of trademark law.

In this context it must be emphasized that no quasi breeders rights or surrogate for such rights can be obtained by means of trademark protection. Such protection entails simply the exclusive right to the name itself, but confers no rights in the new variety. Thus, the trademark protection could not exclude the reproduction or the marketing of the variety by others than the breeder, as long as they do not use the "trademark". Even if they do use the "trademark", it is believed that, in most legal systems, infringement proceedings against them would fail, if it is brought out that the "trademark" is, in fact, the true generic name of the variety in question, for if this were proved the "trademark" would be held invalid.

The Swedish Government is aware of the fact that the Administrative and Legal Committee of UPOV has elaborated an alternative proposal for the new text of Article 13 (Doc. DC/4). For the reasons given above, only alternative 3 of Article 13(4)(a) in that proposal is acceptable to the Swedish Government.

Editor's Note: Rule 30(3) of the Rules of Procedure (see page 105 of the Records) sets out general rules regarding the submission of proposals for amendments. Proposals contained in the above observations are not proposals in the sense of Rule 30(3) except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/7

July 3, 1978

INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH)

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (AIPPI)

INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF PLANT VARIETIES (ASSINSEL)

INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED ORNAMENTALS¹ (CIOPORA)

INTERNATIONAL FEDERATION OF THE SEED TRADE (FIS)

Observations on documents DC/1 to DC/4

AIPH

June 20, 1978 (Original: English)

Our Committee for the Protection of Plant Breeders' Rights studied in its meeting of 16th June 1978 in The Hague the Document DC/3 and has formulated the following recommendations.

1. Our committee accepts the new wording of Article 2 (2) and (3).
2. Our committee is opposed to the new Article 3(3), because it conflicts with the need to extend the member-

Editor's Note: ¹ Present name: International Community of Breeders of Asexually Reproduced Fruit Tree and Ornamental Varieties.

ship of UPOV. A member State must not be entitled to limit the protection to a species which can also be protected in another country.

3. Our committee proposes, concerning Article 4, to add a paragraph obliging countries to give protection to their principal crops, i.e. those species which are significant in their international commerce.
4. Our committee has had intensive discussions in order to renew the present text of Article 5. The extension of protection to the final product in the ornamental sector may present serious practical difficulties for growers unless this is administrated realistically. But we make this strong recommendation to UPOV that Article 5(1) is amended so that ornamental plants or parts thereof normally marketed for purposes other than propagation are also protected.

This recommendation is, however, made on the understanding that the breeder is not thereby enabled or authorized to collect payment of royalties at more than one stage of production for marketing either on the basis of propagating material or on the basis of the final product. In member countries of UPOV royalty payment should be calculated and collected with reference to the former.

Our recommendation is also made on the understanding that the extension of protection to the final product is not dependent nor does it require labelling or otherwise marking of that product.

Indeed we insist that any mandatory extension of protection to be embodied in the Convention is accompanied by provisions to ensure that such labelling is declared unnecessary and that it cannot be imposed upon a licensee by a breeder.

5. Concerning Article 6(1)(b)(i) our committee was concerned with a number of crops which may take some time to evaluate and therefore our committee accepts the principle of a period of grace up to one year.
6. Concerning Article 6(1)(b)(ii) our committee thanks you for changing "four" into "six".
7. Our committee proposes the following text for the second phrase of Article 6(1)(b)(ii): "Trials of the variety which do not involve offering it for sale, other than for the purpose of consumer testing, shall not affect the rights to protection."
8. Our committee accepts the statement made by the Council of UPOV clarifying the form of the examination. On the basis of this statement, tests may take place on a breeder's premises, provided that these are conducted under the auspices of the national testing authorities. This in turn will reduce the costs of the examination itself. Although centralised testing is not associated with the Convention or any revision of it, our committee also looks to this approach to contain the costs of examination.
9. Our committee accepts the amendment of Article 8 in so far as this clarifies the inclusion of ornamental rootstocks.
10. Our committee wishes to ensure that "widespread distribution", referred to in Article 9, shall not be interrupted by unreasonable demands made by a breeder on a grower, whether these are of a financial, legal or practical nature and whether they relate to propagating material or the final product. We, therefore, suggest the addition of a further paragraph (or an additional Article): "Member States shall ensure that protected material is not unreasonably withheld by the breeder or unreasonable conditions are applied to its widespread distribution."
11. Our committee proposes the replacement in Article 12(1) of "twelve months" by "twenty-four months".
12. Our committee regards the new wording in Article 13(4) as an improvement on the previous text, but would prefer the deletion of any reference to trade marks in this Convention. Similarly, it would prefer that the guidelines themselves be amended to reflect this.

AIPPI

June 28, 1978 (Original: English)

Resolution adopted by the AIPPI
at its XXXth Congress
(Munich, May 1978)

Question 51: Application of the International Convention for the Protection of New Varieties of Plants of 1961

The AIPPI

welcomes the convening of the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants and expresses the hope that this Conference will provide for further improving and strengthening of the protection of new plant varieties.

1. Since the aim of a new breed and in particular of ornamental plants is a new shape, color or fragrance of the plant or flower, the AIPPI feels that the alternative left open to member States under Article 5(4) of the International Convention to extend the protection to embrace the commercially marketed product, should be made an obligation, so as not to deprive the breeder of his reward by allowing imports of the products from countries where no protection exists.

The situation is comparable to process protection in the field of chemical patents. In this field, it has been recognized that the final product of the process should equally be protected. Rules to this effect are included in most national laws and have recently been included also into supranational agreements.

Should the efforts fail to protect the commercially marketed final product by the Convention, it is felt that the National Groups of the AIPPI in the countries which do not yet grant such protection should by all available means seek to obtain such protection by the respective national laws, at least for ornamental plants.

2. With respect to the three alternatives contained in the draft of the revised International Convention (Document UPOV DC/4) concerning Article 13(4) and (8)(b), preference is given to alternative 2. Alternative 3 is rejected since thereby other rights would unnecessarily be restricted in countries where a variety protection does not exist.

3. The AIPPI approves the version suggested for Article 13(7). In Article 13(9), the words in square brackets in the first sentence should be maintained. The second sentence should be deleted.

ASSINSEL

June 14, 1978 (Original: English)

DOCUMENT DC/2 PROVISIONAL RULES OF PROCEDURE

Chapter III: Committees and Working Groups

Although our Association is thankful for the invitation to be represented at the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants, it is disappointed at the fact that it cannot participate in the work of the Drafting Committee (Rule 12) and of Working Groups and other Committees (Rule 13).

We want to remind the UPOV Council of the fact that our Association, whose objective, as our name indicates, is the protection of plant varieties, has since 1938 at the time when there was no other international body that was concerned about plant variety rights, done pioneer work in this field.

As indicated in the official records of the first Conference (Actes des Conférences Internationales pour la Protection des Obtentions Végétales, 1957-1961, 1972; page 14) this first Conference, ultimately leading to the 1961 Convention, was convened by the French Government at the proposal formulated in 1956 by ASSINSEL.

Both on these historical grounds and in view of the fact that the breeders are the most direct involved party (the object of the Convention and the Conference is the *variety* developed by the *breeder*) ASSINSEL would like to submit the proposal to the UPOV Council that our organisation be allowed to be represented at the above Committees and Working Groups as an Observer Organisation by *one* of its representatives.

DOCUMENT DC/3 DRAFT REVISED CONVENTION**Article 3, National Treatment; Reciprocity**

In paragraph (3) of the proposed text the limitation called forth by application of the reciprocity principle refers to persons.

Our organisation would like to raise the question whether it is permissible under this paragraph for a member State to grant less protection to a national of the other member State than to its own nationals, e.g. so much protection as is granted to the national of the other member State in his own country (if the scope of protection is less, but complying with Convention requirements e.g., time duration of protection, protection final product etc.).

If the answer would be in the positive the question may be posed whether a member State applying this paragraph in this way, should not, if the scope of protection in another member State is more extensive, have the obligation to grant to nationals of that other member State this more extensive protection.

Article 4, Botanical Genera and Species Which Must or May be Protected

As indicated at earlier meetings ASSINSEL agrees with the list of species being deleted in the text of Article 4 and removed as an annex to the text of the Convention.

The idea behind the list was to promote that member States would make protection available for a reasonable number of important species in agriculture and horticulture.

As this element of importance of the species to be protected is now lacking in the Convention text, we propose to add to paragraph (3)(a) the words: "of its main crops".

Article 5, Rights Protected; Scope of Protection

According to the letter of the present text of the Convention (paragraph (1), first sentence) any reproductive or propagating material of a protected variety that has not been produced for purposes of commercial marketing as such (i.e. as reproductive or vegetative propagating material) may be freely offered for sale and marketed.

Our organisation has in the past objected to this deficient text which starts from the wrong idea that the destination of a crop is always known at the moment of production.

Situations in which a crop or part of a crop is not originally produced for purposes of commercial marketing as propagating material, but ultimately gets this destination are no exception.

Offering for sale and subsequent marketing of this material without the authorisation of the breeder restricts the breeder unduly in his rights.

We are aware of the fact that this paragraph is one of the most difficult of the Convention.

Our contribution to a satisfactory solution of the above problem is the following text we propose to replace the first sentence of paragraph (1):

(1) The effect of the rights granted to the breeder of a variety is that his prior authorisation shall be required for the production for commercial purposes, the offering for sale and marketing of reproductive or vegetative propagating material of the variety.

This text safeguards the right of the farmer to use material produced on his own farm, which is in conformity with the wishes of the national legislations.

On the other hand we feel that it has the merit to make it clear that in all cases in which these savings of seed, although not marketed as such, have taken on proportions which turn them into activities on a commercial scale, the prior authorisation of the breeder is required.

Furthermore it should be noted that the text uses the word marketing and not sale. In this context we wish to mention that it is particularly important that all UPOV member States include "offering for sale" in their legislation.

The second sentence of paragraph (1) of the Convention reading:

"Vegetative propagating material shall be deemed to include whole plants"

has been carefully studied by our organisation and the conclusion of this was that if the protection of plantlets should be covered in the Convention, this could be achieved simply by deleting the word "vegetative".

If however, it would be absolutely certain that this modification would jeopardise a speedy ratification of the revised version of the Convention and accession by some non-member States (although we assume that this does not apply to the USA whose legislation seems to cover the protection of plantlets) we can, although we are not enthusiastic about this solution, agree with a recommendation by the Diplomatic Conference inviting member States to ensure that the scope of protection comprised the sale of plantlets.

Such recommendations as alternatives for an improved wording of the Convention should in our opinion be strictly limited.

The third sentence exclusively applies to ornamental plants.

However, since the Convention has been written new techniques have been developed allowing reproduction of asexually and sexually reproduced plants, other than ornamentals, by "plants or parts thereof normally marketed for purposes other than propagation".

We therefore propose to change the wording of this sentence as follows:

"The breeder's right shall extend to plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of plants."

Paragraph (4) of Article 5 is optional and has been the subject of many discussions in professional circles.

Our organisation endorses the points of view that for asexually reproduced ornamentals this paragraph should not be optional but mandatory.

It is not acceptable that a breeder is hampered in the exploitation of his rights by the fact that his customers have to face the competition of the end product of his varieties produced from propagating material on which no licence has been paid. In fact one could well imagine that for potatoes, sexually reproduced flowers and unprotected plantlets of vegetables and flowers, peas and beans the same situation may present itself.

As this is still theory we will not make any proposal at the present time however. We expect however, that in five years' time a formal proposal will be made. We believe that the argument of the Committee that changing the optional character of paragraph (4) for ornamentals into an obligation might seriously jeopardize ratification of or accession to the revised text, is not a valid argument, as States not wishing to apply paragraph (4) as an obligation prove in our opinion that they are not yet in a position to make an adequate form of protection available to breeders.

Article 6. Conditions Required for Protection

ASSINSEL agrees with the new text of paragraph (1)(a) in which among other things the idea has been expressed that not all differences between a variety for which protection has been applied and known varieties automatically lead to protection. In paragraph (1)(b) we would like to suggest some minor amendments in the proposed text, viz.:

(b) *At the date on which the application for protection in a member State of the Union is filed propagation material of the variety*

- (i) unchanged
- (ii)

The last sentence to be modified as follows:

The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing with the agreement of the breeder shall also not affect the right of the breeder to protection.

Article 7. Official Examination of Varieties; Provisional Protection

ASSINSEL agrees with the statement on page 18 of Doc. DC/3.¹

Editor's Note: ¹ See page 25 of these Records.

With regard to paragraph (3) we would like to point out that the majority of the present UPOV member States have not made any provisions for the protection of varieties during the period between the filing of the application and the decision thereon. As far as we know only France and the United Kingdom have covered this period; the United Kingdom by the so-called protective direction, and France by a system that provides for provisional protection from the moment of application.*

If after the normal testing period no protection is granted to the breeder of the variety, the variety is considered not to have been protected.

In so far as the Seed Regulations allow this, the breeder is entitled to sell propagating material of his variety.

ASSINSEL proposes a recommendation to UPOV member States to promulgate regulations similar to the one described above.

Article 8. Period of Protection

ASSINSEL believes that a uniform protection period starting and ending at the same time in all UPOV member States is desirable.

We are aware of the fact, however, that as long as some centralised testing system ultimately leading to one decision for all UPOV States has not been realised, this wish of our organisation cannot, for the time being, be complied with.

Although we must recognise that this is so, our organisation wishes to congratulate UPOV member States with the work thus far achieved in this direction.

The results of this work are promising and give rise to a reiteration of our wish as a medium to long-term project.

As a short-term project we would suggest to increase in the Convention the minimum period of protection for some crops, viz.:

- (a) potatoes,
- (b) perennial grasses and clovers,
- (c) plantation crops.
- (a) It is a well known fact that the introduction of a new potato variety takes a much longer time than the introduction of a variety of any other agricultural species.
- (b) For this group of species it is often very difficult to find suitable production areas. Uncertainty about seed yield often makes seed growers reluctant to pass seed production contracts. Besides, these contracts have to cover a period of several years and many growers are in view of the fluctuations of market prices of other commodities not prepared to undertake longer term contractual obligations.
- (c) Here too the introduction of new varieties takes a long time and the production of propagating material is a lengthy procedure. In comparison with the 15 years for other crops the 18 years laid down in Article 8 is out of proportion and much too short.

Article 9. Restrictions in the Exercise of Rights Protected

Our organisation feels that the words "*in order to ensure the widespread distribution of the variety*" in paragraph (2) should be deleted.

In all cases in which the free exercise of the exclusive right is restricted for reasons of public interest the breeder should be entitled to receive equitable remuneration.

Article 12. Right of Priority

As there are two days of filing (a: in one member State, b: in another member State) we suggest to amend the last sentence of paragraph (1) as follows:

"The days of filing shall not be included in such period."

Our organisation agrees with the new paragraph (3).

Article 13. Denominations of Varieties of Plants (including Document DC/4)

After having carefully studied all arguments used in the many discussions on this subject in and outside UPOV and

* After this paper was written we learned that also the Swiss Plant Variety Protection Act provides for protection between the moment of granting of and of application for rights.

also after having carefully studied the new text and document DC/4, ASSINSEL has come to the conclusion that there is no need for the many provisions on variety denominations and trade marks in the Convention.

One simple paragraph stating that the breeder must submit a variety denomination and that this may not be misleading or confusing would in the opinion of our organisation suffice.

The only addition which might be useful to avoid identical (and therefore misleading or confusing) variety names in member States would be a paragraph identical to the present Article 13, paragraph (6).

In case the Conference would not share our opinion we wish to comment on the proposals made in Document DC/4.

We feel that systematically paragraph (8)(b) should immediately follow paragraph (1), as it is necessary to first answer the question of the nature of variety denominations (names) before anything can be said about trade marks etc.

Our organisation prefers when it has to choose between the first three alternatives of paragraph (8)(b) alternative 2.

On the second three alternatives of paragraph (8)(b) we are not prepared to make a choice as we are as an organisation not entitled to declare that our members will not apply for rights which other international conventions respectively the law of their country make available to them, particularly not when the text is as general as in this document.

Although this almost applies in the same way to paragraph (4)(a) we would choose for alternative 2 here.

In both cases alternative 1 would be our second choice.

Article 32, Ratification; Accession

We agree with the new text.

In view of the fact that the list of species to be protected has been abolished and also in view of the fact that much is left in the Convention to the national legislator, in view too of the fact that even today the term "public interest" as laid down in Article 9 is interpreted in different ways which leads to national protection systems that are in spite of the Convention basically different, ASSINSEL would appreciate if a procedure could be worked out on the basis of which our organisation could give advice if and when States want to join the Union in order to achieve that the effect in practice of the increased UPOV membership is as much as possible in conformity with the objectives of the Convention.

In this context no addition to the Convention text is proposed; a decision by the competent body is as far as our organisation is concerned, sufficient.

Article 36, Transitional Rules Concerning the Relationship Between Variety Denominations and Trade Marks

If our views expressed on this matter would be accepted, this Article would become superfluous.

If the Conference would decide to solve the question of denominations and trade marks on the basis of Document DC/3 or DC/4 it is proposed to read the second part of the first sentence of paragraph (1) of this Article as follows:

"... he may either renounce the protection in respect of the trade mark in that State or submit a new denomination."

Article 36A, Exceptional Rules for the Use of Denominations Consisting Solely of Figures

If our views expressed on this matter would be accepted, this Article would become superfluous, which we feel would be in the interest of the Convention.

CIOPORA

June 1978 (Original: French)

CIOPORA has taken cognizance with great interest of the Draft Revised Convention drawn up by the Committee of Experts on the Interpretation and Revision of the Convention.

Following an attentive study of the draft, CIOPORA would like to submit the following observations:

ARTICLE 2

Whereas paragraph (3) of the proposed new Article 2 constitutes a restriction in comparison with the current wording,

CIOPORA would like to see paragraph (3) of the new Article 2 rejected.

ARTICLE 3

Whereas it is in the interests of breeders to enjoy protection in the greatest possible number of States;

Whereas also the principle of assimilating nationals of the Union, of which the high moral value is unanimously recognized, would seem alone capable of promoting the development of international cooperation and instituting equality of rights between nationals of Union countries;

CIOPORA expresses the wish that the principle of reciprocity set out in Article 3(3) (current Article 4(4)) be reviewed in a general manner and desires that paragraph (5) of the current Article 4 be maintained.

ARTICLE 4

Whereas the provisions of paragraphs (3) and (4) of the proposed Article 4 are basically intended to take into account the technical and financial problems that certain member States encounter in setting up preliminary examination facilities for each species concerned;

Considering, however, that such provisions are liable to lead to economic obstacles and therefore to unfortunate disparities in international trade and in the protection of new plant varieties, particularly as a result of the inadequacy of the current Article 5; considering moreover that the minimum number of species specified is likely to be either too low or too high depending on the degree of organization in the countries concerned;

Finally, judging that international cooperation in preliminary examination appears to be a much more efficient and positive means of increasing the number of accessions to UPOV;

CIOPORA expresses the wish:

- that Article 4(3)(b)(iii) be modified as follows:
"“(iii) within eight years, to all genera and species to which any of the other member States of the Union apply the Convention and for which such State is already able to carry out the preliminary examination required by Article 7”;
- that Article 4(3)(c) be deleted,
- that Article 4(4) be deleted.

ARTICLE 5

Noting with regret that the Committee of Experts on the Interpretation and Revision of the Convention has not seen fit to amend in the Draft Revised Convention the wording of the current Article 5 on the grounds, it would seem, that an "extension" of the minimum protection provided for in Article 5(1) could compromise ratification of the revised text or accession to it;

Considering, on the contrary, for the reasons already set out a number of times (for example in the comments and proposals submitted by CIOPORA to the third session of the Committee of Experts on the Interpretation and Revision of the Convention, held in February 1976, and in the Report submitted by CIOPORA on "The legal and economic situation of the Western European market for ornamental plants, particularly cut flowers. The impact of this situation on the possibilities open to plant breeders to exercise their rights in new plant varieties for which such rights have been granted" to the eleventh ordinary session of the Council of UPOV, held in December 1977), that the "minimum" protection is in fact illusory and that the problem arising is not only one of "extending" this right but also of ensuring that the minimum right may be normally exercised;

Recalling in this respect:

- that numerous ornamental species (chrysanthemum, carnation, glasshouse roses, etc.) have as their SOLE economic purpose to produce CUT FLOWERS: indeed, that which the breeder of such species exploits, assigns or licenses, is the right to produce and sell CUT FLOWERS and not propagating material,
- that trade in cut flowers is international and that the zones producing cut flowers tend more and more to move away from countries at present members of

UPOV (Western Europe) towards non-member countries (Latin America, Africa, etc.).

- that, from the very first discussions on protection of new varieties of plants onwards, the experts themselves have admitted the necessity of protecting the marketing, AS SUCH, of cut flowers (see Recommendation No. 6 in the Final Act of the Diplomatic Conference on New Varieties of Plants held in Paris from May 7 to 11, 1957).¹
- that, however, such is not the result obtained by the final part of the last sentence of the current Article 5(1) since only the propagation of the reproductive organs on the plants or cut flowers is protected whereas it is the plants and flowers AS SUCH that ought to be protected to enable the breeder:
- to keep an effective check on plantings of his variety in the member countries of UPOV and
- to guarantee the right of peaceful enjoyment to his licensees who produce cut flowers in the member countries of UPOV against imports of plants or cut flowers from non-member countries;

CIOPORA expresses the wish that Article 5(1) be subjected to an immediate revision and begs to suggest to the Diplomatic Conference the following proposal for Article 5:

- 5(1) "The effect of the right granted to the breeder of a new plant variety is that his prior authorisation shall be required for the production and use, for commercial purposes, of the reproductive or vegetative propagating material of the variety and the offering for sale and marketing of such material. Vegetative propagating material shall be deemed to include whole plants.
- 5(2) "The right of the breeder of vegetatively reproduced ornamental plants shall extend to plants or parts thereof which are normally marketed for purposes other than propagation."
- 5(3) As the current Article 5(2).
- 5(4) As the current Article 5(3).
- 5(5) As the current Article 5(4).

Taking into account, moreover, that several experts have raised the objection that protection of cut flowers could enable a breeder to levy a succession of royalty payments at several stages in the marketing of his variety;

And that such an objection is totally unjustified (since, even in those countries in which protection extends to the marketed product, breeders levy their royalties once and once only);

CIOPORA considers that this objection may be definitively removed by directly incorporating in the wording of the Convention, for example at the end of paragraph (2) of Article 5 as proposed above, a provision stipulating the exhaustion of the right.

Basing itself on the wording of Article 32 of the Luxembourg Convention of December 15, 1975,²

CIOPORA suggests the following wording:

- "5(2) ... The remuneration of that right, however, may not extend in the member States of the Union to the marketing of the respective plants or parts thereof after they have been put on the market in one of those States by the breeder or with his express consent."

ARTICLE 6

One-year period during which the breeder may use or sell the variety without losing his right to protection:

CIOPORA proposes that this time limit be referred to as a "franchise period" rather than a "period of grace" since the latter term should preferably be kept for periods that begin AFTER a given date.

Disclosure:

Editor's Note: ¹ See page 28 of the "Actes des Conférences internationales pour la protection des obtentions végétales, 1957-1961, 1972" (UPOV publication 316(F)).

Editor's Note: ² This refers to the "Convention for the European Patent for the Common Market".

CIOPORA draws the attention of the Diplomatic Conference to the fact that, contrary to purely industrial inventions where sometimes the simple sight or the simple description of an invention is sufficient to make it accessible to the public and therefore to disclose it, a plant variety cannot be considered disclosed unless the reproductive material itself has been effectively made accessible to the public with the authorization of the breeder.

Taking into account also the long premultiplication period that elapses between the time the breeder gives propagating material to his licensees and that at which the latter officially offer the variety for sale;

CIOPORA considers that it is necessary to state precisely at which point disclosure is to be assessed.

ARTICLE 7

Considering that the protection instituted by the 1961 Convention is only of real value if its application is truly international;

Recalling in this respect its Memorandum of August 30, 1974, submitted for the meeting of member and non-member States, held in October 1974, and
Noting principally:

- that preliminary examination currently constitutes a brake on both the accession of numerous countries to the 1961 UPOV Convention and the extension of protection in the member countries to a larger number of plant species,
- that preliminary examination remains too costly for breeders and restricts the number of varieties for which requests for titles of protection or plant patents are filed;

CIOPORA considers that this problem could be overcome by envisaging the following arrangements:

- Application of the provisions of the Convention to a given species would be made mandatory after a period of eight years for all member countries of UPOV once any one of these countries had set up a preliminary examination service for that species (see Article 4(3));
- In the event of one or more member States of the Union having established a preliminary examination service for a given species, each country of the Union would be required to recognize for the purposes of its own procedure the examination carried out at such a service whether established on its own territory or outside it.

CIOPORA likewise begs to recall that important international agreements have been concluded during the past years in respect of examination, anticipation searching and the deposit of samples in other fields of industrial property and that it might be useful to make use of the experience acquired on such occasions, particularly during the elaboration of the following treaties:

- Munich European Patent Convention of October 5, 1973,
- Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977.

ARTICLE 12

Whereas the marketing of a variety requires not only technical tests but also, more and more frequently, commercial tests to assess the acceptability of the variety to customers in a given market;

Whereas the former may be carried out by agents or institutes bound by a secrecy clause, the same is not true for the latter and may constitute a cause of disclosure;

Considering that the "franchise" period provided for in certain domestic laws (Plant Patent Act—USA) does not permit the risk of such disclosure to be covered in respect of countries where no such franchise period exists;

Recalling that most breeders of ornamental plants do not have the financial means to enable them to apply, as a precaution, for a patent or title of protection in all Convention countries until they have a reasonable assurance that their variety will be accepted in those countries;

That the commercial tests in question generally last for more than a year, in view of the multiplication periods required by nature, and that the priority period under the Convention is at present only one year;

CIOPORA expresses the wish that the priority period provided for by Article 12 of the Convention be extended from 12 months to 24 months.

ARTICLE 13 (Document DC/4)

Preliminary Remark

Considering that numerous breeders have already adopted the practice of using figures to designate their varieties (see the proposed new Article 36A), CIOPORA proposes that the word "denomination" in the text of the Convention be replaced by "designation".

Paragraph (1)

CIOPORA proposes the following wording:

"A variety shall be given a designation as reference."

Paragraph (2)

For the same reason as stated in the preliminary remark, CIOPORA proposes to the Diplomatic Conference that the second subparagraph of this paragraph be deleted, with the result that the addition of the proposed new Article 36A would become superfluous.

Paragraph (4)(a) (current paragraph (3))

In view of the fact that a denomination and a trademark have a totally different purpose:

- that a denomination has the function of identifying the nature of the variety and distinguishing it from other varieties of the same species; that it is an identification, a definition, the patronymic of the variety for the use of professionals amongst whom it is intended to play a part in economic surveillance; that for this same reason it is pointless, arbitrary and excessive to require (see the Guidelines for Variety Denominations as adopted by the Council of UPOV on October 12, 1973³) that a denomination be "easy to pronounce and to remember"; that denominations formed of figures or of combinations of letters and figures (SLW 500, Meger 561, Korp 1032) should be accepted;
- that a trademark, on the contrary, has as its basic function to present the variety to the general public for whom it implicitly guarantees a certain permanent level of quality, to attract customers, to serve as a medium for the breeder's advertising; that a trademark represents considerable commercial capital; that, for this reason, breeders need to use trademarks in parallel with denominations even in the UPOV countries in which the variety itself is protected by a title of protection or by a patent;

Whereas, on the other hand, the filing as a "trademark" in non-member countries of UPOV of the appellation which they would at the same time file as a designation (denomination) in the UPOV countries offers no value to breeders since, under trademark law, such appellation could not serve to obtain a trademark in any country whatsoever since it would be the generic name and necessary appellation of the variety.

CIOPORA considers that paragraph (4)(a), proposed by the Administrative and Legal Committee, perpetuates the confusion between trademark and denomination which the other provisions of the same text (DC/4) in fact justifiably attempt to eliminate.

CIOPORA consequently proposes to the Diplomatic Conference:

- either to delete the proposed paragraph (4)(a),
- or to replace it by the wording of paragraph (3) of the current Article 13, deleting at the end of its first subparagraph the phrase beginning "... unless he undertakes ..." and ending with "... denomination of the new variety".

Editor's Note: ³ Published in UPOV document C/VII/22 of October 12, 1973.

Paragraph (5)

Taking into account the observations made at 13(1), 13(2) and 13(4)(a);

Considering that it is essential that the variety designation (denomination) should be ABSOLUTELY IDENTICAL in ALL countries of UPOV to ensure that the authenticity of the varieties can be checked whatever the country in which they are marketed;

Recalling once more that only designations formed of figures or of combinations of figures and letters would seem capable of permitting a truly international identification;

CIOPORA expresses the wish that the phase "... a translation of the original denomination or ..." be deleted.

Paragraph (9)

Taking into account the observations made at 13(4)(a) concerning the respective purpose of denominations and of trademarks,

CIOPORA requests the Diplomatic Conference to reject proposal 3(iii) contained in document DC/4 aiming to add the second sentence given in brackets.

FIS

(Original: English)

Document No. 78-035

FIS welcomes the opportunity to present its comments with regard to Documents DC/3 and DC/4.

As our views have not changed after having read Document DC/3 and we believe that our argumentation in Document No. 77-020, submitted to the fifth session of the UPOV Committee of Experts on the Interpretation and Revision of the Convention, is still valid, we refrain from writing a new paper and once more submit our Document No. 77-020 to you.

We wish to add a few additional comments.

Farmer's privilege

We have taken note of the statement in point 14 of Annex II to document DC/3.¹

FIS is of the opinion that this statement is not sufficient.

It feels that in view of the arguments mentioned in our Document No. 77-020 there is every reason to submit a recommendation to the Conference to legislate farm to farm trade in such a way that this is subjected to very narrow restrictions which include a prohibition of offering this material for sale and otherwise acting as if the farmer were a seed merchant.

Protection of the marketed product

Technical developments may require protection of the end product also with respect to varieties belonging to the horticultural and agricultural sector.

For the time being, we do not submit any proposals.

We reconfirm our support to the proposals submitted by CIOPORA.

Plants or parts thereof (Article 5(1), third sentence)

We propose to delete the word "ornamental" in this sentence.

New techniques have been developed allowing reproduction of both asexually and sexually reproduced plants, other than ornamentals, by plants or parts thereof normally marketed for purposes other than propagation.

Variety Denominations

As a logical consequence of the suggestion made in our Document No. 77-020 we choose for the following alternatives in Document DC/4:

Paragraph (4): Alternative 1,

Paragraph (8)(b), first sentence: Alternative 1,

Paragraph (8)(b), second sentence: Alternative 1.

We propose to abolish the requirement that a variety denomination may not consist solely of figures. Some of the present variety denominations are much more difficult to

Editor's Note: ¹ See page 279 of these Records.

remember than a figure. Besides, the Convention allows the use of a trade name added to the variety denomination. A combination of a figure and a trade name is for the consumer much less confusing than two names.

Official examination of varieties

We express the hope that the interpretation of this Article will result in the USA joining UPOV.

Document No. 77-020 (February 26, 1977)

REVISION OF THE CONVENTION OF PARIS FOR THE PROTECTION OF NEW PLANT VARIETIES

Our organisation welcomes the opportunity of expressing its views on the various problems connected with the interpretation and revision of the Convention of Paris for the protection of new plant varieties.

As we will be represented at the fifth session of the Committee of Experts we will do so orally on most points.

There are however some basic questions about which we prefer to express our views in writing.

These questions mainly concern the *Scope of protection* and *Variety denominations*.

Farmer's privilege

Our organisation is disappointed at the fact that the Committee of Experts saw no objection to interpreting Article 5(1) as meaning that member States are not obliged to extend the scope of protection to sales of seed between farmers.

The reasons why we are disappointed and why we feel that this question needs reconsideration by the Committee are the following:

1. When a farmer buys seed of a protected variety he pays a price for this seed, which includes a remuneration for successful breeding work by a breeder.

Generally speaking, only by selling seed the breeder or his successor in title can collect this remuneration.

If therefore a farmer produces seed from the seed he has bought and sows this on his farm, the effect is that the breeder does not get the remuneration for the use of his variety.

In practice the question whether or not the average farmer is in a position to save seed for his own use largely depends on the technique of seed multiplication. If this is simple, as is the case for instance for the self pollinating cereals, he is in a position to save seed; if this is complicated, for example for beet seed, he is not.

The technique of multiplying therefore largely determines the scope of protection of a species and therefore of a variety of that species.

2. Although we do not feel that the practical result of plant variety protection should depend on the technique of multiplication and farming or market gardening is just as much a type of economic activity as any other type, we have an open eye for the practical and political difficulties of declaring plant variety protection applicable to seed saved by an individual farmer for use on his own farm.

3. We do however seriously object to farm to farm trading of seed of protected varieties without payment of royalties, as this means that not only no justice is done to the breeder, but also that a form of unfair competition is maintained or introduced that is unacceptable to the seed industry and particularly to that segment of the seed industry supplying seed to farmers, seedsmen who have to pay royalties and even may under some legislations become liable to prosecution if they infringe plant variety rights.

4. Although strictly speaking these are not plant variety arguments we wish to point out that there are some other valid arguments not to stimulate farm to farm trade by exempting this from plant variety protection.

(a) It is a generally known fact that the quality of farm saved seed is generally poor.

- (b) Although this seed has not been supplied by the breeder this poor quality can damage the image of a variety.
- (c) The regular seed industry has to satisfy quite a number of quality (and other) requirements. Also in this respect farm to farm trade is a form of unfair competition.

5. We are aware of the fact that it is often very difficult to detect farm to farm trade in protected varieties. Sometimes however farmers openly advertise farm saved seed of protected varieties in local papers at prices below what the regular seed industry must charge.
6. These offerings for sale alone can cause serious damage to seedsmen. The fact that farm to farm trade of protected varieties is sometimes difficult to detect is not a reason to exempt it from plant variety protection. It would be highly unfair if the regular seed trade, loyally paying their royalties, had to accept this situation.

7. *Conclusions*

We are of the opinion that offering for sale and selling of seed produced by farmers to other farmers or any other buyer without the breeder's permission must under the Convention constitute an infringement of plant variety protection rights.

In fact the legislations of most of the present UPOV member States unambiguously recognise this.

We refer to the relevant articles in the legislations concerned.

Belgium (Article 21 in conjunction with Article 35(a)), Denmark (Article 14), France (Article 3), Sweden (Article 4), United Kingdom (Article 4).

Only the legislations of the Federal Republic of Germany (Article 15) and the Netherlands (Article 40) recognise an exemption for releases of farm saved seed of a protected variety if this is not done for commercial purposes.

From this it may appear that it is not very likely that the new interpretation of Article 5 of the Convention referring to *sales* of seed, corresponds with the interpretation of the authors of the Convention, a conclusion which is supported by the texts reproduced on pages 41 and 44 of the "Actes des Conférences Internationales pour la Protection des Obtentions Végétales, 1957-1961, 1972" (UPOV publication 316(F)).

We understand that the USA position as laid down in the US Plant Variety Protection Act, *in combination with the Federal Seed Act* is rather similar to that in the Federal Republic of Germany and the Netherlands.

Besides, the farmer's privilege does not apply to varieties required to be sold as a class of certified seed.

Therefore, we feel that it is not necessary to change the interpretation of Article 5(1) of the Convention to make it possible for this country to join UPOV. We consider the interpretation of the UPOV Committee of Experts on the Interpretation and Revision of the Convention too broad and feel that the statement in the last sentence thereof needs to be amended.²

We finally wish to draw your attention to the fact that the text of Article 5 of the Convention is in so far ambiguous that "ce matériel" (such material) in the first sentence can also be understood to refer back to "production à des fins d'écoulement commercial" (production for purposes of commercial marketing).

8. *Sale of plantlets*

Most of what has been said before applies to the sale of plantlets.

When our organisation raised this question for the first time at the third session of the Committee of Experts we have probably given too little background in-

Editor's Note: ² The sentence referred to reads as follows: "It saw no objection to interpreting Article 5(1) as meaning that member States are not obliged to extend the scope of protection to sales of seed between farmers."

formation on the rapidly changing technics in vegetable production.

We are therefore very pleased that a paper on this subject has been submitted to the Committee by the Delegation of the Netherlands, the conclusions of which we fully endorse.

We only wish to add that if protection of young plants for vegetable and other growing would not be included in the protection envisaged by the Convention this could not only be most harmful to the breeders but also to that segment of the seed industry that on a royalty or other basis sells seed to the market gardener. We feel that this subject should not be left to individual member States, as it pertains to basic principles of plant variety protection.

9. Protection of the marketed product

After having heard and examined this problem we fully endorse the standpoint of CIOPORA in this question, although it is not a seed industry problem.

10. Commercial multiplications

It is our wish that also the following case should be more adequately covered by the text of the Convention: where small quantities of seed of a protected variety are bought, multiplied either by the buyer or under contract to him, and where the multiplied material is used either by the buyer or under contract to him for growing crops for the production of plants to be processed and used for consumption.

We do not feel that the effort to clarify this when the Convention was worded was very successful as in the case cited the production of seed peas is not done "à des fins d'écoulement commercial" (for purposes of commercial marketing) of pea seed, but for the cheap production (by others without paying a royalty) of peas for a cannery. It is therefore more correct to say that this production of pea seed is done for commercial purposes (cf. the Belgian law; Article 21 in conjunction with Article 35(a)).

11. Variety denominations

Much has been written and many discussions have been held on the subject of variety denominations.

As our Federation has explained in a note to the Secretariat of UPOV of 14th March 1975, copy of which we attach to this document, the present requirements in this field are particularly onerous to breeders of varieties of species for which plant variety protection is available in only a few member States of the Union.

We would suggest to the Committee to study the following amendments in the Convention:

Article 13(3): to insert after the words member State of the Union "*applying the Convention to the genus or species concerned*".

Article 13(7): to insert after member State of the Union "*applying the Convention to the genus or species concerned*".

Article 13(8)(b) starting to read: "the denomination of the new variety shall in any member State *applying the Convention to the genus or species concerned*, be considered ... etc."

We feel that the Convention should not give directly or indirectly binding prescriptions on the naming of varieties or the use of trade marks in respect of countries in which no protection is available to the breeders of varieties of the genus or species concerned.

We believe that some of the undesirable side effects of the present Convention text on denominations will disappear if the suggested changes were to be adopted and introduced in the national legislations of the UPOV member States.

Document No. 75-021 (March 14, 1975)

VARIETAL DENOMINATIONS AND TRADE MARKS

The international professional organisations have several times expressed their views on the UPOV Guidelines for Variety Denominations.

They have always maintained that these guidelines are going beyond the requirements of the Convention.

They have also maintained that the seed industry should not be unduly hampered in their right of using trade marks.

Finally they maintain that once a breeders' rights legislation has entered into force in any country, the granting of breeders' rights is, if all conditions laid down in the law have been met, not a favour but a right, which is independent of the measures taken by each State to regulate the production, certification and marketing of seed and propagating material.

That these fundamental statements are not merely of a theoretical nature has been adequately demonstrated by ASSINSEL, CIOPORA and FIS.

ASSINSEL and FIS have pointed to the standing practice in the seed maize industry, but have at no time limited their objections to varieties of that species only.

CIOPORA has adequately explained the shortcomings of the guidelines for rose varieties. The fact that other species than maize and roses are concerned is clearly demonstrated by the actual situation in the vegetable sector.

A careful study of the UPOV document "List of Species or Genera Eligible for Protection in One or More Member States" shows that for most vegetable species plant variety rights exist only to a very limited extent.

Yet, breeders of vegetable varieties export seed of their varieties all over the world. They have done so before the Convention of Paris for the Protection of New Varieties of Plants came into operation and they are doing so now.

It should be noted that breeders have always tried to avoid that others would produce and sell seed of their varieties without their authorisation.

One of the possibilities to do so is to add a protected trade name to their variety denomination, although this results only in a limited amount of protection.

In the past even identical trade names were used successfully, but under the influence of Article 13 of the Convention, which by the way contains in our opinion a rather arbitrary decision, today nearly always non-identical trade names are used to this end. Considering the world-wide distribution of seed of vegetable varieties and the expectation that it will take a considerable amount of time until plant variety rights will have taken root in as many countries as industrial property rights have, it may be expected that vegetable breeders will for several decades to come need trade name protection as a substitute for plant variety rights.

The international seed industry feels that as long as the position is as described above the UPOV member States would work against the interest of plant breeders if this way of using trade marks would be made more difficult than necessary and than agreed between States in the Convention. (The situation has been rather aggravated lately by the fact that in the European Economic Community varieties entered on a national list of any EEC member State, allowing the marketing of seed of that variety, are as a rule automatically (so even against the wishes of the breeder) listed on the EEC Common Variety Lists, so that the breeder must tolerate that in EEC countries that do not at all grant breeders' rights or do not grant breeders' rights for the species concerned, his varieties are marketable under an officially approved system by anyone who chooses to do so and without payment of any royalty.)

The UPOV Guidelines however do make the use of trade marks more difficult than strictly necessary. It is not difficult to understand that to successfully use a trade mark the variety denomination should not have a trade mark character.

If a breeder wants to add a trade mark to his variety denomination the best solution (not only for the breeder, but also for the user) is that the variety denomination consists of figures or a figure and letter combination.

The UPOV Guidelines, prohibiting this as they do, unduly restrict the breeder in his legitimate efforts to get a (limited) amount of protection the Convention itself cannot (yet) provide him.

The vegetable breeders problem has been accentuated in this paper, because the position is very clear.

The maize and roses position has been fully and more than once presented to UPOV and the national representatives in UPOV.

The vegetable position is however by no means unique. For many agricultural crops, including amenity grasses, the position is identical, once a variety has been protected in one UPOV member State applying the Guidelines.

It has been suggested that breeders would opt for the trade mark, because they would in this way have the possibility to extend (to a certain degree) the period of protection of their varieties.

This is not a very convincing argument. On the one hand, the speed with which new varieties take the place of existing ones is such that in the majority of cases varieties have become obsolete before the term of protection elapses; on the other hand in the few cases that a variety is still of importance after the rights granted have elapsed, the variety falls into the public domain and everyone can produce and market it, just as everyone can produce and market instant coffee since the Nescafe patent has elapsed. That others do not profit from the publicity made by the holder of the trade mark is perfectly just. Those who wish to market the free variety should do their own publicity.

There are still a number of other considerations which speak for the use of letter and figure combinations as variety denominations, for instance that they are easy to pronounce in any language and easier to remember and note down than words in many languages for those who do not know these languages (very important aspect once the membership of the Convention expands), but most of these have been discussed at the many meetings devoted to this subject.

We therefore limit ourselves to these few practical and important points in the hope of having contributed to a better insight into this problem.

Editor's Note: *Rule 30(2) of the Rules of Procedure (see page 105 of the Records) provides that "Any Delegation may propose amendments". No provision is made, however, for Observer Organizations to propose amendments. Proposals contained in the above observations are therefore not proposals in the sense*

of Rule 30 except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/8 September 5, 1978 (Original: English)
BANGLADESH, SRI LANKA

Observations on documents DC/1 to DC/4

Bangladesh August 24, 1978

The Government of Bangladesh is pleased to comment on document DC/4 as under:

- I. In paragraph (4)(a) of Article 13 (Variety Denomination), Alternative I: "in any Member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs" is preferred.
- II. In paragraph (8)(b) of the same Article, Alternative I is preferred.
- III. In paragraph (9) also of the same Article, omission of the words in square brackets is not preferred.

Sri Lanka July 28, 1978

With reference to your document DC/4, Article 13 (Variety Denomination) is acceptable with the following changes:

Article 13(8)(b) with alternative 2 and Article 13(9) with deletion of the words in square brackets.

Editor's Note: *Rule 30(3) of the Rules of Procedure (see page 105 of the Records) sets out general rules regarding the submission of proposals for amendments. Proposals contained in the above observations are not proposals in the sense of Rule 30(3) except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.*

DC/9
NETHERLANDS

September 8, 1978 (Original: English)

Observations on documents DC/1 to DC/4

Amended table of contents of the International Convention for the Protection of New Varieties of Plants, suggested by the Netherlands.

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of the corresponding
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Editor's Note: ¹ See the part of these Records entitled "Basic Texts" on pages 11 to 76.

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Editor's Note: ¹ See the part of these Records entitled "Basic Texts" on pages 11 to 76.

	Numbers of the corresponding Articles in Document DC/3 ¹
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Article 43: <i>Territorial Field of Application</i>	Art. 34
Article 44: <i>Reservations</i>	Art. 39
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Article 46: <i>Languages; Depositary</i>	Art. 41

Commentary on above amended Table of Contents:

Using the revision it is suggested to update the order of the Articles, which are assembled in 4 parts.

Amendments to the Draft International Convention for the Protection of New Varieties of Plants as contained in Document DC/3,¹ proposed by the Netherlands.

PART I**GENERAL PROVISIONS****Article 1 (DC/3, Art. 1(1))****“Purpose of the Convention”**

The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title a right under the conditions hereinafter defined.

Article 2 (new)**“Definitions”**

For the purpose of this Convention, unless the context otherwise requires:

- (a) “the Union” means the Union for the Protection of New Varieties of Plants (UPOV);
- (b) “the breeder” means the breeder of a new plant variety or his successor in title;
- (c) “variety” means any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 11;
- (d) “the Convention of 1961 as amended by the Additional Act of 1972” means the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as amended by the Additional Act of 10 November, 1972, Amending the International Convention for the Protection of New Varieties of Plants;
- (e) “member State of the Union” means a State party to this Convention.
- (f) “special authority” means an authority set up or assigned in accordance with Article 34.

Article 3 (DC/3, Art. 1(2) and Art. 15)**“Constitution of the Union”**

- (1) The States parties to this Convention constitute the Union.
- (2) The permanent organs of the Union shall be:
 - (a) the Council, and
 - (b) the Secretariat General, entitled the Office of the Union.

Article 4 (DC/3, Art. 23A)**“Legal Status”**

- (1) The Union shall have legal personality.
- (2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that

State, such legal capacity as may be necessary for the fulfilment of the Union’s objectives and for the exercise of its functions.

- (3) *The Secretary-General [or: The President of the Council] shall represent the Union.*

Article 5 (DC/3, Art. 1(3))**“Seat”**

(no change)

PART II**PROVISIONS RELATING TO THE PROTECTION OF VARIETIES****Articles 6 to 22**

(see above Table of Contents for the corresponding Articles in Document DC/3)

PART III**INSTITUTIONAL PROVISIONS****Article 23 (DC/3, Art. 16)****“Composition of the Council; Votes”**

- (1) (no change)
- (2) (no change)
- (3) ... one vote in the Council, *subject to the application of the provision of Article 33(5). (DC/3, Art. 26(5))*

Article 24 (DC/3, Art. 17)**“Observers in Meetings of the Council”**

- (1) States not members of the Union which have signed but not yet *expressed their consent to be bound by this Act in accordance with Article 39(1)(a) and (3), or States which have expressed their consent to be bound but for which this Act has not yet entered into force*, shall be invited as observers to meetings of the Council.
- (2) (no change)

Article 25 (DC/3, Art. 18)**“Officers of the Council”**

- (1) (no change)
 - (new second subsection)
The other Vice-Presidents shall in the order of their election take the place of the President if the latter and the first Vice-President are unable to officiate.
- (2) *A Vice-President acting as President shall have the same powers and duties as the President.*
- (3) The President (*and the Vice-Presidents*) shall hold office for three years.

Article 26 (DC/3, Art. 19)**“Meetings of the Council”**

(no change)

Article 27 (DC/3, Art. 20)**“Rules of Procedure of the Council; Administrative and Financial Regulations of the Union”**

(no change)

Article 28 (DC/3, Art. 21)**“Tasks of the Council”**

(no change)

Editor's Note: ¹ See the part of these Records entitled "Basic Texts" on pages 11 to 76.

Article 29 (DC/3, Art. 22)***"Voting rules"***

- (1) DC/3, Art. 22, no change, except replace twice the word "member" by the words "member State of the Union"

Article 30 (DC/3, Art. 23)

"Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff"
(no change)

Article 31 (DC/3, Art. 28)

"Languages to be Used by the Office and in the Council"

- (1) (no change)
(2) omit the words "and of revision conferences" (see below Art. 38(3))
(3) (no change)

Article 32 (DC/3, Art. 24)

"Auditing of the Accounts"

(no change)

Article 33 (DC/3, Art. 26)

"Finances"

(no change)

PART IV**MISCELLANEOUS PROVISIONS****Article 34 (DC/3, Art. 30)**

"Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services"

- (1) ...
(a) ensure to nationals of *any* member State of the Union *the same* appropriate legal remedies for the effective defence of the rights provided for in this Convention *as to its own nationals, provided that the conditions and formalities imposed upon nationals are complied with;*

Article 35 (DC/3, Art. 29)

"Special Agreements for the Protection of New Varieties of Plants"
(no change)

Article 36 (DC/3, Art. 37)

"Preservation of Existing Rights"
(no change)

Article 37 (DC/3, Art. 38)

"Settlement of Disputes"

- (1) (no change)
(2) After the words "at the request of all the parties concerned" the following is added: *in accordance with the following procedure:*

- (a) Each disputing party, whether constituted by one or more Parties to this Convention, shall designate one arbitrator.

These two arbitrators shall propose a Chairman who shall be a national of a State not party to the dispute, and who shall be designated by common agreement by the disputing parties. The arbitrators shall be designated within two months and the Chairman within three months from the date of submission to arbitration of the dispute.

If these time limits are not met, and the parties to the dispute have not agreed on another designation procedure, the disputing parties may request the President of the Council or one of the Vice-Presidents, in accordance with the provision of Article 25(1), who shall be a national of a State not party to the dispute, to make the necessary designations.

- (b) The arbitrators shall establish their own arbitration procedure.

Decisions shall be taken by a majority of the arbitrators.

The decision of the arbitration tribunal shall be binding on the parties to the dispute.

- (c) Each party shall bear the cost of its representation before the arbitration tribunal as well as the cost of its own arbitrator. The costs of the Chairman of the tribunal and any other costs involved in the arbitration shall be shared equally between the parties in the dispute.
- (d) The arbitration tribunal shall decide on the basis of respect for law.
- (e) The foregoing provision shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the parties agree thereto.
- (f) Notwithstanding the foregoing provisions, the parties may agree to submit the dispute to arbitration in accordance with another arrangement operating between them.

Article 38 (DC/3, Art. 27)

"Revision of the Convention"

- (1) (no change)
(2) (no change)
(3) *The provisions of Article 31 shall apply to the languages to be used by the Conference.*

Article 39 (DC/3, Art. 31 and Art. 32)

"Signature, Ratification, Acceptance, Approval, Accession"

- (1) This Act shall remain open for signature by any member State of the Union and any other State, which was represented in the Diplomatic Conference adopting this Act, at the Headquarters of the Union at Geneva from ... until ... and shall thereafter remain open for accession.
- (2) Any State shall express its consent to be bound by this Act by:
(a) signature without reservation as to ratification, acceptance or approval;
(b) the deposit of its instrument of ratification, acceptance or approval if it has signed this Act subject to ratification, acceptance or approval; or
(c) the deposit of its instrument of accession, subject to the provision of paragraph 4 of this Article.
- (3) The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General who shall be the Depositary.
- (4) Text of Art. 32(3), Document DC/3

Article 40 (DC/3, Art. 33)

"Communications Concerning the Genera and Species Protected; Information to be Published"

- (1) When *expressing its consent to be bound* by this Act, each State which is not a member State of the Union shall notify the Secretary-General ... etc.
- (2) (no change)

Article 41 (DC/3, Art. 32A)

"Entry into Force"

- (1) (no change)
(i) five States have expressed their consent to be bound by this Act, in accordance with Article 39,
(ii) not less than three of the said States are parties to the Convention of 1961 as amended by the Additional Act of 1972.
- (2) In respect of any State expressing its consent to be bound by this Act after the conditions referred to in paragraph (1) ... etc.
- (3) After the entry into force of this Act in accordance with paragraph (1), no State may accede ... etc.

Article 42 (DC/3, Art. 32B)

"Transitional Rules"

- (1) (no change)
(2)
(i) Any State which becomes a member State of the Union, in accordance with Article 39 ("the former State") shall, in its relations with any member State of the Union not bound by this Act ("the latter

- State"), provisionally apply the Convention of 1961 as amended by the Additional Act of 1972, until the present Act enters into force also with respect to the latter State.
- (ii) However, the former State may, when expressing its consent to be bound by this Act, in accordance with Article 39, or at any later date by written notification addressed to the Secretary-General, declare that it shall apply this Act in its relations with any such latter State, whereas the latter State shall, in its relations with the former State, continue to apply the Convention of 1961 as amended by the Additional Act of 1972, until the entry into force of this Act also with respect to the latter State.
- (3) Notwithstanding the foregoing provisions, after the entry into force of this Act the functioning of the Union shall be governed by the provisions of this Act.

Article 43 (DC/3, Art. 34)

"Territorial Field of Application"

- (1) Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date by written notification addressed to the Secretary-General, declare to which territory or territories this Convention shall apply.
- (2) Any notification made in pursuance of the preceding paragraph may be withdrawn in accordance with the provisions laid down in the following paragraph.
- (3) (a) Any notification made under paragraph (1) shall take effect on the same date as the signature without reservation as to ratification or the depositing of the instruments of ratification, acceptance, approval or accession, and any declaration given at any later date shall take effect three months after its notification by the Secretary-General.
 (b) DC/3, Art. 34(2)(b)
 (no change)

Article 44 (DC/3, Art. 39)

"Reservations"

This Convention shall not be subject to any reservation.

Article 45 (DC/3, Art. 40)

"Duration and Denunciation of the Convention"

(no change)

Article 46 (DC/3, Art. 41)

"Languages; Depositary"

- (1) (no change)
 (2) "two" becomes "one"
 (3) "texts" becomes "translations"
 (4) (no change)
 (5) (no change)

Title: International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended at Geneva on November 10, 1972, and as revised at Geneva on October [], 1978

Preamble:

THE CONTRACTING PARTIES,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961 as amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of breeders,

Reaffirming their statements contained in the Preamble to that Convention to the effect that;

- (i) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (ii) they are conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,

- (iii) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

Considering that in recent years the idea of protecting the rights of breeders has gained a strong foothold in many States which have not yet acceded to that Convention,

Having regard to the fact that for some of these States minor amendments to that Convention are necessary before they will be able to accept it,

Considering that the necessary amendments do not in general affect the main principles of that Convention,

Anxious to reach an agreement on these principles to which other States having the same interests may be able to adhere,

Considering, furthermore, that some provisions regulating the functioning of the Union created by that Convention should be updated,

Considering that these objectives may be best achieved by the revision of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972,

Have agreed as follows:

Commentary on above proposed amendments to document DC/3:

PART I

Article 1 (Art. 1(1), DC/3)

This Article consists of the first paragraph of Article 1 of DC/3 with the exception of the words "(both hereinafter referred to as "the breeder")", which have been worked into Article 2 of the Dutch proposal, just like a part of paragraph (2). The main part of paragraph (2) and the third paragraph can be found in Article 3 respectively Article 5 of the Dutch proposal.

Article 2

This new Article concerns various definitions which are scattered all over the text of DC/3 or which are not mentioned at all.

Article 3 (Art. 1(2), 15, DC/3)

This Article consists of the main part of Articles 1(2) and 15 of DC/3. It seems appropriate to mention the organs of the Union at the beginning of the Act, since they appear already in Article 4(4) and 4(5) of DC/3.

Article 4 (Art. 23A, DC/3)

This Article is the same as Article 23A of DC/3. New is a paragraph indicating who has the competence to execute certain decisions of the Council.

Article 5 (Art. 1(3), DC/3)

This is Article 1(3) of DC/3.

PART II

Apart from some small changes in the wording, the Articles of part II are the same as the Articles 2 to 14 of DC/3.

Since Articles 34A, 35, 36 and 36A of DC/3 directly relate to subjects controlled by Articles 2, 6 and 13, it is suggested to include these Articles in this part.

PART III

All Articles concerning the institutional framework and functioning of the Union (Articles 16 to 24, 26 and 28 of DC/3) have been assembled in this part.

Article 23 (Art. 16, DC/3)

This Article is the same as Article 16 of DC/3; for the sake of completeness the words "subject to the application of the provision of article 33(5)" (= Art. 26(5) of DC/3) have been added.

Article 24 (Art. 17, DC/3)

The words "expressed their consent to be bound ... etc." are the consequence of a new wording of the Articles relating

to signature and ratification (Art. 39 of the Dutch proposal; Art. 31 and 32 of DC/3). Furthermore, a provision has been included in order that States, which have expressed their consent to be bound by this Act, can be invited while this Act has not yet entered into force, in general or with respect to such a State.

Article 25 (Art. 18, DC/3)

Some new rules concerning vice-presidency of the Council have been added in order to prevent misinterpretation and to make clear that whenever "the President" is mentioned in the text, a Vice-President has the same authority in the absence of the President.

Article 29 (Art. 22, DC/3)

The heading "Voting Rules" seems more usual than the present one.

Article 31 (Art. 28, DC/3)

It is suggested to delete the words "and of revision conferences" and to add in the Article concerning revision conferences (Art. 38 of the Dutch proposal; Art. 27 of DC/3) that the provision with respect to the use of languages shall apply to the languages to be used by the Conference.

PART IV

Article 34 (Art. 30, DC/3)

A more complete wording of paragraph (1) is suggested.

Article 37 (Art. 38, DC/3)

The Netherlands feel that some rules concerning the procedure of arbitration are necessary in order to prevent that a dispute gets stuck because of disagreement between parties about some simple rules of procedure. However, parties are free to submit the dispute to arbitration according to other rules which may exist between them (subparagraph (f)).

Article 38 (Art. 27, DC/3)

See explanation of Art. 31 of the Dutch proposal.

Article 39 (Art. 31, 32, DC/3)

In view of divergent constitutional requirements and practices existing in relation to becoming party to a treaty, it seems wise to include in this Article also the possibilities of "signature without reservation as to ratification, acceptance or approval", "acceptance" and "approval".

Article 40 (Art. 33, DC/3)

The new wording of Art. 39 of the Dutch proposal results in a slightly changed wording of this Article.

Article 41 (Art. 32A, DC/3)

See explanation of Article 40 of the Dutch proposal.

Article 42 (Art. 32B, DC/3)

Only with respect to the matter of "Relations Between States Bound by Different Texts" the Netherlands propose a fundamental change, based on the following arguments:

- The text of Article 32B(2) of DC/3 does not make clear whether, and if so, which relation exists between a so-called "former State" and a "latter State", when no declaration has been made.
- It is doubtful whether candidate members would appreciate the proposal of DC/3, for they are obliged by a declaration of an old member State to apply the new text containing some furthergoing obligations (see for instance Art. 6(1)(b)(i) and (ii) of DC/3) in relation to such an old member State, while the latter one continues to apply the old text in relation to them.

In the Dutch proposal the obligations between a new member State and an old one are equal, independent of any declaration (Art. 42(2)(i)). However, a State bound by the new text may declare that it shall apply the new text in respect to a State bound by the old text (Art. 42(2)(ii)). It seems only fair that, in its relation to an old member State, a State bound by the furthergoing obligations of the new Act may apply these to the same restricted level as to which the old member State is held, unless it declares otherwise.

Article 43 (Art. 34, DC/3)

A more usual, less offensive wording is proposed. Besides, this wording includes also territories which are part of a State but are able to decide independently whether a treaty shall be applicable to them or not (for instance: the Dutch Antilles).

Article 44 (Art. 39, DC/3)

The words "signature and ratification of and accession to" have been deleted since they seem to be superfluous.

Article 46 (Art. 41, DC/3)

In the heading the word "Copies" has been deleted since it is unusual. The word "Notification" has been replaced by the more usual, more including word "Depositary".

Furthermore, the Netherlands feel that the transmission of one certified copy is enough.

In paragraph (3) the word "texts" has been replaced by "translations" in order to make clear that these are not other "originals".

Finally, the Netherlands suggest some minor changes in the wording of the Preamble. Also a new paragraph has been added in order to perfect the Preamble.

Editor's Note: Rule 30(3) of the Rules of Procedure (see page 105 of the Records) sets out general rules regarding the submission of proposals for amendments. Proposals contained in the above observations are not proposals in the sense of Rule 30(3) except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/10 September 11, 1978 (Original: English)
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS
(AIPH)

September 5, 1978

Amended observations on documents DC/1 to DC/4

With reference to our letter of 20th June 1978,¹ paragraph 4 of that letter was reconsidered at the meeting of AIPH committee for the protection of plant breeders' rights on 5th September 1978 and it was agreed to make the following submission to UPOV. This recommendation was subsequently ratified by the council of AIPH.

AIPH is opposed to the extension of the protection of plant breeders rights to the final product as a general principle, but it is accepted that member states of UPOV may in their national legislation extend such protection where it can be proved that plant breeders will not receive an adequate return without such action.

AIPH adheres to its previously stated position that the breeder should not be enabled or authorized to collect payment of royalties at more than one stage, and that the extension of protection to the final product should not be dependent on or require labelling or other form of marking of the product.

Editor's Note: ¹ See page 87 of these Records under the reference DC/7.

DC/11 September 28, 1978 (Original: English)
DENMARK

Observations on documents DC/1 to DC/4

September 27, 1978

General Comments

The Danish Government is in general satisfied with the present text of the Convention. However, some of the proposed amendments do not, in the view of the Danish Government, represent any improvement of the Convention. If the revised text is adopted, this may lead to a reduction of the uniformity of legislation in the member States. Some of the amendments, however, are proposed in order to make it eas-

ier for certain States at present not members of UPOV to adhere to the Convention. The Danish Government considers it important that more States become parties to the Convention. For this reason, the Danish Government will limit its comments to only a few points.

Article 5

The Danish Government notes with satisfaction that no amendment of substance has been proposed in respect of this Article, and in particular that the faculty which paragraph (4) gives member States to extend the protection to the final product has not been changed to an obligation for member States. The Danish Government wishes to emphasize that such change would cause great difficulties for Denmark to become party to the new text.

Article 6

Under the proposed text of this Article, the Convention will allow Contracting States to grant in their national laws a so-called "period of grace" of one year (Article 6(1)(b)(i)), during which the new variety may have been marketed before the application. The Danish Government considers it a step backward to introduce this possibility in the Convention. It is aware, however, of the fact that some States might find it impossible to ratify the Convention unless they were permitted to maintain in their national law a provision for such period of grace. The Danish Government accepts the necessity of providing for a period of grace for these States but would prefer the provision to take the form of a special derogation analogous with Article 34A in document DC/3.

In the draft (Article 6(1)(b)(ii)) it is proposed to extend, in case of certain groups of plants (vines, forest trees, fruit trees and ornamental trees), from four to six years the period during which a variety may, without prejudicing its novelty, have been offered for sale or marketed in a State other than the State in which the application is filed. The Danish Government does not consider such extension desirable. As the extension is proposed only for groups of plants which are usually slow-growing, the Danish Government will, however, not oppose the amendment.

Article 12

Denmark also reserves its rights to raise the question of the lawfulness of the provision of Article 12(4), second sentence, regarding rights of third parties.

Article 13

In the text of the alternative proposal submitted in document DC/4—as compared with the present text—the word "trademark" appears only in paragraph (9). According to the now proposed wording of paragraph (4)(a), the breeder may not assert the right he enjoys in the use of a designation (e.g. trade mark or trade name) in order to hamper the free use of the variety denomination. Since this wording is broader in scope than that of the present paragraph (3), Denmark has no objection to it.

Denmark finds that only Alternative 3 in paragraphs (4)(a) and (8)(b) reading "in any member State of the Union" provides a satisfactory solution. Failing selection of that alternative, the proposed provision could have unreasonable consequences. In some member States breeders could have variety protection, which subsists for a limited period, while breeders in other member States could have trade mark protection, which may subsist for an indefinite period. Trade mark protection could thus be asserted after expiration of variety protection. Such a solution could tend to make variety protection less attractive and it could result in unreasonable restrictions for exporting in countries where variety protection has expired and where the name used is generic for the variety concerned.

Editor's Note: Rule 30(3) of the Rules of Procedure (see page 105 of the Records) sets out general rules regarding the submission of proposals for amendments. Proposals contained in the above observations are not proposals in the sense of Rule 30(3) except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/12

October 9, 1978 (Original: English)
UNITED STATES OF AMERICA

Proposal for the Amendment of Article 13

Variety Denomination

(1) A variety shall be designated by a denomination.
(2) Such denomination must enable the variety to be identified. It must not be liable to mislead or cause confusion as to the characteristics, value, or identity of the variety or the identity of the breeder. In particular, it must differ, in a way that avoids confusion on the part of the public, from every denomination which designates an existing variety in any member State of the Union.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraph, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4)(a) If a breeder submits in a member State of the Union a denomination for a variety in which he enjoys a right that could hamper the free use of the denomination, he may not, as from the time the variety denomination is registered, continue to assert his right against the free use of the denomination in that State.

(b) Each member State shall provide measures to assure that the prior rights of others are not affected by the registration of a variety denomination under this Article. If it is established that such registration would affect such a prior right, the competent authority shall require the breeder to submit another denomination for that variety.

(5) The breeder shall submit the same denomination for registration in all member States of the Union in which he seeks protection provided that, if the competent authority of any such State finds that the denomination does not meet the requirements specified in paragraph (2), or that it is unsuitable, or that its use would be unlawful in that State, such authority shall require the applicant to submit for the purposes of that State a different denomination acceptable for registration.

(6) The member States of the Union are encouraged to take measures for assuring that the competent authorities of the member States are informed of matters concerning variety denominations.

(7) Each member State shall endeavor to assure to the extent needed, by means of consumer protection, unfair competition, marketing, or other laws or regulations, that persons offering for sale or marketing protected or previously protected reproductive or vegetative propagating material in a member State of the Union shall be obliged to use the registered denomination of that variety, in so far as the prior rights of others do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trademark, tradename or other proprietary indication with a registered variety denomination.

DC/13

October 9, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Rule 14(1) and (2) of the Provisional Rules of Procedure

It is proposed that Rule 14(1) and (2) be drafted as follows:

"(1) The Steering Committee of the Conference shall consist of the President and the Vice-Presidents of the Conference, the Chairman of the Credentials Committee and of the Drafting Committee, as well as of the chairmen of any other committees or working groups from the time of their establishment to the achievement of the tasks entrusted to them.

"(2) If the chairman of a committee or working group finds it necessary to be absent during a meeting of the Steer-

ing Committee, one of the vice-chairmen of the respective organ shall, in the order of precedence indicated in Rule 15(3), sit and vote in the Steering Committee."

DC/14

October 9, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 1

Article 1 (DC/3, Art. 1(1))

"Purpose of the Convention"

The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title a right under the conditions hereinafter defined.

Article 1A (new)

"Definitions"

For the purpose of this Convention, unless the context otherwise requires:

- (a) "the Union" means the Union for the Protection of New Varieties of Plants (UPOV);
- (b) "the breeder" means the breeder of a new plant variety or his successor in title;
- (c) "variety" means any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 11;¹
- (d) "the Convention of 1961 as amended by the Additional Act of 1972" means the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as amended by the Additional Act of 10 November, 1972, Amending the International Convention for the Protection of New Varieties of Plants;
- (e) "member State of the Union" means a State party to this Convention;
- (f) "special authority" means an authority set up or assigned in accordance with Article 34.¹

Article 1B (DC/3, Art. 1(2) and Art. 15)

"Constitution of the Union"

- (1) The States parties to this Convention constitute the Union.
- (2) The permanent organs of the Union shall be:
 - (a) the Council, and
 - (b) the Secretariat General, entitled the Office of the Union.

Article 1C (new) (DC/3, Art. 1(3))

"Seat"

The seat of the Union and its permanent organs shall be at Geneva.

Editor's Note: ¹ The reference to "Article 11" should have been to "Article 6"; the reference to "Article 34" should have been to "Article 30". See paragraph 97 on page 134 of the part of these Records entitled "Summary Minutes".

DC/15

October 9, 1978 (Original: English)

UNITED KINGDOM

Proposal for the Amendment of Articles 2(2) and 6(1)(a)

It is proposed that Article 2(2) be drafted as follows:

"For the purposes of the Convention, the word "variety" is applicable to an assemblage of cultivated¹ plants, satisfying [any assemblage of plants which is capable of cultivation¹ and which satisfies] the requirements of subparagraphs (a), (c) and (d) of paragraph (1) of Article 6."

It is proposed that Article 6(1)(a) be drafted as follows:

"Whatever may be its [the] origin, artificial or natural, [of the initial variation from which it has resulted,] the variety must be clearly distinguishable by one or more important

characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication. A variety may be defined and distinguished by any characteristic which is capable of precise recognition and description. [A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise recognition and description.]"

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference attention was drawn to the relative scope of the English word "cultivate" and the German word "anbauen" (see paragraph 108 on page 134 of the part of these Records entitled "Summary Minutes"). For the sake of completeness the German version of the proposal regarding Article 2(2) is reproduced below:

"Das Wort "Sorte" ist im Sinne dieses Übereinkommens auf eine Mehrheit von angebauten Pflanzen [jede Mehrheit von Pflanzen] anwendbar, die [anbaufähig ist und] den Anforderungen des Artikels 6 Absatz 1 Buchstaben a, c und d entspricht."

DC/16

October 10, 1978 (Original: English)

PLENARY OF THE DIPLOMATIC CONFERENCE

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION, SECRETARIAT

Rule 1: Objective and Competence

(1) The objective of the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants, meeting in Geneva from October 9 to 23, 1978 (hereinafter referred to as "the Conference"), is to negotiate and adopt, on the basis of the draft contained in Document DC/3 and in accordance with Article 27, paragraphs (1) and (3), of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972 (hereinafter referred to as "the Convention"), a revised text of the Convention.

(2) The Conference, meeting in Plenary, shall be competent to:

- (i) adopt and amend these Rules of Procedure (hereinafter referred to as "these Rules");
- (ii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;
- (iii) establish such committees and working groups as are provided for in these Rules;
- (iv) adopt a revised text (hereinafter referred to as "the new Act") of the Convention;
- (v) adopt any recommendation or resolution whose subject matter is germane to the new Act;
- (vi) adopt any agreed statements to be included in the Records of the Conference;
- (vii) adopt any final act of the Conference;
- (viii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of:

- (i) delegations of the member States of the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "the Union" or "UPOV");

(ii) delegations of States other than those referred to in (i) above, a list of which was established by the Council of UPOV in its eleventh ordinary session (see Annex I);

(iii) representatives of intergovernmental and international non-governmental organizations, a list of which was established by the Council of UPOV in its eleventh ordinary session (see Annex II).

(2) Hereinafter, delegations referred to in paragraph (1)(i) are called "Member Delegations", delegations referred to in paragraph (1)(ii) are called "Observer Delegations", and representatives of organizations referred to in paragraph (1)(iii) are called "representatives of Observer Organizations". The term "Delegations", as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term "Delegations" does not include the representatives of Observer Organizations.

(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the Office of UPOV.

(2) The Secretary-General of UPOV, the Vice Secretary-General of UPOV and any other official of the Office of UPOV designated by the Secretary-General of UPOV may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may, at any time, make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

CHAPTER II: REPRESENTATION

Rule 4: Representation of Governments

(1) Each Delegation shall consist of one or more delegates and may include alternate delegates and advisors. Each Delegation shall have a Head of Delegation and may have an Alternate or Deputy Head of Delegation.

(2) The term "delegate" or "delegates", as hereinafter used, shall, unless otherwise expressly indicated, include both member delegates and observer delegates. The term does not include representatives of Observer Organizations.

(3) An alternate delegate or an advisor may act as a delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials.
 (2) Full powers shall be required for signing the new Act. Such powers may be included in the credentials.

(3) Credentials and full powers shall be issued by the Head of the State or Government, or by the Minister responsible for external affairs.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them. Such letter or document shall be signed by the Head (Director General, Secretary General, or President) of the Organization.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary General of the Conference (see Rule 19(1)), if possible not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7 respectively and shall report to the Conference, meeting in Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference, meeting in Plenary. Such decision shall be

made as soon as possible and in any case before the vote on the adoption of the new Act.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of five members elected by the Conference, meeting in Plenary, from among the Member Delegations.

(3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of eight members elected by the Conference, meeting in Plenary; five of them shall be Member Delegations and three of them shall be Observer Delegations.

(3) The officers of the Drafting Committee shall be elected by, and from among, those of its members representing Member Delegations.

(4) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference, meeting in Plenary. The Drafting Committee shall not alter the substance of texts submitted to it, but shall coordinate and review the drafting of all texts provisionally adopted by the Conference, meeting in Plenary, and shall submit the texts so reviewed for final adoption by the Conference, meeting in Plenary.

Rule 13: Working Groups; Other Committees

(1) The Conference may establish such working groups or committees (other than the Credentials Committee and Drafting Committee) as it deems useful.

(2) The number of the members of any working group or committee (other than the Credentials Committee and Drafting Committee) shall be decided by the Conference, meeting in Plenary, which shall elect them from among the Member Delegations and Observer Delegations.

(3) The officers of any working group or committee established under this Rule shall be elected by, and from among, those of its members representing Member Delegations.

Rule 14: Steering Committee

(1) The Steering Committee of the Conference shall consist of the President and the Vice-Presidents of the Conference, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee, as well as the Chairman of any other committee or working group as from the time of its establishment until the completion of its task.

(2) If the Chairman of any committee or working group is absent during a meeting of the Steering Committee, one of the Vice-Chairmen of that committee or working group, as the case may be, shall, in the order of precedence indicated in Rule 15(3), sit and vote in the Steering Committee.

(3) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including in particular decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.

(4) The Steering Committee shall propose for adoption by the Conference, meeting in Plenary, the text of any final act of the Conference.

CHAPTER IV: OFFICERS

Rule 15: Officers

(1) The Conference, meeting in Plenary and presided over by the Secretary-General of UPOV, shall elect its President, and, presided over by its President, shall elect two Vice-Presidents.

(2) The Credentials Committee and the Drafting Committee shall each have a Chairman and two Vice-Chairmen.

(3) Precedence among the Vice-Presidents and Vice-Chairmen shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order.

(4) All officers must be delegates of Member Delegations.

Rule 16: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of the body to be chaired by him (the Conference, meeting in Plenary, the committee or working group), such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the other.

(2) If both the President and the Vice-Presidents or both the Chairman and the Vice-Chairmen are absent from any meeting of the body in which they hold a function (the Conference, meeting in Plenary, the committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 17: Replacement of President or Chairman

If, for the rest of the duration of the Conference, the President or any Chairman is unable to perform his functions, a new President or Chairman shall be elected by the body concerned (the Conference, meeting in Plenary, the committee or working group).

Rule 18: Presiding Officer Not Entitled To Vote

No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall vote. Another member of his Delegation may vote in the name of his State.

CHAPTER V: SECRETARIAT

Rule 19: Secretariat

(1) The Secretary-General of UPOV shall, from among the staff of UPOV, designate the Secretary General of the Conference, and, from among the staff of UPOV or of the International Bureau of the World Intellectual Property Organization (WIPO), the Secretary of the Credentials Committee, the Secretary of the Drafting Committee, the Secretary of the Steering Committee and a Secretary for each other committee and for each working group.

(2) The Secretary General of the Conference shall direct the staff required by the Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(4) The Secretary-General of UPOV shall be responsible for the custody and preservation in the archives of UPOV of all documents of the Conference; the publication of the summary minutes (see Rule 44) of the Conference after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

CHAPTER VI: CONDUCT OF BUSINESS

Rule 20: Quorum

(1) A quorum shall be required in the Conference when meeting in Plenary. It shall be as provided in Article 27(3), first sentence, of the Convention.

(2) A quorum shall not be required in the meetings of committees and working groups.

Rule 21: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the meeting the limiting of time to be allowed to speakers, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers, or the closure of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected by the majority of the Member Delegations present and voting.

Rule 22: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 23 and 24, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 23: Precedence

(1) Member Delegations asking for the floor may be accorded precedence over Observer Delegations asking for the floor, and either may be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee or working group.

(3) The Secretary-General of UPOV or his representative may be accorded precedence for making statements, observations or suggestions relevant to the subject under discussion.

Rule 24: Points of Order

(1) During the discussion of any matter, any participant may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless overruled by a majority of the Member Delegations present and voting.

(2) Any participant rising to a point of order may not speak on the substance of the matter under discussion.

Rule 25: Limit on Speeches

In any meeting, the Member Delegations may decide to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 26: Closing of List of Speakers

During the discussion of any given question, the Presiding Officer may announce the list of participants who have signified their wish to speak and, with the consent of the Member Delegations, declare the list closed as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after he has declared the list of speakers closed, makes it desirable.

Rule 27: Adjournment or Closure of Debate

Any Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be accorded to one Delegation supporting and two Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 28: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 29: Order of Procedural Motions; Content of Interventions of Such Motions

(1) Subject to Rule 24, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting;
- (ii) to adjourn the meeting;
- (iii) to adjourn the debate on the question under discussion;
- (iv) to close the debate on the question under discussion.

(2) Any speaker who has been given the floor on a procedural motion may not speak on the substance of the matter under discussion.

Rule 30: Basic Proposal and Proposals for Amendments

(1) Document DC/3 shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Delegation may propose amendments.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (the Conference, meeting in Plenary, the committee or working group). The Secretariat shall distribute copies to the Delegations and Observer Organizations represented in the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than three hours before it is called up for discussion. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available less than three hours before it is called up for discussion.

Rule 31: Decisions on Competence

Subject to Rule 24, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or the amendment in question.

Rule 32: Withdrawal of Procedural Motions and Proposals for Amendments

Any procedural motion and any proposal for amendment may be withdrawn by the Delegation which has made it, at any time before voting on it has commenced, provided that no amendment to that motion or proposal has been proposed by another Delegation. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Delegation.

Rule 33: Reconsideration of Matters Decided

When any matter has been decided by a body (the Conference, meeting in Plenary, a committee or working group), it may not be reconsidered by that body, unless so decided by a two-thirds majority of the Member Delegations present and voting. In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be accorded only to one Delegation seconding and two Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

CHAPTER VII: VOTING

Rule 34: Voting Rights

Each Member Delegation shall have the right to vote in the Conference, meeting in Plenary, and in each committee or working group of which it is a member. A Member Delegation shall have one vote and shall represent and vote in the name of its own Government only.

Rule 35: Required Majorities

(1) Final adoption of the new Act shall require the majority prescribed in Article 27(3), second sentence, of the Convention.

(2) Subject to Rules 33 and 49(3), any other decision of the Conference, meeting in Plenary, and all decisions in any committee or working group shall require a simple majority of the Member Delegations present and voting.

(3) For the purposes of these Rules, references to Member Delegations "present and voting" shall be construed as

references to Member Delegations present and casting an affirmative or negative vote. Express abstention, non-voting or absence during the vote shall not be considered as votes cast.

Rule 36: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Delegation shall be put to a vote only if it is seconded by at least one other Delegation.

(2) Voting on any question shall be by show of hands unless any member Delegation requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the Member Delegation whose name is drawn by lot by the Presiding Officer.

Rule 37: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit Member Delegations to explain their votes, either before or after the voting.

Rule 38: Division of Proposals

Any Delegation may move that parts of the basic proposal or of proposals for amendments be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Delegation in favor and two Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of the proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered to have been rejected as a whole.

Rule 39: Voting on Proposals for Amendments

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendments relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such proposal or text shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to, or delete from, a text shall be considered a proposal for amendment.

Rule 40: Voting on Proposals on the Same Question

Subject to Rule 39, where two or more proposals relate to the same question, the body (the Conference, meeting in Plenary, the committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The body may, after each vote on a proposal, decide whether to vote on the next proposal.

Rule 41: Elections on the Basis of Proposals Made by the President of the Conference

The President of the Conference may propose a list of candidates for any position which is to be filled by vote of the Conference and is not yet filled through election by the Conference, meeting in Plenary.

Rule 42: Equally Divided Votes

(1) If a vote is equally divided on matters other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated if the nomination is maintained until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VIII: LANGUAGES AND MINUTES

Rule 43: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any body (the Conference, meeting in Plenary, the committee or working group) shall be in English, French or German, and interpretation shall be provided by the Secretariat into the other two languages.

(2) Any Delegation may make oral interventions in another language provided its own interpreter simultaneously interprets the intervention into English, French or German. Interpretation into the other of the said languages by the interpreters of the Secretariat may be based on the interpretation given in one of the said languages.

(3) Any committee or working group may, if none of its members objects, decide to waive interpretation or to limit it to fewer languages than those referred to in paragraphs (1) and (2).

Rule 44: Summary Minutes

(1) Provisional summary minutes of the Plenary meetings of the Conference shall be drawn up by the Office of UPOV and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the making available of such minutes, inform the Office of the Union of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the Office of UPOV.

Rule 45: Languages of Documents and Minutes

(1) Any written proposal shall be presented to the Secretariat in English, French or German.

(2) Subject to paragraph (3), all documents distributed during or after the Conference shall be made available in English, French or German.

(3)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English, French or German; if the speaker has used another language, his intervention shall be rendered in English, French or German as may be decided by the Office of UPOV.

(b) The final summary minutes shall be made available in English, French and German.

CHAPTER IX: OPEN AND CLOSED MEETINGS

Rule 46: Meetings of the Conference

The Plenary meetings of the Conference shall be open to the public unless the Conference, meeting in Plenary, decides otherwise.

Rule 47: Meetings of Committees and of Working Groups

The meetings of any committee or working group shall be open only to the members of that committee or working group and the Secretariat.

CHAPTER X: OBSERVERS

Rule 48: Observers

(1) Observer Delegations and Observer Organizations may participate in the deliberations of the Conference, meeting in Plenary, as provided in these Rules.

(2) Observer Delegations may participate in the deliberations of the committees or working groups of which they are members.

(3) Representatives of any Observer Organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference, meeting in Plenary, on questions within the scope of their activities.

(4) Observer Delegations and Observer Organizations shall not have the right to vote.

(5) Written statements submitted by Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the statements are made available.

**CHAPTER XI: ADOPTION
OF AND AMENDMENTS TO THE RULES OF PROCEDURE**

Rule 49: Adoption of and Amendments to the Rules of Procedure

(1) The Rules of Procedure, based on Provisional Rules of Procedure prepared by the Council of UPOV, shall be adopted by the Conference, meeting in Plenary. Adoption shall require a simple majority of the votes cast by the Member Delegations present and voting.

(2) With the exception of Rule 35(1) and the present Rule, these Rules may be amended by the Conference, meeting in Plenary.

(3) The adoption of any amendment shall require a majority of three-fourths of the votes cast by the Member Delegations present and voting.

CHAPTER XII: FINAL ACT

Rule 50: Final Act

If a final act is adopted, it shall be open for signature by any Delegation.

ANNEX I

NON-MEMBER STATES INVITED TO THE DIPLOMATIC CONFERENCE

(Rule 2(1)(ii))

Afghanistan	Dominican Republic	Luxembourg
Albania	Republic	Madagascar
Algeria	Ecuador	Malawi
Angola	Egypt	Malaysia
Argentina	El Salvador	Maldives
Australia	Equatorial Guinea	Mali
Austria	Ethiopia	Malta
Bahamas	Fiji	Mauritania
Bahrain	Finland	Mauritius
Bangladesh	Gabon	Mexico
Barbados	Gambia	Monaco
Benin	German Democratic Republic	Mongolia
Bhutan	Ghana	Morocco
Bolivia	Greece	Mozambique
Botswana	Grenada	Nauru
Brazil	Guatemala	Nepal
Bulgaria	Guinea	New Zealand
Burma	Guinea-Bissau	Nicaragua
Burundi	Guyana	Niger
Byelorussian SSR	Haiti	Nigeria
Cameroon	Holy See	Norway
Canada	Honduras	Oman
Cape Verde	Hungary	Pakistan
Central African Empire ¹	Iceland	Panama
Chad	India	Papua New Guinea
Chile	Indonesia	Paraguay
China	Iran	Peru
Colombia	Iraq	Philippines
Comoros	Ireland	Poland
Congo	Israel	Portugal
Costa Rica	Ivory Coast	Qatar
Cuba	Jamaica	Republic of Korea
Cyprus	Japan	Romania
Czechoslovakia	Jordan	Rwanda
Democratic Kampuchea	Kenya	Samoa
Democratic People's Republic of Korea	Kuwait	San Marino
Democratic Yemen	Laos	Sao Tome and Principe
Djibouti	Lebanon	Saudi Arabia
	Lesotho	Senegal
	Liberia	Seychelles
	Libyan Arab Jamahiriya	Sierra Leone
	Liechtenstein	Singapore

Editor's Note: ¹ The name of this State has changed in the meantime; at the date of publication of these Records its name is the Central African Republic.

Socialist Republic of Viet Nam	Tanzania	United Arab Emirates
Soviet Union	Thailand	United States of America
Somalia	Togo	Upper Volta
Spain	Tonga	Uruguay
Sri Lanka	Trinidad and Tobago	Venezuela
Sudan	Tunisia	Yemen
Suriname	Turkey	Yugoslavia
Swaziland	Uganda	Zaire
Syria	Ukrainian SSR	Zambia

ANNEX II

INTERNATIONAL ORGANIZATIONS

INVITED TO THE DIPLOMATIC CONFERENCE

(Rule 2(1)(iii))

UN	United Nations
WIPO	World Intellectual Property Organization
FAO	Food and Agriculture Organization of the United Nations
EEC	European Economic Community
EFTA	European Free Trade Association
ISTA	International Seed Testing Association
OECD	Organization for Economic Co-operation and Development
SPS	Seminarios Panamericanos de Semillas (Pan-American Seed Seminars)
* * *	
AIPH	International Association of Horticultural Producers
AIPPI	International Association for the Protection of Industrial Property
ASSINSEL	International Association of Plant Breeders for the Protection of Plant Varieties
CIOPORA	International Community of Breeders of Asexually Reproduced Ornamentals
FIS	International Federation of the Seed Trade
ICC	International Chamber of Commerce
IFAP	International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences
	International Federation of Agricultural Producers

DC/17 October 10, 1978 (Original: French)
FRANCE

Proposal for the Amendment of Article 5(1)

Editor's Note: This document was replaced by document DC/17 Rev., and is not reproduced in this volume.

DC/17 Rev. October 11, 1978 (Original: French)
FRANCE

Proposal for the Amendment of Article 5(1)

It is proposed to replace the third sentence of Article 5(1) by the following provisions:

"The right of the breeder shall extend to vegetatively reproduced plants or parts thereof normally marketed for purposes other than propagation, as well as to the case where they would be used as vegetative propagating material with a view to a commercial production. However, the remuneration of such right shall be limited to the first step of commercialization of the said plants or parts thereof."

DC/18 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of the First Sentence of Article 5(1)

It is proposed that the words "of a variety" be deleted. The first sentence of Article 5(1) would then read as follows:

"The effect of the right granted to the breeder [of a variety] is that his prior authorisation shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the variety, and for the offering for sale or marketing of such material."

DC/19 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of the Introduction of Article 6(1)

It is proposed that the words "of a variety" be deleted. The introduction of Article 6(1) would then read as follows:

"The breeder [of a variety] shall benefit from the protection provided for in this Convention when the following conditions are satisfied."

DC/20 October 10, 1978 (Original: English)
UNITED KINGDOM

Proposal for the Amendment of the Second Sentence of Article 6(1)(a)

It is proposed that the word "a" be deleted in the expression "or a precise description". The second sentence of Article 6(1)(a) would then read as follows:

"Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or [a] precise description in a publication."

DC/21 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 6(1)(b)(ii)

It is proposed that the expression "in the case of vines, forest trees, fruit trees and ornamental trees" be replaced by the expression "in the case of vines and trees". Article 6(1)(b)(ii) would then read as follows:

[At the date on which the application for protection in a member State of the Union is filed, the variety]
"must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines [, forest trees, fruit trees and ornamental trees] and trees, including their rootstocks, or for longer than four years in the case of all other plants."

DC/22 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 7

It is proposed that Article 7 be drafted as follows:

"(1) Protection shall be granted only after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be adapted to the various botanical genera and species [each botanical genus or species] having

regard to their normal¹ manners [its normal manner] of reproduction or multiplication.

"(2) For the purposes of such examination, the competent authorities of each member State of the Union [country] may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

"(3) For [During] the period between the filing of the application for protection and the decision thereon, any member State of the Union may take measures to protect the breeder against wrongful acts by third parties."

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference attention was drawn to the fact that "normal", "habituel" and "üblich" have different meanings (see paragraphs 396 to 401 on page 153 of the part of these Records entitled "Summary Minutes"). For the sake of completeness the relevant part of the French and German version of this document is reproduced below:

"(1) ... Cet examen doit être approprié aux différents genres ou espèces botaniques [à chaque genre ou espèce botanique] en tenant compte de leurs systèmes habituels [son système habituel] de reproduction ou de multiplication."

"(1) ... Diese Prüfung muss den einzelnen botanischen Gattungen oder Arten [der einzelnen botanischen Gattung oder Art] unter Berücksichtigung ihrer üblichen Vermehrungssysteme [ihres üblichen Vermehrungssystems] angepasst sein."

DC/23 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 8

It is proposed that Article 8 be drafted as follows:

"The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, for vines and trees, including their rootstocks, eighteen years, computed from the date of issue of the title of protection."

DC/24 October 10, 1978 (Original: English)
UNITED KINGDOM

Proposal for the Amendment of Article 10(2)

It is proposed that the expression "the breeder shall forfeit his right" be replaced by "the right of the breeder shall become forfeit". Article 10(2) would then read as follows:

"The right of the breeder shall become forfeit [the breeder shall forfeit his right] when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its morphological and physiological characteristics as defined when the right was granted."

DC/25 October 10, 1978 (Original: English)
UNITED KINGDOM

Proposal for the Amendment of the Second Sentence of Article 13(9)

It is proposed that the second sentence of Article 13(9) be drafted as follows:

"Consequently, subject to the provisions of paragraph (1), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a designation [denomination] identical or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law."

DC/26 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 21(c) and (g)

It is proposed that Article 21(c) be drafted as follows:

"Give the Secretary-General, whose functions are set out in Article 23, all necessary directions *for the accomplishment of the tasks of the Union* [, including those concerning relations with national authorities]."

It is proposed that Article 21(g) be drafted as follows:

"Appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General."

member State of the Union shall contribute on the basis of one or more units, or of a fraction of a unit which may not be less than one-fifth, the number of which shall be fixed in the manner provided for in paragraph (4) or (5).

"(3) (No change)

"(4)(a) Each State shall indicate, on joining the Union, the number of units on the basis of which it wishes to pay its annual contribution. Any member State of the Union may, however, subsequently declare that it wishes to pay on the basis of a different number of units.

"(b) Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change in the number of units is to take effect.

"(5) Any member State of the Union which, on the date on which this Act enters into force in respect of that State, pays its contribution according to the Convention of 1961 or the Additional Act of 1972 shall, subject to the provisions of the second sentence of paragraph (4)(a) and paragraph (4)(b), contribute as from that date on the basis of the number of units of the class to which it belonged under the said Convention or Act.

"(6) (Same as paragraph (5) of Article 26 in document DC/3, i.e., paragraph (6) of Article 26 of the present text.)"

DC/27 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of the First Sentence of Article 23(1)

It is proposed that the expression "shall have the task of carrying" be replaced by the word "carry". The first sentence of Article 23(1) would then read as follows:

"The Office of the Union shall *carry* [have the task of carrying] out all the duties and tasks entrusted to it by the Council."

DC/29 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 30(2)

It is proposed that the words "éventuelle" and "etwaigen" be deleted (for the text of the provision as amended, see the French and German versions of this document)¹

Editor's Note: ¹ For the sake of completeness these are reproduced below:

"Des accords particuliers peuvent être conclus entre les services compétents des Etats de l'Union, en vue de l'utilisation [éventuelle] en commun de services chargés de procéder à l'examen des variétés, prévu à l'article 7, et au rassemblement des collections et documents de référence nécessaires."

"Zwischen den zuständigen Behörden der Verbandsstaaten können Vereinbarungen zum Zwecke der [etwaigen] gemeinsamen Inanspruchnahme von Stellen getroffen werden, welche die in Artikel 7 vorgesehene Prüfung der Sorten und die Zusammenstellung der erforderlichen Vergleichssammlungen und — unterlagen durch — zuführen haben."

DC/28 October 10, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 26

It is proposed that Article 26 be drafted as follows:

"(1) (No change)

"(2) Each member State of the Union shall contribute in proportion to the number of units taken over. The contribution may also comprise fractions of a full unit.

"(3) (No change)

"(4)(a) Each State shall indicate, on joining the Union, the number of contribution units it wishes to pay. It may, however, subsequently declare that it wishes to pay another number of units.

"(b) Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change of the number of units is to take effect.

"(5) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, pays contributions according to the Convention of 1961 as amended by the Additional Act of 1972 shall, subject to the provisions of the second sentence of paragraph (4)(a), contribute as from that date in proportion to the number of units already paid."

DC/28 Rev. October 13, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 26

Editor's Note: This document was replaced by document DC/28 Rev. 2 and is not reproduced in this volume.

DC/28 Rev. 2 October 13, 1978 (Original: German)
FEDERAL REPUBLIC OF GERMANY

Proposal for the Amendment of Article 26

It is proposed that Article 26 be worded as follows:

"(1) (No change)

"(2) For the purpose of determining the amount of the annual contributions of the member States of the Union, each

DC/30 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of Article 32A(2)

It is proposed that Article 32A(2) be drafted as follows:

"In respect of any State depositing its instrument of ratification or accession after the conditions referred to in subparagraphs (i) and (ii) of paragraph (1) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State."

DC/31 October 11, 1978 (Original: English)
THE OFFICE OF THE UNION

Provisional Outcome of the Discussions on Article 6(1)(a)

"Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in

progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or precise description in a publication. *The characteristics which define and distinguish a variety must be capable of precise recognition and description.*¹

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference attention was drawn to the possibility of improving the correspondence between the English and French texts of this sentence (see paragraph 390 on page 153 of the part of these Records entitled "Summary Minutes"). For the sake of completeness the French version of this sentence is reproduced below:

"Les caractères permettant de définir et de distinguer une variété doivent pouvoir être reconnus et décrits avec précision."

DC/32 October 10, 1978 (Original: English)
UNITED STATES OF AMERICA

Proposal for the Amendment of Article 34A(2)

It is proposed that the word "novelty" be replaced by the word "patentability". Article 34A(2) would then read as follows:

"Where, in a member State of the Union to which the preceding paragraph applies, protection is sought under patent legislation, the said State may apply the *patentability* [novelty] criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6 and 8."

DC/33 October 10, 1978 (Original: English)
NETHERLANDS

Proposal for the Amendment of the Second Sentence of Article 5(1)

It is proposed that the word "vegetative" be deleted. The second sentence of Article 5(1) would then read as follows:

"[Vegetative] Propagating material shall be deemed to include whole plants."¹

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference efforts were made to establish a single phrase in the French language to encompass propagating material of both sexually reproduced and vegetatively propagated plants (see paragraphs 265 to 267 on page 146 of the part of these Records entitled "Summary Minutes"). For the sake of completeness the French and German versions of this proposal are reproduced below:

"Le matériel de reproduction ou de multiplication végétative comprend les plantes entières."

"Zu dem [vegetativen] Vermehrungsmaterial gehören auch ganze Pflanzen."

DC/34 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of Article 11(2)

It is proposed that Article 11(2) be drafted as follows:

"The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a *special* title of protection or of a *patent* by the member State of the Union in which he made his first application."

DC/35 October 10, 1978 (Original: French)
BELGIUM

Proposal for the Amendment of Article 4(4) and (5)

It is proposed that paragraphs (4) and (5) of Article 4 be replaced by the following paragraph:

"(4) At the request of any member State of the Union or of any State intending to ratify or accede to this Convention, the Council may, in order to take account of special difficulties encountered by such State in the fulfillment of the obligations under paragraph (3), derogate, for the purposes of that State, from the above-mentioned obligations."

DC/36 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of Article 21(c)

It is proposed that Article 21(c) be drafted as follows:

"Give the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national [authorities] and international bodies."

DC/37 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of Article 30(1)

It is proposed that Article 30(1) be drafted as follows:

"(1) Each member State of the Union shall undertake to adopt all measures necessary for the application of this Convention. In particular, each member State of the Union shall undertake to:

- (a) (No change)
- (b) (No change)
- (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of *special* titles of protection and of *patents* issued."

DC/38 October 10, 1978 (Original: English)
SOUTH AFRICA

Proposal for the Amendment of Article 34A(1)

It is proposed that Article 34A(1) be drafted as follows:

"Notwithstanding the provisions of paragraph (1) of Article 2, any State which, at the date of opening for signature of this Act, provides for protection of *rights* under the different forms of protection referred to in the said Article in respect of [for] sexually reproduced..."

DC/39 October 11, 1978 (Original: French)
BELGIUM

Proposal for the Amendment of Article 13(6)

It is proposed that Article 13(6) be drafted as follows:

"The competent authority of each member State of the Union shall ensure the communication of all information concerning variety denominations to the Office of the Union and to the other member States of the Union, which may address observations to the said authority."

DC/40 FRANCE	October 11, 1978 (Original: French)	<i>The other Vice-Presidents shall in the order of their election take the place of the President if the latter and the first Vice-President are unable to officiate.</i>	
Proposal for the Amendment of the Second Sentence of Article 7(1)		<i>"(2) A Vice-President acting as President shall have the same powers and duties as the President.</i>	
It is proposed that the second sentence of Article 7(1) be drafted as follows:		<i>"(3) The President and the Vice-Presidents shall hold office for three years."</i>	
"Such examination shall be appropriate to each botanical genus or species."			
DC/41 ITALY	October 11, 1978 (Original: French)	DC/46 NETHERLANDS	October 12, 1978 (Original: English)
Proposal for the Amendment of the Third Sentence of Article 8		Proposal for the Amendment of Article 22	
It is proposed that the third sentence of Article 8 be drafted as follows:		It is proposed that Article 22 be drafted as follows:	
"For vines, forest trees, fruit trees and ornamental trees, including their rootstocks, <i>this minimum period shall be extended to twenty-five years.</i> "		"Any decision of the Council shall require a simple majority of the votes of the <i>member States of the Union [members]</i> present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(d), 26(5), 27(1), 28(3) and 32(3) shall require three-fourths of the votes of the <i>member States of the Union [members]</i> present and voting. Abstentions shall not be considered as votes."	
DC/42 FEDERAL REPUBLIC OF GERMANY	October 11, 1978 (Original: German)	DC/47 NETHERLANDS	October 12, 1978 (Original: English)
Proposal for the Amendment of the First Part of Article 32B(2)		Proposal for the Amendment of Article 23A	
It is proposed that the first part of Article 32B(2) be drafted as follows:		It is proposed that the following paragraph (3) be added:	
"Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union by ratifying or acceding to this Act ("the latter State")."		"(3) <i>The Secretary-General [or: The President of the Council] shall represent the Union.</i> "	
DC/43 NETHERLANDS	October 11, 1978 (Original: English)	DC/48 NETHERLANDS	October 12, 1978 (Original: English)
Proposal for the Amendment of Article 16(3)		Proposal for the Amendment of Articles 27 and 28	
It is proposed that Article 16(3) be drafted as follows:		It is proposed that the following paragraph (3) be added to Article 27:	
"Each member State of the Union shall have one vote in the Council, subject to the application of the provision of Article 26(5)."		"(3) <i>The provisions of Article 28 shall apply to the languages to be used by the Conference.</i> "	
DC/44 NETHERLANDS	October 11, 1978 (Original: English)	It is further proposed that the words "and of revision conferences" be deleted in Article 28(2) which would then read as follows:	
Proposal for the Amendment of Article 17(1)		"(2) Meetings of the Council [and of revision conferences] shall be held in the three languages."	
It is proposed that Article 17(1) be drafted as follows:			
"States not members of the Union which have signed but not yet <i>expressed their consent to be bound by this Act in accordance with Article 32(1)(a) and (2), or States which have expressed their consent to be bound but for which this Act has not yet entered into force,</i> shall be invited as observers to meetings of the Council."			
DC/45 NETHERLANDS	October 12, 1978 (Original: English)	DC/49 NETHERLANDS	October 12, 1978 (Original: English)
Proposal for the Amendment of Article 18		Proposal for the Amendment of Article 31(1)(a)	
It is proposed that Article 18 be drafted as follows:		Editor's Note: <i>This document was replaced by document DC/49 Rev., and is not reproduced in this volume.</i>	
"(1) (No change) (New second subsection)			
DC/49 Rev. NETHERLANDS	October 12, 1978 (Original: English)	Proposal for the Amendment of Article 30(1)(a)	
Proposal for the Amendment of Article 18		It is proposed that Article 30(1)(a) be drafted as follows:	
It is proposed that Article 18 be drafted as follows:		"Ensure to nationals of <i>any</i> member State of the Union <i>the same</i> appropriate legal remedies for the effective defence of the rights provided for in this Convention <i>as to its own na-</i>	

tionals, provided that the conditions and formalities imposed upon nationals are complied with.”¹

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference attention was drawn to the fact that the French word “ressortissants” has a wider meaning than the English word “nationals” (see paragraph 665 on page 167 of the part of these Records entitled “Summary Minutes”). For the sake of completeness the French version of this proposal is reproduced below:

“A assurer aux ressortissants de tout Etat de l'Union les mêmes recours légaux appropriés leur permettant de défendre efficacement les droits prévus par la présente Convention que ceux assurés à ses propres nationaux, sous réserve de l'accomplissement des formalités imposées aux nationaux.”

DC/50

October 12, 1978

THE OFFICE OF THE UNION

Restatement of Comments of ASSINSEL and CIOPORA on Article 5

ASSINSEL

(Original: English)

Introduction

The representative of ASSINSEL expressed the feeling of the members of his organization that paragraph (1) contains essentially what the Convention intends to achieve. It is the very heart of the matter.

The representative pointed to the fact that the formulation of the paragraph was carefully composed. Every phrase is meaningful. Those who composed the text should be honored and respected for their work.

Any suggestion or proposal for change or alteration of the text should therefore be treated with utmost care. Besides, the justification for changes or alterations should be found not primarily in attempts to extend the breeder's rights as laid down in the paragraph. More important is the analysis of certain imperfections that have shown up in the course of the last ten years when the Convention has been in use (via national law). The main purpose of the ASSINSEL suggestions today is to repair those imperfections so that the spirit of the Convention may cover also those holes that seem to have been left open.

[Later on the representative of FIS suggested that some alterations proposed might be regarded as improvements of drafting, being in fact formulations that correspond better to the original meaning and spirit of the Convention. ASSINSEL is of the opinion that this holds true for its first and second proposal; for its third proposal ASSINSEL sees both: better drafting and a meaningful extension of the breeder's right.]

In the light of what has been said ASSINSEL wants to make a comment on three points.

1. ASSINSEL suggests to use the wording “... the production for commercial purposes ...” instead of the present text “... the production for purposes of commercial marketing ...” (ASSINSEL's suggestion would mean that the French text would simply read “à des fins commerciales” instead of “à des fins d'écoulement commercial”.)

ASSINSEL understands quite well that the Convention does not go so far as to grant the breeder a right to prior authorisation of “the production”, as it would impose on the producer an exclusive claim by breeders even if the producer is not going to make any commercial use at all.

However, practice of the last ten years has shown that very liberal interpretations of the present wording have been made, to the effect that the production became so important that at later stages no other than commercial use could be made of the produced material. This is especially so in cases where the originally intended use of the product is other than for propagation, but being available the owner changes its destination and starts using it as propagating material.

Examples are peas and beans for industrial use, not harvested green but dry, not used for processed or dry consump-

tion but taken back to farmers and drilled for another pea/bean crop. This practice is deplorably widespread.

Similar practices occur in potato and grain crops.

ASSINSEL wants to respect the rights of the user of propagating material to save material for private use. It therefore should be clear what the proposed alteration into “... the production for commercial purposes ...” means. A suggestion was made to elaborate a document in which the Convention makes a definition of this term, that clarifies its meaning in a broad sense, so that strict interpretation is enabled, and trade practice would not develop into abuses of the spirit of the Convention as cited before.

This document should especially pay attention to the fact, and specifically lay it down, that the sale of reproductive material is the right of the breeder, that a “commercial purpose” is coming into effect not only when property passes from one person to another, but also when material, not originally destined as propagating material is used as such in quantities exceeding the normal needs of the average unit of production, viz. farm or nursery. Another criterion of “commercial purposes” is when official authorization to commercialize the material has been given, and the fact that the material was transported over more than a few kilometers from the place where it was in fact produced.

2. ASSINSEL suggests to delete the word “Vegetative” in the phrase “Vegetative material shall be deemed to include whole plants”.

At the base of this suggestion is the aim to create a possibility to exercise the breeder's rights at the point where such can be done normally in practice; preferably in the first stage of introducing propagating material of a variety in commerce. If however at this first stage exercise of rights appears to be technically impossible, a following stage should be the point where the breeder could exercise his rights.

Reference is made to a new practice in the vegetable world, not known when the Convention was drafted in 1960, but an internationally widespread type of enterprise today; the raising and sale of plantlets from seed. Similar future developments, e.g. in sugar beet, might be expected.

In order to prevent the production of seed of varieties at the plant raiser's own premises, for which the possibilities of control are nil, the control of the breeder's rights for plantlets is probably best realized at the point where this material is leaving the plant raiser's nursery.

ASSINSEL however wants to stress at this point that it is not the intention to ask for more remunerations: these should be exerted only once, at the first possible stage of the commercial cycle of the propagating material.

3. ASSINSEL suggests in the third instance to generalize the provision as given already in the Convention to ornamentals, in views of recent new technological and economical developments in horticulture and agriculture in general.

The wording of the last sentence of paragraph (1) is proposed as follows: “The breeder's right shall extend to plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of plants.”

It is a recognized fact that in ornamentals the possibility to use commercial plants or cut flowers for propagation instead of consumer use exists.

New technology enables the multiplication of commercial plants or parts thereof of nearly every vegetable, and also of potatoes and sugar beet, in large quantities. The advantage of clonal multiplication of usually generative material is the extreme uniformity that enables mechanical harvesting. A not too distant daydream is the growing of cauliflowers for mechanical harvesting from cloned plantlets, produced by meristem laboratories at economically feasible prices.

In view of this future development it seems appropriate to bring the Convention up to date by generalizing the existing provisions given exclusively to ornamentals.

ASSINSEL's suggestions are to be considered as separate from each other.

CIOPORA

(Original: French)

CIOPORA refers to its observations as appearing in document DC/7 and to the comments and practical examples presented by its Delegation in the Plenary.

CIOPORA draws the very special attention of the delegates attending the Diplomatic Conference to the serious loopholes subsisting in Article 5(1) of the Convention which place the breeders of vegetatively-reproduced plants in a situation where they cannot control the marketing of their varieties properly and therefore cannot exercise in practice the right which it is the aim of the Convention to grant them.

In view of the fact that Article 5 is the very cornerstone of the Convention, CIOPORA considers that the problem should be settled at the level of the Diplomatic Conference, and to this end submits the following wording of Article 5 for consideration by the delegations of member States:

"(1) The effect of the right granted to the breeder of a variety is that his prior authorisation shall be required for the production and use, for commercial purposes, of the reproductive or vegetative propagating material of that variety, as well as the offering for sale or marketing of such material.

Vegetative propagating material shall be deemed to include whole plants.

"(2) The right of the breeder of vegetatively-reproduced plants shall extend to plants or parts thereof that are normally marketed for purposes other than propagation. However, each member State of the Union shall make the necessary arrangements to avoid a situation where remuneration pertaining to the said right extends to the marketing of the respective plants or parts thereof after they have been put on the market in the State concerned by the breeder or with his express consent.

"(3) [The present Article 5(2)]

"(4) [The present Article 5(3)]

"(5) [The present Article 5(4)]"

Explanation:

The purpose of the inclusion in the first sentence of Article 5(1) of the phrase "use for commercial purposes" and the deletion of "as such" is to make it possible to control certain fraudulent practices without at the same time extending the protection afforded to plants or parts thereof.

The purpose of paragraph (2) is to grant to the breeders of vegetatively-reproduced plants of every member State of the Union protection similar to that enjoyed in the same countries by inventors owning product patents.

The second sentence of paragraph (2) is based on the text of Article 32 of the Luxembourg Convention of December 15, 1975 (Convention for the European Patent for the Common Market).

Editor's Notes: The above statements were prepared at the request of the Diplomatic Conference meeting in Plenary. A further statement by AIPH is reproduced in document DC/80.

Rule 30(2) of the Rules of Procedure (see page 105 of the Records) provides that "Any Delegation may propose amendments". No provision is made, however, for Observer Organizations to propose amendments. Proposals contained in the above statements are therefore not proposals in the sense of Rule 30 except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/51
FRANCE

October 12, 1978 (Original: French)

Proposal for the Amendment of Article 13(4)(a) and (8)(b) in the version of document DC/4

It is proposed that paragraphs (4)(a) and (8)(b) of Article 13 in the version of document DC/4 be regrouped as follows:

"The denomination of the variety shall, in any member State of the Union, be regarded as the generic name of that variety. Subject to the provisions of paragraph (4)(b), no person may, in any member State of the Union, apply for, or obtain, a right which could hamper the free use of the denomination, even after the expiration of the protection, and any person shall renounce any such right which he may have obtained before."

DC/52
DENMARK

October 12, 1978 (Original: English)

Proposal for the Amendment of Article 12(4)

It is proposed that the last sentence of Article 12(4) be deleted.

If this proposal is not accepted, it is proposed that the last sentence of Article 12(4) be drafted as follows:

"Such matters may not give rise to any right in favour of a third party or to any right of personal possession, *provided, however, that a member State may decide that a producer who, in that period, has begun, in good faith, a production of the variety, shall be allowed to sell the plants or parts of plants from that production without the consent of the breeder.*"

DC/53
FRANCE

October 12, 1978 (Original: French)

Proposal for the Amendment of the First Sentence of Article 12(1)

It is proposed that the words "twelve months" be replaced by "two years" in the first sentence of Article 12(1) which would then read as follows:

"Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of *two years* [twelve months]."

DC/54
NETHERLANDS

October 12, 1978 (Original: English)

Proposal for the Amendment of Articles 31, 32, 32A and 33

Articles 31 and 32

"Signature, Ratification, Acceptance, Approval, Accession"

- (1) This Act shall remain open for signature by any member State of the Union and any other State, which was represented in the Diplomatic Conference adopting this Act, at the Headquarters of the Union at Geneva from ... until ... and shall thereafter remain open for accession.
- (2) Any State shall express its consent to be bound by this Act by:
 - (a) signature without reservation as to ratification, acceptance or approval;
 - (b) the deposit of its instrument of ratification, acceptance or approval if it has signed this Act subject to ratification, acceptance or approval, or
 - (c) the deposit of its instrument of accession, subject to the provision of paragraph 4 of this Article.
- (3) The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General who shall be the Depositary.
- (4) Text of Article 32(3), Doc. DC/3.

Article 32A

"Entry into force"

- (1) (No change)
 - (i) five States have expressed their consent to be bound by this Act, in accordance with Article 31/32;
 - (ii) not less than three of the said States are parties to the Convention of 1961 as amended by the Additional Act of 1972.
- (2) In respect of any State expressing its consent to be bound by this Act after the conditions referred to in paragraph (1) ... etc.
- (3) After the entry into force of this Act in accordance with paragraph (1), no State may accede ... etc.

Article 33*"Communications ... etc."*

- (1) When expressing its consent to be bound by this Act, each State which is not a member State of the Union shall notify the Secretary-General ... etc.
- (2) (No change).

DC/55

October 12, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 32B

It is proposed that Article 32B be drafted as follows:

Article 32B*"Transitional rules"*

- (1) (No change)
- (2)
 - (i) Any State which becomes a member State of the Union, in accordance with Article 32 ("the former State") shall, in its relations with any member State of the Union not bound by this Act ("the latter State"), provisionally apply the Convention of 1961 as amended by the Additional Act of 1972, until the present Act enters into force also with respect to the latter State.
 - (ii) However, the former State may, when expressing its consent to be bound by this Act, in accordance with Article 32, or at any later date by written notification addressed to the Secretary-General, declare that it shall apply this Act in its relations with any such latter State, whereas the latter State shall, in its relations with the former State, continue to apply the Convention of 1961 as amended by the Additional Act of 1972, until the entry into force of this Act also with respect to the latter State.
- (3) Notwithstanding the foregoing provisions, after the entry into force of this Act the functioning of the Union shall be governed by the provisions of this Act.

DC/56

October 12, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 34

It is proposed that Article 34 be drafted as follows:

Article 34*"Territorial field of application"*

- (1) Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date by written notification addressed to the Secretary-General, declare to which territory or territories this Convention shall apply.
- (2) Any notification made in pursuance of the preceding paragraph may be withdrawn in accordance with the provisions laid down in the following paragraph.
- (3)
 - (a) Any notification made under paragraph (1) shall take effect on the same date as the signature without reservation as to the ratification or the depositing of the instruments of ratification, acceptance, approval or accession, and any declaration given at any later date shall take effect three months after its notification by the Secretary-General.
 - (b) DC/3, Art. 34(3)(b)
(No change).

DC/57

October 12, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 38

It is proposed that Article 38 be drafted as follows:

Article 38*"Settlement of disputes"*

- (1) (No change)
- (2) After the words "at the request of all the parties concerned" is added *"in accordance with the following procedure"*.

- (a) Each disputing party, whether constituted by one or more Parties to this Convention, shall designate one arbitrator.

These two arbitrators shall propose a Chairman who shall be a national of a State not party to the dispute, and who shall be designated by common agreement by the disputing parties. The arbitrators shall be designated within two months and the Chairman within three months from the date of submission to arbitration of the dispute.

If these time limits are not met, and the parties to the dispute have not agreed on another designation procedure, the disputing parties may request the President of the Council or one of the Vice-Presidents, in accordance with the provision of Article 18(1), who shall be a national of a State not party to the dispute, to make the necessary designations.

- (b) The arbitrators shall establish their own arbitration procedure.

Decisions shall be taken by a majority of the arbitrators.

The decision of the arbitration tribunal shall be binding on the parties to the dispute.

- (c) Each party shall bear the cost of its representation before the arbitration tribunal as well as the cost of its own arbitrator. The costs of the Chairman of the tribunal and other costs involved in the arbitration shall be shared equally between the parties in the dispute.

- (d) The arbitration tribunal shall decide on the basis of respect for law.

- (e) The foregoing provision shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the parties agree thereto.

- (f) Notwithstanding the foregoing provisions, the parties may agree to submit the dispute to arbitration in accordance with another arrangement operating between them.

DC/58

October 12, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 39

It is proposed that Article 39 be drafted as follows:

"[Signature and ratification of and accession to] This Convention shall not be subject to any reservation."¹

Editor's Note: ¹ During the discussion of this document in the Plenary of the Diplomatic Conference attention was drawn to the difference in meaning between the English and French versions (see paragraph 756 on page 171 of the part of these Records entitled "Summary Minutes"). For the sake of completeness the French version is reproduced below:

"[La signature de la Convention, sa ratification ou l'adhésion à ladite Convention ne doivent] La Convention ne doit comporter aucune réserve."

DC/59

October 12, 1978 (Original: English)

NETHERLANDS

Proposal for the Amendment of Article 41

It is proposed that Article 41 be drafted as follows:

Article 41*Languages, Depositary*

- (1) (No change)

"(2) The Secretary-General shall transmit one [two] certified copy [copies] of this Act to the Governments of all States which have been represented in the Diplomatic Conference that has adopted it and, on request, to the Government of any other State.

"(3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official *translations* [texts] in the Dutch, Italian and Spanish languages and such other languages as the Council may designate.

"(4) (No change)
"(5) (No change)".

DC/60 October 12, 1978 (Original: French)
FRANCE

Proposal for the Amendment of Article 23A

It is proposed to add the following paragraph (3) to Article 23A:

"(3) The Union shall conclude a headquarters agreement with the Swiss Confederation. The agreement shall be approved by the Council."

It is further proposed to add a reference to Article 23A in Article 22.

DC/61 October 12, 1978 (Original: French)
FRANCE

Proposal for the Amendment of Article 38

It is proposed that Article 38, "Settlement of Disputes", be drafted as follows:

"(1) Any dispute between two member States of the Union concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of the parties to the dispute, be submitted to the Council, which shall endeavour to bring about agreement between the member States concerned.

"(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of one of the States concerned.

"(3) The arbitration tribunal shall consist of three arbitrators. If the arbitrators have not been appointed by the States concerned within two months from the date on which the request for convening the tribunal was notified to them by the Office of the Union each of the member States concerned may request [the President of the FAO] to make the necessary appointments.

"A referee shall be appointed by common consent by the two arbitrators. If the two arbitrators are unable to agree on the referee to be appointed, the referee shall be appointed by [the President of the FAO].

"(4) The award of the arbitration tribunal shall be final and binding on all the States concerned.

"(5) The arbitration tribunal shall determine its own procedure, unless the States concerned agree otherwise.

"(6) Each of the States parties to the dispute shall bear the costs of its representation before the arbitration tribunal; other costs shall be borne in equal parts by each of the States."

DC/62 October 12, 1978 (Original: English)
NETHERLANDS

Proposal for the Amendment of the Preamble

It is proposed that the preamble be drafted as follows:

"Preamble:

THE CONTRACTING PARTIES,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961 as

amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders.

Reaffirming their statements contained in the Preamble to *that* Convention to the effect that:

- (i) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (ii) they are conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- (iii) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles;

Considering that in recent years the idea of protecting the rights of breeders has gained a strong foothold in many States which have not yet acceded to *that* Convention;

Having regard to the fact that for some of these States minor amendments to *that* Convention are necessary before they will be able to accept it;

Considering that the necessary amendments do not in general affect the main principles of *that* Convention;

Anxious to reach an agreement on these principles to which other States having the same interests may be able to adhere;

Considering, furthermore, that some provisions regulating the functioning of the Union created by *that* Convention should be updated;

Considering that these objectives may be best achieved by the revision of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;

Have agreed as follows:"

DC/63 October 16, 1978 (Original: English)
NETHERLANDS

Proposal, as amended by the United Kingdom, for the Amendment of the Preamble

It is proposed that the preamble be drafted as follows:

"Preamble:

THE CONTRACTING PARTIES,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961 as amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders;

Reaffirming the statements contained in the Preamble to the Convention to the effect that:

- (i) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (ii) they are conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- (iii) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles;

Considering that in recent years the idea of protecting the rights of breeders has gained a strong foothold in many States which have not yet acceded to the Convention;

Considering that certain technical amendments are necessary in order to facilitate the acceptance of the Convention by these States;

Considering, furthermore, that some provisions regulating the functioning of the Union created by the Convention require amendment in the light of experience;

Considering that these objectives may be best achieved by the revision of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;

Have agreed as follows:

DC/64
NETHERLANDS

October 12, 1978 (Original: English)

Proposal for the Amendment of the Title of the Convention

It is proposed that the title of the Convention be drafted as follows:

"International Convention for the protection of new varieties of plants of December 2, 1961, as *amended* at Geneva on November 10, 1972, and as *revised* at Geneva on October ..., 1978."

DC/65
MEXICO AND PERU

October 12, 1978 (Original: English)

Proposal for the Amendment of Article 28(1) and (2)

It is proposed that Article 28(1) and (2) be drafted as follows:

"(1) The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.

"(2) Meetings of the Council and of revision conferences shall be held in the *four* [three] languages."

DC/66
MEXICO AND PERU

October 12, 1978 (Original: English)

Proposal for the Amendment of Article 41(1) and (3)

It is proposed that Article 41(1) and (3) be drafted as follows:

"(1) This Act shall be signed in a single original in the French, English, German and Spanish languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General."

"(3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official texts in the Dutch and Italian [and Spanish] languages and such other languages as the Council may designate."

DC/67
ITALY

October 13, 1978 (Original: French)

Proposal for the Amendment of Article 28(1) and (2)

It is proposed that Article 28(1) and (2) be drafted as follows:

"(1) The English, French, German and Italian languages shall be used by the Office of the Union in carrying out its duties.

"(2) Meetings of the Council and of revision conference shall be held in the *four* [three] languages."

DC/68
MOROCCO

October 13, 1978 (Original: French)

Proposal for the Amendment of Article 34(1)

It is proposed that Article 34(1) be drafted as follows:

"Any State may declare in its instrument of ratification or accession or may inform the Secretary-General by written

notification any time thereafter, that this Act shall be applicable to all or part of *its* [those] territories, designated in the declaration or notification [, for the external relations of which it is responsible]."

DC/69
ITALY

October 13, 1978 (Original: French)

Proposal for the Amendment of Article 30(1)(a)

It is proposed that Article 30(1)(a) be drafted as follows:

"Ensure to nationals of the [other] member States of the Union, *under the same conditions as for its own nationals*, appropriate legal remedies for the effective defence of the rights provided for in this Convention."

DC/70

THE PRESIDENT OF THE CONFERENCE

October 13, 1978 (Original: English).

Proposal for the Amendment of Article 30(1)(a)

It is proposed that Article 30(1)(a) be drafted as follows:

"Provide for [ensure to nationals of the other member States of the Union] appropriate legal remedies for the effective defence of the rights provided for in this Convention."

DC/71

LIBYAN ARAB JAMAHIRIYA

October 13, 1978 (Original: English)

Proposal for the Amendment of Article 28(1) and (2)

It is proposed that Article 28(1) and (2) be drafted as follows:

"(1) The English, French, German, Spanish and Arabic languages shall be used by the Office of the Union in carrying out its duties.

"(2) Meetings of the Council and of revision conferences shall be held in the *five* [three] languages."

DC/72

LIBYAN ARAB JAMAHIRIYA

October 13, 1978 (Original: English)

Proposal for the Amendment of Article 41(1) and (3)

It is proposed that Article 41(1) and (3) be drafted as follows:

"(1) This Act shall be signed in a single original in the French, English, German, Spanish and Arabic languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General."

"(3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official texts in the Dutch and Italian [and Spanish] languages and such other languages as the Council may designate."

DC/73

JAPAN

October 13, 1978 (Original: English)

Proposal for the Amendment of Article 34A(1)

It is proposed that Article 34A(1) be drafted as follows:

"Notwithstanding the provisions of paragraph (1) of Article 2, any State which, prior to the end of the period during which this Act is open for signature, provides for protection under different forms for one and the same genus or species, may continue to do so if, at the time of signing this Act or of

depositing its instrument of ratification of or accession to this Act, it notifies the Secretary-General of the Union of that fact."

DC/74 October 13, 1978 (Original: English)
UNITED KINGDOM

Proposal for the Amendment of Article 38 based on the Proposal of the Netherlands

It is proposed that Article 38 be drafted as follows:

Article 38

"Settlement of disputes"

- (1) (No change)
- (2) After the words "at the request of all the parties concerned" is added "*in accordance with the following procedure*".
- (a) Each party to the dispute, whether constituted by one or more member States of the Union, shall designate one arbitrator.

These two arbitrators shall propose a Chairman who shall be a national of a State not party to the dispute, and who shall be designated by common agreement by the parties to the dispute. The arbitrators shall be designated within two months and the Chairman within three months from the date of submission to arbitration of the dispute.

If these time limits are not met, and the parties to the dispute have not agreed on another designation procedure, either party to the dispute may request the President of the Council or one of the Vice-Presidents, who shall be a national of a State not party to the dispute, to make the necessary designations.

- (b) The arbitrators shall establish their own arbitration procedure.

Decisions shall be taken by a majority of the arbitrators.

The decision of the arbitration tribunal shall be final and binding on the parties to the dispute.

- (c) Each member State of the Union party to the dispute shall bear the cost of its representation before the arbitration tribunal as well as the cost of its own arbitrator. The costs of the Chairman of the tribunal and other costs involved in the arbitration shall be shared equally between the member States of the Union parties to the dispute.

DC/75 October 16, 1978 (Original: English)
THE OFFICE OF THE UNION

Provisional Outcome of the Discussions on Article 34A(1)

It is proposed that Article 34A(1) be drafted as follows:

"Notwithstanding the provisions of paragraph (1) of Article 2, any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in the said paragraph for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of the Union of that fact."

DC/76 October 16, 1978 (Original: English)
THE PRESIDENT OF THE CONFERENCE

Recommendation on Article 4

The following recommendation is submitted to the Conference for adoption:

"The Conference,

"Having regard to Article 4(2) and (3) of the revised Act of the Convention,

"Considering the fact that the Convention in its original version of 1961 contains an Annex listing a number of economically important species to which each member State had to apply the Convention within certain periods,

"Considering further that that Annex has been deleted in the revised Act, thereby giving greater freedom of choice to the member States and to those States which are intending to become members of the Union to decide which genera and species the Convention is to be applied to,

"Conscious of the fact that it is in the interest both of agriculture in general and of breeders in particular that genera and species of economic importance be eligible for protection in each State,

"Recommends that each member State use its best endeavours to ensure that the genera and species eligible for protection under its national law comprise as far as possible those genera and species which are of major economic importance in that State,

"Recommends further that each State intending to become a member of the Union choose the genera or species to which, as a minimum, the Convention has to be applied at the time of its entry into force in the territory of that State from genera and species of major economic importance in that State."

DC/77 October 16, 1978 (Original: English)
THE PRESIDENT OF THE CONFERENCE

Recommendation on Article 5

The following recommendation is submitted to the Conference for adoption:

"The Conference,

"Having regard to Article 5(1) and (4) of the Convention,

"Conscious of the special problems which may arise from the right of the breeder in the case of certain genera and species,

"Considering it of great importance that breeders be enabled effectively to safeguard their interests,

"Recommends that, where, in respect of any genus or species, the granting of more extensive rights than those provided for in paragraph (1) of Article 5 is desirable to safeguard the legitimate interests of the breeders, the Contracting States take adequate measures, pursuant to paragraph (4) of Article 5."

DC/78 October 16, 1978 (Original: German)
THE CHAIRMAN OF THE WORKING GROUP ON ARTICLE 13

Report of the Working Group on Article 13

I. *Establishment and Activity of the Working Group*

1. The Working Group on Article 13 (hereinafter referred to as "the Working Group") was established by the Conference meeting in Plenary on October 9, 1978. Its main task was to examine questions with respect to variety denominations and to prepare proposals for a new wording for Article 13 of the Convention in its version of December 2, 1961, as amended on November 10, 1972.

2. According to the decision of the Conference meeting in Plenary, all member States and interested observer States were invited to delegate representatives to the Working Group; the member States were all represented and representatives of the observer States of Canada, Finland, Japan, New Zealand, Spain and the United States of America also participated in the discussions. During its first meeting, the Working Group decided to call upon further experts to assist it in its deliberations and nominated Dr. H. H. Leenders, Dr. W. Marx, Mr. D. M. R. Obst, Dr. E. Freiherr von Pechmann, Mr. R. Royon and Mr. R. Troost for that purpose.

3. The Working Group elected Mr. W. Gfeller (Switzerland) as Chairman and Mr. J. U. Rietmann (South Africa) and Mr.

F. Schneider (Netherlands) as Vice-Chairmen. The Working Group met on October 9, from October 11 to 13 inclusive and on the morning of October 16.

II. Basis of the Discussions

4. According to the Rules of Procedure, document DC/3 formed the basis for the discussions. During the discussions, document DC/4 was introduced by the representatives of Canada and of the Federal Republic of Germany, document DC/12 by the representative of the United States of America, document DC/25 by the representative of the United Kingdom, document DC/39 by the representative of Belgium and document DC/51 by the representative of France. The representatives of the United Kingdom and of the United States of America also introduced in the discussions Annex IV to the internal document RC/ad hoc/11.

III. Course of the Discussions

5. After short general statements had been made by several States, the Working Group started the discussions on the individual paragraphs of Article 13 on the basis of document DC/3.

6. As a result of its discussions, the Working Group recommends to the Conference meeting in Plenary that the present text of Article 13 of the Convention of December 2, 1961, as revised on November 10, 1972, be replaced by the text appearing in the Annex to this document. It further recommends that Articles 36 and 36A in document DC/3 be deleted.

7. The Working Group emphasizes, however, that it can propose this text to the Conference meeting in Plenary only if the latter can also adopt the following interpretation.

Ad paragraph (1)

The wording leaves open the question in what territorial area and under what conditions the variety denomination shall become the generic designation. This will be a matter for national legislation. The fact that denominations of varieties which are or have been protected as provided for in this Convention are to be their generic designations does not mean that denominations of other varieties are not to be their generic designations.

It is furthermore left to the member States to decide on the extent to which they wish to apply the provisions of the second sentence to those variety denominations which are registered in other member States.

Ad paragraph (5)

The term "unsuitable" covers any circumstance which, in the opinion of the competent authority of a member State, prevents the registration of the variety denomination in that State, including illegality.

Ad paragraph (7)

This paragraph merely requires that the use of the variety denomination in a member State be ensured in accordance with its provisions. It does not specify the means by which this is to be done nor does it necessarily require legislation. The paragraph does not prevent a member State from making more far-reaching provisions extending, in the member State concerned, the obligation to use the variety denomination to varieties that are protected only in another member State.

Ad paragraph (8)

This paragraph has no bearing on the regulation of the designation of varieties under other laws or regulations. The final sentence of this paragraph does not mean that the denomination of varieties other than varieties which are or have been protected as provided for in this Convention should not be easily recognizable.

ANNEX

Article 13 *Variety Denomination*

(1) A variety shall be designated by a denomination, to be its generic designation. The member States shall ensure

that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination, even after the expiration of the protection.

(2) Such denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating the variety in the particular member State. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraph, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The competent authority for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder to submit another suitable denomination.

(6) The competent authority of each member State of the Union shall ensure that the competent authorities of the other member States of the Union are informed of matters concerning variety denominations, including in particular the submission, registration and cancellation of such denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. Even if such an indication is associated, the denomination must be easily recognizable.

DC/79

October 16, 1978 (Original: English)

SOUTH AFRICA

Proposal for the Amendment of Article 30(1)(a) and of Article 3(1) and (2)

It is proposed that Article 30(1)(a) be drafted as follows:

"(a) Provide, under its domestic law, for the effective implementation of the provisions of this Convention."

It is further proposed that the provision presently appearing in Article 30(1)(a) be transferred into Article 3(1) and (2), which would then read as follows:

"(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment, *including the same legal remedy against any infringement of their rights*, as is accorded or may hereafter be accorded by the respective laws

of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

"(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights, *including the same legal remedy against any infringement of their rights*, provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be controlled."

DC/80 October 16, 1978 (Original: English)
THE REPRESENTATIVE OF AIPH

Comments on Article 5

The attitude adopted by AIPH towards Article 5 in document DC/7 was later clarified in document DC/10. Both these papers were particularly concerned with the possibility of an extension of a breeder's right to the marketed or final product and were amplified by the AIPH representative in his opening statement to the Conference.

To this extent it is unnecessary to restate what has already been written or said. However, discussion in plenary session has revealed more than one issue requiring further attention and the Working Group now established to consider this Article will no doubt decide to separate them.

In the first place, a proposal has been made in document DC/50 to amend the first sentence of Article 5(1), replacing the words "production for purposes of commercial marketing" with "production for commercial purposes" and deleting the phrase "as such". AIPH made a similar proposal in February 1976 to the Committee of Experts and now supports the present amendment; in its present form the Convention fails to serve the breeder adequately and allows unfair competition to develop between growers using protected varieties. On a strict interpretation of the text advocated in document DC/3, a grower may buy a plant (or a limited number of plants) of a protected variety and then propagate it himself, not for sale ("commercial marketing") but in order to produce and sell more of the final product derived from it. This practice is manifestly unfair and in conflict with the objectives of the Convention. Already, in certain member States, the practice has discouraged breeders in particular fields and placed responsible growers at a serious financial disadvantage.

With regard to the second issue which arises from a reappraisal of the Article, that of extension of protection to the final product, the position of AIPH remains as before; it is opposed to any amendment of the Convention making such extension mandatory while at the same time recognizing that the present Article 5(4) allows member States to provide it where circumstances make this desirable. AIPH is well aware, as a growers' organization, of the commercial problems for both breeders and growers which result from the present Article but is firmly of the opinion that their solution lies in an extension of the membership of UPOV rather than of protection itself. Any change in the approach now adopted in Article 5(4) will inevitably make it more difficult for new members to join UPOV and this consideration has been accepted by AIPH as being of primary importance.

AIPH has also made its position clear, in document DC/7, on the subject of royalty collection where rights are extended and on the question of labelling or otherwise marking the final product. However, these are now aspects which are properly the concern of member States rather than of the Convention.

Editor's Note: Rule 30(2) of the Rules of Procedure (see page 105 of the Records) provides that "Any Delegation may propose amendments". No provision is made, however, for Observer Organizations to propose amendments. Proposals contained in the above comments are therefore not proposals in the sense of Rule 30 except where they were subsequently submitted in accordance with Rule 30(3) during the Diplomatic Conference itself.

DC/81
MEXICO

October 19, 1978 (Original: English)

Statement¹

Introduction

Agricultural experimentation started in Mexico at the beginning of the century, although we have a tradition in this field since the 16th century. The work was intensified in the forties, and after that time the main concern was to solve the local food problem and attack that aspect of it which was related to such basic crops as corn, wheat, beans and rice. This work progressed in the fifties and sixties. It was improved by breeding certain oil seeds such as soybeans, sesame, safflower, sunflower, seed cotton and also sorghum as a substitute for corn grain in the field of animal food.

Technical Cooperation

A team of agronomists trained in Mexico collected a large amount of corn and wheat varieties. World interest focussed on this and, when the United Nations became aware of it, it started a program under which people were sent to be trained in Mexico and agronomists from many countries of the world came to our country. We received visitors from several countries, including the United States of America, Germany, Holland, France, Australia, India, Pakistan, Iran, Iraq, Syria, Egypt and Turkey, as well as from Latin America, Russia and Libya.

The results of the research acted as a stimulant on the country and a strong team became highly specialized in wheat and corn. Very abundant wheat and corn collections were created, and a group of persons was appointed to attend to such important aspects as breeding, disease resistance, fertilizers, insect control, irrigation experiments, weed control, grain quality, etc. Actually, short-strawed spring Mexican wheats have been used around the world and in many countries they have been multiplied and the final products obtained. Besides this—and for the first and only time—the Nobel Prize for Peace was granted in 1970 to the man who organized the wheat team in Mexico, Dr. Norman Ernest Borlaug.

Our wheat varieties are tested every year in about 80 countries, and the results show that Mexican wheat occupies the first place in a high percentage of the tests as far as yield is concerned. One important factor for the success of its wheat varieties is the fact that they can be adapted to many different conditions of soil and climate, and as a logical consequence they are greatly appreciated.

Certified Seed Production

Since the conditions of climate and soil in Mexico are very variable, it is possible to cultivate small grain cereals as well as corn and sorghum. Under other conditions, we have cotton, soybeans, sesame, sunflower, tomatoes, other vegetable plants and fruit trees.

We now produce annually about 300,000 metric tons of different seeds. Some certified seeds, like those of wheat, cotton and rice, cover 100 percent of the area under commercial cultivation. In some other areas, we have sorghum, oats, soybeans, chickpea, tomatoes, and sunflower. We need to import part of the required seed, and in some cases we frankly need to import seeds from several countries, as in the case of alfalfa seed.

Conclusion

Our agricultural research and experimentation has been rapidly developing over the last 40 years. By now we have an important team of over 600 officials in agricultural research, working on plant breeding and on the practices involved in all aspects of rural technology. They also work on irrigation, soil salinity, fertilizers, weeds, insects, diseases, economy, statistics, variety evaluations, etc.

The results of this research work have been translated into the intensive use of better seeds, and have of course had re-

Editor's Note: ¹ The above statement was submitted by the Delegation of Mexico for the information of participants in the Diplomatic Conference.

percussions on its production. Mexico has had legislation since 1961 that covers the production, multiplication, certification and trade in seeds.

The actual seed production in Mexico amounts to around 300,000 tons, which is for the benefit not only of our own people, but also for that of several other countries with which we have the opportunity to cooperate on the basis of our experience of exporting large amounts to the rest of the world.

DC/82

October 19, 1978 (Original: English)

THE CHAIRMAN OF THE WORKING GROUP ON ARTICLE 5

Report of the Working Group on Article 5

I. Establishment and Activity of the Working Group

1. The Working Group on Article 5 (hereinafter referred to as "the Working Group") was established by the Conference meeting in Plenary on October 16, 1978. Its main task was to examine questions with respect to the scope of protection as laid down in Article 5 of the Convention in its version of December 2, 1961, as amended on November 10, 1972.

2. In accordance with the decision of the Conference meeting in Plenary, all member States and interested observer States were invited to delegate a representative to the Working Group. Most of the member and observer States present in the Plenary were represented at the meetings of the Working Group. At its first meeting, the Working Group decided to call upon some of the representatives of the observer organizations to assist it in its deliberations in the capacity of experts.

3. The Working Group elected Mr. R. Duyvendak (Netherlands) as Chairman and Mr. R. Derveaux (Belgium) and Mr. G. Curotti (Italy) as Vice-Chairmen. The Working Group met on October 17 and in the mornings of October 18 and 19.

II. Basis of Discussions

4. In accordance with the Rules of Procedure, the basis for the discussions was Article 5, as reproduced in document DC/3. In addition, the Working Group considered document DC/17 Rev., submitted by the Delegation of France; document DC/77, presented by the President of the Conference; and documents DC/7, DC/50 and DC/80, containing the comments of observer organizations.

III. Result of the Discussions

5. At the beginning of the discussions, it was stated that, with respect to substance, Article 5(1) was a corner stone of the Convention.

6. After some discussion on the wording of the first sentence of Article 5(1), a paper was drafted in which the components of that sentence were set out. The paper was based mainly on the German version of the Convention. The Working Group agreed that the text as presented in Annex I to this report did not differ in its meaning from the present text of the Convention but was merely a rearrangement of words which would make it more clear that all three activities requiring prior authorization by the breeder:

production for purposes of commercial marketing,
offering for sale and/or
marketing

related equally to the reproductive and vegetative propagating material as such.

7. The redrafted English and French texts might help to avoid any possible misinterpretations such as those presented by the professional organizations.

8. The Working Group recommends that the Conference meeting in Plenary examine whether the Drafting Committee should take Annex I into consideration.

9. It was suggested that "the production for purposes of commercial marketing of the propagating material as such" be replaced by "production for commercial purposes of the propagating material as such". Certain members of the Working Group thought that this would mean an extension of the right in so far as the production of propagating material which was not to be marketed as such would also fall

within the scope of protection. The Working Group could not agree, therefore, to propose such a change.

10. It was the general understanding in the Working Group that the term "reproductive and vegetative propagating material" is understood in its widest sense.

11. It was also understood that propagating material should include both sexual and asexual propagating material, even where both means of propagation would be possible for one and the same variety, on the understanding that both offsprings would satisfy the variety description.

12. The Delegation of France made a proposal for the amendment of Article 5(1) (document DC/17 Rev.) which was intended to solve the major problems of the unlimited reproduction of the variety by growers, especially for vegetatively reproduced plants. The Working Group could not agree, however, to propose such a change.

13. The question was raised why the third sentence of Article 5(1) was restricted to ornamental plants only. It was suggested that the provision should be extended to fruit trees (see Annex II). The Working Group could not agree, however, to propose such a change.

14. After an enquiry the Delegation of the United States of America confirmed that in its country the Plant Patent Law (see Annex III) protected breeders against the unauthorized asexual reproduction of plants by others and the sale or use of the plants so reproduced.

15. To draw more attention to the possibilities provided for by Article 5(4), the President of the Conference suggested that the Conference might adopt the recommendation set out in document DC/77. During the discussions, an amendment was proposed to reflect the necessary balance between the interests of the breeders and those of the users of varieties. The amended version of the recommendation is reproduced in Annex IV to this report. The Working Group proposes that this recommendation be adopted by the Conference.

ANNEX I

Main Components of Article 5(1) 1st Sentence

The effect of the right granted to the breeder of a variety is that his prior authorisation shall be required for the production for purposes of commercial marketing, offering for sale, and/or marketing

of the reproductive or vegetative propagating material, as such, of that variety.

ANNEX II

Suggested change for Article 5(1) 3rd Sentence (not agreed)

The breeder's right shall extend to ornamental plants, fruit trees or parts thereof

normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of

ornamental plants,
cut flowers or
fruit.

ANNEX III

SECTION 163 OF THE US PATENT LAW

Section 163 of the US Patent Law reads as follows:

"In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced."

ANNEX IV

RECOMMENDATION ON ARTICLE 5

The following recommendation is submitted to the Conference for adoption:

"The Conference,

"Having regard to Article 5(1) and (4) of the Convention,

"Conscious of the fact that the scope of the protection laid down in Article 5(1) may create special problems with regard to certain genera and species,

"Considering it of great importance that breeders be enabled effectively to safeguard their interests,

"Recognizing at the same time that an equitable balance must be struck between the interests of breeders and those of users of new varieties,

"Recommends that, where, in respect of any genus or species, the granting of more extensive rights than those provided for in paragraph (1) of Article 5 is desirable to safeguard the legitimate interests of the breeders, the Contracting States take adequate measures, pursuant to paragraph (4) of Article 5."

DC/83 October 21, 1978 (Original: English)
THE CREDENTIALS COMMITTEE

Report

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on October 9, 1978, by the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Conference"), met twice, on October 9, 1978, and October 19, 1978.

Composition

2. The Delegations of the following States members of the Committee attended both meetings: France, Germany (Federal Republic of), Italy, Switzerland, United Kingdom.

Opening of the Meetings

3. The President of the Conference, Mr. H. Skov, opened the first meeting, at which the officers were elected. The Chairman of the Committee opened and presided at the second meeting.

Officers

4. The Committee unanimously elected Dr. H. Graeve (Federal Republic of Germany) as Chairman and Mr. D. Avram (France) and Mr. A. Parry (United Kingdom) as Vice-Chairmen.

Examination of Credentials, etc.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on October 9, 1978 (hereinafter referred to as "the Rules of Procedure"), the Committee examined at its second meeting the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 by the Delegations of the member States of the International Union for the Protection of New Varieties of Plants (UPOV) (hereinafter referred to as "the Member Delegations"), the Delegations of States other than the member States of UPOV participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter referred to as "Observer Delegations"), and the representatives of intergovernmental and international non-governmental organizations participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "Observer Organizations").

Delegations

6. The Committee found that the credentials and full powers presented by the Member Delegations of Denmark, France, Germany (Federal Republic of), Netherlands, South Africa, Switzerland and the United Kingdom and by the Observer Delegations of Spain and the United States of America were in due form in accordance with Rule 6 of the Rules of Procedure.

7. (a) The Committee found that the credentials presented by the Member Delegation of Sweden and by the Observer Delegations of Canada,¹ Finland, Hungary, Iraq, Ireland, Japan, Luxembourg, Morocco, New Zealand and Norway were in due form in accordance with Rule 6 of the Rules of Procedure.

(b) The Committee noted that, in accordance with established practices, powers of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

8. The Committee noted that communications had been received from the Permanent Representatives in Geneva of Belgium and Italy informing the Secretariat that the credentials and full powers of the Delegations of those States had been sent by their Governments and that they should arrive before the close of the Conference.

Observer Organizations

9. The Committee found that the letters or documents of appointment presented by the representatives of the following Observer Organizations were in due form in accordance with Rule 7 of the Rules of Procedure: Food and Agriculture Organization of the United Nations (FAO), European Economic Community (EEC), International Seed Testing Association (ISTA), International Association of Horticultural Producers (AIPH), International Association for the Protection of Industrial Property (AIPPI), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), International Federation of the Seed Trade (FIS), International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences.

Further Procedure

10. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of delegations not having presented credentials.

Report

11. The Committee authorized the Secretariat to prepare the report of the Committee for submission to the Conference, and authorized the Chairman to examine and to report to the Conference upon any further credentials and full powers which might be presented by delegations after the close of its meeting.

Editor's Note: ¹ *The above Report was adopted subject to the addition of a reference to Canada in its paragraph 7(a) (see paragraph 1019 on page 187 in the part of these Records entitled "Summary Minutes").*

DC/84 October 21, 1978 (Original: English)
THE DRAFTING COMMITTEE

Draft Convention

Editor's Note: *This document is not reproduced in this volume since the text appearing in it is substantially the same as the text adopted by the Diplomatic Conference, meeting in Plenary on October 23, 1978. That text is reproduced on pages 221 to 243 in the part of these Records entitled "Signed Text". A record of the drafting amendments, as adopted in the Plenary of the Diplomatic Conference, can be found in paragraphs 1024 to 1080 on pages 187 to 189 in the part of these Records entitled "Summary Minutes".*

DC/85 October 21, 1978 (Original: English)
THE SECRETARIAT

Adoption and Signature of the Convention: Date and Place

Editor's Note: *This document is not reproduced in this volume. It contained information regarding the arrangements for the adoption and signature of the Convention.*

DC/86
THE SECRETARIAT

October 21, 1978 (Original: English)

Recommendation on Article 4: Text edited on the basis of the draft Convention

Editor's Note: *This document is not reproduced in this volume since the text is the same as the Recommendation on Article 4 adopted by the Diplomatic Conference, meeting in Plenary, on October 23, 1978. That Recommendation is reproduced on page 273 in the part of these Records entitled "Recommendations".*

DC/87
THE SECRETARIAT

October 21, 1978 (Original: English)

Recommendation on Article 5: Text edited on the basis of the draft Convention

Editor's Note: *This document was replaced by document DC/88, and is not reproduced in this volume. The text in document DC/88 is the same as the Recommendation on Article 5 adopted by the Diplomatic Conference, meeting in Plenary, on October 23, 1978. That Recommendation is reproduced on page 274 in the part of these Records entitled "Recommendations".*

DC/88
THE SECRETARIAT

October 21, 1978 (Original: English)

Recommendation on Article 5: Text edited on the basis of the draft Convention

Editor's Note: *This document is not reproduced in this volume since the text is the same as the Recommendation on Article 5 adopted by the Diplomatic Conference, meeting in Plenary, on October 23, 1978. That Recommendation is reproduced on page 274 in the part of these Records entitled "Recommendations".*

DC/89
THE PLENARY OF THE DIPLOMATIC CONFERENCE

October 23, 1978 (Original: English)

Text of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and from October 9 to 23, 1978

Editor's Note: *This document is not reproduced in this volume since the text is the same as that appearing on pages 221 to 243 in the part of these Records entitled "Signed Text".*

DC/90
THE PLENARY OF THE DIPLOMATIC CONFERENCE

October 23, 1978 (Original: English)

Recommendation on Article 4

Editor's Note: *This document is not reproduced in this volume since the text is the same as the Recommendation on Article 4 adopted by the Diplomatic Conference, meeting in Plenary, on October 23, 1978. That Recommendation is reproduced on page 273 in the part of these Records entitled "Recommendations".*

DC/91
THE PLENARY OF THE DIPLOMATIC CONFERENCE

October 23, 1978 (Original: English)

Recommendation on Article 5

Editor's Note: *This document is not reproduced in this volume since the text is the same as the Recommendation on Article 5 adopted by the Diplomatic Conference, meeting in Plenary, on October 23, 1978. That Recommendation is reproduced on page 274 in the part of these Records entitled "Recommendations".*

DC/92
THE SECRETARIAT

October 23, 1978 (Original: English)

Signatures

Editor's Note: *This document is not reproduced in this volume since the information contained therein is reproduced on pages 267 to 270 in the section "Signatories" in the part of these Records entitled "Signed Text".*

SUMMARY MINUTES

OF THE
PLENARY MEETINGS OF THE DIPLOMATIC CONFERENCE

PLENARY* OF THE GENEVA DIPLOMATIC CONFERENCE ON THE REVISION OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

President: Mr. H. SKOV (Denmark)

Vice-Presidents: Dr. D. BÖRINGER (Federal Republic of Germany)
Mr. P. W. MURPHY (United Kingdom)

Secretary General: Dr. H. MAST (UPOV)

*First Meeting
Monday, October 9, 1978,
morning*

Welcome Address by the President of the Council of UPOV

1.1 Mr. H. SKOV, as President of the Council of UPOV, said how privileged and pleased he was to welcome the delegates to the Conference and to the beautiful city of Geneva. This Conference to revise the International Convention was being held on the 150th anniversary of the birth of Henry Dunant, a great son of Geneva and the founder of the Red Cross. The aims of Henry Dunant had been exclusively humanitarian whereas those of the International Convention had a more economic aspect. Mr. Skov expressed the view that it was nevertheless perfectly justifiable to use the expression "city of Henry Dunant" to describe the meeting place of a Diplomatic Conference which would concern itself with the protection of new varieties of plants. He was sure that plant breeders were able to contribute to the alleviation of the malnutrition, hunger or starvation from which more than half of the world's population suffered. He instanced the development of new varieties of wheat which had changed Mexico from a wheat-importing to a wheat-exporting country, of new varieties of potato which were resistant, for example, to wart disease or nematodes, of new varieties of maize which were more cold-tolerant, and of new varieties of cereals with an improved protein content. Much, however, remained to be done. Breeders might eventually develop plants, other than leguminous plants such as peas and clovers, which were capable of fixing nitrogen. If this dream could be achieved it would reduce the demand for artificial fertilizers whose

manufacture was so costly in terms of energy. Mr. Skov noted that plant breeders were not alone in their work, being supported first by those responsible for seed certification, for seed testing and for gene banks, and secondly by all the researchers in plant and soil sciences whose findings were, in many cases, a precondition for the effective use of new varieties of plants.

1.2 Mr. Skov stated that daily work had begun in Geneva following the entry into force in 1968 of the Convention of 1961. At first there had been four member States, a little later six, and now there were ten. It had quickly become apparent that, in order to widen the membership of UPOV, talks had to be initiated with other States. A meeting of member and non-member States had been held in 1974. The discussions had shown that it might be desirable to make some minor changes in the Convention. The Council of UPOV had therefore established a Committee for the Interpretation and Revision of the Convention which had met six times under his chairmanship. He expressed his appreciation of the goodwill and spirit of cooperation shown by all who had taken part in those meetings. The Committee had submitted a draft to the Council of UPOV in December, 1977, and this draft, after a few amendments had been made, had been transmitted as document DC/3 to all States and organizations invited to this Diplomatic Conference.

1.3 Mr. Skov, having again welcomed the delegates to the Conference and to the city of Henry Dunant, invited Dr. A. Bogsch, Secretary-General of UPOV, to preside over the introductory business of the Conference.

Opening of the Conference by the Secretary-General of UPOV

2.1 Dr. A. BOGSCH (Secretary-General of UPOV) invited delegates to consider document DC/1, the Provisional Agenda. He noted that item 1 of the agenda: "Welcome Address by the President of the Council of UPOV," had just taken place.

2.2 Dr. Bogsch said that the next item was: "Opening of the Conference by the Secretary-General of UPOV." He declared open the Diplomatic Conference.

Adoption of the Rules of Procedure

2.3 Item 3 provided for the "Adoption of the Rules of Procedure" which were set out in document DC/2. Dr. Bogsch explained that a further document, DC/13, containing proposals to amend Rule 14, would have to be considered. He then called the individual Rules in sequence.

* Note: In these minutes of the Plenary

- (i) "UPOV" means the International Union for the Protection of New Varieties of Plants;
- (ii) unless otherwise indicated, "President" means Mr. H. Skov (Denmark);
- (iii) "Convention" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, and the Additional Act of November 10, 1972;
- (iv) "Draft" means the draft revised text of the Convention, reproduced in document DC/3, and now appearing under the heading "New [Proposed] Text" on pages 11 to 76 of these Records;
- (v) unless otherwise indicated, the Article numbers used are those used in the Draft.

3. *Rules 1 to 4 were adopted as appearing in document DC/2, without discussion.*

4. Mr. W. GFELLER (Switzerland) questioned the reference to "Beobachterdelegation" in the German text of Rule 5, whereas the title referred to "Beobachterorganisationen."

5. Dr. A. BOGSCH (Secretary-General of UPOV) confirmed that the text should be aligned with the title of the Rule in question.

6. *Subject to the amendment referred to in paragraphs 4 and 5, Rule 5 was adopted as appearing in document DC/2.*

7. *Rules 6 to 13 were adopted as appearing in document DC/2, without discussion* (see also paragraphs 87.3 to 90 in respect of Rule 12(2)).

8. Dr. D. BÖRINGER (Federal Republic of Germany) introduced document DC/13 which contained his Delegation's proposal for the amendment of Rule 14(1) and (2). It was the view of his Delegation that the wording of that Rule, which established the membership of the Steering Committee, was rather too narrowly drawn, and that the wording should be slightly widened to allow the Chairmen of any working groups which were created to participate in the work of the Steering Committee at least while the respective working group remained active. His Delegation also considered that the Vice-Presidents of the Conference should be members of the Steering Committee *ex officio*.

9. *Subject to the replacement of paragraphs (1) and (2) by the proposal contained in document DC/13, Rule 14 was adopted as appearing in document DC/2.*

10. *Rules 15 to 47 were adopted as appearing in document DC/2, without discussion.*

11. Mr. R. ROYON (International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA)) asked, with reference to Rule 48, that representatives of the Observer Organizations be authorized to participate in meetings of working groups, in particular with regard to Article 5, Article 7 and Article 13 of the Convention. Highly technical questions were likely to come up in such meetings and if the Observer Organizations were able to comment immediately on such questions this would undoubtedly dispense with the need for lengthy interventions in the Plenary, the work of which might otherwise be delayed thereby.

12. Dr. C.-E. BÜCHTING (ASSINSEL) said that the International Association of Plant Breeders for the Protection of Plant Varieties wished to support the request made by the representative of CIOPORA.

13. Dr. A. BOGSCH (Secretary-General of UPOV) advised the Conference that to meet such a request would amount to a change in the Rules and that a proposal to that effect would have to be made by one of the Member or Observer Delegations.

14. Dr. D. BÖRINGER (Federal Republic of Germany) said that he had a certain understanding for the wish of the Observer Organizations to take an active part in the work of the Conference. He thought, however, that such participation could be assured by intensive discussion of most of the Articles in the Plenary. He favored the adoption of Rule 48 on the understanding that the matter of participation by the Observer Organizations should perhaps be rediscussed later in the proceedings.

15. *Subject to the understanding stated by the Delegation of the Federal Republic of Germany and mentioned in the preceding paragraph, Rule 48 was adopted as appearing in document DC/2.*

16. *Rules 49 and 50 were adopted as appearing in document DC/2, without discussion.*

Election of the President of the Conference

17. Dr. A. BOGSCH (Secretary-General of UPOV) said that the next item of the Provisional Agenda, item 4, was: "Election of the President of the Conference." He invited proposals in this respect.

18. Dr. D. BÖRINGER (Federal Republic of Germany) proposed that the Chairman of the Committee of Experts on the Interpretation and Revision of the Convention, who was also President of the Council of UPOV, be elected President of the Conference.

19. Mr. P. W. MURPHY (United Kingdom) said that he wished to support the proposal of the Delegation of the Federal Republic of Germany that Mr. Skov be elected President of the Conference.

20. Mr. B. LACLAVIDÈRE (France) said that he also wished to support the proposal of the Delegation of the Federal Republic of Germany. He stressed that Mr. Skov, having participated in the Paris Conference of 1961, was in the best position to guide the discussions of the Conference.

21. Mr. S. MEJEGÅRD (Sweden), Mr. J. F. VAN WYK (South Africa) and Mr. K. A. FIKKERT (Netherlands) each supported the proposal of the Federal Republic of Germany.

22. Dr. A. BOGSCH (Secretary-General of UPOV), noting that there were no other proposals and no objections, said that it was a great pleasure and honor to declare that Mr. Skov, Head of the Delegation of Denmark, had been unanimously elected President of the Conference. He congratulated Mr. Skov and invited him to take the Presidential Chair.

23.1 The PRESIDENT thanked the Conference for the confidence shown in him and undertook to do his utmost to ensure, with the help of all present, a successful outcome to the proceedings.

Adoption of the Agenda

23.2 The President said that the next item on the Provisional Agenda, item 5, was: "Adoption of the Agenda," namely document DC/1. He invited delegates to adopt the Agenda with the reservation that item 7: "Consideration of the First Report of the Credentials Committee" would have to be taken at some later stage in the proceedings.

24. *Subject to the reservation referred to in the preceding paragraph the Agenda was adopted as appearing in document DC/1.*

Election of the Vice-Presidents of the Conference

25.1 The PRESIDENT said that the first part of the next item of the Agenda, item 6(i), was: "Election of the Vice-Presidents of the Conference." He wished to propose that Dr. Böringer from the Delegation of the Federal Republic of Germany and Mr. Murphy from the Delegation of the United Kingdom be elected Vice-Presidents of the Conference.

25.2 The President, noting that there were no other proposals and no objections, congratulated Dr. Böringer and Mr. Murphy on their unanimous election as Vice-Presidents of the Conference.

Election of the Members of the Credentials Committee

26. The PRESIDENT then asked for proposals in respect of item 6(ii) of the Agenda: "Election of the Members of the Credentials Committee." He advised the Conference that Rule 11 provided that the Credentials Committee should con-

sist of five members elected from among the Member Delegations.

27. Mr. W. GFELLER (Switzerland) proposed Mr. Jeanrenaud from his Delegation.

28. Dr. D. BÖRINGER (Federal Republic of Germany) proposed Dr. Graeve from his Delegation.

29. Mr. P. W. MURPHY (United Kingdom) proposed Mr. Parry from his Delegation.

30. Mr. B. LACLAVIÈRE (France) proposed Mr. Avram from his Delegation.

31. Mr. J. F. VAN WYK (South Africa) proposed Mr. Marx from his Delegation.

32. The PRESIDENT, noting that there were no other proposals and no objections, congratulated Mr. Jeanrenaud, Dr. Graeve, Mr. Parry, Mr. Avram and Mr. Marx on their unanimous election as members of the Credentials Committee (see also paragraph 313).

Election of the Members of the Drafting Committee

33. The PRESIDENT then asked for proposals in respect of item 6(iii) of the Agenda: "Election of the Members of the Drafting Committee."

34. Dr. A. BOGSCH (Secretary-General of UPOV) reminded the Conference of the need for extreme care in selecting the five Member Delegations and two Observer Delegations required, in accordance with Rule 12(2), to serve in the Drafting Committee, to ensure a proper representation for each of the three Conference languages. He therefore proposed that the election be postponed to allow the necessary consideration to be given to proposals for membership.

35. *The proposal of the Secretary-General of UPOV that further consideration of item 6(iii) of the Agenda should be deferred, as mentioned in the preceding paragraph, was adopted. (Continued at 73.2)*

Consideration of the First Report of the Credentials Committee

36. *As provided in paragraph 24 above, consideration of item 7 of the Agenda was deferred. (Continued at 1016)*

General Statements

37. The PRESIDENT said that he wished, before embarking on item 8 of the Agenda, to invite any Delegations or Observer Organizations wishing to make a general statement to do so.

38.1 Dr. C.-E. BÜCHTING (ASSINSEL) said that ASSINSEL appreciated having been invited to the Conference in which those engaged practically in plant breeding had a great interest. ASSINSEL had commented in writing on the Draft Revised Convention contained in document DC/3 and he could therefore be brief. The comments submitted had been based on several years' experience. They were to be found in document DC/7. ASSINSEL had been very pleased to note the growth in interest in plant variety protection and the fact that the basis of the Conference was to increase the number of member States of UPOV. This was ASSINSEL's most important wish. It therefore considered that the Conference should principally concern itself with revising the Convention in such a way that the maximum number of States could adhere thereto, and especially those States which had so far seen difficulties in doing this because their national legislation was not in complete conformity with the Convention. ASSINSEL had noted with satisfaction that the Council of UPOV had largely been guided by such considerations in the Draft Revised Convention. Dr. Büchting said that he had in

mind, for example, the Council's interpretation of Article 7, reproduced in the explanatory notes on that Article in document DC/3, and the new transitional provisions proposed in Articles 34A and 36A. ASSINSEL sincerely hoped that such provisions would enable further States, such as the United States of America and Canada, to become member States of UPOV.

38.2 The speaker went on to say that on points of detail ASSINSEL had restricted itself to a few expressions of opinion which the Conference would find in the written comments. ASSINSEL considered that the regulation of certain details had to be left to national legislation. If the Convention was to achieve its international vocation it must provide at least some opportunity for regulating national peculiarities.

38.3 The speaker expressed his gratitude for the consideration shown by Dr. Böringer, during the adoption of Rule 48, for the request made by the Observer Organizations that they should be allowed to participate in specific working groups. ASSINSEL wished to underline that request in the belief that its practical experience should be brought to bear in such working groups.

38.4 Dr. Büchting concluded by expressing the wish that the outcome of the Conference would be a complete success and that a much larger number of States would be present at the next Diplomatic Conference.

39.1 Dr. E. FREIHERR VON PECHMANN (AIPPI) said that he wished to express the gratitude of his organization, the International Association for the Protection of Industrial Property, at having been invited to the Conference. The AIPPI, which had been in existence for almost one hundred years and which had more than five thousand members from all over the world, was particularly dedicated to the promotion and strengthening of the protection of inventive achievements beneficial to mankind. His organization had therefore welcomed the creation of a special title of protection to provide for the needs of plant breeders. No one could contest the fact that progress was best promoted by strong legal protection of inventive achievements. The personal initiative and risk capital necessary for making purely technical inventions or for breeding new varieties of plants would only be forthcoming if effective protection was available for the results of such work. Consequently AIPPI was committed to ensuring that protection was available for the end product of plant breeding programs. It was a grave injustice for the breeder if his right in a new variety could be circumvented by importing the end product from States where plant variety protection was unobtainable or non-existent. With regard to ornamental plants, such as roses and carnations, the situation had already become unbearable. In its Resolution, reproduced in document DC/7, AIPPI had drawn a parallel with process protection in the field of chemical and pharmaceutical patents where it had long been recognized that it was essential, if effective protection was to be afforded, to extend protection to the end product.

39.2 The speaker said that he also wished to draw attention to a second problem which was of concern to his organization. Members of AIPPI particularly involved with plant variety protection had noted that the question of variety denominations frequently caused problems in the practical application of that protection. For this reason AIPPI supported the aim of breeders' organizations that variety denominations should be regulated in the most simple and neutral way possible. It also advocated that it should be possible to add a fancy trademark to a variety denomination. Whereas the latter characterized the product as the "generic name" the former could serve to indicate the specific firm from which the product originated, thus assuming a warranty function for the quality of the product as occurred for other trade products. In the pharmaceutical field, for example, it had been recognized that it was necessary to allow, in addition to the chemical denomination for the active ingredient, for protection of the producer of the actual product by means of a trademark for that product.

39.3 Dr. von Pechmann concluded by wishing a successful outcome to the Conference. He hoped that the Conference would always bear in mind in its discussions, which he understood might not be *in camera*, that it wished to improve what was a framework for legislation created for the protection of plant breeders, having to be applied in everyday practice in the simplest manner possible whilst guaranteeing a fair balance between the interests of all parties concerned.

40.1 Dr. Z. SZILVÁSSY (Hungary) congratulated the President on his election. He was certain that the President's extraordinary knowledge, international experience and personal abilities would guarantee the successful conduct of the Conference. The Delegation of the Hungarian People's Republic was interested in that success. In his country increasingly valuable results had been achieved in the selection of plant varieties and in the breeding of animals. It had therefore been essential to introduce legislation to provide protection for the practical achievements of Hungarian breeders. Legislation providing patent protection for new varieties of plants and animal breeds had been enacted in his country about a decade ago. Official classification of new varieties of plants and animal breeds had been practised for some time and the regulations governing that work were currently being brought up to date. Experience gained at the international level regarding the examination of new varieties of plants and animal breeds was being taken into account and it was hoped that it would be possible, as international cooperation increased, for Hungary to accept the results of examinations performed by the competent authorities of other States and for other States to accept the results of examinations performed by the Hungarian authorities.

40.2 The speaker went on to say that the new regulations would also develop the material and moral recognition of the right of the breeder. It was felt that the application of national legislation would lead to participation by the Hungarian People's Republic in the international cooperation inherent in the Convention to be revised by the Diplomatic Conference. At various UPOV meetings the Hungarian Delegation had declared that the Hungarian Government was considering the possibility of accession but that some of the provisions of the Convention were seriously affecting its decision in the matter. The Hungarian Delegation had therefore proposed, during sessions both of the UPOV Council and of the Committee of Experts which had prepared the Diplomatic Conference, the introduction of amendments which would permit Hungary to accede without having to change its national legislation in a major way. The fact that the essence of the amendments proposed had been accepted by the Committee of Experts and had been included in the Draft to be discussed by the Conference had been noted with great pleasure. His Delegation particularly appreciated Article 34A which, if adopted, would allow its national legislation to provide, for the same genus or species, both of the forms of protection mentioned in the Convention. It had also greatly appreciated the possibility provided in Article 6(1)(b)(i) to introduce the so-called "period of grace" of one year. The adoption of those and other amendments sought by the Hungarian People's Republic would in all probability lead to a situation in which its Government would find no difficulty in acceding to the Convention.

40.3 The speaker concluded by expressing the sincere appreciation of the Hungarian Delegation to the main bodies of UPOV and to its Committee of Experts for having prepared, under the guidance of the President, such excellent material as a basis for the work of the Diplomatic Conference. His Delegation was delighted to be able to participate in an observer capacity and was convinced that the outcome would be successful. It hoped that it would be possible for it to express its opinion in more detail in the course of the work.

41.1 Mr. S. D. SCHLOSSER (United States of America) extended the warmest appreciation of the United States Delegation and of its Government to the member States of UPOV for their invitation to the Conference which was of

great importance. He also thanked the member States and the Secretariat for the courtesy and cooperation extended to his Delegation at past UPOV meetings.

41.2 The speaker said that his Delegation had given the most careful consideration to the provisions of the Convention. It could not imagine a more important objective than the promotion of plant breeding to which the Convention made a significant contribution. The fact that the Convention simultaneously protected the public interest was just as important. During the past few years the United States Delegation had offered suggestions for modifying the Convention in ways which it believed would enhance the attractiveness of the Convention to non-member States without detracting from its vitality. Many problems had been settled during the preparatory meetings. His Delegation would offer suggestions for the possible solution of the few complex and significant problems which nevertheless remained. It felt confident that these would be resolved given the spirit of cooperation which had prevailed in the past.

41.3 In conclusion Mr. Schlosser said that he was sure that the member States, the observer States and the international organizations assembled at the Conference shared as a common objective the creation of a worldwide Union.

42.1 Mr. R. KORDES (CIOPORA) expressed the appreciation of his organization at having been invited to the Conference. CIOPORA welcomed the aim of widening the membership of UPOV which, for the breeders, would increase the opportunities to obtain protection. Both Dr. Büchting, the President of ASSINSEL, and Dr. von Pechmann had referred extensively to the problems of the breeder and he had therefore noted with thanks the positive reaction of the President of the German Federal Varieties Office, Dr. Böringer, regarding the possibilities for collaboration.

42.2 The speaker concluded by stating that as far as the course of the Conference was concerned CIOPORA would just say at the outset that tolerance was necessary if progress was to be made with the aim in sight.

43.1 Dr. D. BÖRINGER (Federal Republic of Germany) declared in the name of the German Delegation that although the ten years which had passed since the entry into force of the International Convention for the Protection of New Varieties of Plants might seem a relatively short period by comparison with the other Conventions in the field of industrial property it should nevertheless be possible to draw up a balance sheet of what had so far been achieved. Already at this stage a decision would be taken which would be of lasting importance for the further development of the Union which, without doubt, had developed in a most remarkable way during the years since its establishment. The Secretaries-General, the Vice Secretaries-General and the other officers of the Secretariat had played an important part in this, showing the energy and the wealth of ideas which were needed in abundance, especially by a young, rapidly expanding organization. It was a very pleasant duty for him, as the representative of the Government of the Federal Republic of Germany, to thank them all for the work done.

43.2 The speaker said that in the past ten years UPOV had above all shown itself to have great practical capabilities. In harmonizing the different opinions of the member States it had been necessary to resolve several practical questions. The successful intensification of cooperation at the technical level would have been impossible without the foundation stone of the mutually agreed Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability. In that area, in particular, the Union and the Technical Working Parties set up by it had done pioneer work, the importance of which could not be overestimated and the influence of which stretched way beyond the present member States. Expressing every respect for that excellent work Dr. Böringer said that it seemed that the time had come for the Union to give greater attention to other problems. This had been evident, for example, in the discussions which had taken place regarding

Article 13 during the preparation of the Conference—discussions which would surely be continued by the Conference itself. Another example was the recent discussions concerning the relationship between plant variety protection and competition law. He saw as a further new task for the Union a public relations exercise to explain the benefits arising from plant variety protection. The degree to which technological development had been fostered by the protection of industrial property by means of patents was well-known, as were the many economic values flowing from such protection. Many countries, however, still hesitated to apply this practical experience to the field of plant variety protection. One of the main aims of the Union, if it was not to eventually stagnate, must be to counteract that attitude of hesitation. The revision of the Convention which was about to begin would have to take those points into account. New regulations would have to be prepared in such a way that in effecting the necessary harmonization of rights no unnecessary obstacles were erected for States wishing to join the Union.

43.3 Dr. Böringer expressed the hope of his Government that it would therefore be possible to arrive at the necessary compromises, including compromises between those States which wished the protection system to be extended and those whose special requirements might put into question what had so far been achieved. But it was not only the regulations to be decided by the Conference which were important for the further development of the Union. In the recent past the importance of having a clear definition of the responsibilities of the various bodies of the Union had shown itself. His Delegation hoped that the changes provided for would not influence the principles which had already proved their value. In the light of all those considerations the Government of the Federal Republic of Germany held the view that the Conference was particularly important. It was convinced that the spirit of confidence and openness which had characterized the preparatory work of the Committee of Experts on the Interpretation and Revision of the Convention would also determine in a decisive manner the course of the Conference. The Delegation of the Federal Republic of Germany would do its utmost to help to bring it to a successful conclusion.

44. Dr. D. BÖRINGER (European Economic Community) said that, as a representative of a country which was not only one of the founder members of the Union but which also currently presided over the Council of the European Communities, he wished to make a declaration on behalf of the European Economic Community which was participating in the Conference as an observer. The Community welcomed the work already accomplished within the framework of UPOV. It expressed its satisfaction at the holding of the Conference and supported its aims. It supported the preparation of a revised text of the Convention which, on the one hand, would contain some clarifications and which, on the other hand, would include changes which would ensure that the Convention functioned well and which would permit additional States to participate. Dr. Böringer assured the Conference that the member States of the Community which were represented and the representatives of the Community who were present would do their best to contribute to a successful conclusion to its work. They would continually bear in mind the rules binding the member States of the Community regarding the free movement of goods and the rules governing competition, and also the provisions regarding trade in seeds and planting material. The Community wished the Conference a fruitful course and success in its work.

45. Mr. H. AKABOYA (Japan) congratulated the President on his election. He said that he would like to report on the latest developments in the protection of new varieties of plants in Japan where the necessity for such protection had been recognized for some time. Japan had been represented as an observer at sessions of the Council of UPOV and of the Committee of Experts on the Interpretation and Revision of the Convention and had shown a deep interest in developments in other countries and in the progress of the revision of the Convention. At these meetings the Japanese Delegation had reported on its Government's preparations to establish a

system for the protection of new varieties of plants. A Government Bill—The Seeds and Seedlings Bill—had finally been adopted at the 84th plenary session of the Diet in June 1978. The Japanese Government was making preparations to bring the Seeds and Seedlings Law into force by the end of the year and he was therefore pleased to say that Japan was ready to participate in a positive manner as an observer in the discussions on the revision of the Convention. The speaker concluded by stating that it was his Delegation's sincere hope and conviction that the expert guidance of the President would help in bringing the Conference to a successful conclusion, whatever difficulties might be encountered.

46.1 Mr. V. DESPREZ (FIS) expressed the gratitude of the International Federation of the Seed Trade for having been invited to participate as an observer in the work of the Conference. Since it seemed that the Federation probably would not have an opportunity to participate in the committees or working groups established to treat specific matters, which were nevertheless basic to the future of its members, he asked the Conference to refer back to the Federation's written comments which were contained in document DC/7.

46.2 Mr. Desprez went on to say that the aim of the Conference was clearly to facilitate the admission of further member States. As a worldwide Federation with 50 member States the International Federation of the Seed Trade was certainly very much in favor of that aim but it wished just as strongly that the Conference should not weaken the Convention too much and above all that its nature should not be changed. He felt that he could subscribe to the views expressed on this question by Dr. Böringer on behalf of the Delegation of the Federal Republic of Germany. His Federation could not, however, fully subscribe to the views expressed by Dr. Böringer as a representative of the European Economic Community. He did not believe that the aim was to create a second Convention within the Convention which would really change the nature of the Convention. Although the aim of the Conference was clearly to facilitate the admission of future member States there were equally good grounds for taking the opportunity to correct those provisions which gave rise to difficulties in their application. The speaker said that he did not wish to expand on the various matters dealt with in the Federation's written comments which were available to the Conference.

46.3 The speaker said that the Conference might be surprised that the International Chamber of Commerce, represented at this gathering by the FIS, should be suggesting solutions which were frequently very close to those put forward by ASSINSEL or by other plant breeders' organizations. The seed trade had undergone a significant change several years earlier when it had recognized that contractual production was replacing the simple gathering of seed and that the ecotypes were generally being outyielded by varieties. The breeding of new varieties of plants was the source of 50 percent of the progress seen in agriculture in the last 50 years. For their part plant breeders had recognized that the international seed trade was indispensable as a channel for popularizing their new varieties with and distributing them to the final consumer. Varieties were becoming more and more sophisticated. New techniques such as androgenesis, meristem culture, cell fusion and cloning were being applied. The international and national trade had need of a strong technical structure which it had found in the technical services of the breeders. The trade fulfilled its responsibilities by multiplying stocks of varieties and by ensuring that the demands of consumers were met at reasonable prices which were guaranteed by the intense competition between varieties.

46.4 The speaker concluded by saying that in its written comments his Federation had drawn the attention of UPOV to some very specific matters. He hoped that the message of the FIS would be heard since it would be paradoxical to see UPOV whose task was at all events the protection of new varieties of plants, refuse to take account of certain proposals put forward by breeders and the trade, those proposals having been generously accepted by the consumers who had recognized the benefit for them.

47.1 Mr. R. TROOST (AIPH), speaking in the name of the International Association of Horticultural Producers and particularly of producers of ornamental plants, expressed appreciation at the large number of countries represented at the Conference. The high level of attendance proved that the preliminary studies devoted to the revision of the Convention had been favorably received, especially in those countries not so far cooperating under that Convention. He also saw the extension of the number of countries in which plant breeders' rights could be granted as an important development for the large group of horticultural producers in that it might stimulate breeders to create new and better propagating material for commercial production. It would also provide a broader financial basis for the activities of breeders and should thus contain the costs incurred by individual producers. Finally it was of the greatest interest for the breeders of new varieties themselves.

47.2 The speaker referred to his Association's letters commenting on the Draft, and reproduced in document DC/7 and in document DC/10. Both letters made reference to the protection of the final product, in particular of ornamental plants, and made it clear that horticultural producers were not against such protection in cases where the breeder would not otherwise be adequately compensated. At first his Association had considered it advisable that provision should now be made in the text of the Convention itself, in Article 5, subject to the inclusion of two guarantees: first that royalties should not be charged on both the propagating material and the final product; secondly that the breeder should not be allowed to impose on the producer a requirement to label each ornamental plant. Subsequently it had taken the view that the extension of the number of countries in which plant breeders' rights could be granted was of the utmost importance and that to amend Article 5, for instance by making protection of the final product mandatory for ornamental plants, might adversely influence the possibility of extending the number of participating countries. The two guarantees which he had mentioned previously would still be necessary where the final product was protected under national legislation. The thought that the revision of the Convention might maximise the opportunities to obtain protection had also inspired his Association's wish that Article 3 should refer only to the principle of national treatment, which, additionally, seemed more in keeping with other Conventions in the field of industrial or intellectual property.

47.3 Mr. Troost said that he would like to add a few words about variety denominations and trademarks. For his Association this was a question of two separate fields of law. For the sake of clarity it might be better to refrain from referring to or making rules for trademark rights in the Convention. Furthermore, as far as denominations were concerned the most restrained wording should be used in the Convention which should not impose any obligations on the breeders of new varieties in this respect even should the breeder wish to use the same indication as denomination and trademark.

47.4 Finally, the speaker endorsed earlier remarks concerning the Rules of Procedure on the basis of which participation in the Conference by the Observer Organizations would be rather limited. He hoped that the Conference would be a great success.

48. H. E. Mr. F. BENITO (Spain) congratulated the President on his election and on the qualities demonstrated by him as Chairman of the Committee of Experts which had proposed the Draft text for consideration by the Conference. Delegations from Spain had participated closely and with great interest in that preparatory work. As a result work in his country on legislation to prepare for the protection of new varieties of plants had been facilitated to such a degree that he wished to take advantage of that moment to announce to the Conference that Spain had begun the process of applying to accede to the Convention. In view of this it could be said that Spain had a very special interest in the work of the Conference in which his Delegation would participate to its best effect in order that there should be a successful outcome. His

Delegation favored a study in depth which would enable the Conference to adopt a new Convention, based on the Draft, with the qualifications and modifications necessary to allow further States to participate in the Union. Finally the speaker congratulated the Secretariat and the President personally on the preparatory work and said that his Delegation looked for a successful outcome to the Conference, leading to the final objective of a universal Union.

49.1 Mr. W. T. BRADNOCK (Canada) said that the Government of Canada very much appreciated the opportunity to participate in the Diplomatic Conference as an observer. The Conference happened to be taking place at a particularly important time from the Canadian point of view in that a Plant Breeders' Rights Bill had just been drafted for presentation to the Canadian Parliament in the session due to begin later that month. In drafting the Bill an attempt had been made to conform with the Convention. Although some difficulties had been posed by the existing Convention it was believed that these would be overcome by the revisions which it was hoped the Conference would make.

49.2 Mr. Bradnock went on to say that it was the intention that Canada would apply for membership of the Union once the Canadian Law was in force. He also wished to note Canada's great appreciation of the work done by the pioneers who established the Convention and set up the Union, developing along the way a wealth of expertise and knowledge which his country had been able to draw on and benefit from. Canada looked forward to becoming a member of the Union and to making its contribution.

50.1 Mr. J. FRISCH (Luxembourg) wished first to thank UPOV for its invitation to the Diplomatic Conference which had been accepted with pleasure. The Grand Duchy of Luxembourg had not yet signed the Convention but its government circles were fully aware of the necessity of UPOV for the country and they were convinced that sooner or later a solution would have to be found enabling Luxembourg to become a member of UPOV. A small country like his, however, came up against numerous problems and there were two which were currently causing some preoccupation. First, there was the administrative and technical problem. The administrative and technical work involved in protecting new varieties of plants was too important to just be entrusted to an existing section of the Ministry. A special section would therefore be needed. Secondly, there were the financial burdens comprising on the one hand participation in the common expenses of UPOV and, on the other hand, the costs incurred in examining new varieties the subject of applications for protection. The major countries in UPOV could recover that expenditure by way of fees payable by breeders applying for protection of their varieties. For a small country like the Grand Duchy of Luxembourg such fees would be out of all proportion to the income which a breeder might count on receiving from his variety. As a result the probability of his country's being able to recover costs by way of fees was slight.

50.2 The speaker said that the Grand Duchy of Luxembourg would have to solve its difficulties either by way of a bilateral agreement concluded with a member State of UPOV to the effect that varieties protected in that member State were automatically protected in the Grand Duchy of Luxembourg, or by way of a plant breeders' right established at the level of the European Economic Community, in which case the ideal solution would be that varieties protected in one member State of the Community should be automatically protected in its nine member States. These were the only solutions available to his country and it was on this basis that those responsible in the Grand Duchy of Luxembourg in the matter of the protection of new varieties of plants hoped to find an answer to the question of Luxembourg's accession to UPOV. Mr. Frisch thanked UPOV for the efforts made on behalf of small countries, especially the proposal under Article 26 to reduce the contribution towards the common expenses and also the encouragement, under Articles 29 and 30, of international cooperation in the examination of new

varieties. He concluded by wishing complete success to the Conference.

51. Mr. F. SCHNEIDER (International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences) said that the aims of the Commission he represented were the composing and editing of rules for the nomenclature of cultivated plants. Those rules were laid down in the International Code for Nomenclature of Cultivated Plants, issued for the first time in 1953 and most recently revised in 1969. Botanical nomenclature and nomenclature of cultivated plants had been subjects of international discussion since the days of Linnaeus and Miller which meant since the second half of the 18th century. One might therefore say that he was representing a group of botanists with 200 years' experience concerning plant names. He very much appreciated being invited to attend the Conference and having an opportunity to put forward in UPOV circles his Commission's ideas and opinions on the nomenclature of cultivated plants. His Commission naturally had a special interest in all matters connected with Article 13 and he hoped to participate in the discussions on that Article. He was certain that the decisions of the Conference would have an important influence on the International Code for Nomenclature of Cultivated Plants. Although he was less certain he hoped that the reverse would also be so.

52. Dr. R. M. MOORE (Australia) thanked the Union for having invited him to attend the Conference. The Australian Government was preparing plant variety protection legislation and had established a working group to draft regulations. A scheme had been prepared, based on internationally accepted criteria for novelty, uniformity and stability, to provide for the protection of plant varieties developed by sexual or asexual methods as a result of controlled breeding programs or of induced mutations. The scheme would enable a person who had developed a new variety to apply for the grant of a right confirming his sole ownership of that variety. Such rights would allow the holder to levy and collect royalties from persons selling or using new varieties registered under the scheme. At a meeting in August, 1978, the Australian Agricultural Council had agreed that the Minister for Primary Industry in the Australian Government should take early action to introduce suitable Commonwealth legislation. It was anticipated that such legislation would be prepared for submission to Parliament in spring 1979, that being autumn 1979 in Australia.

53. Dr. A. BEN SAAD (Libyan Arab Jamahiriya) expressed the gratitude of the Delegation of the Socialist People's Libyan Arab Jamahiriya at having been invited by UPOV to attend the Diplomatic Conference in which it had a great interest. It hoped that there would be a successful outcome to the Conference. His country supported international meetings and Unions and hoped to see UPOV fulfilling its commitments and its constructive role for the benefit of the international community. It regretted, however, the fact that the Republic of South Africa, which practised racial discrimination, was a member of the Union, and moreover that the Republic of South Africa had been elected to serve in the Credentials Committee. This would seriously affect the desire of many countries, including the Socialist People's Libyan Arab Jamahiriya, which would like to join the Union but which could not do so under those circumstances. The speaker concluded by saying that his Country would maintain its firm stand against racial discrimination. Although the Conference was technical in nature it was nevertheless a Diplomatic Conference and it should observe all Resolutions voted by the United Nations Organization and by the World Community.

Second Meeting
Monday, October 9, 1978,
afternoon

Article 13: Denomination of Varieties of Plants

54. The PRESIDENT suggested that discussion of Articles 1 and 2 should be deferred pending the distribution of two proposals which were in the course of being reproduced. Since many questions had been raised concerning Article 13, entitled Denomination of Varieties of Plants, he invited Observer Delegations and Organizations to express their general views on that Article.

55. Dr. C.-E. BÜCHTING (ASSINSEL) said that the plant breeders who were grouped in ASSINSEL were most anxious to put forward their observations on Article 13. In their view that Article was not fundamental to plant variety protection legislation. It had been more debated and had been a greater hindrance to the actual management of plant variety protection than any other provision in the Convention. Long and difficult discussions had taken place on several occasions but so far it had not been possible to find a satisfactory solution. The Guidelines for Variety Denominations, as adopted by the Council of UPOV on October 12, 1973, had aggravated rather than improved the situation. In brief, ASSINSEL believed that it would be sufficient to provide that the breeder had to submit a denomination for his variety, which denomination must not mislead or cause confusion, that the same denomination should be submitted in the different member States and that there should be coordination between the member States in this matter. Dr. Büchting said that ASSINSEL believed that its proposal agreed, in essence, with a proposal made by the Secretary-General of UPOV during the preparations for the Diplomatic Conference, whereby a clear separation was made between variety denominations and trademarks. ASSINSEL was advised that plant variety protection law and trademark law were two distinct fields and it wished particularly to support the elimination from Article 13 of all references to trademarks. In case the Conference could not, however, agree to adopt that approach he wished to comment briefly on the alternative proposal for Article 13, submitted by the Administrative and Legal Committee of UPOV and reproduced in document DC/4. ASSINSEL welcomed the recognition given in paragraph (4)(a) of that proposal to its long-standing wish that breeders should not be required to renounce their rights to relevant trademarks when submitting variety denominations but only to refrain from asserting such trademark rights. In that paragraph three alternatives had been suggested regarding territorial effect. ASSINSEL would favor alternative 2, namely limiting the effect to the State in which the breeder had submitted the variety denomination.

56. Mr. R. ROYON (CIOPORA) said that CIOPORA could subscribe in a general way to the views just expressed by Dr. Büchting. Mr. Royon wondered whether there would be a further opportunity to discuss Article 13 and the other Articles in the Draft in greater detail rather than by way of general statements. It had been precisely for that reason that he had asked earlier that the Observer Organizations be permitted to take part in the working groups and Committees which would be established to discuss certain points in the Draft.

57. Dr. H. H. LEENDERS (FIS) declared that FIS also agreed with the statement made by Dr. Büchting and supported Mr. Royon's desire for more detailed discussion. Should the Conference not be able to follow the point of view expressed by those representatives with regard to the alternative proposal for Article 13 reproduced in document DC/4 then his Federation would wish it to be noted that the Convention should not be restrictive in matters in which it was not applicable.

58. Mr. R. TROOST (AIPH) said that his Association believed it would be wise to delete from Article 13 all references to trademarks. In principle it was against any reference to trademarks in the Convention because the protection and regulation of breeders' rights was an entirely different field of law from trademark law. It proposed that paragraphs (4) and (8)(b) should be deleted from the alternative proposal for Article 13 reproduced in document DC/4.

59. Mr. S. D. SCHLOSSER (United States of America) said that he would make only rather general comments at that stage. After much deliberation his Delegation had concluded that Article 13 was not really needed for the protection of breeders and felt, furthermore, that the protection of the public could be left to other laws and provisions such as unfair competition laws, marketing laws and various aspects of consumer protection legislation in individual countries. Should the Conference not be prepared to delete Article 13, then his Delegation thought it would be improved if references to trademarks were eliminated, as had been done in a proposal made by the Secretary-General of UPOV during the preparations for the Conference. Finally his Delegation had prepared a proposal which had yet to be reproduced and distributed. It would revert to this proposal when the Conference came to discuss Article 13 in detail.

60. Dr. E. FREIHERR VON PECHMANN (AIPPI) said that his Association supported the view that references to trademarks should be eliminated and would welcome the deletion of paragraphs (4) and (8)(b) from the proposal for Article 13 reproduced in document DC/4. Should the Conference not be able to adopt this solution then his Association would support alternative 2 in paragraph (4)(a) of that document.

61. Dr. R. E. L. GRAEBER (European Economic Community) said that Article 13 had a bearing on the law of the European Economic Community. He had thought that this Article in particular would be discussed in a working group and that, as previously mentioned, the Community might be represented in that group by consultants or experts. He would therefore reserve his comments for presentation at that stage.

62. Mr. W. A. J. LENHARDT (Canada) referred to earlier statements regarding the absence of any particular connection between plant breeders' rights and trademarks. The connection was simply that in both cases a State offered certain rights in order to encourage certain benefits. At some stage it would be necessary to discuss whether breeders should have access to only one or to both of those rights. Mr. Lenhardt said that he wished to comment on one other point. He had noticed in the documentation for the Conference some references specifically to trademark law and others, particularly in document DC/4, to rights which could hamper the free use of the variety denomination. He thought discussion might better hinge on the wording used in document DC/4 since any reference to trademark law, in view of the complexity of that subject, might just lead to a morass of confusion.

63. The PRESIDENT said that, having heard a number of general remarks on Article 13, he would suggest to the Conference that a working group on variety denominations should be established to consider that Article and the related Articles 36 and 36A.

64. Mr. S. D. SCHLOSSER (United States of America) said that he presumed that such a group's terms of reference would extend to considering the deletion of the Article. He wondered if the membership of such a group would correspond exactly to the membership of the Plenary in that everyone had a pressing interest in the matter of variety denominations.

65. The PRESIDENT felt that it would be open to the working group to discuss all possibilities. He reminded the Conference that it would be for the group to decide, however, and not for him as President. Regarding the membership of the group he believed that the problem which it had to tackle could best be

dealt with by a number of experts. The President invited delegates from member States to comment on his suggestion that a working group on variety denominations should be established.

66. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation favored the establishment of a working group. He asked if the President intended to close the debate on that subject for the time being and to reopen the debate in the Plenary only after the group had presented the results of its work.

67. The PRESIDENT said in reply that it was for the Conference to decide on procedure. In reaching a decision the Conference would also have to discuss Dr. Böringer's earlier remarks about cooperation with the Observer Organizations. He just wished to know whether the Conference wanted to establish the working group which he understood the Delegation of the Federal Republic of Germany to favor.

68. Mr. P. W. MURPHY (United Kingdom) supported the proposal to establish a working group to discuss Article 13 and related matters concerning variety denominations.

69. Mr. B. LACLAVIÈRE (France) also supported the proposal. He would like the representative of the International Commission for the Nomenclature of Cultivated Plants to be a member of that group since he believed that sight of the very purpose of the variety denomination was occasionally somewhat lost. That purpose was rather special, being a matter of agricultural nomenclature rather than of industrial property as was sometimes imagined.

70. Mr. R. KÄMPF (Switzerland) said that his Delegation believed that the difficult problem of the relation between variety denominations and trademarks was more likely to be resolved in a working group than in the Conference meeting in Plenary. It felt, however, that the questions posed by the Delegations of the United States of America and of the Federal Republic of Germany regarding the tasks and composition of such a working group were really justified. He would prefer those questions to be answered before finally declaring his Delegation's view on the establishment of the working group.

71. The PRESIDENT proposed that the meeting be adjourned for a quarter of an hour and that the Heads of Delegations of member States meet in the adjoining room to consider the composition of the working group.

72. *The proposal of the President that the meeting be adjourned, as mentioned in the preceding paragraph, was adopted.*

[Adjournment]

73.1 The PRESIDENT said that the Heads of Delegations of member States had concluded that the Rules of Procedure prevented Observer Organizations from participating in the Working Group on Article 13. They would, however, welcome a discussion before the group started its work. He expected that discussion would take place the next morning. The working group would then be asked to make proposals on the basis of that discussion, which proposals would then be discussed in the Plenary. The working group would comprise representatives from Member Delegations plus volunteers from among the Observer Delegations and it would sit in parallel with the Plenary. (Continued at 80)

Election of the Members of the Drafting Committee (Continued from 35)

73.2 The President said that the composition of the Drafting Committee had also been discussed during the adjournment. The Rules of Procedure provided for seven members, five being from member States and two from non-member States. In view of the three official languages of the Union it was

proposed that France, the Federal Republic of Germany and the United Kingdom each be asked to provide a member, and that the Netherlands and Sweden also each be asked to provide a member, thus making five members from the member States.

74. *There being no other proposals and no objections, the proposal that France, the Federal Republic of Germany, the Netherlands, Sweden and the United Kingdom each be asked to provide a member of the Drafting Committee, as mentioned in the preceding paragraph, was adopted.*

75. The PRESIDENT said that it was further proposed that Hungary and the United States of America be invited as non-member States to provide the remaining two members of the Drafting Committee.

76. Mr. M. LAM (Senegal) proposed that a member from an African State be added to the Drafting Committee.

77. The PRESIDENT drew attention to the fact that Rule 12(2) of the Rules of Procedure provided for only two members from non-member States. It would therefore be necessary to choose from the three States proposed, namely from Hungary, the United States of America and one African State.

78. Dr. A. BOGSCH (Secretary-General of UPOV) suggested that the meeting should adjourn for half an hour to allow the Heads of Delegations of member States and of Hungary, Senegal and the United States of America to meet in the adjoining room to consider the composition of the Drafting Committee, and to allow the Credentials Committee, the Drafting Committee and the Working Group on Article 13 to each elect its officers.

79. *The suggestion of the Secretary-General of UPOV that the meeting be adjourned, as mentioned in the preceding paragraph, was adopted.* (Continued at 87.3)

[Adjournment]

Article 13: Denomination of Varieties of Plants (Continued from 73.1)

80. The PRESIDENT said that before announcing the decisions reached during the adjournment he would like to repeat his earlier statement about the Working Group on Article 13. In accordance with the Rules of Procedure it would comprise representatives of Member and Observer Delegations only. Further discussion with the Observer Organizations would take place in the Plenary the next day. The working group would then be asked to make proposals on the basis of that discussion, which proposals would then be carefully discussed in the Plenary. He understood that the Rules of Procedure permitted the working group to seek the help of experts if this was considered necessary.

81. Mr. R. ROYON (CIOPORA) asked whether it would be possible to determine the times at which the question of variety denominations would be discussed in the Plenary. Since it seemed that the Observer Organizations were prevented from participating in the Working Group on Article 13 they could only make their observations in the Plenary. Unless times were fixed it would be difficult for them to ensure the presence of expert representatives and he sought the understanding of the Conference in this matter.

82. The PRESIDENT confirmed that there would be a discussion the next day before the working group met. It was possible that the proposals of the working group would be available for further discussion on Monday, October 16, but to ensure that there was sufficient time for them to be processed, reproduced and studied he proposed that the second discussion should be scheduled for Tuesday, October 17.

83. Dr. D. BÖRINGER (Federal Republic of Germany) said that the President had expressly mentioned that the Rules of

Procedure provided that working groups could call on experts to assist them. If the Working Group on Article 13 saw the need to hear experts it would be a pity if some or all of the expert representatives of the Observer Organizations were not present.

84. Mr. R. ROYON (CIOPORA) said that if the Observer Organizations could be heard in the working group as experts then that was quite another matter.

85. The PRESIDENT said that he felt that the timetable he had just set out should be maintained and that representatives of the Observer Organizations should be asked to reconsider any plans which they might have to leave Geneva.

86. Dr. D. BÖRINGER (Federal Republic of Germany) wished to confirm that what had been said regarding experts from the Observer Organizations would naturally apply equally to representatives of the European Economic Community. (Continued at 117)

87.1 The PRESIDENT agreed. He said that he would now like to inform the Conference about other developments which had taken place during the recent adjournment.

87.2 The Credentials Committee had held its first meeting and had elected a Chairman from the Federal Republic of Germany and two Vice-Chairmen, one from France and one from the United Kingdom.

Election of the Members of the Drafting Committee (Continued from 79)

87.3. The Heads of Delegations of member States had considered the composition of the Drafting Committee and had decided unanimously to propose a small drafting change in Rule 12(2) of the Rules of Procedure to increase the number of members to eight, five being Member Delegations and three, instead of two, being Observer Delegations. Believing the change to be small and easily understood the President considered it could go forward without being presented in writing.

88. Mr. A. SUNESSEN (Denmark) proposed that in the first line of Rule 12(2) the word "seven" should be changed to "eight" and that in the second line the word "two" should be changed to "three."

89. Mr. B. LACLAVIÈRE (France) supported the amendment proposed by the Delegation of Denmark.

90. *The amendment to Rule 12(2) of the Rules of Procedure, as mentioned in paragraph 88 above, was adopted.*

91. The PRESIDENT went on to inform the Conference that the Drafting Committee had held its first meeting and had elected Mr. B. Laclavière (France) as Chairman and two Vice-Chairmen, one from the Federal Republic of Germany and one from the United Kingdom. He now wished to invite proposals for the three Observer Delegation members of the Drafting Committee.

92. Mr. P. W. MURPHY (United Kingdom) proposed that Hungary, Senegal and the United States of America be elected members of the Drafting Committee.

93. Dr. D. BÖRINGER (Federal Republic of Germany) supported the proposal made by the Delegation of the United Kingdom.

94. *There being no other proposals and no objections, the proposal that Hungary, Senegal and the United States of America be elected members of the Drafting Committee, as mentioned in paragraph 92 above, was adopted.*

95. The PRESIDENT also informed the Conference that the Working Group on Article 13 had held its first meeting, had

elected Mr. W. Gfeller (Switzerland) as Chairman and had invited the Delegations of Italy and of the Netherlands to each nominate one of the two Vice-Chairmen required (see also paragraph 313).

Article 1: Purpose of the Convention; Constitution of a Union; Seat of the Union

96. The PRESIDENT opened the discussion on Article 1 and invited the Delegation of the Netherlands to introduce its proposed amendments which had been reproduced in document DC/14.

97. Mr. K. A. FIKKERT (Netherlands) said that his Delegation's proposal, which was based on the Draft as reproduced in document DC/3, was designed to put the various paragraphs of Article 1 into an order which was more in line with that generally found in international treaties. He wished to make two small corrections to the proposal. In Article 1A(c) the reference to "Article 11" should be changed to "Article 6" and in Article 1A(f) the reference to "Article 24" should be changed to "Article 30."

98. Dr. A. BOGSCH (Secretary-General of UPOV) enquired whether the proposal submitted by the Delegation of the Netherlands contained any substantive changes. At first sight it appeared to him to be a drafting proposal which presented ideas already included in various Articles of the Convention, albeit in a more logical form.

99. Mr. K. A. FIKKERT (Netherlands) confirmed that his Delegation's proposal was a drafting proposal.

100. The PRESIDENT said that although there appeared to be no substantive changes he thought it would be helpful for delegates to have an opportunity to study the document.

101. *It was decided to defer discussion on Article 1 to allow delegates an opportunity to study document DC/14. (Continued at 178)*

Article 2: Forms of Protection; Varieties

102. The PRESIDENT opened the discussion on Article 2(2), which defined the word "variety," and invited the Delegation of the United Kingdom to introduce its proposed amendments which had been reproduced in the first part of document DC/15.

103. Mr. A. F. KELLY (United Kingdom) said that his Delegation had proposed two changes in the wording of Article 2(2). First of all, the Draft referred to "any assemblage of plants which is capable of cultivation." That did not quite correspond to the wording of the International Code of Nomenclature which stated that the word "variety" was applicable to "an assemblage of cultivated plants." The two expressions were thought to mean the same thing and it was therefore suggested that the recognized wording of the International Code be used. Secondly, the Draft stated that for the purposes of the Convention the word "variety" was applicable to "any assemblage of plants... which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 6." Turning to Article 6 one found that there was a further condition attaching to varieties, namely that of distinctness. It seemed illogical not to mention that in the definition of the word "variety" and it was therefore suggested that a reference to subparagraph (a) of paragraph (1) of Article 6 be included.

104. Mr. R. DUYVENDAK (Netherlands) said that he would like to begin by considering the second of the two changes proposed by the Delegation of the United Kingdom. The Delegation of the Netherlands was in favour of the inclusion of a reference to subparagraph (a) of paragraph (1) of Article 6.

105. The PRESIDENT asked whether delegates were ready to discuss that question or whether they required more time to consider document DC/15.

106. Mr. B. LACLAVIÈRE (France) said that he would have wished for time to think about at least the first part of that proposal since his Delegation had so far been unable to find an equivalent in French for the word "assemblage."

107. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation would also ask for time to consider the proposal. First, it wished to consider whether it was really correct to add a reference to Article 6(1)(a) at this point. It was not quite sure whether the inclusion of a reference to distinctness was essential or just desirable. Secondly, his Delegation wished to consider the proposal to replace the words "any assemblage of plants which is capable of cultivation" by the words "an assemblage of cultivated plants." For the moment it would like to propose that the wording of the Draft be retained. One must bear in mind the abstract meaning of "variety." A variety for which protection was granted was, for example, represented by its seed and by the seed sample deposited and there was no condition in the present text of the Convention which obliged a breeder to actually cultivate a variety.

108. Mr. F. SCHNEIDER (International Commission for the Nomenclature of Cultivated Plants) said that he had taken part in 1969 in the formulation of the International Code of Nomenclature. He wished to say that the scope of the word "cultivate" was considered to be much wider than that of the German word "anbauen" which meant "to grow." "Cultivation" included, for instance, propagation or special treatments of breeders.

109. Mr. W. A. J. LENHARDT (Canada) said that his Delegation would also like a little more time to think about the proposal of the United Kingdom.

110. Dr. H. MAST (Secretary General of the Conference), at the invitation of the President, gave an interpretation of the effect of adopting the proposal of the United Kingdom to include a reference to Article 6(1)(a) in the definition of "variety" given in Article 2(2). The effect would be that a variety which was distinguishable only by one or more unimportant characteristics would not be considered a variety. Such a variety was already excluded from protection in that Article 6(1)(a) provided that for a variety to benefit from protection it "must be clearly distinguishable by one or more important characteristics from any other variety..." A reference to that rule in Article 2(2) would mean that such a variety would also be excluded from recognition as a variety in the sense of "any other variety" mentioned in Article 6(1)(a). For the purposes of the Convention such a variety would not be "any other variety"; it would not be a variety at all. Dr. Mast thought that it was for that reason that the drafters of the Convention had not referred to Article 6(1)(a) in Article 2(2).

111. Dr. R. M. MOORE (Australia) said that the various definitions of "variety" which had been put forward appeared to encompass hybrids. According to those definitions a variety had to satisfy the conditions of Article 6(1)(c) and (d). It had to be homogeneous and stable. Hybrids were not stable in reproduction and he therefore questioned their inclusion.

112. The PRESIDENT referred to the wording of Article 6(1)(d) which said that "a variety... must remain true to its description..., where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle." In view of this wording he believed hybrids were included under the definition of "variety."

113. Mr. M. TOURKMANI (Morocco) said that the stability of the variety could not be confirmed in the final product, for example in the hybrid maize. Generally one was forced to go back to the parents if one wished to confirm stability in such a case. In his view the final product could not be said to be

stable because segregation occurred when it was multiplied. Therefore the definition of "variety" could not apply to such hybrids.

114. Dr. D. BÖRINGER (Federal Republic of Germany) said that the philosophy of the Convention was that a variety which could be cultivated and which, *inter alia*, satisfied the provisions of Article 6(1)(c) and (d) could benefit from protection. Hybrid varieties of maize, sorghum or other species could fulfil those requirements provided they were duly produced each year. The Delegation of Morocco was correct in saying that the best way to test hybrid varieties was to test their hereditary components. He believed, however, that this was a technical question which need not influence the text. With respect to hybrid varieties his Delegation could adhere to the present text which was not affected with regard to hybrids as such by the proposals in the Draft or in document DC/15.

115. The PRESIDENT said that it would be necessary to revert to Article 2(2) since several delegations had expressed a wish to give further consideration to it.

116. *It was decided to defer discussion on Article 2(2) until the discussion on Article 13, referred to in paragraph 82 above, had been completed.* (Continued at 197)

Third Meeting
Tuesday, October 10, 1978,
morning

Article 13: Denomination of Varieties of Plants (Continued from 86)

117. The PRESIDENT opened the discussion on Article 13.

118. Dr. C.-E. BÜCHTING (ASSINSEL) said that he had already mentioned in his general remarks on Article 13 that plant breeders were very unhappy with the Guidelines for Variety Denominations which imposed quite unnecessary restrictions and which would hinder cooperation among the member States of the Union, since they were not fully applied in the Federal Republic of Germany, while in other countries they had become partially or fully effective. He proposed that the Guidelines for Variety Denominations should be dispensed with and that a limited set of basic principles should be agreed within the text of the Convention.

119. Dr. E. FREIHERR VON PECHMANN (AIPPI) said that he wished only to complete what Dr. Büchting had said by noting that the German Federal Patent Court had declared that Article 3 of the Guidelines for Variety Denominations, according to which the denomination had to consist of one to three words with or without a pre-existing meaning, had no effect for the Federal Republic of Germany since that requirement was not in accordance with the Convention. He therefore wished to support the proposal of ASSINSEL that the Guidelines for Variety Denominations should be abolished.

120. Dr. D. BÖRINGER (Federal Republic of Germany) wondered whether it was right to discuss the Guidelines for Variety Denominations in the Conference. He wished, however, to clarify the remarks made by the two previous speakers. First, the Guidelines were still applied by the Federal Varieties Office in its daily work as a recommendation. Secondly, the reason for not applying Article 3 of those Guidelines was that the Federal Parliament, when last amending the Law on the Protection of Plant Varieties, had considered that Article 13 of the Convention did not exclude the use of a combination of letters and figures or of a combination of words and figures as a variety denomination. Thirdly, the decision

of the Federal Patent Court had not been to favor such combinations. Between the dates of the relevant decision of the Federal Varieties Office and of the Federal Patent Court, however, national law had been changed to permit such combinations.

121.1 Mr. R. ROYON (CIOPORA) said that the various opinions expressed on Article 13 appeared to be based mainly on two different concepts of the purpose of the variety denomination.

121.2 The trade organizations did not believe that the denomination existed for the use of the general public. Indeed, Article 13(7) related only to the sale of "reproductive or vegetative propagating material" of a variety. It therefore appeared to refer only to relations between professionals or members of the trade. Consequently it was the view of CIOPORA that the function of the denomination should be limited to identifying the nature of the variety and to distinguishing it from other varieties of the same species. It should function as a kind of patronymic of the variety.

121.3 Conversely, CIOPORA believed that it was the function of the trademark to present the variety to the general public. It was well known that the advertising function and the indication of quality fulfilled by the trademark with regard to a given product were tending to supplant its traditional function as a guarantee of origin. For instance the members of the public were interested neither in the scientific denomination of a medicine nor in the laboratory which manufactured it, but solely in the trademark which served as a commercial reference for evaluating its qualities. The same was true for the person who purchased a rose variety under a well-known trademark. Mr. Royon said that he did not understand why ornamental plant varieties had to be subjected to different treatment than other products. One seemed to be confronted with two radically different doctrines as to the respective roles of the denomination and the trademark.

121.4 According to the first doctrine a plant variety should be identified by one generic denomination only, preferably having a commercial value and rendering practically useless the concurrent use of any registered trademark other than a firm's brand name. Mr. Royon thought that this was the reason why Article 13(1) required that each variety be given a denomination, whereas it would have been equally possible to reference each plant patent or special title of protection by a simple number. He also thought that certain national legislation and international regulations had been introduced for the same reason. He wished only to refer to Section 5A of the United Kingdom Plant Varieties and Seeds Act, to the Danish Order on the Naming of New Plant Varieties of August 5, 1970 and, of course, to the Guidelines for Variety Denominations already referred to by Dr. Büchting and Dr. von Pechmann.

121.5 According to the second and contrary doctrine, which was supported by the members of the trade, whether breeders or users, the obligation to give a denomination to each variety should not lead to the imposition of unreasonable and unjustified restrictions as to the manner in which denominations had to be formed or as to the concurrent use of trademarks. Breeders of ornamental plants and of fruit trees had both been using a system of code denominations for twenty years. Allowances should be made for that recognized system in which each denomination was a code designation, formed according to precise rules and enabling the breeder and the country of origin to be indicated, thereby constituting an additional means of identification of the variety. Such denominations avoided costly research and the danger of overlapping inherent in fancy appellations, and, in the opinion of CIOPORA, totally met the requirements of Article 13 as presently drafted. The system was such that the code denomination was the unique, compulsory and final patronymic of the variety even if the variety had a very short commercial life. Such denominations did not give rise to problems of pronunciation or translation, could be used anywhere in the world—in Europe, in an Arabic-speaking country or in

China—and were suitable for processing by computers. Also, since they played no fundamental role in marketing there was no risk of their encroaching on the field of trademarks. In many instances breeders conducted commercial trials before deciding whether to market a variety. By using a code denomination they could avoid the risk of wasting the publicity potential of a fancy appellation. Where commercial trials were successful they could always add a fancy trademark to the code denomination when marketing the variety to the general public.

121.6 Mr. Royon felt it was important to consider those two doctrines. He did not wish to say which was the right one but thought one should always consider what was happening in other fields of industry and commerce. The commercial possibilities of breeders should not be unreasonably limited. In summary CIOPORA thought that denominations and trademarks had different purposes. They could coexist without clashing provided the authorities responsible for implementing the provisions of the Convention refrained from giving the denomination a role which encroached on the role of and limited the use of the trademark. A policy of such encroachment and limitation would indeed be discriminatory and contrary to the law.

122.1 The PRESIDENT noted that Article 13(7), which had been quoted in part by Mr. Royon, referred to sales of reproductive or vegetative propagating material by "any person." In his view "any person" included persons selling to the general public and was not limited to persons selling only to professionals or members of the trade.

122.2 The President invited the Delegation of the United States of America to introduce its proposal for a complete redrafting of Article 13, which had been reproduced in document DC/12.

123.1 Mr. S. D. SCHLOSSER (United States of America) said that before introducing his Delegation's proposal he wished to be sure that the Conference would not overlook what he had said earlier about the possibility of discussing whether Article 13 was even needed in a Convention for the protection of varieties of plants.

123.2 Mr. Schlosser said that the proposal reproduced in document DC/12 incorporated a number of provisions from a proposal made by the Secretary-General of UPOV during the preparations for the Conference and a number from document DC/4.

123.3 Paragraph (1), which appeared not to be in any way controversial, was taken from document DC/4.

123.4 The first thing which would strike everyone regarding paragraph (2) was the absence of any reference to the frequently discussed prohibition of denominations consisting solely of numbers. His Delegation had a number of reasons for omitting that prohibition. He would return to them in detail when that matter was discussed. The final sentence of the equivalent paragraph in document DC/4 ended with the words "of the same botanical species or of a closely related species." His Delegation was not quite sure what was meant and thought there might be some ambiguity. It believed the purpose of the entire Article was to identify variety denominations both to consumers and to the trade, and it had therefore redrafted that final sentence. It looked forward to discussion to determine the best wording.

123.5 Paragraph (3) described the role of an examining office in registering or rejecting a proposed variety denomination. In the United States of America those matters would involve two offices—the Patent and Trademark Office and the Plant Variety Protection Office. For the former it would be necessary to establish a new procedure since it had never concerned itself with the registration of variety denominations. Mr. Schlosser said that the Patent and Trademark Office would be willing to undertake that obligation to the extent permitted by its resources. The work would be done by

members of the patent examining staff who certainly would not lay claim to any great expertise. They might acquire expertise but it would be based on whatever documentation could be reasonably obtained. In other words decisions would not be perfect in every case but would be the best which could be achieved. Decisions regarding the possibility of confusion about the identity of the breeders would raise matters of a trademark nature. He wished to emphasize that in the United States of America not all trademarks were registered. The staff responsible would not even know about conflicts between variety denominations and unregistered trademarks.

123.6 In paragraph (4)(a) his Delegation had selected Alternative 2 from the three alternatives given in document DC/4, believing that the use of a variety denomination in a given country would make that denomination the common name for the variety in that country but that it should not have extra-territorial effect. Mr. Schlosser said that, in particular, it should not have extra-territorial effect, in the judgement of his Delegation, in countries where protection under a breeders' rights law was not available. The idea contained in paragraph (8)(b) in document DC/4 that the use of a variety denomination made it generic and destroyed trademark rights was a difficult one for his Delegation to follow. It thought it to be a matter for each country to decide exactly what made a name generic.

123.7 Paragraph (4)(b) was a general provision requiring member States to assure the protection of prior rights of third parties, but not fixing the way in which that protection was to be assured. Mr. Schlosser said it would be assured in different ways in different countries. It might be by way of an administrative procedure in one country and by way of a judicial procedure in another. The sole concern of his Delegation was that the trademark rights of third parties were protected.

123.8 Paragraph (5) required the same denomination to be used in all the member States. That was a very salutary principle. It might necessitate a slight modification of United States law or administrative procedures. If so this would be willingly undertaken. There was, however, a difficulty with the text in document DC/4 which called for the registration of a translation when the denomination proposed was found to be unsuitable. A translation might not be a good name for business purposes to describe a variety. If a member State found a proposed denomination unsuitable then it should not tell the breeder what name it would register. It should let the breeder decide.

123.9 Mr. Schlosser said that paragraph (6), which called for the exchange of information among member States, was couched in quite broad terms. His Delegation thought, however, that this did not in any way detract from its importance or its implications. The equivalent paragraph in document DC/4 contained one sentence which had been omitted from his Delegation's proposal. That sentence referred to the receiving of objections from competent authorities. The proposal of the United States of America was silent on this point. It neither prohibited such objections nor required any special steps to be taken if such objections were received. Objections received by the United States of America would certainly be considered, provided they were timely.

123.10 Mr. Schlosser said that paragraph (7) was drafted in a more flexible way than equivalent paragraphs in other proposals. The compulsory nature of the relevant provision in document DC/4 had presented his Delegation with a difficulty with regard to plant varieties protected in the United States of America by patents. The patent laws did not deal with the naming of products or plants protected under a patent. That was a matter in his country for unfair competition laws, for consumer protection laws, perhaps even for trademark laws, but not for patent laws. The Patent Office was not a regulatory agency. It could not compel the use of names to describe patented products. There was, however, no cause for alarm since it was the conventional trade practice in his country to designate varieties by name when they were

offered for sale. If the requirement to use the variety denomination remained absolutely compulsory it could be particularly troublesome for the Patent Office where a patent had expired, whether the variety was being marketed by the former owner of that patent or by a competitor. It was simply beyond the scope of the patent laws to compel the use of the variety denomination at that time. Consequently paragraph (7) was worded in such a way that each member State would be required to demand the use of the denomination if such were not the usual practice of breeders in that State.

123.11 Mr. Schlosser said that his Delegation had not included in its proposal an equivalent to paragraph (8) in document DC/4. That paragraph had been felt not to be really necessary.

123.12 Paragraph (8) in his Delegation's proposal was a reflection of paragraph (9) in document DC/4. The latter paragraph contained two phrases in square brackets. The first of those optional phrases had been retained. Mr. Schlosser said that he understood that the purpose of that phrase was to simplify the record-keeping of examining offices and to keep proprietary indications out of their records. The phrase had been included but he had to point out that its purpose could be achieved by administrative regulations. The second optional phrase seemed to infer, if not demand, regulation of the use of variety denominations. It had therefore been omitted. It was a matter for national decision and again one of consumer protection, marketing or unfair trade practices law. In his Delegation's view it was not inherently a matter for the Convention.

124. Dr. C.-E. BüCHTING (ASSINSEL) said that the proposal of the United States of America had much to commend it; in particular it presupposed that variety denominations could not be the subject of trademarks. That strict separation seemed to ASSINSEL to be one of the cardinal prerequisites for a clear settlement of matters relating to variety denominations. Dr. Büchting said that he wished to stress that it had not been easy for breeders to come to that point of view but the experiences of the last ten years had convinced them that they should accept a strict separation.

125. Dr. E. FREIHERR VON PECHMANN (AIPPI) supported what had been said by the previous speaker. The proposal of the United States of America represented a considerable step forward. The Convention was a framework for legislation. As such, in his view, it should be as clear and as simple as possible. The original Convention, and especially Article 13, had been endowed with some very precise provisions which had given rise to difficulties in the member States. A particular case in point was the connection made in the wording of Article 13 between variety denominations and trademark law. If those provisions could be simplified the application of legislation in individual States should be made easier. Dr. von Pechmann felt that the proposal contained in document DC/12 probably had a bearing on the possible accession of the United States of America to the Convention which AIPPI would very much welcome. He therefore urged the Conference to accept that proposal.

126. Mr. R. TROOST (AIPH) associated himself with the views expressed by the previous two speakers. He wished, however, to ask two questions. First, why had the Delegation of the United States of America formulated a new text for Article 13—which was certainly much better than the existing text—when it held the view that the Article might be unnecessary in any case. His Association favored deletion of Article 13. Secondly, it seemed that a proposal had been made by the Secretary-General of UPOV. He wondered whether it would be helpful if representatives of the Observer Organizations could study that proposal.

127. The PRESIDENT advised Mr. Troost that that proposal had been withdrawn and was not before the Conference.

128.1 Mr. S. D. SCHLOSSER (United States of America) said that if he had been convinced that he could have persuaded

the Conference to delete Article 13, he would have stopped at that point. He thought that the Article could be deleted quite safely but recognized that others disagreed with him.

128.2 Mr. Schlosser, noting the President's statement that the proposal of the Secretary-General of UPOV was not before the Conference, asked whether there was a procedure for presenting it to the Conference.

129. Dr. A. BOGSCH (Secretary-General of UPOV) advised that only Government Delegations could propose amendments. The problems he had tried to resolve were mainly those which had just been mentioned by the Observer Organizations. He had systematically omitted the word trademark from his proposal and had stated in an explanatory note that such omission did not affect the freedom of a country to do whatever it wished to do in its trademark law. The philosophy behind his proposal had been that with regard to the accession of new States, in particular, and in view of the fact that parts of Article 13 had caused great difficulties in existing member States, it was extremely unlikely that one could achieve ratification of the Convention by the United States of America if that country had to modify its trademark law. He was convinced that the basic aims of Article 13 could be achieved without interfering with trademark law.

130. Mr. R. ROYON (CIOPORA) said that CIOPORA wished to associate itself with the comments of its fellow organizations and to express its support for the proposal of the Delegation of the United States of America. Equally it would like to pay tribute to the proposal formerly made by the Secretary-General of UPOV in that it fully met the philosophical considerations which he had put forward earlier on behalf of CIOPORA.

131. Dr. D. BÖRINGER (Federal Republic of Germany) said that he would have preferred not to speak about the relation between variety denominations and trademarks for the moment. Different solutions to that question were possible, either within the Convention or possibly outside it. He just wished to investigate what was the real aim of the Convention. The present text and the Draft both required that a balance should be struck between the interest of the breeder, on the one side, and the interest of the public on the other side. By the public he meant, in particular, the multiplier of seed and planting material, the consumer of that seed and planting material and all the interested parties. Dr. Böringer thought that the proposal of the Delegation of the United States of America was very constructive but it seemed to be designed to change the present balance slightly, to the disadvantage of the public. Paragraph (2) of that proposal omitted the requirement that the variety denomination could not consist solely of figures. He feared that if such a provision was not perpetuated in the revised text of the Convention it would be very difficult for member States to preserve the function of the variety denomination. Breeders might endeavour in future in all member States to increase the proportion of proposed variety denominations which consisted solely of figures. Everyone who was acquainted with the plant breeding sector and with the variety and seed trade knew that this would cause great insecurity among farmers, gardeners and foresters. In his view that insecurity would be increased by the fact that the trademark which would appear alongside the variety denomination would be strongly imprinted on the public consciousness. The trademark was primarily intended to characterize the products of a particular business. Therefore the same trademark could be used for several varieties. Dr. Böringer thought that very careful account of that fact would have to be taken in subsequent discussions regarding any wish to deviate from the present balance of interest between the breeder and the other interested parties.

132.1 Mr. W. T. BRADNOCK (Canada) said that he would like to refer back to the Draft and to follow on from Dr. Böringer's line of thought regarding the omission from the proposal of the United States of America of the words "may not consist solely of figures." Those words were included in the first sentence of Article 13(2) in the Draft, but

under Article 36A(1) that rule did not apply to States in which the practice of admitting variety denominations consisting solely of figures was already established. There would therefore be the possibility of two classes of member States; one class in which number denominations might be used and another class in which they might not be used. In that case there could be some very real problems when varieties were to be moved from a State in the former class to a State in the latter class. Some years earlier in Canada, with future accession to the Convention in mind, the use of variety denominations which did not comply with the UPOV Guidelines for Variety Denominations had been prohibited. That action had had some quite marked effects in trade between Canada and its nearest neighbour which was not applying the same rules to its varieties. For many varieties coming from the United States of America into Canada a change of name had been necessary. That requirement could be extremely complicated and very impractical, particularly when the ultimate destination of a seed lot was unknown at the time of labelling or when surplus seed was returned across the border. The ideal situation was to do away with the need for synonyms. Mr. Bradnock shared some of Dr. Böringer's reservations about numbers and he felt that the same reservations applied to combinations of numbers and letters. In essence those kinds of denominations were relatively minor and it was the trademark which created the impression in the eye of the consumer. He had tried that philosophy on Canadian farmers. They had pointed out to him that many agricultural requirements, such as machinery, were identified by numbers or combinations of numbers and letters and that they had no difficulty in determining which sort of tractor they wished to purchase. In this respect the people he had been trying to protect had not shared his fears.

132.2 Mr. Bradnock felt that the proposed Article 36A would create a lot of complications for Canada in that it would result in two classes of member States. He thought that if it were adopted Canada would have to establish the practice of using variety denominations consisting solely of figures before applying for membership of the Union. It would then be able to act in the same way in this respect as its nearest neighbour. Mr. Bradnock thought that the ideal solution would be to leave the regulation of denominations to domestic legislation so that any country which was really concerned about the use of numbers as denominations could make its own decision in that matter.

133. Dr. C.-E. BÜCHTING (ASSINSEL) said that he wished to emphasize what the previous speaker had stated regarding the progressive nature of the modern farmer. He wished to add that in his opinion the way in which plant breeders used variety denominations was not that unreasonable because it was important to them that their variety denominations should be as widely accepted as possible. Following the introduction of the Varieties Protection Law, breeders in the Federal Republic of Germany had departed from established practice with some hesitation at first. For the major agricultural crops, such as cereals and sugar beet, however, breeders had since moved over to short names because they were rapidly accepted. Dr. Büchting believed that breeders would think very hard about which plant species were suited to being designated by denominations composed of figures or combinations of figures and letters. He thought that only a small percentage would be so suited and that one should therefore not be too worried about that matter.

134. The PRESIDENT said that although Dr. Büchting might be correct he had seen many denominations for varieties of sugar beet which were very difficult for farmers to remember.

135. Mr. S. D. SCHLOSSER (United States of America) said that he wished to point out certain incongruities which would occur if the phrase "it may not consist solely of figures" were retained. Dr. Böringer had very properly stated that the need of consumers to know what they were getting should be kept very much in mind. There might, however, be times when numbers would be more meaningful to them than other kinds of denominations. For example, a variety denomination in

Swedish, Japanese or Arabic or in the Cyrillic alphabet, which was encouraged by the Convention, would be unintelligible to an American. A numerical designation would make sense to him. Mr. Schlosser therefore thought that the retention of the phrase in question might create more confusion than would its deletion.

136. Mr. W. A. J. LENHARDT (Canada) wished to comment on paragraph (5) in the proposal of the Delegation of the United States of America. The last sentence of the equivalent paragraph in the Draft said "In this case, it may require the breeder to submit a translation... or another suitable denomination." In the proposal introduced by Mr. Schlosser the reference to "a translation" had been eliminated apparently on the basis that any translation of an unacceptable denomination also had to be unacceptable. Mr. Lenhardt believed that it might sometimes make perfect sense to submit a translation; if, for example, a denomination in English happened to be a profanity in Swedish, but the Swedish translation of it was not. If the proposal in document DC/12 meant that translations would be prohibited then he suggested that the Conference should retain the wording in the Draft.

137. Mr. S. D. SCHLOSSER (United States of America) said that a translation would sometimes constitute a perfectly suitable variety denomination. The breeder would know that and would be willing to use it. At other times, the translation might result in an unsuitable denomination which totally lacked consumer appeal. In that case there was no reason to prevent the breeder from developing and using a more appealing denomination. Mr. Schlosser believed that his Delegation's proposal allowed what Mr. Lenhardt was seeking but still gave the breeder the right to exercise his discretion.

138. Mr. R. KÄMPF (Switzerland) said that he wished to revert to a general question. Observer Organizations had been united in pointing out that the main advantage of the proposal of the United States of America was that it broke the connection made in the Convention between variety denominations and trademarks. His Delegation was in favor of that aim and wondered, therefore, whether the omission of the sentence "the denomination of the variety shall be regarded as the generic name of that variety," which was in paragraph (8)(b) of the present text of Article 13, should not be seen as a loss. Mr. Kämpf said that he would be interested to hear the views of the interested circles about the exclusion of that sentence from the revised text. He suggested that the distinction between variety denominations and trademarks might be made clearer by its inclusion.

139. Dr. C.-E. BÜCHTING (ASSINSEL) said that he was delighted by the understanding shown by the Delegation of Switzerland for the opinion of the Observer Organizations. Not being a lawyer he had to restrict his comments on Mr. Kämpf's final sentence but he thought that the inclusion *expressis verbis* of that statement taken from paragraph (8)(b) of the present text of Article 13 would be excessive. The Convention should not affect States outside the Union but he feared that such would be the consequence.

140. Dr. A. BOGSCH (Secretary-General of UPOV) said that he would be against the inclusion of any phrase to the effect that the denomination of a variety was its generic name because he would not want to force certain countries, by a fiat of the Convention, to have to change their trademark laws. Trademark laws contained rules about generic names which were also normally dealt with extensively in court decisions. In most countries the variety denomination would probably be regarded as a generic name.

141.1 Dr. E. FREIHERR VON PECHMANN (AIPPI) said that the notion of a "generic name," at least for the Federal Republic of Germany, was defined in jurisprudence and not in legislation. A trademark could become a "generic name" and thereafter it lost its function as a trademark. It was not possible to determine clearly at the outset whether something was a "generic name" or a trademark. That question should not be regulated in the Convention which was an outline for legisla-

tion. At most, if it were considered necessary, a provision should be included requiring that the variety be designated with a denomination.

141.2 Dr. von Pechmann said that he wished to revert to Dr. Böringer's statement that the designation of a variety should be so easy to understand and to recognize that no confusion could occur in the trade. Dr. Böringer had seen in the proposal of the Delegation of the United States of America a deterioration of the consumers' position in that respect. Dr. von Pechmann believed figures were used to designate varieties in the United States of America and he therefore wished to ask the Delegation of that country whether, in its experience, consumers were unable to distinguish sufficiently between varieties so designated.

142. Mr. B. M. LESE (United States of America) said that, in his experience, the use of numbers had caused no problems. They had been used consistently to identify varieties of maize, sorghum, soya beans and wheat, indicating maturity dates and other characteristics of the different varieties. Mr. Skidmore, who had practical experience of selling to farmers, could perhaps shed further light on the matter.

143. Mr. R. W. SKIDMORE (ASSINSEL) felt that Dr. Böringer's fears were totally unfounded. In some forty years of experience in the seed industry he had not had any difficulty with number designations; in fact such designations in the United States of America were generally very descriptive of the product, and especially of its maturity date. In his view farmers had more difficulty remembering names than numbers.

144. Dr. D. BÖRINGER (Federal Republic of Germany) said that he did not wish to make a fetish of the question of numbers or figures but that, as far as he knew, seeds were sold in the country bordering on Canada not under a number alone but always or largely under a number combined with another sign, generally a word sign or a brand name. Therefore the question for the consumer was not whether he could get used to numbers; he was faced with a combination of a word and several letters or figures. That was the first point. Secondly, one had to stop and look at the policy which one wished to pursue in respect of plant breeders' rights. If he accepted that a variety might be identified solely by figures and that a trademark might be added to such a variety denomination, then he would be opening the way for a policy under which it would no longer be important which variety the consumer really bought. It would be the trademark of the firm introducing the seed or planting material into trade which would guarantee the consumer that he was getting a good variety. Dr. Böringer did not wish to judge whether that would be a positive or negative step but felt it must be taken into account when the Conference considered the balance of interests it wanted to provide in the revised Convention. Thirdly, the question of figures should not be looked at in isolation. It should be considered with the other proposals which had been made, especially that of the Delegation of the United States of America. The Conference would have to consider whether it wished to reduce the importance of the variety denomination and whether it should do so having regard to the consumer.

145. Dr. C.-E. BÜCHTING (ASSINSEL) referred to an earlier statement he had made and to the President's comment about the names of sugar beet varieties. He believed there were as many as fifty or sixty varieties in the EEC Variety List and he had to agree that it was difficult to distinguish which variety was concerned, let alone the breeder responsible. It was the fact that the breeder was required to choose or create a name for the variety denomination which caused the problem. It had become necessary to have denominations composed of five, six or seven syllables in order to be able to distinguish them from other denominations formed in the same way. In earlier representations ASSINSEL had spoken of using a different system and had mentioned by way of example a series such as BMW 503, BMW 507 and BMW 508. He believed that a system of that kind was used to designate plant vari-

eties in the United States of America. In that way the variety denomination contained both a reference to the name of the breeder responsible, in easily recognizable form, and, by means of the figures, a specific distinction between varieties. Dr. Büchting genuinely regretted that the Plant Varieties Offices maintained the view that denominations such as KWS 1001 and KWS 1002 for plant varieties were insufficient and unacceptable. He held a completely different opinion.

146. Mr. R. KÄMPF (Switzerland) said that he would like to take advantage again of the presence of the Observer Organizations to clarify a question which the Working Group on Article 13 would have to try to resolve. Paragraph (2) of the proposal of the United States of America said that a denomination "must enable the variety to be identified." The present text of Article 13 laid down that a denomination consisting solely of figures could not fulfil that requirement. He wondered whether without such express rule it would not be left to the competent office or court to decide whether, under certain circumstances and in certain areas of agriculture, such a denomination could enable the variety to be identified. He would welcome views on that question.

147. Dr. A. BOGSCH (Secretary-General of UPOV) said that he interpreted the proposal of the Delegation of the United States of America to mean that the Convention would allow any national office or court to determine, according to the circumstances, that a denomination consisting solely of figures was not acceptable.

148. Mr. S. D. SCHLOSSER (United States of America) said that he would like to confirm the interpretation given by the Secretary-General of UPOV.

149. The PRESIDENT closed the discussion on figure denominations and invited comment on the remainder of the proposal of the Delegation of the United States of America on a paragraph by paragraph basis.

150. Dr. D. BÖRINGER (Federal Republic of Germany) sought the opinion of the Observer Organizations on the omission of the words "of the same or a closely related botanical species" from paragraph (2) of the proposal. He believed that in this respect the proposed text was more demanding than either the Draft or the present text.

151. Dr. C.-E. BÜCHTING (ASSINSEL) said that if he had understood the proposal correctly it was based on leaving individual States to fix more restrictive provisions and confined itself to the general principle.

152. Dr. A. BOGSCH (Secretary-General of UPOV) said that he agreed with Dr. Böringer that the proposal was in fact stricter, and he therefore found some difficulty with Dr. Büchting's comment. Dr. Bogsch asked the Delegation of the United States of America why it had excluded that qualification.

153. Mr. B. M. LESE (United States of America) thought that it had been taken out because the concept of a closely related species had been found to be somewhat confusing. It had not been clear whether it was based on botanical nomenclature or common usage. His Delegation had felt that the point could be dealt with by individual States when regulating the problem of confusing or misleading nomenclature.

154. Mr. W. A. J. LENHARDT (Canada) commented on paragraph (4)(a) of the proposal and noted that the proposal excluded paragraph (8)(b) of the alternative proposal contained in document DC/4. In his view paragraph (4)(a) prevented anyone who owned a trademark and who had that trademark registered as a variety denomination from continuing to assert his right to it. Paragraph (8)(b) in document DC/4 prevented anyone who owned a variety denomination from having it registered as a trademark. If that paragraph was to be excluded from the proposal then he suggested that paragraph (4)(a) should have the words "or receive or assert such a right at any future time," or a similar phrase, added to it.

155. Mr. P. W. MURPHY (United Kingdom) said that he did not wish to pose a question in relation to paragraph (4)(a) but to make a statement which was not designed to be unhelpful. The concept of a breeder being able to register a right but not being able thereafter to assert that right was found by the trademark authorities of the United Kingdom to be slightly objectionable. He thought, however, that the problem could be overcome, and that the point raised by the Delegate of Canada could be dealt with at the same time, if the Conference adopted, instead of paragraph (4)(a), the wording proposed by the Secretary-General of UPOV at the meeting of the Ad Hoc Committee on the Revision of the Convention. Mr. Murphy thought that his Delegation would wish to put forward that wording to the Working Group on Article 13 as an improvement on the present text.

156. Dr. A. BOGSCH (Secretary-General of UPOV) said that he would like to comment on the remarks made by the Delegate of Canada. If a variety denomination was considered to be a generic name, as it would be in most countries under present trademark laws, then an existing trademark would be annulled and the registration of a future trademark would be prevented.

157. Mr. W. A. J. LENHARDT (Canada) said that if the Conference was really convinced that variety denominations should not be the subject matter of trademarks at all then it should provide that variety denominations were to be deemed to be generic, as was provided in paragraph (8)(b) in document DC/4. If that were not done then it would always be possible that a court would decide otherwise, thus leaving open the possibility that variety denominations might, at some point, become the subject matter of trademarks.

158. Dr. A. BOGSCH (Secretary-General of UPOV) said that the Delegate of Canada was right, but asked what the real objective was. He believed it was that the variety denomination should be freely usable in connection with the variety even if it maintained its trademark character in some countries. Such was the essence of the proposal he had made at the meeting of the Ad Hoc Committee and which had been referred to by the Delegate of the United Kingdom. He felt that those delegates who had not been at that meeting should now be made aware of that proposal which had been "that each member State shall provide the necessary measures to ensure that any possible rights of the breeder in the word or sign which is registered as a variety denomination shall not hamper the use of that denomination in connection with the marketing or other use of the variety protected in that State." Delegates would note that the wording left it to individual countries to decide how they would "provide the necessary measures." Members of UPOV could find the wording in Annex IV to the internal document RC/ad hoc/11.

159. Mr. K. A. FIKKERT (Netherlands) expressed the support of his Delegation for the wording read out by the Secretary-General of UPOV. His Delegation had concluded that that wording was the best solution.

160.1 The PRESIDENT said that he would just like to add that the wording read out by the Secretary-General of UPOV was designed to replace only paragraph (4)(a) of the version of Article 13 appearing in document DC/4 and that it did not take into account the question of paragraph (8)(b) of that version.

160.2 The President asked the Delegation of the United States of America whether the differences between paragraph (4)(b) of its proposal and the comparative paragraph in document DC/4 were entirely of a drafting nature.

161. Mr. S. D. SCHLOSSER (United States of America) confirmed that his Delegation had not intended to introduce any substantive changes into paragraph (4)(b).

162. The PRESIDENT, noting that paragraph (5) of the proposal had already been discussed, invited comment on paragraph (6) which related to the exchange by member States of information concerning variety denominations.

163. Dr. A. BOGSCH (Secretary-General of UPOV) asked the Delegation of the United States of America whether the words "informed of matters concerning variety denominations" meant the communication of each denomination registered or whether they meant, in addition, the communication of matters such as legal provisions.

164. Mr. S. D. SCHLOSSER (United States of America) replied that his Delegation did not think that the competent authorities of member States would be interested in receiving regulations or technical legal information. The intention was to provide information about the registration of variety denominations.

165. Mr. R. KÄMPF (Switzerland) said that there were always difficulties in the Swiss Parliament with ratification of Conventions containing provisions in the form of recommendations. There was, however, nothing against the addition of a recommendation. His comment was probably applicable both to the words "are encouraged to" in paragraph (6) of the proposal and to the words "shall endeavour to" in paragraph (7), and he would like to revert to this question in the Working Group on Article 13.

166. Mr. P. W. MURPHY (United Kingdom) wondered if he might ask the Delegation of the United States of America if it could in fact replace the words "are encouraged to" in paragraph (6) by a somewhat stronger wording which did not impose a binding legal obligation on its country but which was a little more specific.

167. Mr. S. D. SCHLOSSER (United States of America) thought his Delegation could agree to something stronger provided it did not have to tell the Conference at that moment what the words might be.

168. Dr. A. BOGSCH (Secretary-General of UPOV) said that one might look for a solution by providing that the Union, rather than member States, should establish mechanisms for the communication of denominations.

169. The PRESIDENT, noting the comment already made by the Delegation of Switzerland, invited further comment on paragraph (7) of the proposal.

170. Dr. A. BOGSCH (Secretary-General of UPOV) wondered whether paragraph (7) might be deleted. The principle expressed in that paragraph was very desirable but one might question the correctness of including it in a Convention on the protection of plant breeders' rights. Even if the Convention were completely silent on the matter, the principle would probably still be enacted by each country in its national law. In his view, it related more to the seed trade and to consumer protection than to the protection of the private rights of a breeder.

171. Mr. R. ROYON (CIOPORA) said that CIOPORA wished to strongly support the remarks of the Secretary-General of UPOV.

172. Mr. S. D. SCHLOSSER (United States of America) said that his Delegation would welcome the deletion of paragraph (7).

173. The PRESIDENT noted that the proposal contained no provision to match paragraph (8) of document DC/4. Since there were no statements or questions at that stage he invited comment on paragraph (8) of the proposal which more or less corresponded to paragraph (9) of document DC/4.

174. Mr. P. W. MURPHY (United Kingdom) asked the Delegation of the United States of America whether there was any significance in the substitution of the word "associate" for the word "add."

175. Mr. B. M. LEESE (United States of America) said that his Delegation felt that the substitution was significant in that the word "add" implied that the indication became part of

the variety denomination whereas the word "associate" meant that the indication could be used with the variety denomination.

176. Mr. D. M. R. OBST (European Economic Community) sought clarification of the effect of paragraph (8) with respect to legal prescriptions regarding the naming of seeds and planting material in trade.

177.1 The PRESIDENT said in response that he understood Mr. Obst to be referring to rules governing the official labelling of seeds and planting material. He believed that there was agreement among the member States of UPOV that the official label could not contain private names or trademarks but only the registered variety denomination.

177.2 The President closed the discussion on Article 13 and, in particular, on the proposal of the United States of America contained in document DC/12. (Continued at 481)

Fourth Meeting
Tuesday, October 10, 1978,
afternoon

Article 1: Purpose of the Convention; Constitution of a Union; Seat of the Union (Continued from 101)

178. The PRESIDENT reopened the discussion on Article 1(1) and asked the delegation of the Netherlands whether it wished to add to its earlier introduction of its proposal which was contained in document DC/14.

179. Mr. K. A. FIKKERT (Netherlands) confirmed that there was no intention in the proposal of his Delegation to make substantive changes.

180. Mr. B. LACLAVIDÈRE (France) said that he did not think that the proposal was merely a matter of drafting. He believed that it was a matter of much greater importance. He admitted that he had, at first sight, found the proposal of the Delegation of the Netherlands to be totally compelling, and he had been preparing to make some complementary proposals. But on reflection, and having talked with a number of delegates, he had realized that the proposal was some fifteen years too late. Everyone knew what was meant by "the Union" and "a breeder." He had never heard of a plant breeder's right being attacked because the meaning of "the Union" or of "a breeder" was not known. More seriously, people had been conversant with the Convention for some fifteen years and, in particular, a certain number of States had studied it and were preparing to perhaps accede to it at some stage. If one was now going to say that Article 1 comprised Article 20 and parts of Article 30(2) and so on, then the Convention would become difficult to recognize for those who had been applying it for some fifteen years. Mr. Laclavidière was therefore very afraid that the proposal would lead to confusion. For his part he would wish that the present text should not be modified when it did not reveal major disadvantages, and that the present order should be kept even if it were not satisfactory.

181. Mr. R. DERVEAUX (Belgium) said that he considered that the proposal of the Netherlands simplified the drafting but he thought that the Conference should defer detailed examination of Article 1, pending its examination of the remainder of the Convention. Then, at the end, it might examine whether the wording of that Article was coherent or whether it was in need of modification.

182. Mr. A. SUNESEN (Denmark) said that his Delegation supported the opinion expressed by the Delegation of Belgium. It thought that the proposal of the Netherlands had

perhaps been made at a late stage and that the Conference should try to establish whether it was necessary to change the wording of Article 1.

183. Mr. K. A. FIKKERT (Netherlands) said that the Conference should not be afraid of trying to improve the drafting of the Convention it was revising, if that were possible.

184. Dr. D. BÖRINGER (Federal Republic of Germany) said that he did not know whether the Conference could limit its discussion of the proposal to Article 1 in isolation. He had the impression that the Delegation of the Netherlands had worked through the whole of the Convention very thoroughly and that it would come forward with a wealth of editorial proposals. However good that might be for the individual case, he, like Mr. Laclavidière, was a little apprehensive that material changes might be concealed, quite unintentionally, in the editorial proposals. At the least the Conference would have imposed upon it a difficult and time-consuming task and the same would be true, in particular, for the Drafting Committee.

185. Mr. P. W. MURPHY (United Kingdom) said that he agreed entirely with Dr. Böringer's statement. He thought that the Conference had to be very careful in dealing with drafting amendments in the revision of the Convention.

186. Mr. W. GFELLER (Switzerland) said that his Delegation wished to endorse Mr. Fikkert's statement. It thought that the Conference should have the courage to make improvements in so far as they could be seen as such.

187. Mr. G. CUROTTI (Italy) supported the view expressed by Dr. Böringer.

188. Mr. J. F. VAN WYK (South Africa) said that his Delegation would very much like to support the idea of introducing a paragraph giving definitions. Perhaps more could be added later to make the text even more simple.

189. Mr. S. MEJEGÅRD (Sweden) said that his Delegation thought that the proposal of the Netherlands was a very good one, but that, as Dr. Böringer had said, the Conference should be very careful in this respect. His Delegation thought it would be sensible not to make any amendment which did not involve a change of substance. It therefore supported the view expressed by Dr. Böringer.

190. The PRESIDENT concluded that three member States favored the introduction of the proposal of the Delegation of the Netherlands, contained in document DC/14, and that the remaining seven member States were somewhat reluctant or at least wished to be very careful. He thought that a decision should not be made on the drafting at that stage and proposed that only the substance should be considered for the time being. He asked whether anyone was against the substance of Article 1(1).

191. *Article 1(1) was adopted as appearing in the Draft.*

192. The PRESIDENT opened the discussion on paragraphs (2) and (3) of Article 1.

193. *Paragraphs (2) and (3) of Article 1 were adopted as appearing in the Draft, without discussion.*

194. *It was decided that the decisions referred to in paragraphs 191 and 193 above remained subject to a decision on the drafting proposal contained in document DC/14. (Continued at 855)*

Article 2: Forms of Protection; Varieties (Continued from 116)

195. The PRESIDENT opened the discussion on Article 2 (1).

196. *Article 2(1) was adopted as appearing in the Draft, without discussion.*

197. The PRESIDENT reopened the discussion on Article 2(2) and asked the Delegation of the United Kingdom whether it wished to say more about its proposal which was contained in document DC/15.

198. Mr. A. F. KELLY (United Kingdom) said that the purpose of the proposal was to clarify the somewhat ambiguous wording, in the English text at least, in the Draft. The earlier discussion had shown that different meanings had indeed been given to Article 2(2). It had been evident, for instance, that the word "cultivated" in English meant something different from what was stated in the German text. It had also been evident that there was some confusion whether more than one kind of variety existed. For the purposes of the Convention he would personally favor that there should be only one kind of variety, being the variety one was trying to protect. After reflection he had come to the conclusion that perhaps the wisest course was simply to delete Article 2(2) and he so proposed.

199. Mr. J. BUSTARRET (France) thought that the present wording was, after all, no worse than every other wording which had been proposed. He would tend to agree with Mr. Kelly's conclusion that Article 2(2) was perhaps not necessary. He thought, nevertheless, that one really had to bear in mind that the word "variety" as it was used, without being defined in the Convention, had a meaning for everyone present. What was not absolutely certain was that the meaning was really the same for everyone. There had been no difficulties so far and he would therefore agree with Mr. Kelly that the paragraph, which was probably not indispensable, should be deleted. In considering whether a definite interpretation of the word "variety" might emerge he found himself thinking, in particular, about strains of cultivated mushrooms. Mr. Bustarret wondered if they were really varieties for the purposes of the Convention if it did not clearly say that they were. He feared that there was a slightly narrow translation of the word "variété" which was applied only to cultivated plants whereas, in the spirit of the authors of the Convention it had been thought that it could have a wider significance, applying equally for example to 'varieties' of cultivated mushrooms. He believed that to be a minor difficulty and rather than replace that paragraph by the paragraph proposed, with its "assemblage" or "ensemble de plantes" which, although drawn from the Code of Nomenclature, did not signify very much, he wondered whether it would not be as well to simply delete paragraph (2). He therefore supported the opinion of Mr. Kelly.

200. Mr. M. TOURKMANI (Morocco) said that he would like to propose a definition which would give a slightly wider meaning. His new definition would be "For the purposes of this Convention the word "variety" is applicable to any plant material which is distinct, homogeneous and stable." It could be applied to both self-pollinated and cross-pollinated plants. He had replaced the words "assemblage of plants" by "plant material" because the idea of an assemblage gave the impression of something heterogeneous. The words "capable of cultivation" had been deleted because varieties which were already cultivated might otherwise be excluded from being considered as varieties. The word "distinct" had been added because distinctness was an important characteristic. Detailed definitions of homogeneity and stability were not included.

201. Mr. R. DERVEAUX (Belgium) asked whether the Delegation of the United Kingdom had withdrawn its proposal or whether it was still open for discussion.

202. Mr. A. F. KELLY (United Kingdom) confirmed that he had proposed the deletion of Article 2(2) but, if that were not carried, then the proposal in document DC/15 would be open for discussion again.

203. The PRESIDENT invited comments on and objections to the proposal of the Delegation of the United Kingdom to delete Article 2(2), which proposal had been supported by the Delegation of France.

204. Dr. H. H. LEENDERS (ASSINSEL) thought that it was desirable from a legal point of view to have a definition of "variety." He wondered whether the experts present could meet to see if they could formulate a satisfactory definition.

205. The PRESIDENT advised that the matter had been on the agenda at each of the six sessions of the Committee of Experts on the Interpretation and Revision of the Convention, and at sessions of other bodies of UPOV, but a satisfactory definition had not been found.

206. Dr. E. FREIHERR VON PECHMANN (AIPPI) said that the question of defining what should be eligible for protection had been under discussion in the field of patents for more than one hundred years, without result. Everybody was thankful that no result had been achieved because new developments and everything which would arise in the future could be combined under the broad concept. Perhaps it would really be sufficient in the Convention to mention the "plant variety" just in Article 1(1), thus catching everything which should be protected. It might be left to jurisprudence to interpret whether mushrooms or the like were covered, rather than seeking now a definition which might be too narrow and which, one day, would need to be altered again.

207. *It was decided to omit Article 2(2).*

208. The PRESIDENT opened the discussion on Article 2(3).

209. Mr. M. LAM (Senegal) said that he just wished to draw attention to the form of words used because the paragraph, as drafted, implied that "genus" and "species" were of equivalent value, whereas for him the genus was made up of species. He believed that there was a slight difference of meaning between the two words.

210. The PRESIDENT confirmed that there was a great difference. A genus could comprise several species which could comprise sub-species and sub-species could comprise varieties. Paragraph (3) had been very carefully drafted.

211. Mr. F. SCHNEIDER (International Commission for the Nomenclature of Cultivated Plants) noted that an orchid hybrid, which was a hybrid between genera, was neither within a genus nor within a species. He wondered whether it might not be better to refer only to "species." The inclusion of "genus" suggested that the authors of the Convention had wanted to exclude the family or the class. National lists of species protected included several families. For example, conifers were protected in the United Kingdom and orchids were protected in the Netherlands. It might be better to refer only to "species" in the general sense. The fact that "genus" had been added suggested that other botanical taxa were excluded.

212. The PRESIDENT said that efforts had been made to find a single word which would suffice. There was one word in the English language and that was the word "kind" which was used in the United States Plant Variety Protection Act of 1970. It had proved impossible to translate that word into other languages and, after long deliberations, the Committee of Experts had concluded that the words "genus" and "species," which were used elsewhere in the Convention, were the most suitable.

213. *Article 2(3) was adopted as appearing in the Draft.*

Article 3: National Treatment; Reciprocity

214. The PRESIDENT opened the discussion on Article 3(1).

215. *Article 3(1) was adopted as appearing in the Draft, without discussion.*

216. The PRESIDENT opened the discussion on Article 3(2).

217. Mr. P. W. MURPHY (United Kingdom) noted that it would be necessary, in the English text, to replace the word "headquarters" by the words "registered office."

218. *Subject to the drafting amendment referred to in the above paragraph, Article 3(2) was adopted as appearing in the Draft.*

219. The PRESIDENT opened the discussion on Article 3(3), noting that it corresponded to the first part of Article 4(4) in the present text of the Convention.

220. Mr. R. TROOST (AIPH) said that his Association was opposed to paragraph (3), believing that it would be better, with the extension of the Convention in mind, to keep purely and simply to the principle of national treatment, as was done in other conventions in the field of industrial property.

221. Mr. R. ROYON (CIOPORA) said that his Organization wished to support Mr. Troost's intervention, believing that it was in the interest of breeders to be able to benefit from protection in the greatest possible number of States. In its opinion, adoption of the principle of assimilation of nationals of the Union might be the only way to encourage the development of collaboration and to establish uniform rights for nationals of the member States of the Union. CIOPORA therefore wished that Article 3(3) be rejected.

222. Dr. E. FREIHERR VON PECHMANN (AIPPI) said that his Association wished to add its support for the principle of national treatment. It had defended that principle, especially in connection with the Convention of the Paris Union, ever since that Convention had come into existence, and he therefore wished to stress that it naturally adopted the same attitude with regard to the Convention under discussion.

223. Mr. B. M. LESE (United States of America) declared that adoption of the principle of national treatment would cause a problem for the Plant Variety Protection Office. Section 43 of the Plant Variety Protection Act contained reciprocity limits and he felt that it would not be possible to make the necessary change in that Act.

224. The PRESIDENT asked whether any delegation, having heard the wishes of AIPH, CIOPORA and AIPPI, and having heard the declaration of the Delegation of the United States of America, wished to make a proposal. He noted that no delegation wished to do so.

225. *Article 3(3) was adopted as appearing in the Draft.*

Article 4: Botanical Genera and Species Which Must or May be Protected

226. The PRESIDENT opened the discussion on paragraphs (1) and (2) of Article 4.

227. *Paragraphs (1) and (2) of Article 4 were adopted as appearing in the Draft, without discussion.*

228. The PRESIDENT opened the discussion on Article 4(3) and sought comments on subparagraph (a).

229. Mr. J. E. VELDHUYZEN VAN ZANTEN (ASSINSEL) said that it could be seen from document DC/7 that ASSINSEL would like the words "of its main crops" to be added at the end of subparagraph (a). The purpose of adding those words would be to oblige States acceding to the Convention to apply its provisions initially to at least five genera or species of their main crops.

230. Mr. M. LAM (Senegal) said that he wished to draw attention to the fact that in some countries the range of crops grown was very limited. Such countries possessed several groups of varieties for a given species rather than numerous species. Mr. Lam wished to know what possibilities such countries would have to become members of the Union. He

took as an example Senegal where the peanut was the dominant crop plant

231.1 The PRESIDENT confirmed that Article 4(4), if adopted, would mean that the Council could relieve States which possessed only a few cultivated species from the obligation to afford protection to the minimum numbers of genera or species referred to in Article 4(3).

231.2 The President said that the Committee of Experts had considered very carefully the wish of ASSINSEL and of other organizations that the words "of its main crops," or similar words, should be added to Article 4(3)(a). It had found, however, that the obligation could not be enforced because it would be up to the States themselves to decide what were their main crops. The Committee had prepared a draft Recommendation which went further than the wishes expressed by ASSINSEL and other organizations. It would recommend that each member State should use its best endeavours to ensure that the genera and species eligible for protection under its national law comprised as far as possible those genera and species which were of major economic importance in that State. It would recommend further that each State intending to become a member of the Union should choose the genera and species to which as a minimum the Convention had to be applied at the time of its entry into force in the territory of that State from genera and species of major economic importance in that State.

232. Mr. J. E. VELDHUYZEN VAN ZANTEN (ASSINSEL) said he was unable to comment on the legal difficulties referred to by the President but he thought his Association would be in favor of the proposed Recommendation which he hoped it would be possible to study later.

233. The PRESIDENT confirmed that the draft Recommendation on Article 4 would be distributed.

234. *Article 4(3)(a) was adopted as appearing in the Draft.*

235. The PRESIDENT sought comments on subparagraph (b) of Article 4(3).

236. Mr. R. ROYON (CIOPORA) said that his Organization thought that the provisions of paragraphs (3) and (4) of the proposed Article 4 were aimed essentially at taking account of the technical and financial difficulties which some States might encounter in establishing facilities for the preliminary examination of each relevant species. It thought, nevertheless, that there was a risk that the minimum number of species which had been specified would be either too low, in view of the degree to which some countries were organized, or too high for other countries. It therefore thought that from a certain point in time after at least one member State was in a position to carry out the preliminary examination for a given species, no other member State should be able to refuse to afford protection to that species. CIOPORA therefore suggested that subparagraph (b)(iii) should be modified in such a way that after a certain period of time protection had to be extended to every genus or species to which any member State applied the Convention and for which such member State was in a position to carry out the preliminary examination provided for in Article 7.

237. Dr. F. POPINIGIS (Brazil) said that he understood the suggestion of the representative of CIOPORA to mean that States joining the Union would have to extend protection, after some time, to all the species which were protected in the other member States. He felt that such an obligation might create some problems of a technical nature. Sugar beet, for example, might be protected in European Countries but was not grown in Brazil. If Brazil joined the Union and consequently had to extend protection to sugar beet, then, just because of that obligation, it would have to train persons to work with sugar beet.

238. Mr. R. ROYON (CIOPORA) said that the aim of the wish expressed by CIOPORA was to avoid the very situation

which the Delegation of Brazil had instanced. In expressing that wish he had forgotten to underline that it should be achieved by means of bilateral or multilateral agreements on cooperation in examination. By that means a member State not protecting a given species, which was protected in at least one member State, should allow access to protection for that species in its territory, making beneficial use, naturally, of the result of the preliminary examination carried out in another member State. That other State would already have been affording protection to that species for a long time and would have established the means necessary to carry out the preliminary examination. Such an arrangement would help especially those countries which, whether for climatic, financial or technical reasons, were not in a position to make the preliminary examination for a given species. CIOPORA could be said to be looking in the same direction as was the Delegation of Brazil in the reservation it had expressed.

239. Dr. D. BÖRINGER (Federal Republic of Germany) thought that a careful answer should be given to Mr. Royon's suggestion concerning subparagraph (b). That suggestion was really very similar to the thinking of the Union but it was not, or was not yet, achievable. In practice if the United States of America acceded to the Union, given that varieties of almost all vegetatively propagated species could be protected in that country, it would automatically mean, if he had correctly understood Mr. Royon, that all the other member States of UPOV would have to protect varieties of those species. That would not be practical. Dr. Böringer said that he could mention a series of other examples. Something like that might perhaps work in the future in a smaller circle of States but he believed that it was not feasible on a world-wide scale.

240. *Article 4(3)(b) was adopted as appearing in the Draft.*

241. The PRESIDENT sought comments on subparagraph (c) of Article 4(3) and noted that the reference to paragraph (3) of Article 2 would have to be replaced by a reference to paragraph (2) of Article 2.

242. *Subject to the drafting amendment referred to in the above paragraph, Article 4(3)(c) was adopted as appearing in the Draft, without discussion.*

243. The PRESIDENT opened the discussion on paragraphs (4) and (5) of Article 4, and noted the drafting amendment proposed by the Delegation of Belgium, contained in document DC/35.

244. Mr. A. PARRY (United Kingdom) referred to his experience in relation to obligations which were provided for under the EEC provisions relating to the association of overseas countries and territories with the Community. Although this might not seem to be of immediate relevance to plant varieties there was a provision, in the decision setting up that regime, which was very similar to paragraphs (4) and (5) of Article 4. It had been thought, when that regime had been set up, that it would be possible to identify in advance the countries and territories which should benefit from what might be called, for the purposes of the Conference, 'paragraph 4 treatment' and that there would therefore be no need for retrospective 'paragraph 4 treatment.' That had not proved to be the case. It had been discovered in the operation of that regime that there was a need to reconsider the treatment envisaged at the time of ratification. The Conference might therefore wish to consider whether it should not provide that the facility enabling the Council to take account of special economic or ecological conditions should not apply merely to the time of ratification or accession, as provided in paragraph (4), but should be extended to apply, under paragraph (5), either to any time thereafter or possibly to a period of say five years thereafter. Mr. Parry thought that it could be regarded as being too inflexible to require a State to determine, when deciding to ratify or accede, whether it needed to avail itself of paragraph (4).

245. Dr. A. BOGSCH (Secretary-General of UPOV) said that he thought that the very facility suggested by Mr. Parry was

provided for in paragraph (5). The Council could assist a member State which encountered special difficulties by prolonging indefinitely the period for compliance.

246. Mr. A. PARRY (United Kingdom) thought that Dr. Bogsch was right in part but the facility enabling the Council to reduce the minimum numbers of genera or species to which a State had to apply the provisions of the Convention, which was applicable under paragraph (4), was not provided for in paragraph (5).

247. Dr. A. BOGSCH (Secretary-General of UPOV) said that a State could ask at any time up to eight years after ratification or accession for an unlimited period for compliance. The Council could prolong the period indefinitely and that would have the same effect as reducing the minimum numbers.

248. Mr. A. PARRY (United Kingdom) said that he had simply wished to draw attention to the problem. He did not wish to press the matter if the Conference felt that there was no difficulty.

249. *Subject, in particular, to consideration by the Drafting Committee of document DC/35, paragraphs (4) and (5) of Article 4 were adopted as appearing in the Draft.*

250. The PRESIDENT drew attention to the fact that paragraphs (4) and (5) of the present text of Article 4 were not included in that Article in the Draft.

251. *The exclusion of the paragraphs referred to in the preceding paragraph was adopted, without discussion.*

Article 5: Rights Protected; Scope of Protection

252. The PRESIDENT opened the discussion on Article 5 and said that the proposal in the Draft contained only a few drafting amendments but none of a substantive nature. He knew that there were wishes for some changes in Article 5 and he felt it might be helpful to commence with a general discussion.

253. Dr. H. H. LEENDERS (FIS) referred to the first sentence of paragraph (1) and, in particular to that part which read "the prior authorisation of the breeder shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material." In spite of the fact that those words had been discussed at length when the Convention had been drawn up, the FIS felt that they were not satisfactory in all circumstances. Dr. Leenders quoted, by way of example, the situation which could arise when peas or beans were being produced for canning. He had no wish to be critical of the canneries, which were customers of the seed trade, but it could happen that their production exceeded their handling capacity. In that event it was not unusual for the canneries to reserve the surplus production for use as seed in the following year. Taking the wording he had specified earlier he would say that the canneries were not producing peas or beans "... for purposes of commercial marketing of the reproductive... material" but for canning. If they found that they could not use for canning all the peas or beans produced then they changed the destination of the samples into that of use as seed in the following year. The FIS therefore thought that another wording, which had been considered when the Convention was being drafted, would improve paragraph (1). That wording had read "the prior authorisation of the breeder shall be required for the production for commercial purposes of reproductive or vegetative propagating material." There was, of course, the question of farmers saving seed from their own harvests. It might be said that they did that for commercial purposes but a reasoned explanation of the wording he had suggested would show that it could not be said that they were producing reproductive material for commercial purposes. Mr. Leenders said that the replacement of the words "for purposes of commercial marketing" by the words "for commercial purposes" would help in counteracting certain abusive practices.

254. Mr. J. E. VELDHUYZEN VAN ZANTEN (ASSINSEL) said that his Association believed Article 5 to be the very heart of the Convention. Any amendments proposed had to be treated with the utmost care. It was aware of the fact that the wording of that Article, and especially of paragraph (1), had resulted from long and thoughtful discussions which would be renewed if amendments were proposed. There had been more than ten years' experience, however, which had shown that, although the wording had been good, some improvements could be justified. ASSINSEL thought that three points were worthy of consideration. The first was the point which had just been raised by the representative of FIS. ASSINSEL fully supported what had been said. If the wording "production for commercial purposes" were used instead of "production for purposes of commercial marketing" then it would be clear that the prior authorization of the breeder was required for any production used commercially as reproductive or vegetative propagating material. ASSINSEL would also strongly recommend that a definition of non-commercial production should be made. Such a definition might include, for example, material remaining on the premises of the farmer who had produced it, material not transported over more than a few kilometres from the place where it was produced and material not officially authorized for commercial use.

255.1 Mr. R. ROYON (CIOPORA) wished to remind the Conference of CIOPORA's point of view on the scope of protection, as it appeared in the present text of Article 5 and as CIOPORA would like it to appear in the revised text of the Convention. CIOPORA thought that the most urgent question was not so much to know whether the scope of the minimum right of the breeder, as provided for in Article 5(1), should be extended, but to establish whether that minimum right was not, in fact, very inadequate and even illusory. As stated in greater detail in document DC/7 the production of cut flowers was the sole purpose, in economic terms, for numerous species of ornamental plants, such as chrysanthemums, carnations and glasshouse roses. The breeder of varieties of such species exploited or licensed not the right to reproduce propagating material but the right to produce and sell cut flowers. It should be noted, furthermore, that trade in cut flowers was international and was becoming increasingly so. There was a growing tendency for production areas to be transferred from the present member States of UPOV to non-member States, such as certain countries in Latin America and in Africa. Originally it had been wished, when the Convention had been signed in 1961, that the need to protect cut flowers in a somewhat special way should be taken into account. The last sentence of Article 5(1) had been included for that reason. That sentence, if read quickly, could give the impression that cut flowers were protected, whereas that was not so. In fact the last sentence of Article 5(1) protected only propagation from the reproductive parts found on the plants or on the cut flowers, whereas, to enable the breeder to exercise his minimum right normally, it was necessary to protect the plants and the cut flowers themselves. It was only in that way that the breeder could, on the one hand, effectively control plantings of his variety in countries in which he enjoyed protection and that he could, on the other hand, guarantee the right of peaceful enjoyment to his licensees. As things were at present, licensees in UPOV member States whose national legislation afforded only the minimum protection provided for in Article 5(1) were not protected in relation to imports of plants or cut flowers originating from non-member States. The imported plants or cut flowers were sold as such and were not destined to be used to propagate the variety. CIOPORA had therefore expressed the wish that Article 5(1) should be revised during the Conference and had proposed, in document DC/7, an amended text, under the reference 5(2), which read: "The right of the breeder of vegetatively reproduced ornamental plants shall extend to plants or parts thereof which are normally marketed for purposes other than propagation."

255.2 Mr. Royon said that he would also like to recall that several experts had objected, on more than one occasion, that the protection of plants or cut flowers might enable the

breeder to obtain a succession of royalty payments at the various stages of the marketing of the variety. Although present and former commercial practices of breeders showed such an objection to be totally unjustified, CIOPORA had sought a way of definitively excluding it by incorporating directly into the text of the Convention a provision which would give official authority to the theory of the exhaustion of rights, as had been done in the Luxembourg Convention on the Community Patent. CIOPORA had therefore suggested that a sentence should be added to the wording which he had just proposed under the reference 5(2), if it was felt that such a precaution was necessary, which might read: "The remuneration of that right, however, may not extend in the member States of the Union to the marketing of the respective plants or parts thereof after they have been put on the market in one of those States by the breeder or with his express consent."

255.3 Mr. Royon said that it was time to insist on the need to resolve the problem at the level of the Convention rather than leaving it to the discretion of member States because, as he had said earlier, it was not so much a matter of extending the scope of protection as of allowing the breeder to exercise his minimum right. At previous conferences CIOPORA had taken the opportunity to give practical examples of fraudulent practices which could occur. The minimum right provided for in the Convention did not allow the breeder to exercise his right normally in the event of such practices, examples of which could be found in the reports of the meetings of the Committee of Experts on the Interpretation and Revision of the Convention.

256.1 Mr. J. E. VELDHUYZEN VAN ZANTEN (ASSINSEL), noting the previous speaker's reference to the last sentence of Article 5(1), said that the second remark that he wished to make also concerned that sentence. It was recognized that ornamental plants or cut flowers could be used for the purposes of propagation. ASSINSEL believed that developments in technology would make similar possibilities available for vegetables and maybe for potatoes and for sugar beet. Realisation of the day-dream of growing cauliflowers for machine harvesting, from cloned plantlets produced in meristem laboratories at a viable cost, for example, was not that distant. It therefore considered that the provision made in the Convention for ornamental plants should be extended to other kinds of plants and suggested that the final sentence of Article 5(1) should be amended to read: "The breeder's right shall extend to plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of plants."

256.2 Mr. Veldhuyzen van Zanten said that the third and final point which he wished to raise concerned another development which had not been foreseen when the Convention was drafted. That was the production and sale of plantlets. It was very difficult to control the origin of the seed used by producers of plantlets who commercialized their product. ASSINSEL thought that the escape of significant quantities of propagating material from the control of the breeder was against the spirit of the Convention. It thought that the problem could be solved by deleting the word "vegetative" from the second sentence of Article 5(1) which would then read: "Propagating material shall be deemed to include whole plants." Mr. Veldhuyzen van Zanten stressed that breeders believed that royalty should not be payable more than once on the same material. Their reason for suggesting the amendment was to improve the effectiveness of their control over the use of seed of their varieties, and not to enable them to require a second royalty payment. Whether producers of plantlets purchased seed from the breeder or not the breeder could not maintain control if a further generation of seed was produced by them and used by them to produce plantlets which they subsequently commercialized.

257. Dr. H. H. LEENDERS (FIS) said that the Conference would have seen from the written comments made by his Organization and contained in document DC/7 that FIS fully supported what had just been said by the representative of ASSINSEL.

258. Mr. K. A. FIKKERT (Netherlands) said that his Delegation had great sympathy for the deletion of the word "vegetative" and was preparing a proposal to that effect.

259. Dr. D. BÖRINGER (Federal Republic of Germany) said that the great number of proposals which had just been made was somewhat confusing. If he had understood them correctly they were all aimed at extending the effect of protection, and in some cases to a rather considerable degree. One of them was aimed at saying something in the Convention about royalties. Dr. Böringer believed that they should all be considered calmly, proposal by proposal, to see whether any part of them could be taken into the revised text of the Convention. His Delegation had so far had the impression that the text contained in the Draft was very balanced on the one hand but that, on the other hand, it made it possible for member States to cope with practical difficulties or new technical developments by extending the effect of protection at the national level. He fully understood Mr. Royon's remark that it would really be more agreeable if the Convention itself provided for uniform treatment of such matters by all member States. He did not know whether it was possible or whether it was desirable. He imagined that several member States could act jointly under the present text to resolve existing problems. All in all, Dr. Böringer thought that the Conference should examine those proposals very carefully and that it should examine, moreover, whether it would not be more difficult for States to accede to a Convention which, as regards the effect of protection, would go beyond or far beyond what had been proposed so far in the Draft.

260. Mr. A. SUNESSEN (Denmark), supporting what had been stated by the Delegation of the Federal Republic of Germany, referred to his own Delegation's written comments which were contained in document DC/11. It was very satisfied with the wording in the Draft and doubted whether it could accept a text which gave a much wider protection than that wording.

261. Mr. P. W. MURPHY (United Kingdom) thought that his Delegation held the same views as the Delegation of the Federal Republic of Germany and the Delegation of Denmark regarding the possibilities of extending the right which was already set out in the Convention. He felt that he should point out that if the United Kingdom had to extend the right in the ways which had been proposed, then new national legislation would be required. Not only breeders but all interested organizations would be able to come forward with their own proposals for amendments. As a result the right of the breeder, far from being extended, might in fact be limited in other ways.

262. Mr. J. E. VELDHUYZEN VAN ZANTEN (ASSINSEL) said, in response to Dr. Böringer's remarks, that the suggestions made by ASSINSEL were aimed not at the extension, or considerable extension, of the rights granted to the breeder, but at repairing imperfections which had shown up from use of the system during the previous ten years. Dr. Böringer had expressed a fear that the accession of further States might be discouraged. ASSINSEL thought it to be of interest to existing member States and to any new ones to know that the protection system was complete and that it functioned well. Finally, Mr. Veldhuyzen van Zanten confirmed that ASSINSEL had not intended that royalties should be mentioned in the text.

263.1 Mr. R. ROYON (CIOPORA), replying to the comments made by the Delegations of the Federal Republic of Germany, of Denmark and of the United Kingdom, said that he wished to stress that CIOPORA was not asking that countries which were not yet members of UPOV should be obliged to align themselves on a 'maximum' level of protection, thus making it more difficult for them to accede. It was simply a matter of remedying a huge gap in Article 5(1). That gap, unless it was filled at the level of the Convention, would allow violations of the rights of breeders, which had occurred throughout the years since the Convention had entered into force, to go on occurring for years to come. To maintain the

present wording of paragraph (1) was to say that the "minimum protection" given by it was available only in respect of some species, but not, for example, in respect of the ornamental species intended for the production of cut flowers or of the fruiting species intended for the production of fruit. For example, a supermarket, situated in a member State of UPOV applying the "minimum" protection, did not contravene the "minimum" text of the Convention since it sold the plants to amateurs; it did not sell plants intended for propagation but quite simply plants intended for use as such. Similar situations could occur in respect of the production of cut flowers and of fruit.

263.2 Mr. Royon went on to say that a breeder who obtained protection in a member State of UPOV for an ornamental or a fruiting variety did so in order to be able to control its commercial exploitation which consisted in the production of plants, cut flowers or fruit. Therefore, if the huge gap in Article 5(1) was not remedied it would have the same effect as a flat refusal to protect certain species and perhaps, as the years passed, the loopholes would be more and more easily exploited. Dr. Böringer had remarked that it might be more satisfactory to deal with the problem at the level of national legislation. Mr. Royon thought that such was not the case because, on the one hand, it seemed to him that the Conference should have the courage to consider the inadequacy of the legal provisions of the text of the Convention, and because, on the other hand, it had been seen that it was very difficult to get national legislation amended when there was no obligation in the Convention. He wished to give equal emphasis to the fact that the interest in having the said gap remedied was not just one of a juridical and economic nature in relation to importations from non-member States, but one which subsisted in the member States as well in relation to the breeder's control over his varieties. He believed that subject had been sufficiently developed by the representative of ASSINSEL.

*Fifth Meeting
Wednesday, October 11, 1978,
morning*

264. The PRESIDENT invited the Delegation of the Netherlands to introduce its proposal, contained in document DC/33, to delete the word "vegetative" from the second sentence of Article 5(1).

265. Mr. R. DUYVENDAK (Netherlands) said that he would like to get agreement, for the purpose of the discussion, on the wording to be used in French to translate the words "propagating material." In French a different wording was used depending on whether a plant was sexually reproduced or vegetatively propagated. Such a separation did not exist in every day English and German but had been made in the translations of the existing text of the Convention into those languages. Mr. Duyvendak asked the Delegation of France whether it could agree, just for the purpose of the discussion, to use the single wording "matériel de reproduction."

266. Mr. J. BUSTARRET (France) thought that his Delegation could not follow Mr. Duyvendak's proposal. In fact three words were used in French: "reproduction," when sexual reproduction was involved, which meant that seeds were the only propagating material; "multiplication végétative," when cuttings, grafts or whole plants formed the propagating material; and "multiplication" with no adjective, which had a much wider meaning, encompassing everything which made it possible to propagate a variety. He therefore believed that, in that particular instance, the exact translation of "propagating material" was "matériel de multiplication."

267. Mr. R. DUYVENDAK (Netherlands) found what had just been said a great help. He therefore proposed that the French text of document DC/33 should read: "le matériel de multiplication comprend les plantes entières." The words "reproduction ou de" and "végétative" should be omitted.

268. Mr. J. BUSTARRET (France) said that the real reason for having included the sentence "vegetative propagating material shall be deemed to include whole plants" in the present text of Article 5(1) had been to take account of species for which whole plants were normally marketed as propagating material, and to show that the vegetative propagating material was not limited to cuttings, tubers and the like. If the word "vegetative" was taken out then the scope of the paragraph was changed, in that one introduced the possibility of protecting young plants which were propagated to replace seeds in the propagation of a variety.

269. Mr. R. DUYVENDAK (Netherlands) agreed that his Delegation was proposing a substantive change which was in line with the discussion which had taken place the previous day and which had been sought by some of the Observer Organizations. In a species such as lettuce, which was normally reproduced sexually, someone who produced and sold seed of a protected variety would be caught by the scope of the protection but he could avoid that net by selling plantlets instead of seed. His country's legislation provided that in such a case plantlets which were not the usual propagating material, but which were used as such, fell under the scope of protection. Mr. Duyvendak asked whether the laws of other countries contained a similar provision.

270. The PRESIDENT said that in Denmark a completely different system was envisaged, under which plantlets would be subjected to official control when they were sold. The control implied a genetic control of the origin of the seed. If it was found that the seed used was not certified seed then the sale of the plantlets would be prohibited.

271. Mr. B. M. LEESE (United States of America) confirmed that plantlets produced directly from seed were covered in his country by the Plant Variety Protection Act.

272. Mr. R. GUY (Switzerland) said that his country's legislation referred to "matériel de multiplication" which it defined as being reproductive propagating material, such as seeds, or vegetative propagating material, such as plants or parts of plants. His Delegation felt that the legislation did extend the protection to plantlets. It seemed evident that lettuce seed which was sold was reproductive propagating material and that plantlets which were sold were vegetative propagating material.

273. Mr. S. MEJEGÅRD (Sweden) said that his country's legislation gave the breeder a monopoly right in each generation of multiplication. There was no special provision for plantlets but the construction of the law was such that they were covered. In addition, Sweden had a similar system to that envisaged in Denmark, providing for the control of all sexually-produced material.

274.1 Mr. J. BUSTARRET (France) said that he would like to specify that, in France, protection was only extended to plantlets of certain species. Protection was extended in the case of vegetable species where the production of plantlets had become a commercial matter, for the sole purpose of ensuring that the rights of the breeder were suitably protected.

274.2 In response to the Delegation of Switzerland Mr. Bustarret thought that it could not be said that plantlets were vegetative propagating material because such material could only originate from the vegetative organs of the plant. The term could not be applied to plants produced from seeds, at least not according to his way of thinking.

274.3 If one wished to expressly extend the right of the breeder to cover plantlets in large-scale commercialization

then that could be done by saying that "le matériel de multiplication," or "propagating material," included whole plants.

275. Mr. J. F. VAN WYK (South Africa) said that his country had not so far been confronted with a request to protect plantlets. His country's legislation, however, protected the propagating material of a variety. Propagating material was defined as "any plant or any bulb" etc., including the seed of a plant. He believed it would be possible to give protection to plantlets.

276. Mr. G. CUROTTI (Italy) said that his country's legislation protected reproductive and vegetative propagating material but, in general, even plantlets were protected. Such was the case, for example, with the vine.

277. Mr. R. DERVEAUX (Belgium) said that the law of Belgium also allowed protection to be extended to plantlets.

278. Miss E. V. THORNTON (United Kingdom) said that throughout the United Kingdom's law the term "reproductive material" was used. It was defined as including whole plants and parts of plants, when used as reproductive material. She thought, therefore, that her Delegation could not agree to the proposal of the Delegation of the Netherlands. It would, of course, be for the courts to decide whether a sale of plants was being effected for reproductive purposes, but it appeared from the law that plantlets were not included.

279. Mr. W. BURR (Federal Republic of Germany) said that in his country the situation was similar to that in the United Kingdom. At present the legislation provided protection for whole plants and parts of plants, destined for the production of plants, only for species whose plants were normally vegetatively propagated. Therefore acceptance of the proposed amendment would be difficult for his Delegation as well.

280. Mr. H. AKABOYA (Japan) said that according to his country's new legislation, known as The Seeds and Seedlings Law, the scope of protection included not only plantlets of vegetatively propagated varieties but also plantlets of sexually reproduced varieties.

281. Mr. M. TOURKMANI (Morocco) said that his country had just introduced new legislation which foresaw the protection of new varieties of plants. In that legislation both seeds and plants were protected. The word "seed" had been defined as everything which was sexually reproduced, and the word "plant" as everything which was vegetatively propagated, whether it was a whole plant or part of a plant. Therefore a plantlet would be protected under his country's legislation.

282. The PRESIDENT asked whether any delegation wished to formally support the proposal of the Delegation of the Netherlands. He noted that no delegation wished to do so.

283. *The proposal of the Delegation of the Netherlands, contained in document DC/33, was not proceeded with.*

284. The PRESIDENT invited the Delegation of France to introduce document DC/17 Rev. which contained its proposal to replace the third sentence of Article 5(1) by certain new provisions.

285.1 Mr. B. LACLAVIDÈRE (France) said that it had seemed to his Delegation that the wording in the Draft was slightly restrictive in that it applied only to ornamental plants. In fact the provision should apply to all vegetatively propagated plants. It should apply, in particular, to fruit trees to which no-one was currently giving attention. The breeders of those species were facing particularly difficult and worrying circumstances. For that reason his Delegation had thought that it would be interesting to change the Convention slightly in order to extend the relevant provision to all vegetatively propagated plants, and the first sentence of its proposal was thus aimed at providing help for breeders of fruit trees who had no real encouragement to conduct research.

285.2 Mr. Laclavière went on to say that breeders had been put in an unfavorable position in that they had often been accused of wishing to claim royalties right up to the stage of the marketing of cut flowers or fruit. Such was not the case. Breeders had proposed the addition of the second sentence of his Delegation's proposal, as a kind of safeguard, to indicate that royalties could not be demanded after the first stage of marketing and to make it clear that they had no hidden intention to demand that royalties be paid at successive stages.

286. Mr. R. DERVEAUX (Belgium) wondered whether acceptance of the amendment proposed by the Delegation of France would entail the deletion of Article 5(4).

287. Dr. D. BÖRINGER (Federal Republic of Germany) said that he would like to ask the Delegation of France whether it would be correct to interpret the first sentence of the proposal as meaning that any apple from a protected apple tree, that any trunk produced from a protected tree, that any bottle of wine produced from a protected vine, and so on, fell under the effect of the protection.

288. Mr. B. LACLAVIÈRE (France) thought that although Dr. Böringer's remark was pertinent its force was perhaps reduced by the second sentence of his Delegation's proposal which indicated that royalties could never be demanded after the first stage of marketing. He believed that the problem which the breeders had sought to resolve was primarily to introduce a kind of right of control. There was no question of demanding royalties on apples, and even less on wine, if wine was a part of a plant, which remained to be seen. What the breeder sought was to be able to verify that apples coming onto the market originated from apple trees on which royalties had been paid. It could happen that a producer obtained a few trees of an apple variety, if necessary by importing them. He then propagated them himself. That propagation was not in itself of a commercial nature because the producer was not going to sell the apple trees. He was, however, going to put onto the market large tonnages of apples which would bring absolutely no benefit to the breeder. Mr. Laclavière believed that such was the problem for which a solution was being sought and that was the idea behind his Delegation's proposal.

289.1 Mr. R. ROYON (CIOPORA) wished to comment first on the question raised regarding Article 5(4). He thought that the amendment proposed by the Delegation of France, which was aimed only at vegetatively propagated plants, should not entail the deletion of that Article. It was quite possible that for reasons which were not so far evident, or for reasons resulting from the evolution of new techniques, such an extension of the effect of protection would be shown to be just as necessary for other categories of plants. For that reason, in his opinion, Article 5(4) should be allowed to remain.

289.2 Mr. Royon also wished to comment on Dr. Böringer's reference to final products. He thought that the proposal of the Delegation of France, as it had been very clearly explained by Mr. Laclavière, was aimed at affording the breeder a right of control over apples, which were parts of a plant, but certainly not over bottles of wine, which were not.

289.3 Mr. Royon said that he would like to revert to Mr. Laclavière's explanation of the motives underlying the amendment proposed by the Delegation of France. As had been said the aim of the wording put forward in document DC/17 Rev., and of the wording suggested by CIOPORA and reproduced in document DC/7, was to enable the breeder to control two kinds of situation. The first was the control of the commercial exploitation of a variety for which a breeder had been granted plant breeder's rights. Very highly developed propagation techniques now existed for ornamental plants, fruit trees and many vegetatively propagated plants, which made it possible to produce absolutely phenomenal quantities of plants in a very small space. Plantlets had also been mentioned extensively. As an example one could produce tens of thousands of carnation or chrysanthemum cuttings in a very small part of a glasshouse. At the propagation stage it was not possible to distinguish the variety. The cuttings were like tiny blades of grass or small twigs and it was not possible to recognize the variety. Therefore the breeder was unable to go to the propagator and to say that is my variety because he would be running a very great risk if he were mistaken or if he had received, for example, wrong information regarding a suspected infringement. The plantlets or propagating material, which were subsequently sold, were planted by a grower who used them to produce cut flowers or fruit. It was only at the moment where those cut flowers or that fruit were put onto the wholesale market, or when some rose-bushes were packed in polythene bags and put, for example, on a shelf in a supermarket, that it was possible for the breeder to check where his product was being sold and to control it in a sufficiently easy manner. Mr. Royon said that he had to draw a parallel at that point with what happened in the field of patents. There, checks to establish whether infringements had occurred were also made at the final marketing level. It was not a question of the patent holder collecting his royalty at that stage. That was collected at the manufacturing stage from the factory licensed to produce his invention. But it was at the retail level that it was possible to notice whether infringements had occurred. Breeders were asking for the same opportunity. They simply wanted to have the opportunity to control and the Convention in its present state did not give it to them. Mr. Royon said that the second situation envisaged by the proposed amendment was as follows. In a country which afforded no more than the "minimum" protection, as laid down in the present text of Article 5(1), a fruit tree and fruit grower with a large orchard, wishing to grow a certain variety which was protected in that country, could ask the breeder for a licence, pay a royalty on each tree propagated in his orchard and then receive a licence to produce and sell fruit. Royalties, of course, would be payable only on the propagation of the trees. The grower could then sell the fruit he produced. The legal and economic relationship between the breeder and the licensed grower consisted, for the breeder, in the hiring out of his right, and for the grower, in the obligation to pay royalties. Mr. Royon stressed that the breeder was obliged to guarantee the peaceful enjoyment of the licence. When the licensed grower took the fruit to market he found himself competing against fruit of the same variety produced by growers in countries where protection did not exist. It was accepted that the breeder could not control the use of his variety in such countries, but it was not acceptable that the breeder should see fruit of his protected variety sold under his very nose in the country in which he had been granted a title of protection. On the one hand his variety, which was intended for fruit production, was being commercially exploited and, on the other hand, he could not guarantee his licensees the peaceful enjoyment of their licence. In those circumstances the grower could tell himself that he was stupid to be honest and to accept to pay royalties, that he would no longer ask the breeder for a licence, that he would buy trees of the said variety from a country where there was no protection, plant them in his orchard and sell the fruit produced. In that case the grower had not propagated but simply purchased plants. He sold only the fruit, being the final product, which was not covered by the Convention in its present form. That was the situation which CIOPORA wished to cover. It was an important gap in the Convention and one should not bury one's head in the sand and not accept the need to put the situation right. Mr. Royon said that he could unfortunately point to many similar examples. It was not a matter of going beyond a reasonable protection but of enabling the breeder to exercise his right quite normally and quite reasonably in the country which had afforded protection to his variety.

290. The PRESIDENT asked whether there was formal support for, or further comment on, the proposal of the Delegation of France.

291. Mr. R. DERVEAUX (Belgium) said that his Delegation seconded the proposal of the Delegation of France.

292. Mr. H. AKABOYA (Japan) explained that the new Japanese Law, called The Seeds and Seedlings Law, followed the

present text of Article 5(1). If the proposal of the Delegation of France were accepted by the member States then Japan would have to amend its law accordingly. He wished the member States to be aware of that fact when making their decision.

293. Dr. D. BÖRINGER (Federal Republic of Germany) said that he agreed with the Delegation of France and with Mr. Royon that the problem being discussed was a very serious one, but he saw difficulties in resolving it properly within the Convention. He believed, however, that there was still a misunderstanding. Both Mr. Laclavière and Mr. Royon had stated convincingly that the effect of the protection provided for in Article 5(1) was less for vegetatively propagated species than for sexually reproduced species, and that breeders of vegetatively propagated species should therefore have the possibility of controlling the final product. In his opinion, however, the proposal which was on the table would in no way facilitate control in the market, and it did not bring anything new to the discussion of that matter. It would always be left to the owner of the title of protection to find out how to discover that a product originating from propagating material of his variety had come onto the market. He supposed, however, that the first sentence of the proposal was to be understood to mean that the effect of the protection extended automatically to the final product. That would mean, in respect of cut roses or apples, that the breeder would be given the possibility of using his exclusive right in the market. So far he had not fully understood whether that was really the intention behind the proposal or whether the intention was only to create a tool for control.

294. Mr. B. M. LEENE (United States of America) said that the proposal of the Delegation of France would present his country with a double problem in that both the Plant Patent Act and the Plant Variety Protection Act would have to be amended. The change which would be required in the latter Act was not feasible. It appeared to him that the matter was best left to national legislation. Finally, Mr. Leene advised that the final products of protected materials were not protected in the United States of America.

295. Mr. W. T. BRADNOCK (Canada) said that, although he had a great deal of sympathy for the particular problem which had been explained by the Delegation of France and Mr. Royon, he had to state that if the proposed amendment were adopted, and if it in fact made protection of the final product compulsory, then it would probably prevent Canada from being able to sign the Convention. Propagating material was subject to federal jurisdiction and could be protected but final products, which were subject to provincial jurisdiction, could not.

296. Mr. R. ROYON (CIOPORA) believed that the comments made by Dr. Böringer and Mr. Bradnock justified his underlining the misunderstanding which seemed to be ever-present. If one talked of "final product" or "marketed product" it was quite simply because the present text of Article 5(4) of the Convention referred to "marketed product." But it should not be thought that the breeder received a kind of monopoly of the final product in trade. CIOPORA was asking for no more and no less than had been enjoyed for several decades by holders of patents for industrial products.

297. Mr. F. ESPENHAIN (Denmark) felt that his Delegation could not support the proposal of the Delegation of France. Denmark was aware of the various problems which had been taken as examples. One was that fruit trees were purchased from countries where those trees were not protected. He could say that Denmark had considered regulating that matter by introducing legislation as provided for in Article 5(4) of the Convention. Another was that fruit trees were propagated not for sale but for the purpose of producing a final product. That matter had been regulated in Denmark some years earlier, in particular as far as apples were concerned.

298. Mr. R. ROYON (CIOPORA) regretted that he had failed to mention one important point which might have a bearing

on what had just been said by the Delegation of Denmark and on an earlier remark by Dr. Böringer. It had been said that one might try to remedy the gaps in the Convention in another way. Dr. Böringer had even said that he did not see how the problem could be resolved by changing Article 5(1). Mr. Royon said that he nonetheless wished to stress that the purpose of the Convention was to recognize an exclusive right of the breeder. It was not its purpose to establish rules to control the marketing of plant material. That would exceed its purpose. Mr. Royon believed it was up to each breeder to defend his rights but he had to have the means to do that. Breeders, like patent holders, brought actions against infringers. Patent holders had available to them legislation to that effect which enabled them to act. Given the present wording of Article 5(1) breeders did not have the means of action.

299. Mr. S. MEJEGÅRD (Sweden) said that the question of extending the rights of breeders had been discussed recently in his country; discussions had related, in particular, to giving the breeder a right to claim royalties in respect of propagating material produced and used within the canning industry, and to extending the right to the final product. Although it was believed that the best results would be achieved by extending the right as much as possible, it had been found that the time was not opportune. Therefore his Delegation could not accept any amendment to the minimum scope of protection.

300. Mr. G. CUROTTI (Italy) said that his Delegation supported the proposal of the Delegation of France.

301. Miss E. V. THORNTON (United Kingdom) said that she had listened with great interest to what had been said about Article 5 and particularly to the persuasive tones of Mr. Royon. The United Kingdom had been occupied for a number of years with the question of extending plant breeders' rights and was perfectly willing to discuss and to consider it as a matter of national treatment under the terms of Article 5(4); it might be possible in certain sectors to come to some agreement and to amend the law in the United Kingdom. Miss Thornton felt she should say, however, at that point, that the United Kingdom could not accept any amendment to the text of Article 5 contained in the Draft. If it were amended in the manner proposed then it would place her Delegation in very serious difficulties with regard to signing the new Convention.

302. Mr. R. GUY (Switzerland) said that his Delegation had been very impressed by what had been said by Mr. Royon, but it was convinced that it would be very difficult for the proposal of the Delegation of France to find acceptance in Switzerland. His Delegation preferred the text in the Draft, with paragraph (4) giving each State the possibility to manage its affairs.

303. Mr. T. E. NORRIS (New Zealand) said that his country's legislation was essentially similar to that of the United Kingdom; his Government would not wish to accept the amendment being proposed by the Delegation of France.

304. Mr. R. DUYVENDAK (Netherlands) said that his Delegation preferred not to accept the proposal of the Delegation of France but to seek a solution through Article 5(4).

305. Mr. J. F. VAN WYK (South Africa) said that the Plant Breeder's Rights Act, 1976, provided for the minimum scope of protection laid down in Article 5(1). His Delegation would like to leave the question of any extension of the scope open to national discretion.

306. Mr. F. ESPENHAIN (Denmark) said that his Delegation supported the position adopted by the Delegation of the United Kingdom.

307. Mr. R. LOPEZ DE HARO (Spain) said that his country's legislation did not provide for the protection of the final product. Since it would be very difficult to introduce such a provision, his Delegation was, for the time being, against any extension of protection.

308. Mr. B. LACLAVIDÈRE (France) said that he gained the impression from the debate that the proposal of his Delegation had attracted some sympathy but that, in its present wording, it provoked serious difficulties and States were not ready to accept it. Given the sympathy which the proposal had nevertheless attracted, he wished to ask the Conference whether it would be acceptable to form a small ad hoc working group to examine whether it was possible to formulate a proposal which the Conference could accept.

309. Miss E. V. THORNTON (United Kingdom) said that the proposal to establish an ad hoc working group placed her Delegation in some difficulty. If it was the general wish of the Conference that a working group should be set up then the United Kingdom would be willing to participate, but she really could not see the possibility of reaching an agreement on any wording different from that in Article 5 in the Draft, bearing in mind the provisions of paragraph (4) of that Article which left the matter open to national treatment.

310. Dr. D. BÖRINGER (Federal Republic of Germany) said that he believed that some more documents were being prepared in relation to Article 5(1). If that were so would it not be wiser to await those documents, have a look at them and then decide whether Mr. Laclavidière's proposal to form a working group should be adopted. In any event he believed that the problems regarding the effect of protection were big enough to require that the Conference took time to consider them. Whether that consideration might lead, should lead or had to lead to a change in the text in the Draft was a completely different question. He therefore proposed that the discussions on Article 5 should be interrupted pending the possible tabling of further documents, and should be continued later on.

311. The PRESIDENT said that he could see that Mr. Laclavidière was in agreement.

312. *It was decided that discussions on Article 5 should be resumed after any further relevant documents had been distributed. (Continued at 868)*

313. Dr. A. BOGSCH (Secretary-General of UPOV) said that he would like to announce, before the discussion moved on to Article 6, that the Delegations of South Africa and Italy would switch places in the Credentials Committee and the Working Group on Article 13. Italy would become a member of the Credentials Committee, and its place in the Working Group on Article 13 would be taken by South Africa.

314. Mrs. O. REYES-RETANA (Mexico) said that her Delegation wished to support the earlier statement of the Delegation of the Libyan Arab Jamahiriya and to indicate its disagreement with the fact that a country like South Africa was nominated as a member of the Credentials Committee. It believed that the nomination of South Africa as a member of any Committee in the Conference did not encourage non-member States to join UPOV.

315. Miss R. E. SILVA Y SILVA (Peru) said that her Delegation fully supported the statement made by the Delegation of Mexico.

316. Mr. S. OMAR (Iraq) declared, on behalf of the Government of the Republic of Iraq, that the presence of South Africa as a member would be an impediment to its joining UPOV.

317. Dr. Z. SZILVÁSSY (Hungary) said that his Delegation strongly supported the earlier statement of the Delegation of the Libyan Arab Jamahiriya.

318. Mr. B. SADRI (Iran) said that his Delegation supported the statements which had been made.

319. Mr. M. TOURKMANI (Morocco) said that his Delegation supported the statements which had been made.

320. Mr. M. LAM (Senegal) said that his Delegation supported the statements which had been made.

321. Mr. J. F. VAN WYK (South Africa) said that his Delegation deemed it necessary to voice its strenuous objections to the introduction of matters of a political nature in a Conference which, although a diplomatic conference, had been convened to deal with a strictly technical subject. There were appropriate international forums for dealing with political matters and it was suggested that such matters be left to those forums and not be raised at the Conference.

Article 6: Conditions Required for Protection

322. The PRESIDENT opened the discussion on Article 6(1)(a).

323. Mr. A. HEITZ (Office of the Union) advised that document DC/19, containing a drafting proposal submitted by the Delegation of the Federal Republic of Germany, had just been distributed. The proposal was to delete the words "of a variety" from the phrase "the breeder of a variety" at the beginning of the first sentence of Article 6(1).

324. *It was decided to refer document DC/19 to the Drafting Committee.*

325. The PRESIDENT invited the Delegation of the United Kingdom to introduce the proposals for amendment contained in documents DC/15 and DC/20.

326. Mr. A. F. KELLY (United Kingdom) said that his Delegation considered both proposals to be merely drafting amendments, designed to clarify and perhaps slightly shorten Article 6(1)(a). Document DC/15 concerned the opening and final two sentences. It was suggested that a small change in construction in the opening sentence, substituting "its origin" for "the origin," would allow that sentence to be simplified by the deletion of the words "of the initial variation from which it has resulted." It was further suggested that the meaning of the final two sentences would be made clearer if they were combined and shortened, so that they read: "A variety may be defined and distinguished by any characteristic which is capable of precise recognition and description." That wording, by omitting the words "morphological or physiological," had the added advantage that it removed any possible implication that the two types of characteristic mentioned in the text in the Draft were to be considered as a restriction of the types of characteristic which could be used. In document DC/20 a relatively small drafting change in the second sentence was suggested. Mainly to bring that into line with the French and German versions, the word "a" should be deleted from the phrase "or a precise description."

327. Mr. J. BUSTARRET (France) said that whilst Mr. Kelly's wording was shorter he thought it to be less precise than the wording of the Draft. It was not a matter of the artificial or natural origin of the variety but of the variation giving rise to the variety. A mutation could be induced or could occur naturally. It was from that variation that the variety was derived by a process of selection. Mr. Bustarret thought also that it would be regrettable to leave out the words "morphological or physiological." The text proposed by Mr. Kelly was certainly not unacceptable but it did not particularly improve the Draft. Since the Conference had agreed to make only those changes that were necessary he favored maintaining the Draft.

328. Mr. R. DUVVENDAK (Netherlands) said that his Delegation had no specific opinion on the proposal to substitute "its origin" for "the origin." It did, however, wish to support the proposal to delete the words "morphological or physiological" and to combine the final two sentences.

329. Mr. F. ESPENHAIN (Denmark) said that his Delegation wished to add its support to that expressed by the Delegation of the Netherlands.

330. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation's first priority with respect to the opening sentence of Article 6(1)(a) was to retain the wording of the Draft. If there were a majority for the proposal of the Delegation of the United Kingdom, however, then his Delegation would like to reconsider its opinion. In addition his Delegation had the impression that the nature of the proposed redrafting of the last two sentences was more than editorial. It believed that the substance might also have been altered as a result of the replacement of the word "characteristics" by the words "any characteristic." Dr. Böringer thought that the discussions in the Technical Working Parties, in the Technical Committee and in the Council of UPOV had so far led to the conclusion that it was necessary to study thoroughly which characteristics could be used to assess distinctness and that in all cases characteristics used for that purpose had to be capable of precise recognition and description. His Delegation was slightly hesitant in case the proposal of the Delegation of the United Kingdom entailed a commitment to use "any" characteristic, no matter how sophisticated the methods were that were needed to identify it. Finally, Dr. Böringer believed that his Delegation could agree to the proposal contained in document DC/20 since it had no effect on the German text.

331. Mr. A. F. KELLY (United Kingdom) thought that the interpretation given by Dr. Böringer to the words "any characteristic" was possible but it seemed that the sophisticated methods mentioned by him were also covered by the wording of the Draft. Mr. Kelly believed that any characteristic could be classified as morphological or physiological. One could find a physiological origin for a chemical difference, and so on. He therefore thought that Dr. Böringer had a point but he was not sure that it was a major one.

332. The PRESIDENT, considering that the Delegation of the Federal Republic of Germany would wish to follow the majority opinion, sought the views of the other delegations.

333. Mr. R. GUY (Switzerland) said that his Delegation thought that the first sentence of Article 6(1)(a) in the Draft was more precise than the shorter version proposed in document DC/15 by the Delegation of the United Kingdom. As far as the final sentence of that proposal was concerned he tended to agree with the Delegation of the Federal Republic of Germany that it introduced a slightly different meaning. If the Conference agreed that all characteristics were either morphological or physiological then it seemed to him that there was no need to amend the Draft.

334. Mr. R. DUYVENDAK (Netherlands) said that when his Delegation had expressed support for the deletion of the words "morphological or physiological" it had not commented on the introduction of the word "any" which was a separate matter. It thought that there was no need to add that word and proposed that the text should revert to "by characteristics."

335. Mr. A. F. KELLY (United Kingdom) said that his Delegation accepted the alteration proposed by the Delegation of the Netherlands.

336. Mr. J. BUSTARRET (France) said that the words "morphological or physiological characteristics" had been used simply to indicate that there were characteristics other than morphological ones. Characteristics recognized by means of biochemistry, for example, were "physiological" in the broad sense of that word.

337. Mr. R. DUYVENDAK (Netherlands) asked whether any delegate thought that the inclusion of the words "morphological or physiological" had restrictive effect. His Delegation believed that there had been no intention to be restrictive; it had therefore favored deleting those words. In the Code of Nomenclature of Cultivated Plants, however, mention was also made of cytological and chemical characteristics. The fact that those kinds of characteristics were not mentioned in the Convention could lead people to believe that it specifically excluded such kinds. The proposal of the Delegation of

the United Kingdom, by omitting any reference to specific kinds of characteristics, made it clear that there was no intention to be restrictive in that respect.

338. Mr. J. BUSTARRET (France) said that the words "morphological or physiological" were not restrictive; on the contrary, they were all-embracing.

339. Mr. R. DUYVENDAK (Netherlands) asked whether delegates could therefore support the deletion of the words "morphological or physiological" which, although they might be correctly understood by the Conference, might lead to misunderstanding by other people who might wrongly interpret the omission from the Convention of the additional kinds of characteristics referred to in the Code of Nomenclature.

340. Mr. W. T. BRADNOCK (Canada) said that his Delegation preferred the wording proposed by the Delegation of the United Kingdom. The wording of the Draft could cause confusion and indeed had done so in his country.

341. Dr. D. BÖRINGER (Federal Republic of Germany), noting that the Conference had agreed that the words "morphological or physiological" were to be understood in their broadest sense, asked whether any delegate could indicate a characteristic that did not fall under that definition.

342. Mr. R. DUYVENDAK (Netherlands) said that he could not answer Dr. Böringer's question. He thought he could name a characteristic which was neither morphological nor physiological but why should the Convention refer specifically to two classes of characteristic if it related to any characteristic or class of characteristic. The specific reference frequently led to the belief that other classes, such as those mentioned in the Code of Nomenclature, were excluded.

343. Mr. J. F. VAN WYK (South Africa) said that his Delegation was in favor of the proposed amendment, as adjusted.

344. Mr. J. BUSTARRET (France) said that he personally was in favor of not modifying the Draft except where difficulties had arisen. He would, however, like the words "morphological or physiological" to be deleted. He thought that the proposal as presented, in its English language version, even after deleting the word "any," lacked clarity. In the first sentence of Article 6(1)(a) it was said that "... the variety must be clearly distinguishable by one or more important characteristics..." He would like the final sentence to be adapted to that sentence and suggested that it might read: "The characteristics which define and distinguish a variety must be capable of precise recognition and description."

345. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his understanding was that Mr. Bustarret agreed to the deletion of "morphological or physiological." Mr. van der Meeren believed that the other point which had been raised was for the Drafting Committee to resolve.

346. Dr. D. BÖRINGER (Federal Republic of Germany) said that he had thought that there were no problems with Article 6(1)(a). It was, however, clear that it contained several small difficulties and he believed that the Conference should not leave the matter exclusively to the Drafting Committee. He was in favor of improving the wording but would like to see what now seemed to be the common opinion of the Plenary set down in a document.

347. *It was decided to continue the discussion on Article 6(1)(a) after a redrafted version of the proposal contained in document DC/15 had been submitted to the Plenary by the Secretariat. (Continued at 388)*

*Sixth Meeting
Wednesday, October 11, 1978,
afternoon*

348. The PRESIDENT opened the discussion on Article 6(1)(b).

349. Dr. D. BÖRINGER (Federal Republic of Germany) referred to document DC/21 which contained a proposal by his Delegation for the amendment of Article 6(1)(b)(ii). His Delegation considered its proposal to be purely a matter of drafting which should be referred to the Drafting Committee.

350. Mr. J. BUSTARRET (France) said that he found some difficulty in accepting the proposal of the Delegation of the Federal Republic of Germany. He was concerned that the word "trees," in its generally accepted sense, might exclude fruit trees. The Draft, which mentioned "forest trees, fruit trees and ornamental trees" was, however, quite clear. He wondered whether it was really necessary to amend a text which had brought forth no comments.

351. Dr. D. BÖRINGER (Federal Republic of Germany) said that the proposed amendment had originated not from his Delegation but from the session of the Ad Hoc Committee on the Revision of the Convention. If the majority of the Member Delegations no longer wished to simplify the text in that way then his Delegation was willing to withdraw its proposal.

352. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation supported the proposal of the Delegation of the Federal Republic of Germany.

353. Mr. J. F. VAN WYK (South Africa) said that his Delegation would also support the proposed amendment.

354. Mr. G. CUROTTI (Italy) said that his Delegation also supported the proposed amendment.

355. Mr. F. ESPENHAIN (Denmark) said that his Delegation had no strong feelings in the matter and would support the majority view.

356. Mr. A. F. KELLY (United Kingdom) said that his Delegation was in a similar position to that of Denmark and would support the majority view.

357. Mr. S. MEJEGÅRD (Sweden) said that his Delegation would also support the majority view.

358. Mr. R. GUY (Switzerland) said that his Delegation would also support the majority view.

359. Mr. B. LACLAVIÈRE (France) said that he saw a difficulty in adopting the proposed amendment in that the Convention provided that the French text should prevail in case of any discrepancy among the various texts. It was somewhat difficult for the French to group fruit trees in the general category of trees. Fruit trees formed a category apart.

360. Dr. A. BOGSCH (Secretary-General of UPOV) suggested that the difficulty might be overcome by using the expression "trees, including fruit trees."

361. Mr. J. BUSTARRET (France) said that he still considered the proposal of the Federal Republic of Germany to be more ambiguous than the wording of the Draft.

362. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation had understood that its proposal reflected the unanimous decision of the Ad Hoc Committee on the Revision of the Convention. Since the proposal appeared to give rise to difficulties of interpretation his Delegation with-

drew it. Dr. Böringer thanked the delegations which had supported it.

363. Mr. B. LACLAVIÈRE (France) thanked the Delegation of the Federal Republic of Germany for the understanding which it had shown.

364. The PRESIDENT noted that since no other delegation had taken up the proposal of the Delegation of the Federal Republic of Germany, contained in document DC/21, Article 6(1)(b)(ii) would, subject to any further observations and proposals, remain as appearing in the Draft.

365. Mr. F. ESPENHAIN (Denmark) said that the comments of his Government on Article 6(1)(b)(ii) were contained in document DC/11. His Government was somewhat concerned about the introduction of a six year period permitting prior marketing abroad of certain groups of plants and would prefer to retain the present provision of a four year period common to all plants.

366. The PRESIDENT asked whether there was any support for the concern expressed by the Delegation of Denmark. He noted that there was none.

367. Mr. W. T. BRADNOCK (Canada) asked whether the proposed Article 35, regarding transitional limitation of the requirement of novelty, meant that periods of prior commercialization, such as the four year and six year periods specified in Article 6(1)(b)(ii), could be set aside by a member State when it applied the provisions of the Convention to a particular species for the first time. He understood that the legislation of some member States allowed prior commercialization to have taken place for a longer period at that time.

368. Dr. D. BÖRINGER (Federal Republic of Germany) thought that two completely different questions were involved. Article 6(1)(b)(ii) dealt only with the period during which a variety could be commercialized in another State without affecting its novelty when an application for protection was made in a given State. The limitation of the requirement of novelty provided for in Article 35 was an entirely different matter. Mr. Bradnock was correct in his understanding that some States had provided that varieties bred some years before an application for protection were eligible for protection when they first applied the Convention to a species. In the Federal Republic of Germany, for example, it just so happened that a period of four years applied in such cases. The length of the period, however, was in no way related to the periods mentioned in Article 6. Some member States did not limit the requirement of novelty; others provided for a much longer period than four years.

369. The PRESIDENT invited observations on Article 6(1)(b)(i).

370. Mr. B. M. LEESE (United States of America) said that he wished to confirm that it was planned to amend the Plant Variety Protection Act slightly to bring it into conformity with Article 6(1)(b)(i). The "period of grace" of one year, which had been incorporated in the wording of that Article in the Draft, was already a feature of the Plant Variety Protection Act. As far as the Plant Patent Act was concerned the exception provided for in the proposed Article 34A(2) would be applied in his country.

371. Mr. F. ESPENHAIN (Denmark) said that his Government's views on the introduction of the so-called "period of grace" of one year were stated in document DC/11. Given that it was necessary to provide for such a derogation his Government would prefer to see it take the form of a special provision like the exceptions provided for in Article 34A.

372. The PRESIDENT asked whether there was any support for the wish expressed by the Delegation of Denmark. He noted that there was none.

373. *Article 6(1)(b) was adopted as appearing in the Draft.*

374. The PRESIDENT opened the discussion on Article 6(1)(c).

375. *Article 6(1)(c) was adopted as appearing in the Draft, without discussion.*

376. The PRESIDENT opened the discussion on Article 6(1)(d).

377. Mr. A. F. KELLY (United Kingdom) said that his Delegation thought that the last phrase of Article 6(1)(d) might be made more clear in the English text if the word "defined" was added. Earlier in the Article reference was made to a particular cycle defined by the breeder and it might therefore be better to conclude with the words "at the end of each defined cycle."

378. Mr. B. LACLAVIDÈRE (France) said that his Delegation had no objection to the proposed addition. If it was translated directly into French, however, it would not be quite correct and he would propose using the words "à la fin de chaque cycle ainsi défini" in the French text.

379. The PRESIDENT considered that the amendment proposed was relatively small and that the document normally required under the Rules of Procedure of the Diplomatic Conference could be dispensed with provided the Conference had no objections.

380. Mr. W. BURR (Federal Republic of Germany) said that his Delegation had some difficulty with the proposal. The German text in the Draft read: "... am Ende eines jeden Zyklus." The meaning of those words was clear. If, however, the text was changed to: "... am Ende eines jeden so festgelegten Zyklus," in accordance with the proposal of the Delegation of France, then the German text would be more far-reaching than the English text. Mr. Burr was not sure that the changes proposed would really have the same effect in the three languages.

381. Mr. A. F. KELLY (United Kingdom) said that the English text could be amended to read: "...at the end of each cycle thus defined," if that would help to bring the three texts closer together.

382. The PRESIDENT asked whether there was formal support for the proposal of the Delegation of the United Kingdom. He noted that there was not.

383. *Article 6(1)(d) was adopted as appearing in the Draft.*

384. The PRESIDENT opened the discussion on Article 6(1)(e).

385. *Article 6(1)(e) was adopted as appearing in the Draft, without discussion.*

386. The PRESIDENT opened the discussion on Article 6(2).

387. *Article 6(2) was adopted as appearing in the Draft, without discussion.*

388. The PRESIDENT reopened the discussion on Article 6(1)(a) and invited observations on document DC/31 which contained the provisional outcome of the earlier discussions on that Article, as recorded by the Office of the Union. (Continued from 347)

389. Mr. J. BUSTARRET (France) said that his Delegation accepted the wording, as recorded in document DC/31, in all three languages.

390. Mr. A. F. KELLY (United Kingdom) noted that the correspondence between the English and French texts would be improved by changing the final sentence in the English version to: "The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description."

391. *Subject to the amendment referred to in the preceding paragraph, Article 6(1)(a) was adopted as appearing in document DC/31.*

Article 7: Official Examination of Varieties; Provisional Protection

392. The PRESIDENT opened the discussion on Article 7 and invited the Delegation of the Federal Republic of Germany to introduce its proposals for amendments, as contained in document DC/22.

393.1 Mr. W. BURR (Federal Republic of Germany) said that the amendments proposed in document DC/22 resulted largely from the discussions in the Ad Hoc Committee on the Revision of the Convention. Member Delegations might recall that there had been a detailed discussion about the consequences of the fact that some botanical species could be propagated both sexually and vegetatively. At that time it had been provisionally concluded that the final part of the second sentence of Article 7(1), which read: "having regard to its normal manner of reproduction or multiplication," should be put into the plural so that the examining offices at least had the possibility to take into account in each particular case the relevant system of propagation.

393.2 Mr. Burr went on to say that the proposal to replace the word "country" by the words "member State of the Union" was made solely in order to align the language used in Article 7(2) with that of other Articles in the Draft.

393.3 Mr. Burr concluded by saying that it had been noted during the discussions in the Ad Hoc Committee that the legislation in some member States provided for a system of provisional protection under which the applicant could not sue third persons in respect of acts committed during the period between the filing of the application for protection and the decision thereon until a grant of protection had been made. His Delegation therefore proposed that the words "for the period..." would be more appropriate in Article 7(3) than "during the period...." That amendment would have the advantage that it left it open whether suits could be brought during or only after the period.

394. Mr. B. M. LESE (United States of America) said that his Delegation wished to record its understanding of the statement reproduced in document DC/3 in the explanatory notes on Article 7. In the light of that interpretation it understood that Article 7 did not require a government itself to conduct the necessary tests for the determination of distinctness, homogeneity and stability, always provided that the conditions specified in that interpretation were met.

395. Mr. R. DUYVENDAK (Netherlands) believed that the proposal of the Delegation of the Federal Republic of Germany for the amendment of Article 7(1) differed slightly from the conclusion reached in the Ad Hoc Committee, in that the word "normal" had been retained. For many crops one could not speak of 'the normal manner of reproduction.' In maize, for example, where inbred lines were produced by inbreeding and hybrids were produced by crossing, there was no 'normal' reproductive system. His Delegation thought that it had been agreed that the word "normal" should be deleted. Mr. Duyvendak thought that the proposal in document DC/22 did not resolve the problem, which had been discussed many times; he said that he would be willing to make an alternative written proposal for the amendment of the second sentence of Article 7(1) which he believed should read: "Such examination shall be adapted to the various botanical genera and species having regard to their reproductive systems." Before doing so, however, he would appreciate further clarification of the aim of the proposal submitted by the Delegation of the Federal Republic of Germany.

396. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation's proposal aimed to introduce the conclusion reached in the Ad Hoc Committee. He had to confess,

however, that the words "üblich" in the German text and "normal" in the English text probably had differing meanings. He thought that "normal" might be stronger than "üblich" which perhaps would be more accurately translated by the word "usual." By using the word "üblich" his Delegation had wished to establish that the examination methods should not extend beyond the manners of reproduction or multiplication by which varieties were customarily ("üblicherweise") produced. It had wished to make it impossible for a breeder to demand, without reason, that his variety be examined in such and such a very special way.

397. Mr. J. BUSTARRET (France) thought that the word "normal" in the English text was not equivalent to "habitué" and "üblich" in the French and German texts respectively. What one wished to provide in Article 7(1) was that account had to be taken of what might be called the 'usual' manner of reproduction. Mr. Duyvendak had cited inbred lines of maize. Clearly the concept of homogeneity for an allogamous plant, such as an inbred line of maize, was not the same as for a pure line of an autogamous plant. More latitude had to be given in the case of an allogamous plant. Therefore, the different examination criteria had to take into account the 'usual' manner of reproduction of the species in question, particularly with regard to homogeneity.

398. Mr. R. DUYVENDAK (Netherlands) said that it was precisely because account had to be taken of the specific case one was working with that he had proposed the deletion of the word "normal," "habitué" or "üblich."

399. Dr. A. BOGSCH (Secretary-General of UPOV) saw two problems in relation to the proposal to amend Article 7(1). The first was to establish whether it was essential for the Delegation of the Federal Republic of Germany to maintain the word "üblich." If it was then the question arose whether equivalent words could be found in English and French.

400. Mr. J. BUSTARRET (France) supported the proposal of the Delegation of the Netherlands to delete "normal," "habitué" and "üblich."

401. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation would really like to keep the word "üblich" if the second sentence of Article 7(1) was to be retained.

402. Mr. R. DUYVENDAK (Netherlands) said that he would be pleased if the whole of the second sentence could be deleted. The conduct of examinations would then be entirely regulated by Article 6. He therefore proposed that the second sentence of Article 7(1) be deleted.

403. Mr. J. BUSTARRET (France) thought that it would be wrong to delete the whole of the second sentence but he would accept, personally, that it should simply say: "Such examination shall be appropriate to each botanical genus or species."

404. *It was decided to continue the discussion on Article 7(1) after the proposal referred to in the above paragraph had been formally submitted by the Delegation of France. (Continued at 455)*

405. The PRESIDENT opened the discussion on the proposed amendment of Article 7(2).

406. *Article 7(2) was adopted as appearing in document DC/22, without discussion.*

407. The PRESIDENT opened the discussion on the proposed amendment of Article 7(3).

408. Mr. J. WINTER (ASSINSEL) said that his Association supported the amendment proposed in document DC/22. He also wished to make a general statement. Provisional protection was, for ASSINSEL, a matter of the highest importance. It realized, however, that it would probably not be possible to

introduce a provision into Article 7(3) to oblige the member States to grant provisional protection. Such protection was, however, available in France, in the United Kingdom, on a somewhat different basis, and in Switzerland. ASSINSEL therefore asked that note be taken of its wish that UPOV should make a recommendation that the protection available within the member States should be as uniform as possible.

409. Dr. A. BOGSCH (Secretary-General of UPOV) proposed that the translations of "für" into English and French should be considered by the Drafting Committee. He felt that "in respect of" and "en ce qui concerne," respectively, would be better than "for" and "pour."

410. Mr. J. BUSTARRET (France) saw nothing wrong with keeping the wording of the Draft for Article 7(3). In any event the amendment proposed did not seem to him to be a matter of substance.

411. *It was decided to refer the proposal mentioned in paragraph 409 to the Drafting Committee.*

412. *Subject to the decision referred to in the preceding paragraph, Article 7(3) was adopted as appearing in document DC/22.*

Article 8: Period of Protection

413. The PRESIDENT opened the discussion on Article 8 and invited the Delegation of the Federal Republic of Germany to introduce its proposal for amendment as contained in document DC/23.

414. Dr. D. BÖRINGER (Federal Republic of Germany) said that the proposal was analogous to the earlier proposal in document DC/21 to amend Article 6(1)(b)(ii). Since it had withdrawn that earlier proposal his Delegation now withdrew its proposal in respect of Article 8.

415. The PRESIDENT invited observations on the new wording proposed for Article 8 in the Draft.

416. Mr. J. WINTER (ASSINSEL) said that his Association favored a world-wide, uniform plant variety protection right. For as long as the procedure for granting protection and, in particular, the duration of protection differed from State to State, that would remain a long-term objective. In the shorter term it should be possible to increase the duration of protection for species which needed a long time for their introduction to the market, such as potatoes, perennial grasses, clover and fruit trees. ASSINSEL believed that the present minimum periods of protection of fifteen and eighteen years were too short in the case of such species. It would like to see a minimum period of twenty years for the species quoted.

417. Mr. G. CUROTTI (Italy) said that his Delegation proposed that the period of protection for fruit trees should be made longer.

418. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation would be willing to examine both the wish expressed by ASSINSEL and the proposal of the Delegation of Italy if they were presented as written proposals.

419. Miss E. V. THORNTON (United Kingdom) said that her Delegation would like to have clarified that part of the last sentence of Article 8 in the Draft which read: "For vines, forest trees, fruit trees and ornamental trees, including their rootstocks..." It was not clear whether the rootstocks of all the groups mentioned, or only those of ornamental trees, were included.

420. Dr. A. BOGSCH (Secretary-General of UPOV) said that the intention had certainly been to include the rootstocks of all the groups mentioned. He proposed that the Drafting Committee be asked to improve the wording in that respect.

421. *It was decided to refer the matter mentioned in the preceding paragraph to the Drafting Committee.*

422. Mr. B. M. LEESE (United States of America) confirmed that his Government could accept Article 8 provided the exception specified in Article 34A(2) was retained.

423. *It was decided to continue the discussion on Article 8 after the proposal referred to in paragraph 417 had been formally submitted by the Delegation of Italy.* (Continued at 549)

Article 9: Restrictions in the Exercise of Rights Protected

424. The PRESIDENT opened the discussion on Article 9.

425. Mr. B. M. LEESE (United States of America) said that his Government could accept Article 9 with the understanding that it permitted member States to annul or restrict for antitrust or national security reasons the exclusive right accorded to a breeder. In its view the obligation of a State to take such measures in the public interest took precedence over other provisions of the Convention and there would therefore be no conflict between its patent legislation and either Article 10(4) or Article 11(1) of the Convention.

426. Dr. A. BOGSCH (Secretary-General of UPOV) noted that the expression "public interest" characteristically referred to the situations mentioned by the Delegation of the United States of America.

427. Mr. J. WINTER (ASSINSEL) said that his Association would like the phrase "in order to ensure the widespread distribution of the variety" to be deleted from Article 9(2). It considered that the obligation to ensure that the breeder received equitable remuneration should not be limited to restrictions made for that purpose.

428. The PRESIDENT asked whether any delegation wished to submit a proposal to delete the phrase referred to by the representative of ASSINSEL. He noted that no delegation wished to do so.

429. *Article 9 was adopted as appearing in the Draft.*

Article 10: Nullity and Forfeiture of the Rights Protected

430. The PRESIDENT opened the discussion on Article 10(1).

431. Mr. W. T. BRADNOCK (Canada) said that his Delegation was concerned that there was no reference to Article 6(1)(c) and (d) in Article 10(1). That Article provided that the right of the breeder had to be annulled if it was established that the conditions of distinctness and novelty were not effectively met when the title of protection was issued. Article 6(1)(c) and (d), however, provided that the variety also had to be "sufficiently homogeneous" and "stable in its essential characteristics." There appeared to be no basis for annulment if the latter two conditions were not met.

432. Mr. R. DUYVENDAK (Netherlands) said that in his country the fact that a variety was found, after the title of protection had been issued, not to be homogeneous was not considered to be a ground for annulment of the right of the breeder.

433. The PRESIDENT asked whether delegates thought it desirable to include the criterion of homogeneity in Article 10(1).

434. Mr. J. BUSTARRET (France) thought that homogeneity should not be included in Article 10(1). Homogeneity was judged at the time of the preliminary examination and the responsibility for that judgement did not rest with the breeder. In the case of distinctness and novelty new facts or documents which established that the examining authority had been misled could come to light. Once the authority had

determined, however, that the variety was homogeneous there was no going back.

435. Mr. J. WINTER (ASSINSEL) said that his Association was against the inclusion of the criterion of homogeneity in Article 10(1).

436. Mr. W. T. BRADNOCK (Canada) said that he had also referred to "stability." He would like to know what the authorities in the member States did if they discovered that a protected variety had lost its stability.

437. Dr. D. BÖRINGER (Federal Republic of Germany) said that the annulment of the right of a breeder was a very significant matter. He believed that it had been the wish, when the Convention had been established in 1961, that annulment should be obligatory if it was shown, after the title of protection had been issued, that a variety had not been distinct or novel. It had been the intention that in such a case the right had to be declared null and void which meant that it had never been valid. As far as Mr. Bradnock's second question was concerned, Dr. Böringer believed that it had been the intention to provide an opportunity in the wording of the Convention for some flexibility of interpretation, which was justified by the biological nature of the material being examined. If a State found that a variety had lost its homogeneity or stability it would examine the variety very carefully. If it proved that those prerequisites were no longer met then it could declare the right of the breeder to be forfeit. It was not obliged to do so, however, since those qualities could sometimes be restored to the variety by the breeder.

438. Mr. R. DUYVENDAK (Netherlands) said that it was felt in his country that in most cases it was not a question of the variety being unstable but of the breeder not maintaining it correctly. It was generally possible for the original stability to be recovered.

439. Mr. J. BUSTARRET (France) said that Article 10(2) of the Convention dealt very clearly with the last question raised by Mr. Bradnock. It provided that the breeder forfeited his right if he was no longer in a position to maintain the variety in conformity with its description. The right was not annulled. It was forfeit as a result of considerations arising after the grant of the title of protection.

440. Mr. F. ESPENHAIN (Denmark) said that his Delegation agreed with the comments made by the Delegations of the Federal Republic of Germany, the Netherlands and France.

441. Mr. W. T. BRADNOCK (Canada) said that he appreciated the clarification provided by member Delegations and recognized the differentiation between declaring the right null and void and declaring it forfeit.

442. *Article 10(1) was adopted as appearing in the Draft.*

443. The PRESIDENT opened the discussion on Article 10(2) and invited the Delegation of the United Kingdom to introduce its proposal for amendment as contained in document DC/24.

444. Miss E. V. THORNTON (United Kingdom) noted that paragraphs (2) and (3) of Article 10 dealt with related situations. The former paragraph dealt with a mandatory requirement and the latter with a permissive one. The opening words of paragraph (3) stated that: "The right of the breeder may become forfeit..." and her Delegation thought this to be the correct expression. It suggested, therefore, that a similar expression should be ascribed to paragraph (2) which should begin with the words: "The right of the breeder shall become forfeit..."

445. Dr. A. BOGSCH (Secretary-General of UPOV) felt that the proposal should be submitted to the Drafting Committee. In the French text, the introductory words of paragraphs (2) and (3) were already compatible. In that text, however, which said: "Est déchu de son droit l'obtenteur..." the breeder was

the suffering party, whereas in the English text proposed in document DC/24 the suffering party was the right.

446. Miss E. V. THORNTON (United Kingdom) said that her Delegation also wished to propose that the words "morphological and physiological" be deleted from Article 10(2), as had been done in respect of Article 6(1)(a).

447. *Subject to the decisions of the Drafting Committee on the proposals referred to in paragraphs 444 and 446 above, Article 10(2) was adopted as appearing in the Draft.*

448. The PRESIDENT opened the discussion on Article 10(3).

449. Mr. B. M. LESE (United States of America) said that his Delegation could agree to the requirement placed on breeders by Articles 10(2) and (3)(a) to possess propagating material, although such a requirement did not currently feature in the Plant Patent Law. Users of the plant patent system in his country had pointed out the desirability of such a provision and his Government had acknowledged its willingness to amend the Plant Patent Law accordingly.

450. *Article 10(3) was adopted as appearing in the Draft.*

451. The PRESIDENT opened the discussion on Article 10(4).

452. Mr. W. T. BRADNOCK (Canada) said that he wished to revert to the fact that Article 10(4) provided that the right of the breeder could not be annulled or become forfeit except on the grounds set out in Article 10. It was implied in Article 9 that the right of a breeder could be restricted in the public interest. As a matter of interpretation he wished to know whether it was possible under Article 9 to cancel a right either in the public interest or because of failure to comply with a restriction imposed in the public interest. If it was not possible to do so then a provision was needed in Article 10 to allow cancellation in certain public interest situations.

453. Dr. A. BOGSCH (Secretary-General of UPOV) thought that non-compliance with a restriction imposed pursuant to Article 9 was, in formal terms, no reason for cancellation, but he felt that the restriction imposed could be so severe that it reduced the right to an infinitesimal fraction of its original value.

454. *Article 10(4) was adopted as appearing in the Draft.*

Seventh Meeting
Thursday, October 12, 1978,
morning

Article 7: Official Examination of Varieties; Provisional Protection (Continued from 404)

455. The PRESIDENT invited the Conference to consider document DC/40 which contained a proposal, submitted by the Delegation of France, for a new wording for the second sentence of Article 7(1). It was proposed that the sentence should read: "Such examination shall be appropriate to each botanical genus or species."

456. Mr. R. DUYVENDAK (Netherlands) remarked that test guidelines for a wide range of species had been developed in the period since the coming into force of the original Convention. That collection of guidelines provided much more detailed information about the examination of varieties than did the single sentence under consideration. He therefore repeated his proposal that the second sentence of Article 7(1) should be deleted.

457. Mr. B. LACLAVIÈRE (France) believed that the existence of the test guidelines was due to the fact that the Convention encouraged their development. He believed, moreover, that the sentence in question was certainly reassuring to the professional organizations which feared examinations. There were some which contested them. He thought, therefore, that it might be preferable to retain the sentence.

458. Mr. J. WINTER (ASSINSEL) said that his Association wished to emphasize what had been said by Mr. Laclavière. It would not view favorably the deletion of the sentence in question which really had provided a basis for the preparation of the test guidelines cited by Mr. Duyvendak.

459. *It was decided that the second sentence of Article 7(1) should be replaced by the wording proposed in document DC/40.*

460. *Subject to the decision recorded in the preceding paragraph, Article 7(1) was adopted as appearing in the Draft.*

Article 11: Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

461. The PRESIDENT opened the discussion on Article 11 and invited the Delegation of South Africa to introduce document DC/34 containing its proposal for the amendment of Article 11(2).

462. Mr. J. F. VAN WYK (South Africa) said that his Delegation considered its proposal to be mainly of a drafting nature. The intention was to improve the text by referring specifically to the titles of protection involved as was done in Article 2(1) which mentioned both special titles of protection and patents.

463. Dr. D. BÖRINGER (Federal Republic of Germany) said that he could not see any substantive reason for the proposed amendment. Since Article 2(1) provided a clear basis for the recognition of the right of the breeder "by the grant either of a special title of protection or of a patent" he felt it to be unnecessary to expand on the words "a title of protection" in Article 11(2).

464. Mr. B. LACLAVIÈRE (France) thought that the proposal would modify the text in that its scope would be limited to some extent. He considered the proposed amendment to be substantive and he would not be in favor of it.

465. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) was of the opinion that the text of Article 11(2) as appearing in the Draft was quite clear. He therefore saw no need for the amendment proposed by the Delegation of South Africa.

466. The PRESIDENT asked whether there was formal support for the proposal contained in document DC/34. He noted that there was not.

467. *Article 11 was adopted as appearing in the Draft.*

Article 12: Right of Priority

468. The PRESIDENT opened the discussion on paragraphs (1) and (2) of Article 12.

469. *Paragraphs (1) and (2) of Article 12 were adopted as appearing in the Draft, without discussion. (Paragraph (1) re-considered at paragraph 578.2 et seq.)*

470. The PRESIDENT opened the discussion on Article 12(3).

471.1 Mr. H. J. WINTER (United States of America) said that his Delegation wished to make a general statement with regard to Article 12 and the right of priority. There were a number of differences between the relevant provisions of the Paris Convention for the Protection of Industrial Property

and of the UPOV Convention. In each instance the Paris Convention was more liberal towards applicants. At previous discussions delegations from his country had been assured that as far as plant patents were concerned it would be in order for the United States Patent and Trademark Office to apply the terms and conditions of the Paris Convention. As a result foreign applicants would be accorded more liberal treatment than was required by Article 12. The Plant Variety Protection Office of the Department of Agriculture would apply the provisions of Article 12.

471.2 Mr. Winter went on to make specific reference to Article 12(3) which allowed the breeder up to four years after the expiration of the period of priority to provide propagating material for examination. At previous discussions assurances had been given that both of the Offices of the United States of America could examine applications upon receipt, without reference to the four-year period. His Delegation was concerned, however, that a literal reading of Article 12(3) might not so allow.

472. The PRESIDENT invited comments on the statement made by the Delegation of the United States of America.

473. Miss E. V. THORNTON (United Kingdom) sought confirmation from the Delegation of the United States of America that it was referring only to the case of its own country and breeders making applications there and that it was not expecting current member States of the Union to provide anything further for applicants from its own country.

474. Mr. H. J. WINTER (United States of America) confirmed that Miss Thornton's understanding of the scope of his statement was correct.

475. The PRESIDENT said that he understood from the earlier discussions that when an application was filed in the United States of America no additional documents or material were required and the application could be processed immediately.

476. Mr. H. J. WINTER (United States of America) said that the understanding expressed by the President was quite correct.

477. *The Conference noted that Article 12(3) had no relevance for the United States of America in the circumstances referred to in paragraphs 471.2 to 476 above.*

478. *Article 12(3) was adopted as appearing in the Draft.*

479. The PRESIDENT opened the discussion on Article 12(4). The Delegation of Denmark was preparing a proposal and he therefore asked that consideration of that Article be deferred.

480. *It was decided to defer discussion on Article 12(4) until the proposal referred to in the preceding paragraph had been circulated. (Continued at 565)*

Article 13: Denomination of Varieties of Plants (Continued from 177)

481. The PRESIDENT reopened the discussion on Article 13 and noted that it was being examined by the working group especially established for that purpose.

482. *It was decided to defer discussion on Article 13 until the working group referred to in the preceding paragraph had reported. (Continued at 996)*

Article 14: Protection Independent of Measures Regulating Production, Certification and Marketing

483. The PRESIDENT opened the discussion on Article 14.

484. *Article 14 was adopted as appearing in the Draft, without discussion.*

Article 15: Organs of the Union

485. The PRESIDENT opened the discussion on Article 15. He noted that the Government of Switzerland had declared in writing that it had no objection to the proposal in the Draft to delete the final sentence of the original text of Article 15 which stated: "That Office shall be under the high authority of the Swiss Confederation", and to the consequential amendments proposed in the Draft in respect of a number of subsequent Articles.

486. *Article 15 was adopted as appearing in the Draft, without discussion.*

Article 16: Composition of the Council; Votes

Article 17: Observers in Meetings of the Council

Article 18: Officers of the Council

487. *It was decided to defer examination of Articles 16, 17 and 18 until proposals for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 587, 592 and 595)*

Article 19: Meetings of the Council

488. The PRESIDENT opened the discussion on Article 19.

489. *Article 19 was adopted as appearing in the Draft, without discussion.*

Article 20: Rules of Procedure of the Council; Administrative and Financial Regulations of the Union

490. The PRESIDENT opened the discussion on Article 20.

491. *Article 20 was adopted as appearing in the Draft, without discussion.*

Article 21: Tasks of the Council

492. The PRESIDENT opened the discussion on Article 21 and invited the Delegation of the Federal Republic of Germany to introduce its proposals for amendment as contained in document DC/26.

493. Mr. W. BURR (Federal Republic of Germany) said that he would like to take first that part of his Delegation's proposal which related to Article 21(c). The present text of the Convention provided that the Council should "give to the Secretary-General . . . all necessary directions, including those concerning relations with national authorities." In order to ensure that relations with international, supranational and suchlike organizations were not excluded, his Delegation felt that it might be more appropriate to refer instead to "all necessary directions for the accomplishment of the tasks of the Union."

494. Mr. J. F. VAN WYK (South Africa) said that a proposal by his Delegation for the amendment of Article 21(c) was currently being reproduced in document DC/36. He wished to withdraw that proposal and to support, at the same time, the proposal submitted by the Delegation of the Federal Republic of Germany in document DC/26.

495. *Article 21(c) was adopted as appearing in document DC/26.*

496. Mr. W. BURR (Federal Republic of Germany) said that the remaining amendment proposed by his Delegation in document DC/26 related to Article 21(g). His Delegation had

certain reservations about the revised wording proposed in the Draft which provided that the Council required the agreement of the Secretary-General when appointing a Vice Secretary-General. According to its cooperation agreement with the World Intellectual Property Organization (WIPO) the Union had no influence in the appointment of the Secretary-General. It was conceivable that a future Director General of WIPO might have aims which were quite different to the present and future aims of the Union. In that case the work of the Union might be blocked if a Vice Secretary-General could not be appointed without the agreement of the Secretary-General. His Delegation believed that the amendment it was proposing would in no way mean that a future Secretary-General should not have an opportunity to express his opinion about the appointment of a Vice Secretary-General. On the contrary, good cooperation between the Council and the Secretary-General was essential. His Delegation believed, however, that the matter should be regulated in administrative provisions on cooperation in such a way that the work of the Union would not be blocked. It therefore proposed that Article 21(g) should simply state that the Council should "appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General."

497. Mr. B. LACLAVIÈRE (France) said that he had considerable hesitation about the proposed amendment. In his view the problem, which had been widely discussed, was more theoretical than practical. It was inconceivable that a Vice Secretary-General should be appointed without the agreement of the Secretary-General. In that event the working relationship between the Union and the World Intellectual Property Organization would cease to exist. He believed that it would be preferable to keep the wording proposed for Article 21(g) in the Draft in order to facilitate a good relationship with the Secretary-General.

498. Miss E. V. THORNTON (United Kingdom) said that she was inclined to support the proposal of the Federal Republic of Germany. Her Delegation thought that the duties of the Union should be quite clear and that there should not be an obligation to consult with and obtain the agreement of the Secretary-General.

499. Mr. F. PINI (Italy) said that although he had not followed all the preparatory work for the Diplomatic Conference he found the remarks of the Delegation of France quite reasonable and wished to support them.

500. Mr. R. DERVEAUX (Belgium) said that his Delegation supported the proposal submitted by the Delegation of the Federal Republic of Germany.

501. Mr. W. VAN SOEST (Netherlands) said that his Delegation was in favor of the proposal of the Delegation of the Federal Republic of Germany.

502. Mr. J. F. VAN WYK (South Africa) said that his Delegation also favored that proposal.

503. Mr. F. ESPENHAIN (Denmark) said that his Delegation also favored that proposal.

504. Mr. H. J. WINTER (United States of America) said that his Delegation, as an Observer Delegation, naturally had no position on the matter. It did seem, however, that it would be desirable to reserve the final decision on it until the Secretary-General's return.

505. Mr. S. MEJEGÅRD (Sweden) said that he shared the views expressed by the Delegation of the United States of America.

506. The PRESIDENT said that it might help the Conference to know that the Secretary-General had accepted the proposal under consideration. The President understood that the Delegation of the Federal Republic of Germany had made the proposal in order to ensure that the work of the Union would not be blocked in the event of an irreconcilable differ-

ence between the Union and the World Intellectual Property Organization.

507. Mr. S. MEJEGÅRD (Sweden) said that his Delegation would support the proposal of the Delegation of the Federal Republic of Germany, in view of the clarification given by the President.

508. Mr. F. PINI (Italy) said that he was of the same opinion as the Delegation of Sweden.

509. Mr. R. GUY (Switzerland) said that his Delegation also supported the proposal of the Delegation of the Federal Republic of Germany.

510. Mr. B. LACLAVIÈRE (France) asked the Conference to note that his Delegation abstained.

511. *Article 21(g) was adopted as appearing in document DC/26 (see also paragraphs 520 to 522).*

512. *Subject to the decisions recorded in paragraphs 495 and 511 above, Article 21 was adopted as appearing in the Draft.*

Article 22: Majorities Required for Decisions of the Council

513. *It was decided to defer examination of Article 22 until the proposal for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 605)*

Article 23: Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff

514. The PRESIDENT opened the discussion on Article 23(1) and invited the Delegation of South Africa to introduce its proposal for amendment contained in document DC/27.

515. Mr. J. F. VAN WYK (South Africa) said that his Delegation proposed as a drafting matter that the words "have the task of carrying" in the first sentence of Article 23(1) be replaced by the word "carry."

516. *It was decided to refer the proposal reproduced in document DC/27 to the Drafting Committee.*

517. *Subject to the decision referred to in the preceding paragraph Article 23(1) was adopted as appearing in the Draft.*

518. The PRESIDENT opened the discussion on Article 23(2).

519. *Article 23(2) was adopted as appearing in the Draft, without discussion.*

520. The PRESIDENT opened the discussion on Article 23(3).

521. Mr. A. PARRY (United Kingdom) drew attention to the reference in Article 23(3) to Article 21(g). The Conference had adopted as the text of Article 21(g) the amendment proposed in document DC/26 which read: "appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General." (See paragraphs 496 to 511). The reference in Article 21(g) to the conditions of appointment of the Secretary-General and of a Vice Secretary-General, which had been included in the wording proposed for the Article in the Draft, did not appear in the text adopted. There was therefore no point in retaining the cross-reference in Article 23(3). It appeared to Mr. Parry that the cross-reference to Article 21(g) should be deleted and that the Conference had to consider what should be said about the conditions of appointment of the Secretary-General and of a Vice Secretary-General, given that the relevant reference had been deleted from Article 21(g).

522. Dr. D. BÖRINGER (Federal Republic of Germany) agreed with Mr. Parry's analysis but felt that it would be suf-

ficient to refer the question to the Drafting Committee for alignment with the present content of Article 21(g).

523. *It was decided that the Drafting Committee should be asked to ensure that there was conformity between the texts of Articles 21(g) and 23(3).*

524. *Subject to the decision referred to in the preceding paragraph, Article 23(3) was adopted as appearing in the Draft.*

Article 23A: Legal Status

525. *It was decided to defer examination of Article 23A until the proposal for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 611)*

Article 24: Auditing of the Accounts

526. The PRESIDENT opened the discussion on Article 24.

527. *Article 24 was adopted as appearing in the Draft, without discussion. It was noted that the Delegation of Switzerland might wish to make a statement regarding the cessation of the supervisory function of the Government of the Swiss Confederation. (Continued at 679)*

Article 25: (Cooperation with the Unions Administered by BIRPI)

528. *The Conference noted that there was no provision in the Draft corresponding to Article 25 of the original text of the Convention.*

Article 26: Finances

529. *It was decided to defer examination of Article 26 until the proposal for amendment being submitted by the Delegation of the Federal Republic of Germany had been circulated. (Continued at 613)*

Article 27: Revision of the Convention

Article 28: Languages to be Used by the Office and in the Council

530. *It was decided to defer examination of Articles 27 and 28 until proposals for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 628 and 636)*

Article 29: Special Agreements for the Protection of New Varieties of Plants

531. The PRESIDENT opened the discussion on Article 29.

532. *Article 29 was adopted as appearing in the Draft, without discussion.*

Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilization of Examination Services

Article 31: Signature

Article 32: Ratification; Accession

Article 32A: Entry Into Force; Closing of Earlier Texts

Article 32B: Relations Between States Bound by Different Texts

Article 33: Communications Concerning the Genera and Species Protected; Information to be Published

Article 34: Territories

533. *It was decided to defer examination of Articles 30, 31, 32, 32A, 32B, 33 and 34 until proposals for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 639, 682, 689, 692, 707, 719 and 722)*

Article 34A: Exceptional Rules for Protection Under Two Forms

534. The PRESIDENT opened the discussion on Article 34A and noted that the Delegation of the United States of America had submitted a proposal, which was reproduced in document DC/32, for the amendment of Article 34A(2).

535. Mr. H. SHIRAI (Japan) said that his Delegation would like the adoption of Article 34A to be deferred since it was considering whether to submit a proposal for amendment.

536. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation supported the proposal of the Delegation of Japan to defer further consideration of Article 34A.

537. *It was decided to defer discussions on Article 34A. (Continued at 813)*

Article 35: Transitional Limitation of the Requirement of Novelty

538. The PRESIDENT opened the discussion on Article 35.

539. *Article 35 was adopted as appearing in the Draft, without discussion.*

Article 36: Transitional Rules Concerning the Relationship Between Variety Denominations and Trademarks

Article 36A: Exceptional Rules for the Use of Denominations Consisting Solely of Figures

540. *It was decided to defer examination of Articles 36 and 36A until the Report of the Working Group on Article 13 was available. (Continued at 996)*

Article 37: Preservation of Existing Rights

541. The PRESIDENT opened the discussion on Article 37.

542. *Article 37 was adopted as appearing in the Draft, without discussion. (Reconsidered at paragraph 738 et seq.)*

Article 38: Settlement of Disputes

Article 39: Reservations

543. *It was decided to defer examination of Articles 38 and 39 until proposals for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 744 and 754)*

Article 40: Duration and Denunciation of the Convention

544. The PRESIDENT opened the discussion on Article 40.

545. Mr. W. BURR (Federal Republic of Germany) said that his Delegation had a small problem at least with the German text of Article 40(2). It considered the matter to be one for the Drafting Committee to decide but wished to know whether the Conference would like a written proposal to be submitted. The problem occurred in the second and final sentence of Article 40(2). His Delegation would like the words "of the receipt of the notification of denunciation" to be replaced by "of the receipt of that notification." Repetition of part of the first sentence of that Article would thus be avoided.

546. *It was decided to refer the proposal recorded in the preceding paragraph to the Drafting Committee.*

547. *Subject to the decision referred to in the preceding paragraph, Article 40 was adopted as appearing in the Draft.*

Article 41: Copies; Languages; Notifications

548. *It was decided to defer examination of Article 41 until the proposal for amendment being submitted by the Delegation of the Netherlands had been circulated. (Continued at 762)*

Article 8: Period of Protection (Continued from 423)

549. The PRESIDENT reopened the discussion on Article 8 and invited the Delegation of Italy to introduce its proposal for amendment, contained in document DC/41.

550. Prof. A. SINAGRA (Italy) said that his Delegation's proposal to increase the minimum period of protection for vines, forest trees, fruit trees and ornamental trees, including their rootstocks, from 18 years to 25 years was based on the length of the productive life of trees and on the fact that their varietal or clonal denominations remained in current use for longer than did those of herbaceous plants. Furthermore, trademark and patent legislation generally afforded a longer period of protection than 18 years. His Delegation believed that a long minimum period of protection stimulated the work of breeders.

551. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation wished to support the proposal of the Delegation of Italy so that there could be a further discussion in the Plenary of the question of the period of protection.

552. Mr. J. WINTER (ASSINSEL) said that his Association also welcomed the proposal of the Delegation of Italy. The arguments put forward for extending the minimum period of protection for vines, forest trees, fruit trees and ornamental trees, including their rootstocks, were equally valid for potatoes. ASSINSEL would recommend that potatoes should be included in the consideration of the proposal.

553. Miss E. V. THORNTON (United Kingdom) said that the minimum periods laid down in the Convention had been translated into United Kingdom law. Longer periods had been fixed for some species where it was considered that the minimum period of protection was not sufficient. Her Delegation felt, however, that to accept an obligation under the Convention for the prolongation of the minimum period to 25 years, which would require an amendment of United Kingdom law, would cause considerable difficulties. It therefore could not support the amendment proposed by the Delegation of Italy and would prefer to retain the discretionary approach to extensions of the minimum period of protection.

554. Mr. F. ESPENHAIN (Denmark) said that his Delegation supported the views expressed by the Delegation of the United Kingdom. Consideration was being given currently in Denmark to fixing longer periods of protection for some species where difficulties were known to exist.

555. Mr. H. AKABOYA (Japan) said that his country's new legislation prescribed a minimum period of protection of 18

years for vines, forest trees, fruit trees and ornamental trees. He asked Member Delegations to take that fact into consideration.

556. Mr. J. F. VAN WYK (South Africa) said that his country was in more or less the same situation as the United Kingdom. Longer minimum periods were already in force for a large number of fruit trees and other types of trees and for potatoes, but those periods were less than 25 years. If the proposal of the Delegation of Italy were adopted then it would require an amendment of South African Law. His Delegation regretted that it was therefore unable at that time to support the proposal.

557. Mr. S. MEJEGÅRD (Sweden) said that his country's position was similar to that of the United Kingdom and Denmark. Although his Delegation could not support the proposal of the Delegation of Italy, consideration was being given in Sweden to the voluntary introduction of a longer period of protection.

558. Mr. T. E. NORRIS (New Zealand) said that his country's legislation was somewhat similar to that of the United Kingdom. His Delegation would also prefer not to be bound to the longer period but to be able to consider it for particular species as appropriate.

559. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation would prefer not to introduce a longer minimum period of protection. Every member State was free to fix a longer period when it wished to do so.

560. Mr. R. GUY (Switzerland) said that his country had fixed periods of protection of 20 and 25 years for some species but his Delegation believed a rather short minimum period, which could be accepted by all countries, should be retained.

561. Mr. R. DERVEAUX (Belgium) said that his Delegation also was unable to support the proposal of the Delegation of Italy.

562. Dr. D. BÖRINGER (Federal Republic of Germany) said that when the Convention was established in 1961 the minimum periods of protection had been fixed at 15 and 18 years as a compromise. That compromise had been reached, in particular, as a result of a declaration by one State that it would grant protection within the framework of its patent legislation and in recognition of the consequential difficulties to grant a longer period of protection than 18 years. Although his Delegation was not proposing that the Convention should be changed immediately in the way proposed by the Delegation of Italy, it thought that it had become clear from the discussions that a period of 15 or 18 years was in many cases too short for breeders. Many member States had already fixed longer periods of protection and discussions should perhaps continue in the Union, during the coming decade, to determine whether member States could not at some stage agree in common to extend the period of protection on a voluntary basis.

563. Mr. M. O. SLOCOK (AIPH) said that his Association had a particular interest in ornamental plants. As a breeder and producer of trees he personally thought that it must be recognized that it would be wrong to fix a minimum period of protection of 25 years for that category of plants as a homogeneous unit. For many species falling into the category covered by the proposal of the Delegation of Italy a period of less than 25 years would be perfectly acceptable on technical grounds. In view of the scope existing in national legislation to fix periods, where appropriate, that were longer than the minimum periods of 15 and 18 years, he suggested that those minimum periods should not be increased.

564. *Subject to the decision referred to in paragraph 421 above, Article 8 was adopted as appearing in the Draft.*

Eighth Meeting
Thursday, October 12, 1978,
afternoon

Article 12: Right of Priority (Continued from 480)

565. Dr. D. BÖRINGER (Acting President) announced that the President had asked him, as one of the Vice-Presidents, to preside over the discussion on the proposal for the amendment of Article 12(4) submitted by the Delegation of Denmark and contained in document DC/52. Dr. Böringer invited the Delegation of Denmark to introduce its proposal.

566.1 Mr. H. Skov (Denmark) said that during the course of the summer several lawsuits had been filed in his country against persons who had begun to exploit a variety, apparently in good faith. The question of good faith had not been discussed, however, and could not have been discussed, because of the existing text of the last sentence of Article 12(4). Although it was not known whether production had been started in good faith, one of the producers had already been reduced to bankruptcy because he had not foreseen that his production would give rise to a financial liability. Mr. Skov said that as a result his Government would like to introduce a number of measures. It wished to provide that a variety must have an approved name before it was marketed. That could be done under seed law. It would also try to establish a provisional protection for the period between the application for and the grant of protection, thereby making it impossible in many cases, he hoped, for a producer to claim that he had started production in good faith.

566.2 Mr. Skov went on to draw the Conference's attention to the fact that before and after the period of priority there were other periods in which difficulties might arise which were not covered by Article 12(4). In between came the period of priority for which special provision had been made in that Article. His Government thought that it would be appropriate to allow the producer who has started production in good faith to dispose of his stock. That was all that his Delegation was proposing. If such a producer had produced, for example, some rose plants then he should be allowed to dispose of his stock.

566.3 It could be argued that the provision in the last sentence of Article 12(4) had been taken from the Paris Convention for the Protection of Industrial Property. In the matters regulated by that Convention, however, there was only one period, namely the period of priority. Also, when an applicant for a patent filed his application there was a clear description of the subject matter which was quite clearly intelligible to persons with a knowledge of the matter. In the case of applications for plant variety protection all that was announced was that breeder "X" had applied for protection of a new variety of a given species. It was not possible to identify from the announcement the variety in question. For that reason there was a clear possibility, even if one did one's best to eliminate it, that a producer could start production in good faith of a variety in respect of which protection was subsequently granted. That was the reason behind his Delegation's proposal to delete or amend the last sentence of Article 12(4).

567. Dr. D. BÖRINGER (Acting President) invited observations on the amendment proposed by the Delegation of Denmark, as appearing in document DC/52 and as introduced by Mr. Skov.

568.1 Mr. J. WINTER (ASSINSEL) said that his Association was extraordinarily grateful to the Delegation of Denmark for having provided an opportunity for the problem to be discussed by the Conference, in particular with reference to the need for provisional protection to be introduced. He was of the opinion, however, that several aspects of the problem were in need of clarification. He thought that the meaning of

the content of the right of priority, as laid down in Article 12, was that a given State, receiving an application for protection, could not hold that an earlier application in another State was detrimental to the novelty of the variety. In other words the relationship between breeders and authorities receiving applications for protection was regulated under the aspect of novelty. Assuming that his interpretation, which was based on the situation for patents, was correct, he considered that one could argue against the systematic grouping of the provisions of the last sentence of Article 12(4) in that it regulated the relationship between an applicant and third parties. Mr. Winter thought that such a provision should nevertheless be included somewhere in the Convention. If no difficulties had arisen so far in the exercise of that provision then ASSINSEL would suggest that the first proposal of the Delegation of Denmark, namely to delete the last sentence of Article 12(4), should be rejected.

568.2 Mr. Winter went on to consider the alternative proposal submitted by the Delegation of Denmark. He wondered whether the reference to "plants or parts of plants" was meant to imply that the proposed exception should apply exclusively in respect of vegetatively propagated plants. He noted the reference to production "begun in good faith." In his view that matter was one for the courts to interpret and one which was not normally provided for in a basic work on industrial property. If he had correctly understood the proposed addition to the last sentence of Article 12(4) it would allow member States to decide to establish a personal right, contrary to the principle established in the original text of that Article. The effect of such a decision would be that when protection was granted in respect of the variety in question the content of that protection would be limited. Mr. Winter believed that the problem experienced in Denmark could not be solved on the basis of the amendment proposed by that country's Delegation. He wished to stress again the need for provisional protection to be introduced. It seemed to him that, for the time being, the solution of the kind of problem instanced by the Delegation of Denmark should be left to the competence of individual member States. ASSINSEL would welcome it if the Conference rejected the amendment proposed in document DC/52.

569. Mr. S. MEJEGÅRD (Sweden) said that Article 12 dealt with a right of priority. The whole Article dealt with novelty questions. Paragraph (1) referred only to a right of priority and did not state what that right was. The effect of that right was set out in paragraph (4). The sole reference to the content of the right was in the last sentence of paragraph (4). The main scope of the right protected was laid down in Article 5 where it was stated that it was compulsory to afford protection from the day when the right was granted. Protection during the period between the filing of an application for protection and the grant of a right was, according to Article 7(3), a matter for the discretion of each member State. If he had correctly understood the proposal submitted by the Delegation of Denmark he believed it concerned that period. If Denmark had difficulty in finding a solution to its problem he wondered if it could not be solved within the national legislation, as had been suggested by the previous speaker.

570. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) believed that the question of "good faith" had to be determined by the courts and that it was for judges to take account of the absence or presence of it when fixing the amount of fines for infringement. He was also concerned by what he saw as a contradiction between the amendment proposed by the Delegation of Denmark and the existing text of the last sentence of Article 12(4). The existing text stated that "such matters may not give rise to any right in favour of a third party . . ." The proposal, however, went on to state that in such and such a case a member State could give rights to a third party. His Delegation could not understand how one could give a right of priority with one hand and take it back with the other.

571. Mr. W. BURR (Federal Republic of Germany) believed that Mr. Skov, in introducing the proposal of the Delegation

of Denmark, had referred to the examination period. He would prefer to leave open whether the reference had concerned the country of first application or a country in which a subsequent application was filed with a claim in respect of the priority of the first application. In the view of his Delegation problems associated with the examination period could not be solved within the framework of Article 12 which was concerned with the priority period. The first sentence of paragraph (4) referred back to paragraph (1) which specified a one-year priority period but it did not refer to the four-year period for submitting additional documents and material. That period was mentioned only in paragraph (3). His Delegation therefore wondered whether the problem raised by the Delegation of Denmark would not have to be solved within the existing framework of Article 7 where member States were authorized to provide for provisional protection.

572.1 Mr. H. Skov (Denmark) said that Article 12(4) contained two rules. The first sentence contained a rule about matters which could occur within the priority period without prejudicing novelty. The other rule, which concerned rights, was in the second and last sentence. If it was felt that his Delegation's proposal to add to the latter rule was wrong then he defied the wisdom of including a rule concerning rights in an Article which dealt with priority.

572.2 Mr. Skov said that he wished to clarify that no protection was given in his country during the examination period. Producers were free to use the variety during that period. Serious consideration was being given to changing that situation. At the moment, however, when the day came and the right was granted, then, all of a sudden, a person who had produced some rose plants or other products was prevented from selling them. It was only that situation which his Delegation thought should be changed. That could be done by granting provisional protection under certain conditions, thus normally excluding claims that production had been started in good faith. But there could still be problems arising from the fact that a variety could be marketed in other countries for up to four or six years before an application for protection was filed in a given member State. Europe was a relatively small area in which there was a considerable trade and in which the boundaries were rather open. It was therefore very easy for a situation to arise in which a producer started production in good faith.

572.3 Mr. Skov concluded by saying that he had no strong feelings about retaining the reference in his Delegation's proposal to "plants or parts of plants," which had been questioned by the representative of ASSINSEL. He thought, however, that if a rose or chrysanthemum producer, for instance, filled his whole glasshouse in good faith with a variety then he should have some chance of disposing of his production. The only purpose of his Delegation's proposal was to ensure that in such cases the producer had that chance, even after rights had been granted in the variety, provided that he had started his production in good faith. Mr. Skov agreed that the question of good faith was clearly one for the courts. They would decide when there was good faith and when there was not.

573. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that the situation just described by Mr. Skov could and did occur from time to time in his country. In the majority of such cases the holder of the plant breeder's right was quite willing to licence the sale of the production in question because he was well aware that he might find himself in a similar situation on some future occasion. Mr. van der Meeren said that his Delegation believed that the breeder must, in any case, receive some remuneration. To allow a third party to sell his stock without some payment to the breeder would run counter to the protection afforded to the breeder.

574. Mr. H. J. WINTER (United States of America) said that his Delegation had already indicated its support for the text of Article 12 appearing in the Draft, subject to certain understandings regarding its application (see paragraphs 471 to

477). It appeared to his Delegation that the last sentence of Article 12(4) had the same effect as part of Article 4, Section B, of the Paris Convention for the Protection of Industrial Property. The redrafting of the sentence, as proposed by the Delegation of Denmark, was not favored since it appeared to limit the rights of the breeder and to create uncertainty as to his rights. A number of the delegations which had already spoken had indicated that the concept of good faith was rather ambiguous and might lead to a good deal of uncertainty.

575. Dr. H. H. LEENDERS (FIS) said that perhaps the majority of the members of FIS would have supported the proposal of the Delegation of Denmark, if it had been made 15 to 20 years earlier. He did not think that would still be the case. The relationship between breeders and the trade was good and his Federation did not want to have that disturbed. He was somewhat astonished that in Denmark, where growers were keenly aware of market situations, someone could be reduced to bankruptcy because he did not know that there were plant breeder's rights. It had cost some time to educate people and his Federation would not wish to see exceptions introduced by way of the concept of good faith.

576. Dr. D. BÖRINGER (Acting President) asked whether any delegation wished to second either of the proposals of the Delegation of Denmark as appearing in document DC/52. He noted that no delegation wished to do so.

577. *Article 12(4) was adopted as appearing in the Draft.*

578.1 The PRESIDENT thanked Dr. Böringer for having chaired the now concluded discussion on Article 12(4).

578.2 The President advised the Conference that although Article 12(1) had been adopted as appearing in the Draft, without discussion (see paragraph 469), the Delegation of France wished to submit a proposal for amendment. He noted that there were no objections to reconsidering Article 12(1) and invited the Delegation of France to introduce its proposal for amendment which was reproduced in document DC/53.

579. Mr. B. LACLAVIÈRE (France) said that his Delegation's proposal concerned the first sentence of Article 12(1). When studying the Convention and the professional activities of breeders he had noted that it was rather difficult for breeders, given the time required to complete each growth cycle, to test their varieties commercially in foreign countries. It was known, nevertheless, that important steps and expenses were involved in filing an application for protection in a foreign country. It was for that reason that breeders would like to see the priority period extended to two years, thus making it easier for them to carry on their businesses. With that in mind his Delegation submitted its proposal that the words "twelve months" be replaced by "two years" in the first sentence of Article 12(1).

580. Mr. J. WINTER (ASSINSEL) said that Mr. Laclavière had quite rightly mentioned the fact that the proposal of the Delegation of France had originated in the professional circles. ASSINSEL therefore wished to support the proposal. It might, however, lead to greater legal uncertainty.

581. Mr. M. O. SLOCOK (AIPH) drew the attention of the Conference to paragraph 11 of the submission of AIPH as reproduced in document DC/7. His Association had thoroughly discussed the question before making its submission and it fully supported the amendment proposed by the Delegation of France.

582. Mr. F. ESPENHAIN (Denmark) said that his Delegation had already expressed its concern about various periods when the question of "good faith" had been discussed. It could not support the proposal of the Delegation of France.

583. Mr. G. CUROTTI (Italy) said that his Delegation was opposed to the proposal of the Delegation of France.

584. Mr. B. M. LESE (United States of America) said that the text of Article 12(1) as amended in the proposal of the Delegation of France would be inconsistent with both the Plant Variety Protection Act and the Plant Patent Act. His Delegation was therefore opposed to it.

585. The PRESIDENT asked whether any delegation wished to support the proposal of the Delegation of France. He noted that no delegation wished to do so.

586. *The earlier adoption of Article 12(1) as appearing in the Draft (see paragraph 469) was confirmed.*

Article 16: Composition of the Council; Votes (Continued from 487)

587. The PRESIDENT opened the discussion on Article 16 and invited the Delegation of the Netherlands to introduce its proposal for the amendment of paragraph (3) as appearing in document DC/43.

588. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that the text of Article 16(3) in the Draft did not take into account the provision in Article 26(5) whereby a member State could be deprived of its right to vote. His Delegation therefore proposed that the phrase "subject to the application of the provision of Article 26(5)" should be added to Article 16(3).

589. Mr. A. PARRY (United Kingdom) remarked that Article 16(3) described a single situation in that it provided that each member State had one vote in the Council. His immediate reaction on reading the proposal of the Delegation of the Netherlands had been that the additional words must relate to a provision later in the Convention giving parties to the Convention more than one vote. The provision in Article 26(5), however, dealt with the circumstances in which the right to vote could be suspended if a member State was in arrears in the payment of its contributions. That being the case, he would not advise that the proposed amendment be adopted because the two articles in question dealt with quite different situations. Mr. Parry said that he had in front of him copies of a number of the Conventions sponsored by the World Intellectual Property Organization. None of those Conventions had a provision of the kind proposed for inclusion in Article 16(3). They all had separate provisions similar to Articles 16(3) and 26(5) of the Draft. Such separate provisions were also to be found, for example, in the International Sugar Agreement of 1977. He therefore felt it was clear that the normal procedure in multilateral conventions was to separate entirely the two ideas. His Delegation would not advocate support of the proposal of the Delegation of the Netherlands.

590. The PRESIDENT asked whether any delegation wished to support the proposal reproduced in document DC/43. He noted that no delegation wished to do so.

591. *Article 16 was adopted as appearing in the Draft, without discussion of paragraphs (1) and (2) thereof.*

Article 17: Observers in Meetings of the Council (Continued from 487)

592. The PRESIDENT opened the discussion on Article 17 and invited the Delegation of the Netherlands to introduce its proposal for the amendment of paragraph (1) as appearing in document DC/44.

593. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that it was rather difficult to introduce his Delegation's proposal since it contained a reference to Article 32, which was also the subject of a proposed amendment, yet to be circulated.

594. *It was decided to further defer discussion on Article 17 until the proposal for the amendment of Article 32, referred to*

in the preceding paragraph, had been circulated. (Continued at 686)

Article 18: Officers of the Council (Continued from 487)

595. The PRESIDENT opened the discussion on Article 18 and invited the Delegation of the Netherlands to introduce its proposals for amendment as appearing in document DC/45.

596. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that Article 18(1), which would not be affected by his Delegation's proposal, provided for the possibility of electing more than one Vice-President of the Council. The purpose of the proposal was to establish an order of seniority, to specify the powers and duties of a Vice-President acting as President and to fix the duration of a Vice-President's term of office at three years.

597. Mr. B. LACLAVIÈRE (France) said that he well understood the concern of the Delegation of the Netherlands. Its proposal was certainly quite correct from the legal point of view. He wondered, however, whether the points could not be more happily left to the internal Rules and Regulations of the Union.

598. The PRESIDENT asked whether there was any support for the first of the proposed amendments which sought to establish an order of seniority in the event of their being more than one Vice-President.

599. Mr. J. F. VAN WYK (South Africa) said that his Delegation wished to support the proposed amendment referred to by the President.

600. Mr. B. LACLAVIÈRE (France) remarked that Mr. van Wyk had not participated in the first years of the life of the Union. During those years one had been very pleased at not having an order of precedence, a fixed term of office and specific provisions in respect of Vice-Presidents. The Council had acted in the way that seemed most opportune. He believed that acting in that way had been most valuable for the functioning of the Union.

601. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation supported what had just been said by the Delegation of France.

602. Miss E. V. THORNTON (United Kingdom) said that her Delegation associated itself with the support expressed by the Delegation of the Federal Republic of Germany.

603. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation withdrew its proposals for the amendment of Article 18, as contained in document DC/45.

604. *Article 18 was adopted as appearing in the Draft.*

Article 22: Majorities Required for Decisions of the Council (Continued from 513)

605. The PRESIDENT opened the discussion on Article 22 and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/46.

606. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation considered its proposal to replace the word "members" in Article 22 by the expression "member States of the Union" to be a drafting amendment.

607. *It was decided to refer the proposal contained in document DC/46 to the Drafting Committee for consideration.*

608. Mr. H. J. WINTER (United States of America) said that his Delegation thought that it would be useful to include in the Convention a quorum requirement for decisions of the Council. If that was not acceptable his Delegation would sug-

gest that such a requirement be established by the Council in its Rules of Procedure.

609. The PRESIDENT drew the attention of the Conference to the final paragraph of the explanatory notes on Article 22 in document DC/3 where it was stated that the Council would "establish the quorum for its decisions in its Rules of Procedure."

610. *Subject to the decision referred to in paragraph 607 above, Article 22 was adopted as appearing in the Draft.*

Article 23A: Legal Status (Continued from 525)

611. The PRESIDENT said that, although the proposal for amendment submitted by the Delegation of the Netherlands had now been circulated in document DC/47, he understood that another proposal for amendment, from the Delegation of France, was in preparation.

612. *It was decided to further defer discussion on Article 23A until the proposal for amendment being submitted by the Delegation of France had been circulated. (Continued at 904)*

Article 26: Finances (Continued from 529)

613. The PRESIDENT opened the discussion on Article 26 and invited the Delegation of the Federal Republic of Germany to introduce its proposal for amendment as appearing in document DC/28.

614.1 Mr. H. KUNHARDT (Federal Republic of Germany) said that his Delegation's proposal was aimed at solving a particular problem. The Convention of 1961, which had entered into force in 1968, had provided for three contribution classes. After just four years, however, it had already become apparent that a system of three classes was too narrow to accommodate the necessary degree of differentiation between member States. In the Additional Act of 1972 the number of classes had therefore been increased from three to five. Now, six years later, the Union was again confronted with the same need to increase the number of classes. At first sight it might seem that the proposal in Article 26(2) in the Draft to have 15 classes, ranging from one-fifth to 15 units of contribution, should suitably meet requirements for a long time to come. His Delegation, however, was not so sure. The value of one unit was calculated according to the provisions of Article 26(3). That method of calculation had the effect that as the number of States belonging to the Union increased so the value of one unit decreased. As a result the need for the lower contribution classes would almost certainly be reduced and, eventually, the system might cease to be suitable to meet the need to differentiate between member States. His Delegation believed that the answer to the problem was to remove the upper limit from the proposed scale, thus allowing the payment of more than 15 units without it being necessary to change the Convention. The sole aim of the proposal contained in document DC/28 was to remove that upper limit.

614.2 Mr. Kunhardt said that he wished to comment briefly on the details of his Delegation's proposal in which the structure of Article 26 in the Draft had been followed as closely as possible. No change was proposed in paragraph (1). Paragraph (2) had been amended to exclude any reference to "class" and, in view of the present practice of some member States, to make it clear that contributions "may also comprise fractions of a full unit." No change was proposed in paragraph (3) which was the essential part of Article 26 in that it regulated the calculation of the unit of contribution. No substantive changes were proposed in paragraphs (4)(a) or (4)(b) but drafting changes had been made to exclude any reference to "class," thus aligning them with the wording proposed by his Delegation for paragraph (2). The only new provision was paragraph (5). Since it was proposed that the system of "classes" should give way to a simple system of "units" it

seemed expedient to include a transitional rule. The aim of paragraph (5) was to make it clear that, once the revised text of the Convention entered into force, a State whose membership preceded that event should continue to pay the number of units of contribution corresponding to its former class, unless it had declared that it wished to pay another number of units.

614.3 Mr. Kunhardt concluded by noting that his Delegation wished to preserve paragraph (5) of the Draft version of Article 26 unchanged. It would therefore have to be added as a separate paragraph at the end of the proposal contained in document DC/28.

615. The PRESIDENT invited comment on the idea of deleting the list of classes, which he saw as the main point of the proposal of the Delegation of the Federal Republic of Germany.

616. Mr. A. PARRY (United Kingdom) said that he would like to support the proposal of the Delegation of the Federal Republic of Germany for the purpose of the discussion but the absence of any definition of the "units" referred to caused him some difficulty. He would have thought that if one was starting from an entirely fresh system one could have worked on the basis of just dividing the budget in terms of percentage points, or something of that kind. The system proposed was workable only because it was dependent on a system found in a previous Act of the Convention. His Delegation could nevertheless see merit in the idea of deleting the list of classes and in having a rather more flexible procedure.

617. Mr. H. KUNHARDT (Federal Republic of Germany) said that he wished to reply briefly to the statement made by the Delegation of the United Kingdom. It seemed sufficient that paragraph (3) specified how to calculate the unit of contribution. In the present system there was no definition of "class" but just a statement of the number of units corresponding to a class.

618. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) believed that it was better to speak of units. If the percentage system were used then member States would have to make a fresh choice whenever the membership of the Union increased.

619. Mr. H. J. WINTER (United States of America) said that if paragraph (2)(a) in the Draft, which set forth various classes, were deleted then his Delegation was not sure how the United States of America would determine the number of units it would have to pay to become a member State.

620. Mr. A. PARRY (United Kingdom) noted that the Delegation of the Federal Republic of Germany had stated that the crux of its proposal was paragraph (3) of the existing text, which would remain unchanged. It was, however, not possible to make the calculation described in that paragraph unless one knew the "total number of units" and there was no fixed yardstick for finding that number. Mr. Parry believed that the Delegation of the United States of America had really been referring to that point.

621. Mr. H. J. WINTER (United States of America) said that a State joining the Union had to indicate the number of contribution units it wished to pay. To do that the State needed a point of reference. Although paragraph (5) of the proposal provided some sort of point of reference for member States, it seemed to his Delegation that the proposal was silent in that respect as regards non-member States.

622. The PRESIDENT invited Mr. Ledakis to clarify the situation.

623. Mr. G. LEDAKIS (Legal Counsel, International Bureau of the World Intellectual Property Organization (WIPO)) said that the choice of a "class" or of a "number of units" was something that a number of States wishing to join a Union had had to face. The Secretariat had often been asked on what basis a State should make its choice. The question

came up, for example, in connection with the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, which all made reference to "classes." The advice given by the Secretariat was that it was for each State to make its own choice and that it might wish to do so in the light of the choice made by member States of the Union it sought to join, bearing in mind its comparative stature, position, and level of social and economic development.

624. Mr. H. J. WINTER (United States of America) thanked Mr. Ledakis for his explanation. It was still necessary, however, to have a point of reference with respect to other member States. Unless some specific number of units was set forth for different groups of countries it would still be difficult for a State to determine how many units it should pay upon assuming membership of the Union. Mr. Winter said that his Delegation was sure that the matter would be very carefully looked into by the financial authorities in the various non-member States. It would appreciate further information from the Delegation of the Federal Republic of Germany regarding the way in which the proposed system would work in practice and the number of units which would be paid by member States.

625. Mr. H. KUNHARDT (Federal Republic of Germany) said that it was not possible to give reference points regarding the "amount" a State would have to pay, especially since that amount would vary from year to year as a result, for example, of changes in the financial structure of the Union. He wished just to point out that it made no difference at all whether a new member State had to decide, when joining the Union, on a class or a number of units. To choose a class it had to find out first how many units corresponded to that class, and secondly the current value of a unit. The decision process, therefore, would not be changed at all by his Delegation's proposal. In the end a State had to choose an amount that it was willing to pay and it was completely irrelevant whether it chose a class or a number of units corresponding to that amount. Currently the budget which had to be met by the member States amounted to slightly more than 1 000 000 Swiss francs and the total number of units was 26. A unit therefore amounted to some 40 000 Swiss francs but, as he had said, the amount changed from year to year.

626. Mr. H. J. WINTER (United States of America) said that his Delegation, which was an Observer Delegation, did not want to cause difficulties in respect of Article 26. It wondered, however, whether the final decision on that Article could be deferred to allow time for further reflection on the amendments proposed.

627. *It was decided to defer further discussion on Article 26. (Continued at 934)*

Article 27: Revision of the Convention (Continued from 530)

628. The PRESIDENT opened the discussion on Article 27 and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/48.

629. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) felt that his Delegation's proposal needed no explanation. Since Article 27 contained provisions for the revision of the Convention it would be more logical to determine in that Article, rather than in Article 28, the languages to be used in revision conferences.

630. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation wished to support the substance of the proposal of the Delegation of the Netherlands. It believed, however, that the proposal wording would have to be carefully checked by the Drafting Committee, at least in respect of the German version.

631. Mr. A. PARRY (United Kingdom) said that his Delegation felt that the question of languages in revision conferences was perfectly neatly dealt with in Article 28. The amendment proposed was therefore purely cosmetic and the Conference should try to avoid changes where no point of substance was involved.

632. Mr. B. LACLAVIÈRE (France) said that his Delegation supported the position taken by the Delegation of the United Kingdom.

633. Prof. A. SINAGRA (Italy) said that his Delegation took the same position as the Delegation of France.

634. *The proposal for amendment submitted by the Delegation of the Netherlands (see paragraph 629) was rejected on a show of hands by seven votes against to two in favor, with one abstention.*

635. *Article 27 was adopted as appearing in the Draft.*

Article 28: Languages to be Used by the Office and in the Council (Continued from 530)

636. The PRESIDENT opened the discussion on Article 28. He noted that the proposal for amendment submitted by the Delegation of the Netherlands and reproduced in Document DC/48 had been rejected during the discussion of Article 27 (see paragraphs 628 to 634).

637. Mrs. O. REYES-RETANA (Mexico) said that her Delegation was preparing a proposal for the amendment of Article 28 and would like the discussion to be deferred.

638. *It was decided to defer further examination of Article 28 until the proposal for amendment being submitted by the Delegation of Mexico had been circulated. (Continued at 762)*

Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services (Continued from 533)

639.1 The PRESIDENT opened the discussion on Article 30. He noted that proposals for amendment had been submitted by the Delegations of the Federal Republic of Germany, of South Africa and of the Netherlands. Those proposals were reproduced in documents DC/29, DC/37 and DC/49 Rev. respectively.

639.2 The President said that the proposal of the Delegation of the Federal Republic of Germany as appearing in document DC/29 referred to Article 30(2). The proposal was to delete the words "éventuelle" and "etwaigen" from the French and German texts respectively. There was no corresponding word in the English text.

640. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to support the proposal of the Delegation of the Federal Republic of Germany.

641. The PRESIDENT asked whether there were any objections to deleting the words "éventuelle" and "etwaigen." He noted that there were none.

642. *It was decided to delete from the French and German texts of Article 30(2) the words "éventuelle" and "etwaigen" respectively.*

643. The PRESIDENT invited the Delegation of South Africa to introduce its proposal as appearing in document DC/37.

644. Mr. J. F. VAN WYK (South Africa) said that his Delegation's proposal related to Article 30(1). He considered that the proposal to add, after the words "each member State" in the second sentence, the words "of the Union," was a matter for the Drafting Committee. In view of what had been decided

earlier with regard to the proposal appearing in document DC/34 (see paragraphs 461 to 466) his Delegation withdrew its proposal to extend the wording of Article 30(1)(c) to include a reference to "patents."

645. *It was decided that the first of the two proposals mentioned in the preceding paragraph should be referred to the Drafting Committee.*

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646. The PRESIDENT invited the Delegation of the Netherlands to introduce its proposal, contained in document DC/49 Rev., for the amendment of Article 30(1)(a).

647. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that the purpose of his Delegation's proposal was to make good the omission from Article 30(1)(a) of a reference to a member State's "own nationals." It appeared from the text in the Draft that each member State had to ensure appropriate legal remedies only to "nationals of the other member States."

648. Mr. A. PARRY (United Kingdom) said that he agreed with the Delegation of the Netherlands and that he supported its proposal to the extent that the text in question was defective. Article 3 provided for national treatment in relation to the recognition and protection of the breeder's right to be accorded to all sorts of persons. He believed that it inevitably followed that the Convention must equally provide for that same national treatment in relation to the effective defence of the rights provided for therein. Mr. Parry said that he would therefore suggest that the first part of Article 30(1)(a) should refer not to "nationals" but to "all those persons specified in Article 3." The precise wording was a matter for the Drafting Committee but, for example, one might consider saying: "ensure to all persons enjoying the benefits of Article 3 appropriate legal remedies for the effective defence of the rights provided for in this Convention." He would also suggest that the words "as to its own nationals; provided that the conditions and formalities imposed upon nationals are complied with," which the Delegation of the Netherlands had proposed to introduce into the text, were superfluous. That point was already made in Article 3(1).

649. Mr. H. J. WINTER (United States of America) said that the broad provisions of Article 3 on national treatment certainly seemed to cover the situation dealt with in Article 30. With that in mind his Delegation thought that the amendment proposed by the Delegation of the Netherlands was unnecessary. His Delegation had not, however, had sufficient opportunity to consider all the implications of that proposal. Mr. Winter noted that his country was in an ambivalent position since it provided for national treatment under the Patent Law, in relation to its membership of the Paris Convention for the Protection of Industrial Property, whilst under the Plant Variety Protection Act it provided for reciprocity.

650. The PRESIDENT wondered whether it would be sufficient to say, for example, "ensure appropriate legal remedies for the effective defence of the rights provided for in this Convention." He said that what he was wondering, in other words, was whether one could not resolve the matter by taking the text of Article 30(1)(a) as appearing in the Draft and deleting the words "to nationals of the other member States of the Union."

651. Mr. A. PARRY (United Kingdom) said that he accepted the point made by the Delegation of the United States of America. He therefore wished to withdraw his earlier state-

ment (see paragraph 648) and to support the President's suggestion to delete all reference to the persons to whom appropriate legal remedies were to be ensured.

652. Mr. J. BUSTARRET (France) commented that it was necessary, in any event, to indicate who would be able to benefit from such legal remedies.

653. Dr. H. H. LEENDERS (ASSINSEL) said that he agreed with Mr. Bustarret and that he believed that the inclusion of such an indication in Article 30(1)(a) might help someone defending his right in a court in that he could then base himself not only on national law but also, if necessary, on the Convention.

654. Mr. A. PARRY (United Kingdom) said that his Delegation wished to reiterate its support for the President's suggestion that the paragraph should simply read: "ensure appropriate legal remedies for the effective defence of the rights provided for in this Convention." If that solution was not acceptable then he thought that Article 30(1)(a) could be deleted entirely.

655. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that he also supported the President's suggestion. He thought that the wording might be improved, however, by replacing "ensure" by the more positive expression "provide for."

656. Mr. J. BUSTARRET (France) said that his Delegation thought that Article 30(1)(a), although it somewhat duplicated the provisions of Article 3, at least guaranteed that the legislation of each member State had to enable the "ressortissants" of the other member States to exercise effectively the rights accorded to them by virtue of Article 3. After all, it was not illogical for a State joining the Union to have such a guarantee. He thought, furthermore, that when one spoke of ensuring legal remedies it was generally necessary to say to whom they were ensured. He therefore considered the suggestion by the Delegation of the United Kingdom to say that those legal remedies were ensured to persons enjoying the benefits of Article 3 (see paragraph 648) to be preferable to a non-specific declaration.

657. Prof. A. SINAGRA (Italy) said that his Delegation shared entirely the opinion expressed by the Delegation of France.

658. Mr. H. J. WINTER (United States of America) said that he thought that the wording suggested by the President and supported by the Delegation of the United Kingdom (see paragraphs 650 and 654) was simple and clear-cut. Article 30(1)(a) in the Draft ended with the phrase "for the effective defence of the rights provided for in this Convention." That phrase, in a sense, would of course cover any pertinent Articles such as Article 3, and additional reference to that Article might therefore be redundant. His Delegation had previously expressed the view that the proposal of the Delegation of the Netherlands contained in document DC/49 Rev. (see paragraph 647) was unnecessary, given that Article 3 provided for national treatment. He felt that the addition of a cross-reference to Article 3 would encumber Article 30(1)(a) and make it even more redundant.

659. Mr. J. BUSTARRET (France) said that on reflection, and having heard the views of others on the matter, he thought that the best solution would be to retain Article 30(1)(a) in its present form.

660. The PRESIDENT invited observations on Mr. Bustarret's thought that Article 30(1)(a) should be left unchanged.

661. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that the difficulty with leaving Article 30(1)(a) as it stood was that it ensured the possibility of defending their rights only to nationals of the other member States. His Delegation wished to have the wording broadened so that a member State's own nationals also had effective means to defend their rights. Such had been the reasoning behind the proposal submitted by his Delegation and reproduced in document DC/49 Rev.

662. Dr. D. BÖRINGER (Federal Republic of Germany) thought that Mr. van der Meeren was right. In the German text his wish could be met just by deleting the word "übrigen."

663. Mr. A. PARRY (United Kingdom) said that he objected to the proposal of the Delegation of the Netherlands, and therefore to the suggestion just made by the Delegation of the Federal Republic of Germany, because a reference to "nationals" was insufficient. Article 3, in specifying who was entitled to rights under the Convention and what those rights were, did not refer just to nationals but also to natural and legal persons resident in particular places. He believed that it was for that reason that the President had suggested that it would be preferable to delete the words "to nationals of the other member States of the Union" (see paragraph 650) rather than to add a cross-reference to Article 3. As the Delegation of the United States of America had pointed out, the latter course would merely encumber the text.

664. Prof. A. SINAGRA (Italy) wondered whether the requirements both of the Delegation of the Netherlands and of the Delegation of the United Kingdom might be satisfied by adding in the French text, for example, the expression "aux mêmes conditions que pour ses nationaux," between commas and after the word "Union." Such an amendment would in effect simplify the drafting of the proposal for the amendment of Article 30(1)(a) submitted by the Delegation of the Netherlands and contained in document DC/49 Rev.

665. Mr. J. BUSTARRET (France) said that he wished, in reply to the remarks made by Mr. Parry (see paragraph 663), to add that the French text of Article 30(1)(a) referred specifically to "ressortissants des autres Etats de l'Union." In his opinion the word "ressortissants" covered not only "nationaux" but also "résidents," whereas in the English text the word "nationals" was more restrictive.

666.1 Mr. A. PARRY (United Kingdom) said that if the word "ressortissants" did in fact cover nationals, residents and companies having their registered office in one of the member States, then, as far as the French text was concerned, that would appear to answer his objection (see paragraph 663). He thought, however, that to cover those concepts in the English language one would have to say "nationals, residents and companies having their registered office." It was for that reason that he had referred in his original statement to "all persons enjoying the benefits of Article 3" (see paragraph 648).

666.2 Mr. Parry went on to say that the rights assured to nationals, residents and companies having their registered office in one of the member States could, of course, be restricted by virtue of Article 3(3). He had therefore suggested originally that a cross-reference to Article 3 should be inserted in Article 30(1)(a). Such an amendment, which he could accept, would have the effect that whoever benefitted from Article 3 should benefit from Article 30(1)(a). Nevertheless he did not really see the difficulty in not indicating who should have the benefit of appropriate legal remedies. Anybody who came to the United Kingdom with a cause of action could bring an action before a British court. It was not necessary to be resident. One had merely to show that the court had jurisdiction. Mr. Parry concluded by saying that he would be surprised if that were not the position in every other member State of the Union.

667. Mr. H. J. WINTER (United States of America) said that his Delegation fully agreed with the statement made by the Delegation of the United Kingdom. He did not know of any country in which foreign nationals had access to the courts whilst its own nationals and residents did not have such access. Such a situation was inconceivable to his Delegation.

668. Prof. A. SINAGRA (Italy) said that he had listened with great interest to the observations of the Delegation of the United Kingdom. He believed, however, that the problem was not one of explaining the meaning of the word "ressortis-

sants." The problem was rather to explain that in theory, and he stressed the words "in theory," "ressortissants" could not have more extensive legal protection than "nationaux." That was why he had proposed to add to Article 30(1)(a) the expression "aux mêmes conditions que pour ses nationaux" (see paragraph 664).

669. The PRESIDENT, noting that many solutions had been put forward, asked whether delegates could agree to delete Article 30(1)(a) in its entirety. He believed that all States that gave rights would allow those persons who held them to have access to the courts. It was therefore hard to deny that it was not strictly necessary to retain the Article under discussion.

670. Mr. R. DERVEAUX (Belgium) said that his Delegation would not oppose deletion of the whole of Article 30(1)(a) since constitutionally the "ressortissants" of other States had the same rights as the "nationaux."

671. Dr. D. BÖRINGER (Federal Republic of Germany) said that he did not believe that the whole Article should be deleted but that he would like to have a few minutes to reflect on the matter.

672. Mr. B. LACLAVIÈRE (France) thought that it would weaken the Convention to delete the Article. At the least it was a reassuring declaration to have. His Delegation would strongly support the proposal made by the Delegation of Italy (see paragraph 664).

673. Mr. R. DERVEAUX (Belgium) said that his Delegation, in order to resolve the matter, would also support the proposal of the Delegation of Italy.

674. *It was decided to defer further consideration of Article 30(1)(a) until a document reproducing the amendment proposed by the Delegation of Italy had been circulated. (Continued at 940)*

675. *Article 30(1)(b) was adopted as appearing in the Draft, without discussion.*

676. *Article 30(1)(c) was adopted as appearing in the Draft, without discussion, the proposal for its amendment submitted by the Delegation of South Africa and reproduced as part of document DC/37 having been withdrawn (see paragraph 644).*

677. *Subject to the decision referred to in paragraph 642 above, Article 30(2) was adopted as appearing in the Draft.*

678. *Article 30(3) was adopted as appearing in the Draft, without discussion.*

Article 24: Auditing of the Accounts (Continued from 527)

679. The PRESIDENT invited Mr. Jeanrenaud of the Delegation of Switzerland to make a statement on behalf of the Government of the Swiss Confederation.

680. Mr. M. JEANRENAUD (Switzerland) stated, in clarification of the position of the Federal Authorities of Switzerland on the question of their supervision of the Union and on the future situation regarding that matter, that, in June 1977, the Secretary-General of the Union had asked whether they saw any difficulty in relinquishing that supervisory function and in there being no mention in the revised text of the Convention of a special function for them. His authorities had concluded that, in the light of the evolution of the United International Bureaux for the Protection of Intellectual Property (BIRPI) into the World Intellectual Property Organization (WIPO) and in the light of the probable modification of the legal status of the Union, they had no difficulty in relinquishing their mandate to supervise the Union.

681. The PRESIDENT thanked Mr. Jeanrenaud for his clarification of the decision of the Government of the Swiss Confederation.

Article 31: Signature (Continued from 533)

682. The PRESIDENT opened the discussion on Article 31 and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/54.

683. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation had been advised by its Ministry for Foreign Affairs that there were several ways in which States could consent to be bound by international conventions. Articles 31 and 32 of the Convention in the present text, and in the Draft, provided only for ratification and accession. The purpose of his Delegation's proposal was to include other possibilities. It understood that those possibilities had been included in a number of recent international conventions.

684. Mr. A. PARRY (United Kingdom) thought that the proposal of the Delegation of the Netherlands was very admirable and commendable, as were many of the other proposals of that Delegation. He was conscious, however, of the fact that the Committee of Experts on the Interpretation and Revision of the Convention had chosen, in preparing the Draft, to follow as closely as possible the existing text of the Convention. He was therefore reluctant to depart from that text, unless there were sound practical reasons for doing so. The proposed amendments reproduced in document DC/54 seemed perfectly acceptable in substance but he thought it extremely unlikely, for instance, that any State would wish to sign "without reservation as to ratification, acceptance or approval." He did not think that any of the additional possibilities mentioned were in fact essential to the purpose of Articles 31 and 32 and he would therefore be reluctant to support the proposal.

685. *Article 31 was adopted as appearing in the Draft.*

Article 17: Observers in Meetings of the Council (Continued from 594)

686. The PRESIDENT reopened the discussion on Article 17 and invited the Delegation of the Netherlands to introduce its proposal for the amendment of paragraph (1) as appearing in document DC/44.

687. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation's proposal was closely related to its proposal for the amendment of Article 31. Since the latter proposal had just fallen (see paragraphs 682 to 685), his Delegation withdrew its proposal for the amendment of Article 17(1).

688. *Article 17 was adopted as appearing in the Draft, without discussion.*

Article 32: Ratification; Accession (Continued from 533)

689. The PRESIDENT opened the discussion on Article 32 and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/54.

690. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to withdraw that proposal.

691. *Article 32 was adopted as appearing in the draft, without discussion. (Reconsidered at 699 et seq.)*

Article 32A: Entry Into Force; Closing of Earlier Texts (Continued from 533)

692. The PRESIDENT opened the discussion on Article 32A and noted that proposals for amendment had been submitted by the Delegation of South Africa and by the Delegation of the Netherlands. The proposals were reproduced in documents DC/30 and DC/54 respectively. He invited the Delegation of South Africa to introduce its proposal.

693. Mr. J. F. VAN WYK (South Africa) said that the purpose of his Delegation's proposal to add the words "subparagraphs (i) and (ii)" to Article 32A(2) was to make it clear to which conditions reference was made and to eliminate any possibility that the introductory sentence of paragraph (1) might be regarded as forming part of the reference.

694. Prof. A. SINAGRA (Italy) said that his Delegation was pleased to support the proposal of the Delegation of South Africa in so far as it clarified the meaning of paragraph (2).

695. *It was decided to adopt as Article 32A(2) the wording proposed in document DC/30.*

696. The PRESIDENT invited the Delegation of the Netherlands to introduce its proposal.

697. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to withdraw its proposal as reproduced in document DC/54.

698. *Subject to the decision referred to in paragraph 695 above, Article 32A was adopted as appearing in the Draft.*

Article 32: Ratification; Accession

699. The PRESIDENT advised the Conference that although Article 32 had been adopted as appearing in the Draft, without discussion (see paragraph 691), he understood that the Delegation of the Netherlands wished to make a statement regarding that Article.

700. Mr. K. A. FIKKERT (Netherlands) said that his Delegation would appreciate it if the Conference would agree to reconsider Article 32. Constitutional procedure in the Netherlands was such that the Netherlands, once it had signed the new Act, could only express its consent to be bound by that Act by means of an instrument of acceptance. The authority for his Delegation to take part in the Diplomatic Conference, and to sign the new Act, had been given by the Minister for Foreign Affairs and not by the Queen. Consequently, once the new Act had been approved by the Dutch Parliament, the Netherlands could only express its consent to be bound by it by means of an instrument signed by the Minister. That instrument, which would have the same legal effects as an instrument of ratification, would be called an "acceptance." He was therefore concerned that if Article 32 designated "ratification" as the only means by which a State, having signed the new Act, could express its consent to be bound by that Act, then real difficulties would exist for the Netherlands. Mr. Fikkert thought, furthermore, that there could be no real objections to including "acceptance" and "approval" as alternatives to "ratification," especially since the Vienna Convention on the Law of Treaties of 1969 had provided for those three different instruments.

701. The PRESIDENT noted that Rule 33 of the Rules of Procedure provided that when a matter had been decided it could not be reconsidered, "unless so decided by a two-thirds majority of the Member Delegations present and voting."

702. Mr. A. PARRY (United Kingdom) said that he would like, before taking a view on the request made by the Delegation of the Netherlands, to ask whether it was Article 32(1)(a) that the Conference was being asked to reconsider.

703.1 The PRESIDENT said that he understood that to be the case. If Article 32(1)(a) were amended then there would also be consequential changes in some other Articles.

703.2 The President asked whether there were any objections to reconsidering Article 32(1)(a). He noted that there were none and invited the Delegation of the Netherlands to submit its proposal for amendment.

704. Mr. K. A. FIKKERT (Netherlands) said that his Delegation proposed that Article 32(1)(a) should read: "its instru-

ment of ratification, acceptance or approval, if it has signed this Act; or".

705. Mr. A. PARRY (United Kingdom) said that his Delegation seconded the proposal of the Delegation of the Netherlands.

706. *It was decided to adopt as Article 32(1)(a) the text proposed by the Delegation of the Netherlands and recorded in paragraph 704 above, and to authorize the Secretariat to draft the consequential changes in other Articles.*

Article 32B: Relations Between States Bound by Different Texts (Continued from 533)

707. The PRESIDENT opened the discussion on Article 32B and noted that proposals for amendment had been submitted by the Delegation of the Federal Republic of Germany and by the Delegation of the Netherlands. The proposals were reproduced in documents DC/42 and DC/55 respectively. He noted that neither proposal had any bearing on paragraph (1).

708. *Article 32B(1) was adopted as appearing in the Draft, without discussion.*

709. The PRESIDENT invited the Delegation of the Federal Republic of Germany to introduce its proposal.

710. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation's proposal, which concerned only the first part of Article 32B(2), was merely a drafting matter. In preparing its proposal his Delegation had endeavored to keep as close as possible to the text in the Draft. His Delegation believed, however, that it was not necessary to retain all of the text preceding the expression "the former State," and that it would suffice to say "Any member State of the Union not bound by this Act," "this Act" meaning the future Act of 1978. Before a State could be a member State it must have ratified or acceded to one of the different Acts of the Convention. A member State not bound by the 1978 Act must of necessity be bound by the Act of 1961 and the Draft could therefore be simplified in the way proposed in document DC/42.

711. The PRESIDENT invited the Delegation of the Netherlands to introduce its proposal.

712. Mr. K. A. FIKKERT (Netherlands) said that he would like, before introducing his Delegation's proposal to make substantive amendments to Article 32B(2), to ask what would happen if a member State not bound by the new Act did not make the declaration referred to in that Article.

713. The PRESIDENT thought that the answer was that nothing would happen. He believed that some official, legally binding declaration had to be made.

714. Dr. H. MAST (Secretary General of the Conference) said that a member State that did not express its consent to be bound by the new Act would not be bound by that Act in its relations with a State that joined the Union by ratifying, accepting or approving of or acceding to that Act. They were just parties to different instruments of international law. He therefore thought that the reference to the possibility of making a declaration was the most that could be done.

715.1 Mr. H. J. WINTER (United States of America) said that the matter under discussion was very complicated, sensitive and important. He agreed with the answer given by the Secretary General of the Conference to the Delegation of the Netherlands. Mr. Winter said that it was inconceivable to his Delegation that a member State that had not expressed its consent to be bound by the new Act should be bound by the second part of paragraph 2(ii) of the proposal submitted by the Delegation of the Netherlands.

715.2 Mr. Winter went on to say that his country, if it ratified or acceded to the new Act, could not be bound by the provisions of paragraph 2(i) of the proposal of the Delegation of the Netherlands. Being bound by the later Act could in no way mean that the United States would be bound to the "old" member States by the earlier Act. That would be constitutionally and legally impossible.

715.3 Mr. Winter concluded by saying that his Delegation felt that the text proposed in the Draft under the reference Article 32B(2), although it might not provide an answer to all of the situations that might arise, and although it might not clearly cover the situation mentioned by the Delegation of the Netherlands, was nevertheless the more acceptable text. The text in the Draft left it open to an "old" member State to make a declaration. That was consistent with the practice followed in Article 27 of the Stockholm Act of 1967 of the Paris Convention for the Protection of Industrial Property, which allowed adherents to the earlier Acts of that Convention to extend protection to new members adhering to the Stockholm Act.

716. Mr. A. PARRY (United Kingdom) said that he tended to subscribe to the feeling expressed by the Delegation of the United States of America.

717. Mr. R. DUYVENDAK (Netherlands) suggested that it might be wise to postpone the final decision on Article 32B to allow for an opportunity for consultation with Dr. Bogsch, Secretary-General of the Union, who had such a wide experience in the matter.

718. *It was decided to postpone the final decision on Article 32B in accordance with the suggestion made by the Delegation of the Netherlands and referred to in the preceding paragraph.* (Continued at 954)

Article 33: Communications Concerning the Genera and Species Protected; Information to be Published (Continued from 533)

719. The PRESIDENT opened the discussion on Article 33 and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/54.

720. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to withdraw that proposal.

721. *Subject to the decision regarding consequential changes, referred to in paragraph 706 above, it was decided to adopt Article 33 as appearing in the Draft, without discussion.*

Article 34: Territories (Continued from 533)

722. The PRESIDENT opened the discussion on Article 34 and noted that proposals for amendment had been submitted by the Delegation of the Netherlands and by the Delegation of Morocco. The proposals were reproduced in documents DC/56 and DC/68 respectively. He invited the Delegation of the Netherlands to introduce its proposal.

723. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation's proposal had been designed in part to adapt Article 34 to the wording his Delegation had submitted earlier in respect of Article 32 ("Ratification, Acceptance or Approval; Accession"), and in part to make more neutral the reference in Article 34(1) to territories to which the new Act would be applicable by excluding the reference to responsibility for external relations. An effort had also been made to simplify the drafting of Article 34.

724. Mr. M. TOURKMANI (Morocco) said that his Delegation proposed that two amendments should be made to Article 34(1). First, to align the text with the United Nations' Charter, the closing words "for the external relations of which it is responsible" should be deleted. Secondly, the expression "of those territories" should be replaced by "of its territories."

725. Dr. A. BEN SAAD (Libyan Arab Jamahiriya) said that his Delegation seconded the proposal submitted by the Delegation of Morocco.

726. Prof. A. SINAGRA (Italy) said that he had nothing against the proposal of the Delegation of Morocco but wished just to make an observation. Given that non-autonomous territories were an international political reality, he wondered what legal régime would be applicable to them.

727. The PRESIDENT noted that both of the proposals under consideration had more or less the same effect, namely to delete the words "for the external relations of which it is responsible."

728. Prof. A. SINAGRA (Italy) believed that the two proposals were not equivalent. In his view the proposal submitted by the Delegation of the Netherlands reflected a change, as that Delegation had said, of a drafting nature, whereas the proposal submitted by the Delegation of Morocco had an impact on substance. He had to interpret the very clear reference to "its territories" as a reference to metropolitan territories.

729. Mr. M. TOURKMANI (Morocco) said that his Delegation could go along with the proposal of the Delegation of the Netherlands and therefore withdrew its own proposal.

730. Mr. H. J. WINTER (United States of America) said that his Delegation could accept the proposal of the Delegation of the Netherlands. It also wished to commend the Delegation of Morocco for its spirit of cooperation.

731.1 Mr. A. PARRY (United Kingdom) recalled that the Article under consideration had given rise to much discussion in the Committee of Experts on the Interpretation and Revision of the Convention. The text proposed in the draft was virtually identical with Article 24 of the Paris Convention for the Protection of Industrial Property. The Committee of Experts had deliberately chosen that text.

731.2 Mr. Parry said that his Delegation could accept the substance of the amendment to Article 34(1) proposed by the Delegation of the Netherlands, which would mean deleting the words "for the external relations of which it is responsible." It would, however, suggest that it might be better to leave the rest of the Draft as it was.

732. Prof. A. SINAGRA (Italy) said that he wished to support the view expressed by the Delegation of the United Kingdom. He also wished to thank the Delegation of Morocco for the understanding it had shown.

733. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) thought that his Delegation could accept what had been said by the Delegation of the United Kingdom.

734. *It was decided to delete the words "for the external relations of which it is responsible" from Article 34(1).*

735. *Subject to the decision referred to in the preceding paragraph, and subject to the decision regarding consequential changes, referred to in paragraph 706 above, it was decided to adopt Article 34(1) as appearing in the Draft.*

736. *Article 34(2) was adopted as appearing in the Draft, without discussion.*

737. *Subject to the decision regarding consequential changes, referred to in paragraph 706 above, it was decided to adopt Article 34(3) as appearing in the Draft, without discussion.*

Article 37: Preservation of Existing Rights

738. Prof. A. SINAGRA (Italy) said that he would like to revert to Article 37, if the Conference would allow him to do so, and to repeat a suggestion which he had already made in the Ad Hoc Committee on the Revision of the Convention. Article 37 referred to "existing rights." Those rights were

things of the past and not things of the future. He therefore believed that it was necessary to include the word "already" in the phrase "or under agreements concluded between such States."

739.1 The PRESIDENT noted that Article 37 had already been adopted as appearing in the Draft, without discussion (see paragraph 542). Rule 33 of the Rules of Procedure provided that when a matter had been decided it could not be reconsidered, "unless so decided by a two-thirds majority of the Member Delegations present and voting."

739.2 The President asked whether there were any objections to reconsidering Article 37. He noted that there were none.

740. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that he would like the Delegation of Italy to explain the reason for its proposal. He believed that it was implicit in the Draft that the agreements referred to were agreements "already" concluded between member States.

741. Prof. A. SINAGRA (Italy) thanked the Delegation of the Netherlands for providing him with a decisive argument in favor of his suggestion. If what he wanted to say was implicit in Article 37 as worded in the Draft then he could not see what there was against making the wording explicit. As he had said before, Article 37, in referring to "existing rights," referred to something of the past. For that reason he had suggested that the word "already" should be included in the phrase "or under agreements concluded between such States." Prof. Sinagra said that he would also like, by way of clarification, to ask whether a State could invoke a later agreement with regard to a right covered by Article 37.

742. Mr. H. J. WINTER (United States of America) said that his Delegation could see no need for Article 37 to be amended.

743. The PRESIDENT asked whether there was any support for the wish of the Delegation of Italy. He noted that there was none and that Article 37 would therefore remain as previously adopted (see paragraphs 541 and 542).

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Article 38: Settlement of Disputes (Continued from 543)

744. The PRESIDENT opened the discussion on Article 38 and noted that proposals for amendment had been submitted by the Delegation of the Netherlands and by the Delegation of France. The proposals were reproduced in documents DC/57 and DC/61 respectively.

745. Mr. B. LACLAVIDÈRE (France) said that the proposal of the Delegation of the Netherlands suited his Delegation very well. If that proposal were accepted then his Delegation would withdraw its proposal.

746.1 Mr. A. PARRY (United Kingdom) said that he found the proposal of the Delegation of the Netherlands broadly acceptable and that his Delegation would be able to support it on that basis. As far as he could see, the proposal, in general, followed the pattern of Article 38 as it was set out in the Draft. He commended the idea of attempting to cope with the problem of having more than two parties to a dispute while retaining at the same time the assumption that there would only be two sides to the dispute. There were, however, some points of substance on which he wished to comment.

746.2 In the third subparagraph of paragraph (2)(a) it was provided that "the disputing parties may request the President of the Council" to do certain things. Mr. Parry said that his Delegation assumed that the phrase should begin with the words "either party to the dispute may request." The present wording would mean that all sides would have to agree to the use of a procedure, whereas presumably the intention was that once the procedure under paragraph (2) was in motion nothing should be able to stop it, provided one State wanted it to continue. In the same subparagraph there was a reference to "the Vice-Presidents in accordance with the provisions of Article 18(1)." He took that reference to be a reference to Article 18(1), as it would have been amended had the proposal of the Delegation of the Netherlands in respect of that Article been adopted. Since that proposal had been withdrawn (see paragraphs 595 to 604), he assumed that the reference should be deleted from the proposal under consideration.

746.3 Regarding paragraph (2)(c), Mr. Parry believed that some drafting amendments would be needed to make it clear that there was a distinction between the two sides to the dispute and the States parties to it where more than two States were involved.

746.4 Mr. Parry said that his Delegation was not quite sure of the meaning of paragraph (2)(d) but thought that possibly it could be deleted. If it was a reference to decision in accordance with law as opposed to equity he thought that that could be left to the operation of the first sentence of paragraph (2)(b) which said: "The arbitrators shall establish their own arbitration procedure." The elements of law that would govern that procedure would presumably be decided either in the rules of procedure or in the "compromis d'arbitrage" that would have to be made under paragraph (2)(a).

746.5 As to paragraph (2)(e), Mr. Parry said that his Delegation considered that a reference to deciding a dispute *ex aequo et bono* was rather old-fashioned and that it could be deleted.

746.6 Mr. Parry concluded by saying that his Delegation felt that paragraph (2)(f) could also be deleted. Either the arbitration procedure established by Article 38 would be invoked or another method would be selected. It was not necessary, however, to have a specific rule about the relationship between the two.

747. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that he was not sure whether his Delegation could accept all the points made by the Delegation of the United Kingdom. As far as paragraph (2)(e) of his Delegation's proposal was concerned he wished to explain that there were two kinds of forum in the Netherlands. In one there was an arbitration procedure which followed the law; in the other the parties agreed that the decision, which was known as a 'binding advice,' was taken *ex aequo et bono*. He was not sure whether that situation had to be reflected in the Convention and his Delegation wished to reserve its position until it had studied the point. As to the other points, the major aim of his Delegation's proposal was that a procedure should be laid down in the Convention.

748. Mr. W. BURR (Federal Republic of Germany) said that his Delegation also was of the opinion that a clause on the settlement of disputes should be included in the Convention. Before taking a decision he would like to see in writing the proposal in the amended form proposed by the Delegation of the United Kingdom.

749. Mr. A. PARRY (United Kingdom) indicated that his Delegation was willing to submit a written proposal.

750. Mr. H. J. WINTER (United States of America) said that it was rather unusual for an international agreement to spell out the various procedures and methods for arbitration in the great detail contained in the proposal of the Delegation of the Netherlands. His Delegation felt very strongly that the procedure should be voluntary and it was most pleased that the

voluntary nature of the provision in the Draft had been retained in the proposal of the Delegation of the Netherlands. If the procedure was to be voluntary, however, then it would seem that the method or means of arbitration should be left to the parties concerned. In any event, if the proposal were adopted then his Delegation would strongly support the retention of paragraph (2)(f) so that the door would remain open for parties to a dispute to agree on some other method of arbitration.

751. Mr. H. AKABOYA (Japan) said that his Delegation was of the opinion that Article 38 should remain as it was in the original text because disputes concerning the interpretation or application of the Convention should be settled as obligatorily and objectively as possible. If the proposal of the Delegation of the Netherlands were adopted, however, then his Delegation could accept that text.

752. Dr. G. PUSZTAI (Hungary) said that he would just like to record that his Delegation strongly supported the opinion expressed by the Delegation of the United States of America as to the substance of the proposal.

753. *It was decided to defer further consideration of Article 38 until the proposal referred to in paragraphs 746 and 749 above had been formally submitted by the Delegation of the United Kingdom.* (Continued at 984)

Article 39: Reservations (Continued from 543)

754. The PRESIDENT opened the discussion on Article 39 and invited the Delegation of the Netherlands to introduce its proposal for amendment, as appearing in document DC/58.

755. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that the purpose of his Delegation's proposal was to adjust Article 39 to the new wording of Article 32 (see paragraphs 704 and 706), which had been expanded to allow for a wider range of instruments by means of which States could consent to be bound by the new Act.

756. Mr. R. DERVEAUX (Belgium) said that the English and French texts of document DC/58 had different meanings. The English text, literally translated, said: "La présente Convention ne doit faire l'objet d'aucune réserve."

757. Mr. B. LACLAVIÈRE (France) said that his Delegation agreed that the French translation gave a bad rendering of the original English text of document DC/58. Furthermore, his Delegation saw no reason to modify the text proposed for Article 39 in the Draft. It had always held that a State signing or acceding to the Convention must not be able to make any reservation.

758. Mr. R. DERVEAUX (Belgium) said that he wished to draw attention to the fact that under the text as proposed in the Draft a State could make reservations, for example, five years after having ratified or acceded to the Convention. The Draft, taken literally, clearly said that no reservation could be made when signing, ratifying or acceding to the Convention. It did not say that reservations could not be made at a later stage. The proposal of the Delegation of the Netherlands, however, would have that effect.

759. The PRESIDENT asked whether precedents existed in other conventions which might assist the Conference.

760. Mr. A. PARRY (United Kingdom) noted that Article VII of the Additional Act of 1972 said: "No reservations to this Additional Act are permitted." That wording was very similar to that of the proposal of the Delegation of the Netherlands. The wording used in the Additional Act was very simple. It might overcome any possible ambiguity, as mentioned by the Delegation of Belgium, and it would also take account of the amendment made to Article 32.

761. *It was decided to adopt as Article 39 the wording of Article VII of the Additional Act of 1972, mutatis mutandis.*

Article 28: Languages to be Used by the Office and in the Council (Continued from 638)**Article 41: Copies; Languages; Notifications (Continued from 548)**

762.1 The PRESIDENT reopened the discussion on Articles 28 and 41. He noted that several proposals in respect of languages had been submitted. The Delegations of Mexico and Peru had jointly proposed amendments to Article 28 and to Article 41. Those proposals were reproduced in documents DC/65 and DC/66 respectively. The Delegation of Italy had proposed amendments to Article 28 and that proposal was reproduced in document DC/67. The Delegation of the Libyan Arab Jamahiriya had proposed amendments to Article 28 and to Article 41. Those proposals were reproduced in documents DC/71 and DC/72 respectively.

762.2 The President invited the Delegation of Mexico to introduce the proposals it had submitted jointly with the Delegation of Peru.

763. Mrs. O. REYES-RETANA (Mexico) said that her Delegation and that of Peru, in view of the growing interest of Spanish-speaking countries in the work of the Union, considered it important that the word "Spanish" be inserted into Article 28(1), and that the word "three" in Article 28(2) be replaced by the word "four." The use of the Spanish language by the Office of the Union in carrying out its duties would be an incentive for Spanish-speaking countries to join the Union. Both Delegations also believed that the Union was interested in expanding its activities among such countries, since they were consumers of products and technology protected under the Convention. Finally they also wished to point out that Spanish was an official language of the United Nations and that it was used in most of the international organizations.

764. Mr. J. M. ELENA ROSELLÓ (Spain) said that his Delegation wished to express its warm and strong support for the proposal of the Delegations of Mexico and Peru. His Delegation thought that it would be appropriate for the Union to expand its activities among Spanish-speaking countries and believed that the use of the Spanish language would be helpful. Finally, Mr. Elena Rosselló asked the Conference to bear in mind that Spanish was an official language of the United Nations and of the World Intellectual Property Organization.

765. Mr. C. A. PASSALACQUA (Argentina) said that his Delegation wished to endorse what had been said by the previous speakers and to support the proposal of the Delegations of Mexico and Peru. The arguments in favor of the inclusion of the Spanish language had been clearly stated and he hoped that the proposal would be adopted.

766. Dr. F. POPINIGIS (Brazil) said that his Delegation, considering that many countries in Latin America were in the process of studying draft plant variety protection laws and might be willing in the future to join the Union, considering that Spain and Argentina had already introduced relevant legislation and might also be willing to join the Union in the near future, and considering that Spanish was an official language of the United Nations, wished to express its approval of and support for the proposal submitted by the Delegations of Mexico and Peru.

767. Prof. A. SINAGRA (Italy) said that his Delegation welcomed the proposal to add Spanish to the official languages of the Union. Leaving to one side his Delegation's proposal to add Italian to the official languages of the Union, he wished to remark, however, that he could not share in the constant references to what happened in the United Nations. To do so would mean cutting short the discussion at its beginning and binding the other international organizations which had different needs, different structures and different geographical compositions.

768. Dr. W. P. FEISTRITZER (Food and Agriculture Organization of the United Nations (FAO)) said that he was aware of the encouragement given by the President to FAO member countries to join the Union. The FAO would like to urge the member States of the Union to consider the use of both the Spanish and the Arabic languages since such a practice would contribute substantially to facilitating communication.

769. Mr. H. AKABOYA (Japan) said that his Delegation sympathized very deeply with the proposal of the Delegation of Italy. Japanese, like Italian, had not been adopted as an official language in international conferences. The language barrier was always imposed on his Delegation at such conferences.

770. The PRESIDENT invited the Delegation of the Libyan Arab Jamahiriya to introduce its proposals for amendment as contained in documents DC/71 and DC/72.

771. Dr. A. BEN SAAD (Libyan Arab Jamahiriya) said that his Delegation wished only to stress that simply by counting the number of Arab States that might join the Union one could see very clearly the importance of introducing Arabic as one of its official languages.

772. Prof. A. SINAGRA (Italy) said that he had asked for the floor because he wished to thank the Delegation of Japan for its kind words. He also wished, if the Conference would permit him, to speak in justification of his Delegation's proposal. He believed that the criterion of facilitating the access of many additional countries to the Convention was very important. He also believed, however, that one had to have regard to other criteria. It would be all too easy for him to say that, throughout the world, there were probably as many as one hundred million persons who spoke Italian, but he did not wish to rely on that argumentation since he did not wish to give an impression of linguistic imperialism. He just wished to underline the real importance of Italian discoveries in the botanical field and of the theoretical and practical studies being carried out in Italy. Among his country's scientific research institutes he wished to mention, in particular, the "Istituto Agronomico per l'Oltremare" at Florence. That scientific involvement justified the proposal that he had formulated in the name of the Government of Italy, which attached great importance to the matter under consideration. He believed that he could hope that the Conference would consider his Delegation's proposal with the greatest understanding possible.

773. Mr. M. TOURKMANI (Morocco) said that his Delegation wished to support the proposal of the Delegation of the Libyan Arab Jamahiriya regarding the use of Spanish and of Arabic. That proposal was self-explanatory in view of the great number of Spanish-speaking or Arabic-speaking countries that might be interested in joining the Union.

774. Miss R. E. SILVA Y SILVA (Peru), referring to document DC/66, said that her Delegation, in conjunction with the Delegation of Mexico, had proposed that the original Act prepared for signature should also be in the Spanish language in view of the fact that many Spanish-speaking countries had a strong interest in joining the Union.

775. The PRESIDENT drew the Conference's attention to Article 28(3) which gave the Council the power to decide that languages other than English, French and German should be used. He also referred to the fact that Article 41(3) required the Secretary-General of the Union to "establish official texts in the Dutch, Italian and Spanish languages and such other languages as the Council may designate." At present there were only ten member States of the Union and it would be very costly to comply with the wishes to include Arabic, Italian and Spanish in the official languages of the Union.

776. Mr. F. ESPENHAIN (Denmark) said that his Delegation found the proposals under consideration very interesting. It knew what it was like to have to express oneself and to understand technical and legal matters in a foreign language.

It could see some difficulty, however, in creating an obligation to use languages additional to those already provided for in the Convention. Taking into consideration the costs of interpretation for meetings and of the translation of documents it felt unable to support the proposals which would give rise to a major obligation for the Union. Article 28(3) already gave the Council the power to decide on the use of further languages should the need arise.

777. Mr. S. MEJEGÅRD (Sweden) said that his Delegation shared entirely the views of the Delegation of Denmark. The problem was one of expenditure. The wish had been expressed in the past that one of the Scandinavian languages should be used. Costs had to be limited, however, and since there were only two Scandinavian members of the Union that wish had not been pursued. His Delegation therefore felt somewhat hesitant about the proposals.

778. Mr. R. DERVEAUX (Belgium) said that he could readily intervene in the somewhat delicate discussion, being of Flemish and not French mother tongue, to ask the Conference not to give favorable consideration to the proposals submitted by various countries. He had to associate himself with the remarks of the Delegation of Denmark concerning the costs of interpretation and translation. He drew attention to Article 28(3) and to the fact that the Council could decide from one day to another, by a majority of three-quarters of the members present and voting, that a further language would be used by the Office of the Union and in meetings of the Council and of revision conferences.

779. Mr. B. LACLAVIDÈRE (France) said that he wished to record his complete sympathy with the proposals made by various States to increase the number of official languages. He understood their problems perfectly but would like them equally to understand the material difficulties of the existing member States. The same matter had arisen in 1961 and that was the reason for the somewhat practical approach taken in Article 28. Moreover, he drew attention to the fact the Office of the Union had already published some documents in Japanese and Spanish, and that it was not excluded that it might also publish some in Arabic. He wondered whether the Conference might express a wish that it would be interested to see an extension of the number of working languages, in so far as that was possible, but that one should retain just the three languages presently used for as long as material considerations did not permit extension.

780. Prof. A. SINAGRA (Italy) said that he understood that the tendency of several delegations was to limit the number of official languages of the Union for budgetary reasons. If his understanding was correct, then he would like to know whether the Secretariat was in a position to present a document to the Conference showing the extra costs which the use of the additional languages would involve. He believed that the discussion could then take place with a greater knowledge of the elements of the problem.

781. The PRESIDENT asked Mr. Ledakis whether the Secretariat could meet the request of the Delegation of Italy.

782.1 Mr. G. LEDAKIS (Legal Counsel, International Bureau of the World Intellectual Property Organization (WIPO)) said that, if he had correctly understood the request, then the Delegation of Italy was seeking a projection of the increase in costs involved in introducing certain languages. He assumed that the Delegation of Italy had been speaking to Article 28 and not to Article 41. There was also a problem in connection with the latter Article since all the Conference documentation had so far been produced only in the three languages used by the Office of the Union. The Conference was supposed to terminate its work on October 23 and, as yet, the text for the Drafting Committee was not available in any language. There were therefore certain limitations of time. Delegations normally liked to have an opportunity to examine a text in each of the languages in which it was going to be signed before signing or even before adopting it. He thought, therefore, that the Secretariat would not be in a position to

present between then and the end of the Conference a text in Spanish, Arabic, Italian, Dutch or any language other than the three official languages. Provision was made in Article 41 for the establishment of official texts, so that as soon as possible after the Conference had adopted a text, texts could be prepared in the other languages and made available to facilitate ratification, acceptance or approval, or accession.

782.2 Mr. Ledakis then said that as far as the question of additional languages to be used by the Office of the Union was concerned, he thought that most delegations were familiar with the present staffing situation and with the fact that the Office of the Union relied on the services of WIPO for the preparation of much of its documentation. WIPO itself had not yet made a decision regarding the use of languages other than English and French, but he could say that the matter had recently been placed on the agendas for the 1979 sessions of its Governing Bodies. A document on the financial implications of the use of certain additional languages would have to be presented to those sessions and would be relevant to any study of the financial implications for UPOV of the use of additional languages, but he did not think that the Secretariat could now prepare such a document for the present Conference. Moreover, the preparation of such a document would depend on the extent to which interpretation, documents as distinct from interpretation and publications as distinct from documents, were to be the subject of the languages concerned.

783. Prof. A. SINAGRA (Italy) said that his Delegation's proposal did not refer to the continuation of the proceedings of the Conference. He believed that the same could be said for the proposals concerning Spanish and Arabic. It went without saying that the work of the Conference would continue in the existing official languages. What he had asked was whether the Secretariat could prepare a document giving an estimate of additional costs should one or several other languages be made official languages.

784. Dr. W. P. FEISTRITZER (FAO) drew the attention of the Conference to the fact that many Spanish and Arabic speaking countries were drafting, considering and implementing national seed laws. FAO therefore felt that it would be in the interest of the Union to have the revised text of the Convention and specific technical papers available in Spanish and Arabic.

785.1 Mr. A. PARRY (United Kingdom) said that it was perhaps somewhat unrealistic to draw a comparison between the number of languages used by UPOV and the number used by the World Intellectual Property Organization or by the United Nations. By comparison UPOV was a small organization which, at the moment, had a regional character. It did not seem to him to be terribly relevant to know precisely what the costs would be but he could imagine that for each language added the Office of the Union, which had a very small staff, would need to employ at least one additional administrative grade officer and presumably at least one clerical or typing officer. If there were particular documents of importance to countries considering membership of the Union then such documents could presumably be translated. He wondered, however, if it was fair to ask the existing member States to adopt a language not spoken by any of them, when a number of their own languages had not yet been adopted. The practical difficulties of expanding the number of languages used seemed to him to militate against such a step.

785.2 Mr. Parry noted that a number of speakers had referred to the fact that Article 28(3) empowered the Council to decide that further languages should be used if the need arose. As far as the establishing of texts of the Convention was concerned he thought that the Conference might consider extending the provision in Article 41(3) by adding to the list of languages in which official texts had to be established. He wondered whether the Union should go beyond that for the moment.

786. The PRESIDENT said that he had tried to make a rough calculation. He thought that the Union would probably need to employ a professional officer and two secretaries for each additional language, and that the addition of Arabic, Italian and Spanish would probably mean increasing the existing budget by roughly one-third.

787. Mr. M. JEANRENAUD (Switzerland) said that his Delegation had listened with great sympathy to the proposals to increase the number of working languages of the Office of the Union and it too thought that the language barrier should not be allowed to constitute an obstacle to the development or to the future activities of the Union. But one had to take into account the size of the organization. An extension of the number of official languages would undoubtedly give rise to rather serious financial problems and his Delegation thought that an immediate decision on the matter would in fact be premature. Article 28(3) made it possible to introduce additional languages should the development of the Union make that necessary.

788. Mr. W. VAN SOEST (Netherlands) said that his Delegation shared the views expressed by the Delegation of Switzerland.

789. Prof. A. SINAGRA (Italy) said that whatever decisions the Diplomatic Conference might take he believed that reference to Article 28(3) did not solve the problem on the table but merely avoided it. It was already quite clear that that Article referred to a power of the Council and further, through the inclusion of the words "if the need arises," it referred to exceptional situations. The proposals that had been made by his Delegation and by the Delegations of Mexico and of the Libyan Arab Jamahiriya were aimed at introducing Italian, Spanish and Arabic as official languages.

790.1 The PRESIDENT asked whether there was any support for the proposal of the Delegation of Italy, as contained in document DC/67. He noted that there was none and that the proposal had therefore fallen.

790.2 The President asked whether there was a majority in favor of the proposal submitted jointly by the Delegations of Mexico and Peru, as contained in document DC/65. He noted that there was not and that the proposal had therefore fallen. He then addressed delegates of Spanish mother tongue in their own language, saying how much he would like their language to be used by the Union. He regretted that financial means did not permit that for the moment but he hoped that one day there would be sufficient Spanish-speaking member States to enable Spanish to be adopted as a working language in the Union's meetings.

791. Mr. J. M. ELENA ROSELLÓ (Spain) thanked the President for his kind words.

792. Mrs. O. REYES-RETANA (Mexico) also thanked the President and said that it had been very pleasant for the Spanish-speaking delegates to hear his words. She had to say, however, that her Delegation really regretted the fact that its proposal had not been adopted.

793. The PRESIDENT asked whether there was a majority in favor of the proposal of the Libyan Arab Jamahiriya, as contained in document DC/71. He noted that there was not and that the proposal had therefore fallen. He was sorry not to be able to express his regrets in Arabic.

794. *Article 28 was adopted as appearing in the Draft.*

795. Dr. A. BEN SAAD (Libyan Arab Jamahiriya) said that his Delegation wished to change the proposal that it had submitted for the amendment of Article 41. It would now like paragraph (1) to remain as in the Draft, and paragraph (3) to be extended to the Arabic language.

796. The PRESIDENT ruled that the change proposed by the Delegation of the Libyan Arab Jamahiriya was such that it could be considered even though it had not been circulated in

writing. In his capacity as Head of the Delegation of Denmark he supported the proposal reproduced in document DC/72 as revised orally by the Delegation of the Libyan Arab Jamahiriya.

797. *It was decided to adopt the proposal to amend Article 41(3), referred to in paragraph 795 above, and to add Arabic to the list of languages in which official texts had to be established.*

798. Mrs. O. REYES-RETANA (Mexico) withdrew the proposal that her Delegation had submitted jointly with the Delegation of Peru, as contained in document DC/66.

799.1 The PRESIDENT thanked the Delegations of Mexico and Peru for the understanding they had shown.

799.2 The President then invited the Delegation of the Netherlands to introduce its proposal for the amendment of paragraphs (2) and (3) of Article 41, as reproduced in document DC/59.

800. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to make two small corrections to the text proposed in the Draft. First, in paragraph (2), it did not see the need for the Secretary-General of the Union to transmit "two certified copies of this Act." It thought that one copy would suffice. Secondly, in paragraph (3), the word "translations" would be preferable to the word "texts."

801. Dr. H. MAST (Secretary General of the Conference) advised the Conference that the wording of the Draft was in conformity with Article 29 of the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967.

802. Mrs. O. REYES-RETANA (Mexico) said that she would like to be quite certain as to which documents or texts were going to be published in Spanish.

803. The PRESIDENT confirmed that the words "official texts" in Article 41(3) referred to official texts, in the specified languages, of the text to be signed in a single original in the three official languages of the Union, as provided for in Article 41(1).

804. Mr. M. LAM (Senegal) said that his Delegation considered that if the Union was looking for an increase in its membership then it must not be designed just to meet the needs of the existing member States. The Union would have to consider the situation of States which could form part of its future membership and it should now take the measures necessary to ensure that potential member States would not have misgivings. When the African States, the Arabic States and the Third World States, which would tomorrow be the partners of the existing member States, turned towards membership of the Union it was certain that they would be greater in number than the entire existing membership. He believed that it would be a good thing to keep in mind the present situation of those countries that had sent delegates to the Diplomatic Conference so that their Governments might gain useful information as they considered joining the Union.

805. The PRESIDENT said that the Union must consider very carefully what means it had whereby contacts could be established with non-member States. He was sure that the matter would be carefully studied by the Council of the Union.

806. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation wished to withdraw its proposal for the amendment of paragraphs (2) and (3), as appearing in document DC/59.

807. Mr. H. AKABOYA (Japan) referred to the statement he had made on behalf of his Delegation on the opening morning of the Conference. His country had a strong desire to join the Union and his Delegation would like to ask the Conference to consider including the Japanese language in the list of languages specified in Article 41(3), as had been agreed in respect of the Arabic language (see paragraph 797).

808. Prof. A. SINAGRA (Italy) said that his Delegation warmly supported the proposal of the Delegation of Japan.

809. The PRESIDENT ruled that the amendment proposed by the Delegation of Japan was such that it could be considered even though it had not been circulated in writing.

810. *It was decided to include the word "Japanese" after the word "Italian" in Article 41(3).*

811. Mr. H. AKABOYA (Japan) said that his Delegation appreciated the adoption of its proposal and that his country would cooperate as far as possible in the translation of the Convention into Japanese.

812. *Subject, in respect of paragraph (3), to the decisions referred to in paragraphs 797 and 810 above, and subject, in respect of paragraph (5), to the decision regarding consequential changes referred to in paragraph 706 above, it was decided to adopt Article 41 as appearing in the Draft.*

Article 34A: Exceptional Rules for Protection Under Two Forms (Continued from 537)

813. The PRESIDENT reopened the discussion on Article 34A and asked whether there was support for the proposal for the amendment of paragraph (1) submitted by the Delegation of Japan and reproduced in document DC/73.

814. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation seconded the proposal of the Delegation of Japan.

815. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) said that his Delegation also supported the proposal of the Delegation of Japan.

816. *Subject to the decision regarding consequential changes, referred to in paragraph 706 above, and subject to consideration of the proposal submitted by the Delegation of South Africa and appearing in document DC/38, it was decided to adopt as Article 34A(1) the wording appearing in document DC/73.*

817. The PRESIDENT invited the Delegation of South Africa to introduce its proposal as appearing in document DC/38.

818. Mr. J. F. VAN WYK (South Africa) said that his Delegation felt that the reference in the wording of Article 34A(1) in the Draft to "protection under different forms" was too vague and could allow forms of protection other than those mentioned in Article 2(1). His Delegation's proposal was a matter of clarification and not of substance, and was believed to be an improvement on the Draft. He recognized that the proposal, if approved, would require some drafting changes to align it with the proposal of the Delegation of Japan just adopted by the Conference.

819. Mr. A. PARRY (United Kingdom) suggested that the wording of the proposal of the Delegation of South Africa might be amended slightly by replacing the expression "in the said Article" by "in the said paragraph."

820. The PRESIDENT said that it seemed to him that it would be of benefit to merge the proposal of the Delegation of South Africa, subject to the amendment suggested by the Delegation of the United Kingdom, with the new wording of Article 34A(1) (see paragraph 816). Referring to the English version of document DC/73 that would mean replacing the section "under different forms for one and the same genus or species" by "under the different forms referred to in the said paragraph for one and the same genus or species."

821. *It was decided to amend document DC/73 in the way stated in the preceding paragraph.*

822. *The Secretariat was asked to prepare and circulate a document recording the new text of Article 34A(1) in the light of the decisions referred to in paragraphs 816 and 821 above.*

823. The PRESIDENT invited the Delegation of the United States of America to introduce its proposal for the amendment of Article 34A(2), as appearing in document DC/32.

824. Mr. L. DONAHUE (United States of America) said that his Delegation's proposal to replace the word "novelty" by the word "patentability" was more a drafting change than a substantive change. His country's Patent Law concerned itself not with novelty but with patentability. As far as plant varieties were concerned the effect was the same as the requirement in the Plant Variety Protection Act that a variety had to be new.

825. Mr. A. PARRY (United Kingdom) asked whether the intention of the proposal of the Delegation of the United States of America was to provide for the possibility, in the circumstances specified, of an alternative to just the requirements laid down in Article 6(1)(a), or to the whole of Article 6.

826. Mr. L. DONAHUE (United States of America) understood that Article 6 would continue to be applicable under his country's Plant Variety Protection Act.

827. Prof. A. SINAGRA (Italy) said that for him "novelty" was an implicit condition of "patentability." Indeed it was the main condition of patentability. It would therefore be better to retain the word "novelty."

828. Dr. H. MAST (Secretary General of the Conference) said that he understood that the problem for the Delegation of the United States of America was that under its country's patent system novelty was not the only criterion of patentability. There were other criteria, such as non-obviousness, and the Delegation of the United States of America therefore wished to align the wording of Article 34A(2) to the wording of its Patent Law. It was very difficult to ask a country to amend its normal patent legislation only for the sake of a small number of applications in respect of plant varieties. It had already been stated that Article 6 would be applied without limitation under the Plant Variety Protection Act. The exception sought by the Delegation of the United States of America was solely in respect of its country's patent legislation.

829. Mr. J. BUSTARRET (France) remarked that Article 6 really was one of the foundation stones of the Convention. He was quite willing to see an exception made to certain of the provisions of that Article for plants, such as vegetatively propagated plants in the United States of America, that were protected under a patent system. It was unacceptable for him, however, to have a text which substituted for the whole of Article 6 patentability criteria whose exact scope was not known to the Conference. He therefore requested that the matter be more closely studied.

830. Prof. A. SINAGRA (Italy) said that his Delegation was of the same opinion as the Delegation of France.

831. Mr. L. DONAHUE (United States of America) said that his Delegation would make a statement later in clarification of its proposal.

832. *It was decided to defer further consideration of Article 34A(2) until the Delegation of the United States of America was in a position to clarify its proposal as appearing in document DC/32. (Continued at 958)*

833. *Article 34A(3) was adopted as appearing in the Draft, without discussion.*

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Monday, October 16, 1978,
morning

834. The PRESIDENT said that it would be helpful if the Secretariat could begin the preparation of the text for consideration by the Drafting Committee. He therefore wished to begin at the beginning by discussing the Title of the Convention.

835. Dr. A. BOGSCH (Secretary-General of the Union) asked the Delegation of the United Kingdom whether the Drafting Committee could work on the assumption that it would not be necessary to make the complicated provisions that would be required if the Additional Act of 1972 were not in force in respect of the United Kingdom when it ratified the revised text of the Convention, hopefully in the next two to three years.

836. Mr. P. W. MURPHY (United Kingdom) confirmed that the Drafting Committee could work on the assumption specified by the Secretary-General of the Union.

837. Dr. A. BOGSCH (Secretary-General of the Union) said that he appreciated the confirmation given by the Delegation of the United Kingdom. It meant that the text could be drafted in a much simpler way.

Title of the Convention

838. The PRESIDENT opened the discussion on the Title of the Convention and invited the Delegation of the Netherlands to introduce its proposal for amendment as appearing in document DC/64.

839. Mr. K. A. FIKKERT (Netherlands) said that his Delegation's proposal had been made because it was thought that one of the purposes of the Diplomatic Conference was to include the text of the Additional Act of 1972 in the revised Act, and that the wording of the Title should clearly express what had happened. One could see that the Additional Act was an amendment of the original Convention from the fact that Roman numerals had been used to number the Articles.

840. Mr. A. PARRY (United Kingdom) said that he did not know whether the use of Roman numerals was significant. He noted, however, that the Additional Act referred to itself as "amending the International Convention for the Protection of New Varieties of Plants." His Delegation was therefore inclined to support the proposal of the Delegation of the Netherlands.

841. Mr. B. LACLAVIÈRE (France) saw no difference from the legal point of view between what had been done in 1972 and what the Diplomatic Conference was doing. In 1972 the Convention had been amended; in 1978 it was being amended again. One should say, in respect of both occasions, either that it had been 'amended' or that it had been 'revised.'

842. Mr. M. JACOBSSON (Sweden) tended to agree that it was unnecessary to have both terms and noted that the Vienna Convention on the Law of Treaties used only the word "amendment."

843. Dr. D. BÖRINGER (Federal Republic of Germany) asked what wording had been used in the titles of other conventions.

844. Dr. A. BOGSCH (Secretary-General of the Union) said that in the style of some other conventions the title would read: "as completed by the Additional Act of 1972 and as revised at . . ." That would be a complete statement of what had happened. If the Conference wished, however, either the

word "amended" or the word "revised" could be used in respect of both the Additional Act and the new text.

845. Dr. D. BÖRINGER (Federal Republic of Germany) wondered whether it might be left to the Drafting Committee to consider all three proposals, namely those reproduced in documents DC/3 and DC/64 and the wording given by the Secretary-General of the Union, and to formulate a solution.

846. *It was decided to ask the Drafting Committee to consider the various wordings referred to in the preceding paragraph and to determine the Title of the Convention.*

Preamble

847.1 The PRESIDENT opened the discussion on the Preamble to the Convention. He noted that there was a slight difference in the basic proposal, as reproduced at the end of Annex II to document DC/3, in that the second paragraph referred in the French text to "reaffirming the statements," whereas the English and German texts both referred to "reaffirming their statements." Since it was the hope that the revised text would be signed not only by the existing member States but also by other States he felt that it might be better to align the English and German texts to the French text by using the word "the" instead of "their."

847.2 The President further noted that a proposal for the amendment of the Preamble had been submitted by the Delegation of the Netherlands. He invited that Delegation to introduce its proposal, as appearing in document DC/62.

848. Mr. K. A. FIKKERT (Netherlands) said that his Delegation thought that its proposal was a matter for the Drafting Committee to consider.

849. Mr. W. A. J. LENHARDT (Canada) said that it seemed to him that the Conference was in the process of drafting an Act which would replace everything that had preceded it. If that was the intention then he would suggest that it might be explicitly stated somewhere in the Preamble.

850. Mr. K. A. FIKKERT (Netherlands) said that his Delegation had introduced the final paragraph of document DC/62 for the very reason mentioned by the Delegation of Canada. His Delegation thought that the product of a revision was something totally new, namely a new Act replacing in the future the old Act.

851. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation seconded the proposal submitted by the Delegation of the Netherlands.

852. Dr. A. BOGSCH (Secretary-General of the Union) suggested that the Drafting Committee might be asked to condense into one paragraph the four paragraphs devoted, both in the basic proposal and in the proposal submitted by the Delegation of the Netherlands, to expressing the desire to make the Convention accessible to other countries.

853. Mr. A. PARRY (United Kingdom) indicated that his Delegation, in response to the suggestion made by the Secretary-General of the Union, was willing to prepare an amendment to the proposal of the Delegation of the Netherlands, for the consideration of the Drafting Committee.

854. *It was decided that the Drafting Committee should determine the text of the Preamble on the basis of the proposal contained in document DC/62 and of an amended version thereof to be prepared by the Delegation of the United Kingdom.*

Article 1: Purpose of the Convention; Constitution of a Union; Seat of the Union (Continued from 194)

855. The PRESIDENT reopened the discussion on Article 1 and invited the Delegation of the Netherlands to introduce

again its proposal for amendment, as appearing in document DC/14.

856. Mr. K. A. FIKKERT (Netherlands) confirmed that his Delegation's proposal, apart from the introduction of Article 1A setting out a list of "definitions," was concerned only with drafting matters and with the systematic ordering of the Articles of the Convention.

857. Mr. J. F. VAN WYK (South Africa) suggested that the proposed Article 1A should be discussed first because the definition of "the breeder" included therein would have a bearing on the wording proposed for Article 1.

858. Mr. B. LACLAVIÈRE (France) said that the Conference had so far worked on the basis of making as few changes as possible. He believed that Article 1 had never given rise to difficulties. He therefore saw nothing to be gained by introducing Article 1A. It would be totally contrary to French tradition to introduce a list of definitions.

859. Mr. P. W. MURPHY (United Kingdom) thought that the main question for the Conference was whether the revised text should or should not contain a list of definitions. He was not certain what consequential changes might be introduced if the proposed Article 1A were adopted. He would prefer to retain the existing structure of the Convention, if at all possible.

860. Mr. F. ESPENHAIN (Denmark) said that he was of the same opinion as the Delegation of the United Kingdom.

861. Mr. M. JACOBSSON (Sweden) said that his Delegation also shared the opinion of the Delegation of the United Kingdom.

862. Mr. W. A. J. LENHARDT (Canada) said that he was in sympathy with the proposal of the Delegation of the Netherlands. It was always helpful, particularly from the lawyer's point of view, to have the "definitions" set out at the beginning of a text. He did not think that the proposed Article 1A, if adopted, would have any effect whatsoever on the Convention. Although he was not sure that he agreed with the wording of all of the definitions proposed he would prefer to have definitions included in the text. If necessary they could be put in the individual Articles and not in a separate list.

863. Mr. H. J. WINTER (United States of America) said that his Delegation had no strong views on the matter under discussion. If it was decided, however, to include a list of definitions, then one would have to be absolutely certain that the drafting followed exactly the definitions currently to be found in various Articles.

864. Dr. D. BÖRINGER (Federal Republic of Germany) said that he had before him the texts of two Conventions, both dated July 14, 1967. The Convention Establishing the World Intellectual Property Organization contained a list of "definitions"; the Paris Convention for the Protection of Industrial Property did not. He agreed with what had just been said by the Delegation of the United States of America. His Delegation was in favor of keeping the text as it was for three reasons. First, it was not sure that the proposed Article 1A covered all the important terms in the Convention. To check that would involve the Drafting Committee in a considerable amount of work. Secondly, it was not sure that those definitions that were listed were correctly worded in all the three official languages. Finally, adoption of the proposal of the Delegation of the Netherlands would result in a renumbering of almost every Article in the Convention, including Article 13, and that would lead to confusion.

865. Mr. W. GFELLER (Switzerland) said that his Delegation wished to second the proposal of the Delegation of the Netherlands.

866. *The proposal of the Delegation of the Netherlands as appearing in document DC/14 was rejected by 7 votes against to 2 in favor, with 1 abstention.*

867. *The adoption of Article 1 as appearing in the Draft was confirmed. (See paragraphs 191 and 193 above.)*

Article 5: Rights Protected; Scope of Protection (Continued from 312)

868. The PRESIDENT reopened the discussion on Article 5.

869. *It was decided to refer to the Drafting Committee the proposal submitted by the Delegation of the Federal Republic of Germany to delete the words "of a variety" from the first sentence of Article 5(1), as reproduced in document DC/18.*

870. The PRESIDENT then invited comments on documents DC/17 Rev. and DC/50, being respectively the proposal submitted by the Delegation of France for the amendment of Article 5(1) and the comments of Observer Organizations on Article 5 as restated by the Office of the Union on the request of the Conference.

871. Mr. R. ROYON (CIOPORA) said that in his earlier statements (see paragraphs 255, 263 and 289.3) he had emphasized the problems facing members of CIOPORA as a result of imports of plants or parts of plants from non-member States of the Union. He wished the Conference to also be aware that problems could equally arise even at the level of the European member States of the Union. Because of differing periods of protection, or for purely financial reasons, or because of market forces, it was possible that a variety protected in one member State was not protected in another member State. Producers of that variety in the latter State did not need a licence since the variety was "free." Exports of that production to the former State, however, were very damaging to the owner of plant variety protection.

872. Dr. H. H. LEENDERS (FIS) asked the Conference to bear in mind, when considering document DC/50, one point which was always stressed by his Federation, namely that once plant variety protection had been introduced into a country and once the trade had become accustomed to the payment of royalties, the regular trade was faced with unfair competition if others could too easily produce material without paying a royalty. He was not questioning the right of a farmer to produce seed for his own use. Commercial production, however, for example by cooperatives, raisers of plantlets or canneries, was a different matter. That could lead to unfair competition and he wished to draw the attention of the Conference to that problem.

873. Mr. H. J. WINTER (United States of America) said that when Article 5 had been debated the previous week his Delegation had clearly stated that any attempt to protect the final product would cause very severe problems in its country (see paragraph 294). His Delegation believed that such an amendment would cause some serious problems under its country's antitrust laws and that it would go beyond the scope of protection necessary in the Convention. His Delegation would therefore be opposed to such an amendment.

874. Mr. R. ROYON (CIOPORA) said that the requests made by CIOPORA were concerned with two different problems. One was protection, in the case of vegetatively propagated plants, for the final product as such, namely for a plant or a part of a plant, be it a cut flower or even a fruit. That was the purpose of the proposed Article 5(2) in document DC/50. The other, which was covered by the proposed Article 5(1) in that same document, was not designed to extend protection to the final product, but simply, by amending the drafting, to enable the owner of a protected variety to exercise his "minimum" right. The plant patent legislation of the United States of America already covered the "commercial use" of a plant and that was what CIOPORA was seeking to cover in the proposed Article 5(1).

875. Mr. J. BUSTARRET (France) felt that there were two different problems to be discussed and that they should be taken separately. The first was the amendment of the wording of

the first sentence of Article 5(1), namely to replace the expression "for purposes of commercial marketing" by the expression "for commercial purposes," and to delete the words "as such." The second concerned, in various forms, the proposal submitted by his Delegation and reproduced in document DC/17 Rev., whereby certain provisions so far reserved for ornamental plants would be extended to vegetatively propagated plants in general.

876. Dr. D. BÖRINGER (Federal Republic of Germany) said that he would like to associate himself with the proposal of Mr. Bustarret. He would like first to ask the representative of CIOPORA to clarify his organization's proposed Article 5(1), and the explanation thereon, as appearing in document DC/50.

877. Mr. R. ROYON (CIOPORA) said that he would take as an example the case of a grower producing cut flowers in country "A," where the variety was protected, who imported plants from country "B," where the variety was not protected, planted them in his glasshouse and subsequently, without multiplying the variety, sold cut flowers. Such a practice was not covered by the present wording of Article 5(1). Mr. Royon said that he asked himself to what extent the "minimum protection" of the right of the breeder existed when the breeder of a rose, carnation or chrysanthemum variety used for the production of cut flowers could not subject such use, even in country "A," to the holding of a licence. The wording suggested by CIOPORA for Article 5(1) would overcome that difficulty. Given that vegetative propagating material included whole plants, the plants imported from country "B" could then be considered to be vegetative propagating material. The fact that the grower had them in his glasshouse with a view to commercially producing and marketing cut flowers would be covered by the expression "the ... use, for commercial purposes," of the propagating material. As was stated in the first paragraph of the "explanation" at the end of document DC/50, the purpose of amending the drafting of Article 5(1) was not to extend protection to plants or parts thereof but to cover "utilisation à des fins commerciales." The expression "à des fins d'écoulement commercial" left room for doubt, since it could be construed to cover only reselling, which in CIOPORA's opinion had not been the intention of the drafters of the Convention.

878. Dr. H. H. LEENDERS (ASSINSEL) said that ASSINSEL, as could be seen from item 1 of document DC/50, had also found certain imperfections in the wording of Article 5(1). The problem faced by members of his Association differed slightly from the difficulties explained by the representative of CIOPORA. Dr. Leenders said that he would take as an example a cannery producing peas and beans for canning. When the quantity of peas or beans produced exceeded that required for canning the surplus was retained for use as seed in the following year. The first sentence of Article 5(1) stated that the breeder's authorization "shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material." In the case he had cited there was no "marketing." He was sure, however, that the Conference would agree that in such cases the cannery should pay the normal royalties. The problem was, of course, that the cannery could rely on the present wording of Article 5(1), refusing to pay a royalty on the ground that no marketing had taken place.

879. Mr. J. BUSTARRET (France) said that he would like to respond to what had been said earlier by Mr. Royon about fruit trees (see paragraph 289.3), and to what Dr. Leenders had just said about peas and beans, by explaining the intentions of the persons who had drafted Article 5(1) in 1961. Their intention regarding the fruit grower who bought some trees of a new variety and reproduced the variety in his own orchard by means of grafting had been that he did not have to pay royalties on that reproduction, unless the owner of the variety had taken the precaution of specifying in his conditions of sale that reproduction of the variety by that means was not permitted. Their intention regarding the canner who

multiplied seeds himself for delivery to his contract growers, however, had really been that such delivery, being in effect an act of commercial marketing, should give rise to the payment of royalties to the owner of the variety. Mr. Bustarret said that he did not know whether the wording used to express those intentions was perfect, but nevertheless such had been the intentions of the drafters.

880. Mr. M. TOURKMANI (Morocco) said that he would just like to give a simple example to show the problems one might face if the wording suggested by CIOPORA were accepted. He took as an example a farmer producing wheat who purchased 'certified' seed, delivered 99 per cent of the resulting crop to the mill for the production of flour and retained one per cent for his own use as seed. Mr. Tourkmani believed that subjecting the use of that small quantity to the authorization of the breeder would lead to unimaginable practical difficulties. In his view what should be subjected to the authorization of the breeder was seed destined to be marketed as seed. Technical regulations covering seed production always required proof of the origin of the seed used to establish the crop entered for certification as seed. In other words the identity of the 'basic' seed had to be disclosed. 'Basic' seed could only be obtained from the breeder and at that point the right of the breeder was respected.

881. Mr. R. ROYON (CIOPORA) said that in the example given by the Delegation of Morocco there would be no "utilisation à des fins commerciales." It would be a question of the producer satisfying his own needs and that was not covered by the text suggested by CIOPORA. Furthermore, that text was applicable only to vegetatively propagated plants. One of the reasons why CIOPORA sought a rather special scope of protection in respect of vegetatively propagated plants was that breeders of sexually reproduced plants benefitted from indirect means of a technical nature in protecting themselves in respect of the use made of reproductive material of their varieties.

882. Dr. H. H. LEENDERS (ASSINSEL) said that in the example given by the Delegation of Morocco it was clear that the farmer was producing reproductive material not for commercial purposes but for his own purposes. He believed that there was some misunderstanding.

883. Mr. A. W. A. M. VAN DER MEEREN (Netherlands) agreed that there was some misunderstanding. He could see no difference between an ornamental plant used to produce cut flowers and a cereal used to produce bread. According to his understanding, if the wording proposed by CIOPORA for Article 5(1) in document DC/50 were adopted then all farmers would be dependent on the authorization of the breeder. The wheat producer who retained some of his crop and used it as seed to produce wheat for the milling industry used the material he had retained as reproductive material. According to the wording suggested for Article 5(1) the "use, for commercial purposes of the reproductive or vegetative propagating material" required the prior authorization of the breeder.

884. Dr. H. H. LEENDERS (ASSINSEL) said that he had based his earlier remark on his Association's suggestion, recorded in item 1 of document DC/50, that the existing wording of Article 5(1) should be retained, except that the phrase "production, for purposes of commercial marketing, ..." should be replaced by "production, for commercial purposes, ..." Both the existing text and the text including ASSINSEL's suggested amendment referred to production of reproductive material and not to its use.

885. Mr. R. ROYON (CIOPORA) believed that the exclusion from the scope of protection of the two activities that he had mentioned in relation to fruit trees and cut flowers ran counter to the very spirit of the Convention. Leaving aside the question of protection for the final product, it seemed to him that there was a basic defect in the Convention if the breeder of a variety whose purpose was to produce fruit or cut flowers of a better quality could not control the commercial exploitation of the variety.

886. Mr. M. TOURKMANI (Morocco) said that if the representative of CIOPORA agreed that the wheat producer in the earlier example was free to use material retained by him to sow his fields in the following year then surely the situation in respect of fruit trees was analogous. In his view it was the interpretation and application of the text to different categories of species, for example to sexually reproduced species or to vegetatively propagated species, that gave rise to difficulties.

887.1 Mr. J. BUSTARRET (France) agreed with the conclusions drawn by the Delegation of Morocco. If a text permitted a producer of cereals to use his own grain crop as seed for sowing his own fields—and it appeared that no-one contested that—then one had to apply a similar reasoning in respect of fruit trees. Nevertheless, seen objectively, the situations differed. The same text could not permit in the one case what it forbade in the other. In the first case, however, the rights that the cereals breeder could legitimately count on in respect of his innovation were satisfied, whereas in the second case the breeder could justifiably consider that his rights in the variety of fruit bred by him brought him nothing by comparison with the work entailed in the breeding of that variety. It was not the nature or scope of the right that was in question; it was a matter of the consistency of the right when looked at objectively. That was the very difficult problem with which the Conference was faced.

887.2 Mr. Bustarret went on to say that it was clear that the fruit tree breeder had practically no interest in seeking protection for his varieties. His interest lay in seeking other means of ensuring a return, such as very high prices, Draconian conditions of sale and so on. It was clear that the breeding of fruit trees was not financially viable. As a consequence nine-tenths of the breeding work in that field was being carried out in government research stations and very few private breeders remained. Mr. Bustarret said in conclusion that he recognized, however, that it was not through the text of the Convention that a solution would be found.

888. Mr. M. O. SLOCOCK (AIPH) said that he had found Mr. Bustarret's intervention very illuminating. The description of the situation prevailing in respect of fruit trees was equally applicable in respect of ornamental plants. As the representative of AIPH, which tended to represent the interests of the growers of ornamental crops rather than the breeders, he wished to state that it would not be of advantage to either sector of the industry if the breeding of new varieties became a governmental responsibility and if there were no longer sufficient incentive for private breeders to continue their work. That could occur if Article 5(1) remained as it was.

889. Mr. R. ROYON (CIOPORA) supported what had been said by the representative of AIPH. A fruit tree breeder could spend fifteen or even twenty years perfecting a variety. Assuming that the variety had extraordinary properties, for example of tolerance to being packed and shipped, or of a flavor which everyone appreciated, should one accept the fact that the breeder, once he had sold a single tree, could not control the production of tens or hundreds of thousands of trees therefrom by any grower enjoying a favorable climate or terrain. Those were the sort of quantities involved in orchard production. Should not the breeder be able to control the commercial exploitation of his variety occurring by means of the sale of the fruit, which would be in world-wide demand. Mr. Royon said that as he had listened to the debate he had wondered what purpose had been served by the signature some seventeen years earlier of the International Convention for the Protection of New Varieties of Plants.

890. Dr. W. P. FEISTRITZER (FAO) was concerned that the reference in Article 5(1) to the "prior authorisation" of the breeder might imply that the breeder could hinder the utilization, for example, of a variety that had been identified in official trials as being suitable from an agronomic point of view, the use of which was being recommended.

891.1 The PRESIDENT thought that the question raised by the representative of FAO was answered by implication in Article 9(1).

891.2 The President sought the views of the Conference on the establishing of a working group to discuss Article 5.

892. Dr. A. BOGSCH (Secretary-General of the Union) said that he would strongly recommend such a solution. The Working Group on Article 13 had evolved not only a new text but also some explanatory statements. Dr. Bogsch thought that part of the discussion on Article 5 had been based on misunderstandings and part had been genuinely directed to amending the basic proposal. Both areas might be resolved in a working group; the first by an agreed declaration and the second by an amendment, if any, of the text.

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893. Mr. A. SUNESSEN (Denmark) said that his Delegation felt that it could be useful to establish a working group to give detailed consideration to the problems arising from Article 5. He had participated in the Working Group on Article 13 where it had been proved that problems could be isolated and that common solutions could be found. His Delegation therefore proposed that the Conference establish a working group to consider Article 5.

894. Mr. S. MEJEGÅRD (Sweden) noted that he had announced earlier that, for the time being, his Delegation could not accept any amendment to the minimum scope of protection (see paragraph 299). It was therefore unable to support the establishment of a working group charged with preparing a proposal for the amendment of Article 5. It would, however, support the establishment of a working group with the task of studying the question and even of drafting some examples.

895. Mr. P. W. MURPHY (United Kingdom) said that his Delegation had the same difficulties as the Delegation of Sweden in agreeing to the establishment of a working group if such agreement implied that the scope of protection provided for in Article 5 would be extended or that it would become mandatory for member States to extend that scope of protection. His country already went well beyond the existing mandatory provisions of Article 5, but whether such an extension was acceptable as a mandatory obligation, imposed under the Convention, was another matter. His Delegation would therefore very much like to have a proposal for the terms of reference of the proposed working group.

896.1 The PRESIDENT said that the proposed working group would, of course, have a number of points of reference. It would have available for consideration the basic proposal in document DC/3, the proposal submitted by the Delegation of France in document DC/17 Rev., the comments of Observer Organizations in document DC/50 and a new document under the reference DC/77. The latter document, containing a recommendation on Article 5, had been presented by himself as President of the Conference. If it was decided that Article 5 should not be amended then he hoped that the Conference would adopt that recommendation.

896.2 Referring to the statements made by the Delegations of Sweden and the United Kingdom the President said that he was certain that some other delegations would also find it difficult to accept any amendment of the basic proposal for Article 5. In his view, therefore, discussion in the proposed working group should be without prejudice to the final decision by the Conference meeting in Plenary.

897. Mr. A. SUNESSEN (Denmark) said that his Delegation would find it difficult to accept any changes. It did feel, however, that the establishment of a working group would provide an opportunity for a useful discussion.

898. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation would be willing to participate in a working group provided that there was sufficient time for meaningful discussion and provided that the Observer Organizations considered that its establishment would be useful.

899. Mr. J. WINTER (ASSINSEL) said that ASSINSEL would welcome the establishment of a working group to discuss the problems arising from Article 5 and would be pleased to participate.

900. Mr. R. ROYON (CIOPORA) said that CIOPORA fully endorsed the statement made by the representative of ASSINSEL.

901. Prof. R. K. MANNER (Finland) said that his Delegation believed that it would be difficult for its country to join the Union if the scope of protection was extended. It considered that the possibility of extension could form part of the agenda for the next Diplomatic Conference on the Revision of the Convention, say in five years' time.

902. *It was decided to establish a Working Group on Article 5 to thoroughly consider and discuss the documents referred to in paragraph 896.1 above and to report its conclusions to the Conference meeting in Plenary.*

903. *It was further decided that participation in the Working Group on Article 5 would be open to all Delegations and that it would invite experts from the Observer Organizations to attend.*
(Continued at 1004)

Article 23A: Legal Status (Continued from 612)

904. The PRESIDENT opened the discussion on Article 23A. He noted that the Delegation of the Netherlands and the Delegation of France had each submitted a proposal to add a paragraph (3) to that Article. Those proposals were reproduced respectively in documents DC/47 and DC/60.

905. *Paragraphs (1) and (2) of Article 23A were adopted as appearing in the Draft, without discussion.*

906. The PRESIDENT invited the Delegation of the Netherlands to introduce its proposal for amendment.

907. Mr. K. A. FIKKERT (Netherlands) said that the purpose of his Delegation's proposal was to indicate who was competent to execute certain decisions of, for example, the Council. There was no reference in the Draft of the revised text, for example, to powers of signature. His Delegation thought it would be wise to have some indication in that direction in the Convention. Mr. Fikkert drew the Conference's attention to the fact that his Delegation's proposal left open the question of who should represent the Union.

908. Dr. A. BOGSCH (Secretary-General of the Union) noted that the Convention Establishing the World Intellectual Property Organization, for example, provided in its Article 9(4) that "The Director General shall be the chief executive of the Organization" and that "He shall represent the Organization." The signatures of which the Delegation of the Netherlands had spoken were needed in Geneva usually, and in any case, in all important matters the Secretary-General simply executed the directives that he received from the Council. Dr. Bogsch thought that the proposal submitted by the Delegation of the Netherlands had merit. It conformed with general practice. If it were to be adopted then he would suggest that the first of the variants proposed, namely "The Secretary-General," be taken.

909. Mr. A. PARRY (United Kingdom) said that his Delegation had no strong views about the proposal of the Delegation of the Netherlands. Article 23(2) already provided that the Secretary-General "shall be responsible for carrying out the decisions of the Council." Although it emerged from that Article that it was normally the Secretary-General who represented the Union, his Delegation could see no harm in including in Article 23A the addition proposed by the Delegation of the Netherlands.

910. Mr. B. LACLAVIÈRE (France) said that it would be normal for the Secretary-General to represent the Union in what might be termed its daily tasks. But in the case of a mission, for example, was it the Secretary-General or the President of the Council who should represent the Union. He was tempted to say that the Union, in accordance with existing practice, was represented by the President of the Council but that the Secretary-General was responsible for the accomplishment of its daily tasks. But that was merely a personal opinion of his.

911. Dr. D. BÖRINGER (Federal Republic of Germany) said that he believed that the proposal of the Delegation of the Netherlands gave rise to a number of difficulties because the position of the Secretary-General of UPOV differed from that of his counterparts in other international unions. He was convinced that the provisions of paragraphs (1) and (2) of Article 23 were sufficient in all cases except where the Council reserved matters to its President.

912. Mr. B. LACLAVIÈRE (France) said that, to avoid further discussion, he would support what has just been said by the Delegation of the Federal Republic of Germany. If necessary one might add a suitable provision to the Rules of Procedure of the Council.

913. Mr. A. PARRY (United Kingdom) said that it seemed to him that the purpose of including the paragraph proposed by the Delegation of the Netherlands would be to show specifically the actual scope of the ostensible authority. As he had said, his Delegation felt that the matter was already sufficiently clear, but if it was decided not to include a specific provision in the Convention then there seemed to be no point in including one in the Rules of Procedure of the Council. They did not really constitute evidence of the legal position.

914. Dr. A. BOGSCH (Secretary-General of the Union) said that he was of the opinion, having listened to the debate, that the Convention should remain silent on the matter, leaving the Council to make the decision as and when required.

915. Mr. K. A. FIKKERT (Netherlands) said that his Delegation withdrew its proposal as contained in document DC/47.

916. The PRESIDENT invited the Delegation of France to introduce its proposal for amendment.

917. Mr. B. LACLAVIÈRE (France) said that he believed his Delegation's proposal to be very simple. In view of the changes made to certain provisions of the Convention it now seemed indispensable to include a clause, found in a number of similar conventions, requiring the Union to conclude a headquarters agreement with the Swiss Confederation.

918. Mr. W. GRELLER (Switzerland) regretted that his colleague, Mr. Jeanrenaud, from the Federal Political Department was not present since he could certainly have advised the Conference in the matter of headquarters agreements with the Swiss Confederation. Having received no instructions he personally was not able to comment thereon (see paragraph 975 for subsequent statement).

919. Dr. A. BOGSCH (Secretary-General of the Union) considered that the proposal submitted by the Delegation of France was useful and even necessary. Under the existing text of the Convention, the Swiss Confederation unilaterally governed the affairs of the Union, naturally in consultation with the Council. When the revised text of the Convention

entered into force, the Union would cease to be under the guardianship of the Confederation. Consequently the existing decree would have to be replaced by a bilateral agreement between the Union and the Confederation.

920. Dr. D. BÖRINGER (Federal Republic of Germany) thought that the second sentence of the proposal of the Delegation of France was not needed. In accordance with Article 23, the Council would either ask the Secretary-General himself to conclude a headquarters agreement or it would ask the Secretary-General to prepare the agreement and to present it to the Council, the right of signature being reserved to the President of the Council.

921. Mr. B. LACLAVIDÈRE (France) said that he did not entirely share the opinion of the Delegation of the Federal Republic of Germany. The Council could entrust the Secretary-General with the negotiation of the agreement but the outcome had to be confirmed by the Council.

922. Prof. A. SINAGRA (Italy) said that his Delegation considered that it would be right to include in the Convention a paragraph such as the one proposed by the Delegation of France. He wondered, however, if it would not be better to include it in the transitional provisions since the agreement in question did not concern the daily management of the Union.

923. Dr. A. BOGSCH (Secretary-General of the Union) thought that it would be useful to include such a paragraph in the general provisions. A headquarters agreement could be modified from time to time and was not necessarily a single operation.

924. Mr. M. JACOBSSON (Sweden) said that his Delegation also believed that a clause such as that one proposed by the Delegation of France could be useful. He noted that Article 12 of the Convention Establishing the World Intellectual Property Organization contained a similar clause. He endorsed the opinion of the Secretary-General regarding the positioning of the clause. Mr. Jacobsson concluded by saying his Delegation had no strong views regarding the need for the second sentence of the proposal of the Delegation of France.

925. Mr. A. PARRY (United Kingdom) said that if the second sentence of the proposal of the Delegation of France was to be retained then it should be somewhat expanded. It stated that: "The agreement shall be approved by the Council." It did not specify, however, the stage at which the approval was needed, nor did it specify what was the purpose of that approval. It was therefore not clear whether it was for the Council to approve the agreement in draft or whether its approval in fact constituted the conclusion of the agreement on behalf of the Union. It seemed to him that the sentence, as proposed, might be insufficient and that it might be better either to replace it by something more elaborate or to omit it altogether.

926. Mr. H. J. WINTER (United States of America), noting the reference by the Delegation of Sweden to Article 12(2) of the Convention Establishing the World Intellectual Property Organization, said that he would agree with the Secretary-General's opinion that it was desirable to include in the Convention specific reference to a headquarters agreement with the State in which the Union had its seat.

927. The PRESIDENT asked delegates whether they were in favor of including as Article 23A(3) the first sentence of the proposal of the Delegation of France, as reproduced in document DC/60.

928. Mr. K. A. FIKKERT (Netherlands) said that his Delegation could support the proposal of the Delegation of France but thought it might be better to just say: "The Union shall conclude a headquarters agreement." Article 1(3) already provided that the seat of the Union was to be at Geneva.

929. Dr. A. BOGSCH (Secretary-General of the Union) said that it was another question whether one made a reference to

Switzerland or to "host country" or even "country on whose territory the seat is." For as long as the Convention referred to Geneva the host country was Switzerland.

930. *It was decided to adopt the first sentence of the proposal reproduced in document DC/60.*

931. The PRESIDENT asked delegates whether they considered it necessary to retain the second sentence of the proposal under consideration or whether sufficient provision was already made in Article 21.

932. *Subject to the Records of the Conference stating that the conclusion of or any amendment to the headquarters agreement required the decision and approval of the Council acting pursuant to Article 21(h), it was decided that the second sentence of the proposal reproduced in document DC/60 should not be retained.*

933. *Subject to the proviso referred to in the preceding paragraph, the first sentence of document DC/60 was adopted as Article 23A(3).*

Article 26: Finances (Continued from 627)

934. The PRESIDENT reopened the discussion on Article 26 and invited the Delegation of the Federal Republic of Germany to introduce its revised proposal for amendment, as appearing in document DC/28 Rev. 2.

935. Mr. H. KUNHARDT (Federal Republic of Germany) said that the revised version of his Delegation's proposal was the same, from the substantive point of view, as the original proposal, as reproduced in document DC/28. He had already explained the aim of that proposal (see paragraph 614). The revision concerned only improvements of a drafting and linguistic nature.

936. Dr. A. BOGSCH (Secretary-General of the Union) noted that it was difficult to construe paragraph (2) logically. It said that: "For the purpose of determining the amount of the annual contributions of the member States of the Union, each member State shall contribute . . ." That was tantamount to saying 'for the purpose of determining the price of the car, everybody will pay 1,000 dollars.' He suggested that the Drafting Committee should be asked to find a better wording. Dr. Bogsch also wondered whether it might not be necessary, in creating the provisions for the new system proposed by the Delegation of the Federal Republic of Germany, to commence with what was for the moment paragraph (4)(a) in document DC/28 Rev. 2. Again he suggested that the Conference should authorize the Drafting Committee to look into the matter.

937. Mr. H. KUNHARDT (Federal Republic of Germany) said that to some extent the suggestion of the Secretary-General reverted to the original proposal, as reproduced in document DC/28. Paragraph (2) of that document read: "Each member State of the Union shall contribute in proportion to the number of units taken over. The contribution may also comprise fractions of a full unit." His Delegation had been informed that that wording presented certain difficulties. Although his Delegation had not been able to fully visualize the difficulties it had tried to take them into account in its revised proposal. If it was the general wish to revert to the original proposal then his Delegation would be willing to do that. It was concerned only with the substance of its proposal and would be very open to and appreciative of any help offered with a view to achieving a meaningful text, especially in the English version. His Delegation would equally be willing, if the Conference agreed on the substance of the proposal, to leave the precise wording to the Drafting Committee.

938. Mr. F. ESPENHAIN (Denmark) said that his Delegation considered the proposal of the Delegation of the Federal Republic of Germany to be a simplification of the existing

text of Article 26 and wished to support the proposal, on the understanding that the Drafting Committee was authorized to improve the wording.

939. *Subject to the understanding that the Drafting Committee was authorized to improve the wording of and even, if necessary, to interchange certain sentences and certain paragraphs in document DC/28 Rev. 2, it was decided that the system and the principles proposed by the Delegation of the Federal Republic of Germany in that document should form the basis of Article 26.*

Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services (Continued from 674)

940. The PRESIDENT reopened the discussion on Article 30(1)(a). He noted that there were four proposals for consideration. One proposal, namely that submitted by the Delegation of the Netherlands, as reproduced in document DC/49 Rev., had been introduced and considered at the end of the previous week (see paragraphs 646 et seq.). Two further proposals, namely that now submitted by the Delegation of Italy and that now submitted by himself as President of the Conference, as reproduced in documents DC/69 and DC/70 respectively, had been made orally at the time when document DC/49 Rev. had been considered (see respectively paragraphs 650 and 664). Finally, a new proposal had been submitted by the Delegation of South Africa. Since that proposal, as reproduced in document DC/79, related not only to Article 30(1)(a) but also to paragraphs (1) and (2) of Article 3, which had already been adopted by the Conference (see paragraphs 214 to 218), it could not be considered, according to Rule 33 of the Rules of Procedure, "unless so decided by a two-thirds majority of the Member Delegations present and voting." The President asked whether there were any objections to reconsidering paragraphs (1) and (2) of Article 3. He noted that there were none.

941. Dr. A. BOGSCH (Secretary-General of the Union) said that for him the wording proposed in document DC/70 was better than that in the Draft.

942.1 Mr. A. PARRY (United Kingdom) said that he wished to echo what had been said by the Secretary-General. The proposals before the Conference in relation to Article 30(1)(a) seemed to fall into two categories. On the one hand, the proposals reproduced in documents DC/49 Rev., DC/69 and DC/70 all referred to "appropriate legal remedies;" on the other hand, the proposal reproduced in document DC/79 would tend, if adopted, to convert the Article into one about "effective implementation" of the Convention. His Delegation would prefer that the Article should not relate to effective implementation. If a State ratified the Convention then it could be assumed that it would provide in its law for the effective implementation of the Convention.

942.2 Mr. Parry then said that he had already explained why the proposals reproduced in documents DC/49 Rev. and DC/69 were insufficient (see paragraphs 648 and 666.2). The fact was that the beneficiaries of the Convention were not merely nationals but also residents and companies having their headquarters in a member State. His Delegation was therefore of the opinion that the best solution in respect of Article 30(1)(a) would be the adoption of the proposal reproduced in document DC/70, which simply stated: "provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention."

943. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation considered Article 3(1), which provided for national treatment, to be the basic rule. Protection was only meaningful when it was accompanied by the necessary legal remedies. Article 30(1)(a) was a complement to that Article. When Article 30(1)(a) was first drafted the sole intention had been to guarantee such legal remedies to the nationals of other member States. His Delegation would

therefore prefer the present wording to be maintained. It believed that the same wish had been expressed by the Delegation of France (see paragraph 659). Alternatively, it could accept the proposal submitted by the President of the Conference and reproduced in document DC/70, although it believed that the proposal went beyond what had been intended originally and that there was no compulsion to do that.

944.1 Dr. A. BOGSCH (Secretary-General of the Union) said that, in view of what had just been stated by the Delegation of the Federal Republic of Germany, he would like to explain why he considered the proposal of the President of the Conference to be an improvement. Article 3 provided for national treatment and Article 30(1)(a) was indeed just an appendix to that Article. It emphasized that there were not only rights but also remedies. In his view, those remedies could only be applied where they applied also to nationals of the country. That was why it was a national treatment. He believed that it was much safer to take that as a basis than to have an express reference to nationals of the other country, thereby giving the impression that there were two sets of remedies: one set for nationals and the other for foreigners. Although the latter had to be effective it could be different.

944.2 Dr. Bogsch said that the second point was that it was not only the nationals who needed to have remedies available to them but also the foreign domiciliaries and the foreign companies, as had been rightly indicated by the Delegation of the United Kingdom. They were not covered by the existing text. He therefore considered the less specific wording proposed in document DC/70 to be superior to the existing text.

945. Mr. J. BUSTARRET (France) said that when the Convention had been drafted the eventual content of the various national legislations had been unknown and it had been thought to be not without usefulness to insist on the provisions contained in Article 30(1). In his view it was not absolutely essential to preserve Article 30(1)(a). He nevertheless wished to say something further on the matter. In the proposal submitted by the Delegation of South Africa the provision was transferred to paragraphs (1) and (2) of Article 3. In reality the question of remedies for third parties involved not only those to whom a right was granted but also those who might contest that right. Perhaps that point had been somewhat lost from sight. One had to bear in mind that the Convention not only accorded rights; it also created obligations and possible remedies.

946. Dr. A. BOGSCH (Secretary-General of the Union) noted that neither the existing text nor any of the proposals covered the last point mentioned by the Delegation of France. The provision contained in Article 30(1)(a) was quite unnecessary but it seemed to be the general wish that it should be preserved to avoid such misunderstandings as might arise if it were deleted. In his opinion, the best solution was offered by the proposal submitted by the President of the Conference.

947. Mr. M. TOURKMANI (Morocco) believed that Article 30(1)(a) could be preserved just by inserting the words "the same" before "legal remedies" and by specifying more clearly who benefitted from those remedies.

948. Dr. A. BOGSCH (Secretary-General of the Union) said that the amendment proposed by the Delegation of Morocco would simply restate the national treatment principle. He believed that the only justification for Article 30(1)(a) was that it required the remedies provided by a State to be "effective."

949. Mr. H. J. WINTER (United States of America) said that his Delegation had noted earlier that it saw no real reason, in view of Article 3, for having Article 30(1)(a) (see paragraphs 649 and 658). If something was to be included in the revised text then his Delegation would certainly prefer the wording proposed by the President of the Conference.

950. Mr. M. JACOBSSON (Sweden) said that there was a certain merit in not changing the existing state of affairs. His Delegation endorsed what had been said by the Secretary-General and supported the proposal submitted by the President of the Conference.

951. Mr. J. F. VAN WYK (South Africa) said that, in view of what had been stated by the other delegations and to assist the meeting, his Delegation withdrew its proposal, as reproduced in document DC/79, and supported the proposal submitted by the President of the Conference.

952. Mr. W. VAN SOEST (Netherlands) said that his Delegation supported the proposal submitted by the President of the Conference.

953. *By 8 votes in favor to 1 against, with one abstention, it was decided to adopt as Article 30(1)(a) the proposal submitted by the President of the Conference and reproduced in document DC/70.*

Article 32B: Relations Between States Bound by Different Texts (Continued from 718)

954. The PRESIDENT reopened the discussion on Article 32B(2).

955. Mr. R. DUYVENDAK (Netherlands) announced the withdrawal by his Delegation of its proposal for amendment as appearing in document DC/55.

956. *It was decided to adopt the proposal submitted by the Delegation of the Federal Republic of Germany and reproduced in document DC/42 in place of the first part of Article 32B(2), ending in the Draft at the semicolon.*

957. *Subject to the decision referred to in the preceding paragraph, and subject to the decision regarding consequential changes referred to in paragraph 706 above, it was decided to adopt Article 32B(2) as appearing in the Draft.*

Article 34A: Exceptional Rules for Protection Under Two Forms (Continued from 832)

958. The PRESIDENT reopened the discussion on Article 34A(2) and invited the Delegation of the United States of America to clarify its proposal, as appearing in document DC/32, to replace the word "novelty" by the word "patentability."

959. Mr. S. D. SCHLOSSER (United States of America) said that the purpose of his Delegation's proposal was to provide for the theoretical requirement under his country's Patent Laws to examine plant varieties for non-obviousness. It was not easy to explain the meaning of non-obviousness. There had been very little litigation on the matter over the course of the years. The most recent court decision dealing with the matter had ruled that non-obviousness was a requirement of the Patent Laws. Its application, if any, to plant patents was uncertain, but, being a formal requirement, it had to be dealt with in some way. If the requirement had to be met that would mean that the United States of America had, in some way, to evaluate the amount or degree of distinctness present in a new variety submitted for patenting, distinctness, of course being a requirement of Section 161 of its Patent Laws. That would be tantamount to judging new varieties for important differences, as required by Article 6(1)(a) of the Convention. Mr. Schlosser said that he wished to stress that his Delegation had nothing in mind beyond the practice examined by the Committee of Experts on the Interpretation and Revision of the Convention and approved of in many discussions and during a visit to the United States of America.

960. Mr. M. JACOBSSON (Sweden) expressed his concern that the use of the word "patentability" would cover not only the

criterion of "novelty" but also the criteria of "homogeneity" and "stability."

961. Mr. S. D. SCHLOSSER (United States of America) said that he did not see homogeneity or stability as presenting a problem since they were taken for granted where vegetatively propagated plants were concerned and the Plant Patent Law was only applicable to such plants.

962. Mr. J. BUSTARRET (France) said that he accepted that the provisions of Article 6 in respect of homogeneity and stability were automatically satisfied in that only vegetatively propagated plants were eligible for patenting in the United States of America. He was, nevertheless, still disturbed by the inclusion in the text proposed in document DC/32 of the words "notwithstanding the provisions of Article 6." He had stated earlier that he could not accept the substitution of "patentability criteria" for the whole of Article 6 (see paragraph 829). He had noted that the Delegation of the United States of America had confirmed that the substitution related only to the criterion of "novelty." If one wished to keep the word "patentability" he would prefer the reference to Article 6 to be restricted to that or those parts of it that were being substituted.

963. Dr. A. BOGSCH (Secretary-General of the Union) suggested that the genuine difficulty raised by the Delegation of France might be overcome by saying: "notwithstanding the relevant provisions of Articles 6 and 8." He noted that the provisions of Article 6(2), for example, were in no way affected by the proposal submitted by the Delegation of the United States of America.

964. Dr. D. BÖRINGER (Federal Republic of Germany) said that in principle his Delegation shared the hesitation expressed by the Delegation of France. He would appreciate further clarification of the difference between "patentability criteria" and "novelty criteria."

965. Dr. A. BOGSCH (Secretary-General of the Union) said that there were two almost universal criteria of patentability, namely that the invention had to be new or novel and that there had to be an inventive step or non-obviousness. He believed that the Delegation of the United States of America was concerned that the word "novelty" *stricto sensu* did not include the concept of the inventive step or non-obviousness, whereas *largo sensu* it did of course include it.

966. Dr. D. BÖRINGER (Federal Republic of Germany) noted that Article 6(1)(a) of the Convention stated that: "a variety must be clearly distinguishable by one or more important characteristics . . ." The meaning of the word "important" had not been discussed by the Conference but within the Union it had been decided that for practical purposes it referred to characteristics suited to the purpose of establishing distinctness. He wished to know whether, under the concept of "patentability criteria," and in view of the requirement of non-obviousness, only functionally important characteristics could be used in examining a variety.

967. Mr. S. D. SCHLOSSER (United States of America) said that in his country the characteristics used in examining a variety were not limited to functional ones.

968. Mr. J. BUSTARRET (France) said that he still thought, having listened to the discussion, that it was a pity to use the general expression "notwithstanding the provisions of Article 6." He would prefer the reference to be limited to certain provisions of Article 6. In view of the fact that the scope of application of Article 34A(1) had been extended (see paragraphs 813 to 821) the derogations to be provided for in Article 34A(2) needed rather careful consideration.

969. Dr. D. BÖRINGER (Federal Republic of Germany) wondered whether it might help to resolve the concern felt by the Delegation of France if the expression "novelty criteria" were retained and if reference were made to "Article 6(1)(a)" rather than just to "Article 6."

970. Mr. S. D. SCHLOSSER (United States of America) said that he did not think that the wording proposed by the Delegation of the Federal Republic of Germany would resolve the problem. The word "novelty" was insufficient to encompass the concept that his Delegation was trying to take care of, namely that of non-obviousness. His Delegation was not attempting to add a substantive requirement or to make it more difficult to obtain a plant patent than it was in other countries. The purpose of its proposal was simply to take care of a formality in its country's Patent Laws.

971. The PRESIDENT said that it seemed to him that some matters dealt with in Article 6(1)(b) also needed to be covered by the derogation to be included in Article 34A(2). For instance, the very last sentence of Article 6(1)(b) stated that: "The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection." He understood that under the Patent Laws of the United States of America publication was prejudicial to novelty.

972. Dr. D. BÖRINGER (Federal Republic of Germany) said that he wished to withdraw the proposal he had made (see paragraph 969). His Delegation proposed, however, that an analysis be made of Article 6 to determine which parts had to be mentioned in the derogation provided for in Article 34A(2).

973. Mr. S. D. SCHLOSSER (United States of America) said that his Delegation would appreciate time to consider the various points made in the discussion.

974. *It was decided to defer further consideration of Article 34A(2) until the following meeting.* (Continued at 978)

Thirteenth Meeting
Tuesday, October 17, 1978,
morning

Article 23A: Legal Status

975. Mr. W. GFELLER (Switzerland) said that he would like to make a short statement regarding the conclusion by the Union of a headquarters agreement with the Swiss Confederation, as provided for in Article 23A(3). When that matter had been discussed he had unfortunately found himself without instructions from the Federal Political Department (see paragraph 918). Having consulted with that Department he was pleased to be able to inform the Conference that the competent authority in that Department saw no difficulties in concluding such an agreement.

976. The PRESIDENT thanked Mr. Gfeller for his statement and asked that it be recorded in the minutes.

977. Dr. A. BOGSCH (Secretary-General of the Union) said that he also wished to express his sincere thanks to the Government of the Swiss Confederation.

Article 34A: Exceptional Rules for Protection Under Two Forms (Continued from 974)

978. The PRESIDENT reopened the discussion on Article 34A(2) and invited the Delegation of the United States of America to comment on the previous day's discussion of its proposed amendment as appearing in document DC/32.

979. Mr. S. D. SCHLOSSER (United States of America) said that his Delegation, having considered again all the factors involved in its proposal, wished to retain it, with one qualifi-

cation. In his Delegation's opinion "patentability criteria" was the only expression that could be safely used when talking about the application of patent laws to the protection of plant varieties. It understood, however, that the use of that expression could be taken as an untoward use of words. Accordingly, his Delegation wished to pursue its proposal by specifying that the reference to "the provisions of Article 6" related only to "Article 6(1)(a) and (b)," thereby limiting the applicability of the patentability concept to those two portions of the Article.

980. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation believed that the revised proposal of the Delegation of the United States of America overcame the difficulties raised in the earlier discussion. It therefore wished to support that revised proposal.

981. Mr. J. BUSTARRET (France) said that his Delegation also found that the revised proposal of the Delegation of the United States of America met the concerns that it had expressed the previous day. Consequently, his Delegation also supported that revised proposal.

982. The PRESIDENT ruled that the oral amendment to document DC/32 proposed by the Delegation of the United States of America was such that a further written proposal was unnecessary.

983. *Subject to the oral amendment recorded in paragraph 979 above, Article 34A(2) was adopted as appearing in document DC/32.*

Article 38: Settlement of Disputes (Continued from 753)

984. The PRESIDENT reopened the discussion on Article 38 and invited the Delegation of the United Kingdom to introduce its proposal for amendment, as reproduced in document DC/74.

985. Mr. P. W. MURPHY (United Kingdom) regretted that Mr. Parry was not present to introduce the proposal. It was based on the proposal submitted earlier by the Delegation of the Netherlands and reproduced in document DC/57. In essence it retained paragraphs (2)(a), (b) and (c) of that proposal, whilst deleting paragraphs (2)(d), (e) and (f) thereof.

986. Mr. H. J. WINTER (United States of America) noted that his Delegation had expressed serious concern about the proposal of the Delegation of the Netherlands when it had first been introduced (see paragraph 750). That proposal, if adopted, would make it very difficult for the United States of America to adhere to the Convention. The text of Article 38 in the Draft had been considered very carefully by the Department of State and that text was acceptable to the United States of America. Both the proposal submitted by the Delegation of the Netherlands and that submitted by the Delegation of the United Kingdom spelt out in detail the arbitration procedure to be followed. For Mr. Winter that was all the more unusual since, in the Draft and in both the proposals in question, the decision to refer a dispute to arbitration was to be a voluntary one, made "at the request of all the parties concerned." His Delegation therefore entreated the Delegation of the Netherlands and the Delegation of the United Kingdom to revert to the basic proposal in respect of Article 38, as appearing in the Draft.

987. Mr. K. A. FIKKERT (Netherlands) said that the reason for including in his Delegation's proposal details of the procedure to be followed was that it wished to prevent disputes from becoming blocked because of disagreement between the parties regarding rules of procedure. His Delegation wondered whether it was really so difficult, once one had accepted that a dispute should be referred to arbitration "at the request of all the parties concerned," to further accept the inclusion in Article 38 of some simple rules of procedure. It felt that some rules had to be included and it was quite willing to give consideration to the simplified proposal submitted by the Delegation of the United Kingdom.

988. Mr. M. JACOBSSON (Sweden) said that his Delegation tended to share the concern expressed by the Delegation of the United States of America. It wondered whether the inclusion of detailed rules might not make it more difficult to achieve an agreement between the parties to submit a dispute to arbitration. Mr. Jacobsson said that, for the time being, he did not wish to comment at length on the proposals reproduced in documents DC/57 and DC/74. He did just wish to note, however, that his Delegation doubted the wisdom of the provision that, as a last resort, the President of the Council could be asked to designate one or more of the members of the arbitration tribunal. It was also somewhat hesitant about paragraph (2)(d) of the proposal of the Delegation of the Netherlands.

989. Mr. B. LACLAVIÈRE (France) said that he had to state that it would be impossible for France to sign a text containing the provisions proposed in the Draft. His Delegation therefore greatly favored the procedure proposed by the Delegation of the Netherlands and amended by the Delegation of the United Kingdom. As he had said previously the Delegation of France would withdraw its own proposal for amendment, as appearing in document DC/61, so long as that other proposal was adopted (see paragraph 745). Should it not prove possible to reach agreement it saw no inconvenience in deleting Article 38 in its entirety.

990. Dr. A. BOGSCH (Secretary-General of the Union) said that, on the basis of his experience in other conventions dealing with private property, he considered that it would be most desirable either to completely suppress Article 38 or to limit it to optional provisions. First, it was most unlikely that a State would litigate with another State on the basis that a new plant variety had been refused protection, for example, as a result of a misinterpretation of the Convention. It was unlikely because the procedure was so expensive and so complicated. Secondly, it was a fact of international life that several States, as a matter of policy, would not sign treaties containing compulsory provisions on the settlement of disputes before a compulsory jurisdiction.

991. Mr. H. J. WINTER (United States of America) said that he did not intend to repeat the difficulties posed for his country by the proposals under discussion. As a compromise, his Delegation could certainly accept the suggestion made by the Delegation of France that Article 38 might be deleted.

992. Mr. B. LACLAVIÈRE (France) said that his Delegation wished to formally propose that Article 38 be deleted.

993. The PRESIDENT, noting that Rule 39 of the Rules of Procedure provided that: "Proposals for amendments relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last," asked whether there was support for the proposal of the Delegation of France that Article 38 be deleted.

994. Mr. M. JACOBSSON (Sweden) said that his Delegation seconded that proposal of the Delegation of France.

995. *By 6 votes in favor to 1 against, with two abstentions, it was decided to omit Article 38.*

Article 13: Denomination of Varieties of Plants (Continued from 482)

Article 36: Transitional Rules Concerning the Relationship Between Variety Denominations and Trade Marks (Continued from 540)

Article 36A: Exceptional Rules for the Use of Denominations Consisting Solely of Figures (Continued from 540)

996. The PRESIDENT reopened the discussion on Article 13 and invited the Chairman of the Working Group on Article 13 to introduce its Report.

997.1 Mr. W. GFELLER (Chairman of the Working Group on Article 13) said that the Working Group had met on eight occasions and, in accordance with the mandate given by the Conference meeting in Plenary, had prepared a proposed new text for Article 13, which it recommended the Conference to adopt. It also recommended the Conference to adopt four declarations concerning respectively the interpretation of paragraphs (1), (5), (7) and (8) of that text and to delete Articles 36 and 36A from the Draft.

997.2 Mr. Gfeller then said that the Report of the Working Group, circulated the previous day as document DC/78, also referred in parts I and II to formal matters. The names of the States represented and of the experts invited to assist the Working Group were listed there.

997.3 Mr. Gfeller asked the Conference to particularly note that the new text recommended by the Working Group was in the English language. It was reproduced as the Annex to the English version of document DC/78. That text was the result of long discussions and was a synthesis of a variety of opinions. He therefore stressed to the Conference that even the smallest change might endanger the whole proposal. As Chairman of the Working Group he wished to express his warmest appreciation to all who had participated, both for their lively and equitable approach and for their extraordinary willingness to find the compromises which had enabled the proposal to be formulated.

997.4 Mr. Gfeller said that he wished to refer in particular to paragraphs (1) and (2) of the proposal. Paragraph (1) recommended member States to consider the variety denomination to be a generic designation and to ensure that the free use of the variety denomination was not hampered in so far as there were no prior rights of third parties in the designation so registered. That formulation had made it possible to avoid the controversial questions raised by the proposals contained in paragraphs (4)(a) and (8)(b) of document DC/4. The remaining seven paragraphs of the text recommended by the Working Group largely followed the proposals found in the Draft, in document DC/4, and, as far as paragraph (8) was concerned, in document DC/12. Paragraph (2) provided a limited opening for variety denominations consisting solely of figures. Consequently the derogation proposed in the Draft in Article 36A would be unnecessary, always assuming that the Annex to document DC/78 was adopted. The Working Group had also been of the opinion that Article 36 in the Draft should be deleted.

997.5 Mr. Gfeller concluded by saying that he was sure that those who had participated in the Working Group would be willing to answer any questions that the Conference might have.

998. Mr. W. GFELLER (Switzerland) said that, as Head of the Delegation of Switzerland he would like to propose the adoption of Article 13 in the English language version reproduced in the Annex to the English version of document DC/78, and of the other recommendations recorded in that document.

999. The PRESIDENT thanked Mr. Gfeller and the Working Group for its achievements and asked whether there was support for the proposal of the Delegation of Switzerland.

1000. Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation seconded the proposal of the Delegation of Switzerland.

1001. Mr. S. D. SCHLOSSER (United States of America) said that his Delegation also supported the proposal of the Delegation of Switzerland.

1002. *By 10 votes in favor to none against, with no abstentions, it was decided to adopt Article 13 as appearing in the*

Annex to the English version of document DC/78, to adopt the interpretations in respect of paragraphs (1), (5), (7) and (8) as appearing in paragraph 7 of that document, and to delete Articles 36 and 36A from the Draft.

1003. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) said that in some instances the wording of Article 13 in the Annex to the French version of document DC/78 did not reflect accurately the English text just adopted. In this particular case it was the English text that prevailed and the Drafting Committee would therefore align the French text of Article 13 on that text.

Article 5: Rights Protected; Scope of Protection (Continued from 903)

1004. The PRESIDENT noted that Article 5 was the only Article that remained to be adopted. He therefore proposed that the meeting be adjourned to allow the Working Group on Article 5 to begin its work.

1005. *The proposal of the President referred to in the preceding paragraph was adopted.*

[*Adjournment*]

**Fourteenth Meeting
Thursday, October 19, 1978,
afternoon**

1006. The PRESIDENT advised the Conference that the Working Group on Article 5, under the chairmanship of Mr. R. Duyvendak (Netherlands), who was supported by Mr. R. Derveaux (Belgium) and Mr. G. Curotti (Italy) as Vice-Chairmen, had completed its discussions. He invited Mr. Duyvendak to introduce the Report of the Working Group on Article 5, as appearing in document DC/82.

1007.1 Mr. R. DUYVENDAK (Chairman of the Working Group on Article 5) said that it was his pleasure to introduce the Report reproduced in document DC/82. It contained a résumé of the outcome of the discussions held on October 17, 18 and 19. The recommendations and decisions of the Working Group were recorded in paragraphs 8, 9, 12, 13 and 15 of and in Annexes I, II and IV to the Report. In other paragraphs of part III of the document the Conference would find a record of a number of interpretations and understandings arrived at by the Working Group.

1007.2 Mr. Duyvendak then expressed the wish that the good contacts established and the discussions held in the Working Group would continue and that it might eventually prove possible to agree on a more elegant expression than "the reproductive or vegetative propagating material, as such."

1007.3 Mr. Duyvendak concluded by thanking the Vice-Chairmen, Mr. Derveaux and Mr. Curotti, for the support they had given him.

1008. The PRESIDENT thanked Mr. Duyvendak for his Report and asked whether there were any objections against its content. Noting that there were none, he declared it to be adopted.

1009. *By 6 votes in favor to none against, with four abstentions, it was decided that the Drafting Committee should take into consideration Annex I to document DC/82.*

1010. *The Recommendation on Article 5, reproduced in Annex IV to document DC/82 was adopted.*

1011. *Subject to the decision recorded in paragraph 1009 above it was decided to adopt Article 5 as appearing in the Draft.*

1012. The PRESIDENT, noting that the first reading of the revised text of the Convention had been completed, proposed that the meeting be adjourned to allow the members of the Steering Committee to discuss with the Secretariat the arrangements for the final reading and signature of the text.

1013. *The proposal of the President that the meeting be adjourned, as mentioned in the preceding paragraph, was adopted.*

[*Adjournment*]

1014. The PRESIDENT informed the Conference that the final reading of the text, as drafted by the Drafting Committee, would take place on Saturday, October 21. The final adoption of the revised text would take place at noon on Monday, October 23, and the text would be laid open for signature immediately thereafter. The PRESIDENT concluded by announcing that there would not be a final act of the Conference for adoption by delegates.

1015. *The meeting was adjourned until Saturday, October 21.*

[*Adjournment*]

**Fifteenth Meeting
Saturday, October 21, 1978,
morning**

Adoption of the Report of the Credentials Committee (Continued from 36)

1016. The PRESIDENT invited Mr. A. Parry (United Kingdom), as a Vice-Chairman of the Credentials Committee, to present the Report of that Committee in the absence of its Chairman, Dr. H. Graeve (Federal Republic of Germany).

1017.1 Mr. A. PARRY (Vice Chairman of the Credentials Committee) said that he did not propose to read to the Conference the entire Report. It was contained in document DC/83 which had been circulated to delegates that morning. Paragraphs 5 to 9 of that document set out the details of the considerations of the Credentials Committee. The credentials of the Observer Delegation of Canada had been presented after the Report had been prepared. A reference to Canada should therefore be inserted in paragraph 7(a) of document DC/83.

1017.2 Mr. Parry then referred to paragraph 10 of the Report where it was recorded that: "The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of delegations not having presented credentials."

1017.3 Mr. Parry concluded by referring to paragraph 11 of the Report. He noted that the mandate given by the Committee to its Chairman "to examine and to report to the Conference upon any further credentials and full powers which might be presented by delegations after the close of its meeting" had been transmitted to him by Dr. Graeve, Chairman of the Committee, who had had to return to Bonn the previous evening.

1018. The PRESIDENT thanked Mr. Parry for presenting the Report of the Credentials Committee. He asked whether

there were any remarks thereon and noted that there were none. He declared the Report adopted.

1019. *Subject to the addition of a reference to Canada in paragraph 7(a), as referred to in paragraph 1017.1 above, the Report of the Credentials Committee was adopted as appearing in document DC/83.*

Adoption of a Revised Text of the Convention Submitted by the Drafting Committee

1020. The PRESIDENT said that he wished, before inviting Mr. Laclavière (France), as Chairman of the Drafting Committee, to present document DC/84 containing the Draft Convention prepared by the Drafting Committee, to thank that Committee and the Secretariat for their intensive efforts.

1021.1 Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) said that the Drafting Committee had thoroughly examined the text of the Convention as adopted by the Conference meeting in Plenary. The Committee had limited itself to endeavoring to put that text into correct language, the principles thereof having been settled. It had done its utmost to avoid the introduction of any substantive changes; that would have exceeded its purpose. It had also thoroughly examined the titles of the Articles. It had done its utmost to ensure the closest possible concordance between the French, English and German versions of the text. Even though the text provided that the French text prevailed in case of any discrepancy among the various texts, the Committee had done its utmost, by aligning the English and German texts as closely as possible on the French text, to ensure that there were no discrepancies. The Secretariat had reproduced in document DC/84 the results of the Committee's work.

1021.2 Mr. Laclavière concluded by thanking the members of the Drafting Committee for the patience that they had shown. He thanked the Secretary-General of the Union for his assistance during the Committee's discussions, especially in matters of treaty law. Finally, he thanked the Secretariat for the diligence it had shown and for the preparation of document DC/84 for examination by the Conference.

1022. The PRESIDENT thanked Mr. Laclavière and proposed that the meeting be adjourned for one hour to allow delegates an opportunity to study the text submitted by the Drafting Committee, as reproduced in document DC/84.

1023. *The proposal of the President that the meeting be adjourned, as mentioned in the preceding paragraph, was adopted.*

[Adjournment]

1024. The PRESIDENT opened the discussion on the revised text of the Convention as submitted by the Drafting Committee and reproduced in document DC/84 (hereinafter referred to as "the text of the Drafting Committee").

1025. Mr. K. A. FIKKERT (Netherlands) said that his Delegation was concerned to establish whether the word "revised" in the Title of the text of the Drafting Committee was correct. The Preamble to that text, for instance, referred to the Convention of 1961, as "amended by the Additional Act of 1972." The same reference occurred in some Articles; Article 34(1) (*Article 32B(1) in the Draft*), for instance, included the words "the Convention of 1961 as amended by the Additional Act of 1972."

1026. Dr. A. BOGSCH (Secretary-General of the Union) noted that the word "amending" was included in the title of the Additional Act of 1972. He also noted that the title of Article 27, both in the Convention and in the text of the Drafting Committee, was "Revision of the Convention." In his opinion, both terms were valid but the latter was considered to be the better.

1027. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) noted that the Drafting Committee, in which the Netherlands had been represented, having spent a considerable time on the matter under discussion, had unanimously adopted the word "revised."

1028. *The Title of the Convention was adopted as proposed in the text of the Drafting Committee.*

1029. *It was decided that the adoption of an Article would imply the adoption of the title of that Article for the purposes of the adoption of the Table of Contents.*

1030. Mr. P. W. MURPHY (United Kingdom) said that his Delegation wondered whether the phrase "has gained general acceptance," which appeared in the second "Considering" in the Preamble, accorded with "a pris une grande importance" in the French text.

1031. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) said that the comment made by the Delegation of the United Kingdom was pertinent. He believed the English text to be better but, in the first place, the Drafting Committee had been unable to find a better translation and, in the second place, he thought that it would not be too serious if the Preamble allowed of a slight difference of interpretation in this one instance.

1032. *The Preamble was adopted as proposed in the text of the Drafting Committee.*

1033. *Articles 1 to 4 (corresponding to the Articles bearing the same numbers in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1034. Mr. H. KUNHARDT (Federal Republic of Germany) said that his Delegation had no comments to make on the wording of Article 5, but it did wish to question the use of small Roman numerals in paragraph (1) of that Article. It appeared that the numbering system followed in the text of the Drafting Committee was that Arabic numerals indicated paragraphs within an Article, that small letters of the Roman alphabet indicated subparagraphs and that small Roman numerals indicated subdivisions thereof. Article 4 provided a good example of that system. In conformity with that system, and as shown in Article 26(1), the subdivisions of Article 5(1) should be indicated not by small Roman numerals but by small letters of the Roman alphabet.

1035. Dr. J. SPANRING (Yugoslavia) drew the attention of the Conference to the standard recommended by the International Organization for Standardization for numbering in written documents. That standard required the use of just Arabic numerals and decimal points.

1036. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) thought that the observation made by the Delegation of Yugoslavia was very relevant, but the Conference had decided that, as a general rule, the existing text of the Convention should be changed as little as possible. If that decision had not been made then other changes in presentation that had been sought would have been accepted. Consequently, he believed that it would be better not to revise the numbering system for the time being.

1037. Mr. R. DUYVENDAK (Chairman of the Working Group on Article 5) said that the proposal of the Delegation of the Federal Republic of Germany would create a text for Article 5(1) that went beyond the intentions of the Working Group on Article 5. The use of small letters of the Roman alphabet would be wrong since it indicated subparagraphs. He would propose that the small Roman numerals in the text of the Drafting Committee be replaced by dashes.

1038. Mr. S. D. SCHLOSSER (United States of America) said that his Delegation found Article 5(1) as proposed in the text of the Drafting Committee to be completely acceptable.

1039. Mr. R. DUVVENDAK (Chairman of the Working Group on Article 5) said that what was in question was not a matter of substance but of having a systematic way of numbering paragraphs, subparagraphs and so on. He noted, by way of an example, the use of small letters of the Roman alphabet in Article 35(2) as proposed in the text of the Drafting Committee.

1040. Dr. A. BOGSCH (Secretary-General of the Union) said that there was no fixed numbering system in the text of the Drafting Committee. Equally, there was no fixed system in the existing text of the Convention. It was usual when drafting a treaty to employ small letters of the Roman alphabet only to indicate subparagraphs and to employ small Roman numerals only to indicate enumerations. In the text under consideration, however, small letters of the Roman alphabet were employed for both purposes and small Roman numerals were employed for further subdivisions. Dr. Bogsch thought that the best solution would be to replace each small Roman numeral in Article 5(1) by a single dash, as proposed by the Chairman of the Working Group on Article 5.

1041. Mr. H. KUNHARDT (Federal Republic of Germany) said that his Delegation seconded the proposal of the Chairman of the Working Group on Article 5.

1042. The PRESIDENT said that the way in which Article 5(1) was now drafted could give the impression that the prior authorization of the breeder was required for each of the three activities mentioned. It was, however, to be understood that the producer could offer for sale and sell the material produced, and that the breeder could not require royalties to be paid more than once.

1043. *It was decided to replace each small Roman numeral in Article 5(1) by a single dash.*

1044. *Subject to the decision recorded in the preceding paragraph, Article 5 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee.*

1045. *Articles 6 to 12 (corresponding to the Articles bearing the same numbers in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1046. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) said that he had noticed that the wording of the French text of Article 13(8) could give rise to some confusion. In the expression "ou une indication similaire à la dénomination variétale enregistrée" it appeared that the "indication" was "similar" to the "denomination." He proposed to overcome the problem, if the Conference agreed, simply by putting a comma after the word "similaire."

1047. *It was decided to insert a comma in the French text of Article 13(8) between the words "similaire" and "à."*

1048. Dr. J. SPANRING (Yugoslavia) suggested that, in view of Article 29 of the International Code of Nomenclature of Cultivated Plants, 1969, the abbreviation for the word "cultivar" (cv.) should be inserted at the end of the first sentence of Article 13(1).

1049. The PRESIDENT asked whether there was any support for the suggestion made by the Delegation of Yugoslavia and noted that there was none.

1050. Mr. H. J. WINTER (United States of America) said that his Delegation understood that the Conference, in adopting Article 13 as proposed in the text of the Drafting Committee, in effect confirmed its earlier acceptance of the interpretations set forth in the Report of the Working Group on Article 13. (See paragraph 1002)

1051. *Subject to the decision recorded in paragraph 1047 above, Article 13 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee.*

1052. *Articles 14 to 20 (corresponding to the Articles bearing the same numbers in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1053. Mr. B. LACLAVIÈRE (Chairman of the Drafting Committee) suggested that it would be more logical if the provisions contained in Article 21(g) were placed immediately after Article 21(a). He therefore proposed that such change be made.

1054. Mr. W. GFELLER (Switzerland) said that his Delegation seconded the proposal of the Chairman of the Drafting Committee.

1055. *It was decided that Article 21(g) should become Article 21(b) and that Articles 21(b) to (f) inclusive should be renumbered accordingly.*

1056. *Subject to the decision recorded in the preceding paragraph, Article 21 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee.*

1057. *It was decided, as a consequence of the decision recorded in paragraph 1055 above, to replace the reference in Article 22 to Article 21(d) by a reference to Article 21(e).*

1058. *Subject to the decision recorded in the preceding paragraph, Article 22 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee, without discussion.*

1059. *It was decided, as a consequence of the decision recorded in paragraph 1055 above, to replace the reference in Article 23(3) to Article 21(g) by a reference to Article 21(b).*

1060. *Subject to the decision recorded in the preceding paragraph, Article 23 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee, without discussion.*

1061. *Articles 24 and 25 (corresponding to the Articles bearing the numbers 23A and 24 in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1062. *It was decided, by analogy with the decision recorded in paragraph 1043 above, to replace the signs (a), (b) and (c) in Article 26(1) by single dashes.*

1063. *Subject to the decision recorded in the preceding paragraph, Article 26 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee, without discussion.*

1064. Mr. K. A. FIKKERT (Netherlands) said that his Delegation wished to know whether the effect of Article 27(1) would be that even a slight amendment of one Article would require the signing of a totally new Act. It noted that Article 27(1) of the existing text of the Convention said: "This Convention shall be reviewed..." whereas the text of the Drafting Committee said: "This Convention may be revised..." It wished to be sure that the possibility of amending the Convention by means of an Additional Act, as had been done in 1972, remained open.

1065. The PRESIDENT thought that the Delegation of the Netherlands could rest assured that it would still be possible to amend the Convention by means of an Additional Act.

1066. Dr. A. BOGSCH (Secretary-General of the Union) said that he agreed with the interpretation given by the President of the Conference.

1067. *Article 27 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee.*

1068. *Articles 28 and 29 (corresponding to the Articles bearing the same numbers in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1069. Mr. J. F. VAN WYK (South Africa) wondered whether the words "of the Union" should be inserted after the word "State" in the second sentence of Article 30(1).

1070. Dr. A. BOGSCH (Secretary-General of the Union) suggested that the best solution, which would also bring the English text closer to the French text, would be to replace the full stop at the end of the first sentence of Article 30(1) by a semicolon and to continue: "in particular, it shall".

1071. *It was decided to amend Article 30(1) in the way suggested by the Secretary-General of the Union and referred to in the preceding paragraph.*

1072. *Subject to the decision recorded in the preceding paragraph, Article 30 (corresponding to the Article bearing the same number in the Draft) was adopted as proposed in the text of the Drafting Committee.*

1073. *Articles 31 to 36 (corresponding to the Articles bearing the numbers 31, 32, 32A, 32B, 33 and 34 in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1074. Mr. P. W. MURPHY (United Kingdom) said that his Delegation wished the minutes to record that the United Kingdom accepted the final phrase of Article 36(1) as adopted (*corresponding to the Article bearing the number 34(1) in the Draft, as amended by the Conference (see paragraphs 734 and 735)*), on the basis that the substance of that provision had not been affected. Specifically, the United Kingdom would interpret that provision as relating to those territories for the external relations of which it was for the time being responsible.

1075. *Articles 37 to 41 (corresponding to the Articles bearing the numbers 34A, 35, 37, 39 and 40 in the Draft) were adopted as proposed in the text of the Drafting Committee, without discussion.*

1076. Mr. H. KUNHARDT (Federal Republic of Germany) said that his Delegation wished to question the reference at the end of Article 42(5) (*corresponding to the Article bearing the number 41(5) in the Draft*) to any declaration made under Article 36(3)(a). That Article related not to the making of a declaration but to its taking effect. It was Article 36(1) that related to the making of a declaration.

1077.1 Mr. G. LEDAKIS (Legal Counsel, International Bureau of the World Intellectual Property Organization (WIPO)) regretted that the reference in Article 42(5) to Article 36(3)(a) was erroneous. It should be replaced by a reference to Article 36(1).

1077.2 Mr. Ledakis also noted that the words "any notification received" had been omitted in error from the English text of Article 42(5). Those words should be inserted after the word "accession." Also in the English text of that Article the word "declarations" should be replaced by the word "declaration."

1077.3 Mr. Ledakis concluded by confirming that the final part of Article 42(5) in the English text should read: "...the deposit of instruments of ratification, acceptance, approval and accession, any notification received under Articles 34(2), 36(1) and (2), 37(1) and (3) or 41(2) and any declaration made under Article 36(1)."

1078. *It was decided to amend Article 42(5) in the manner indicated by Mr. Ledakis and referred to in paragraph 1077.1 above.*

1079. *It was further decided to replace the final part of Article 42(5) in the English text by the wording given by Mr. Ledakis and referred to in paragraph 1077.3 above.*

1080. *Subject to the decisions recorded in the two preceding paragraphs, Article 42 (corresponding to the Article bearing the number 41 in the Draft) was adopted as proposed in the text of the Drafting Committee.*

Adoption of Recommendations on Articles 4 and 5

1081. The PRESIDENT drew the attention of delegates to documents DC/86 and DC/88 which contained respectively the texts of the Recommendations on Article 4 and Article 5, as edited by the Secretariat on the basis of the Draft Convention, of document DC/76 and of Annex IV to document DC/82 (see paragraphs 233 and 1010). The final adoption of those recommendations would take place on Monday, October 23, immediately after the final adoption of the revised text of the Convention.

General Statements

1082. Mr. W. T. BRADNOCK (Canada) said that when he had made a short statement during the opening meeting of the Diplomatic Conference he had expressed the belief that the amendments proposed for consideration would make it possible for Canada to eventually become a member of the Union. He wished to congratulate the Member Delegations on the understanding shown for the difficulties posed for his country by the original Convention. His Delegation greatly appreciated the compromises made with a view to overcoming those difficulties without destroying the spirit of the Convention or altering anything in the original intention. It fully endorsed the revised text, which seemed likely to be adopted on Monday, October 23, and hoped that, in due course, Canada would sign and ratify the Convention and would play a full part in the Union.

1083. Mr. M. TOURKMANI (Morocco), speaking on behalf of the Delegations of Hungary, Iraq, the Libyan Arab Jamahiriya, Senegal and Yugoslavia, and of his own Delegation, expressed their admiration of and gratitude for the competence, eloquence and objectiveness manifested by the President of the Conference in his conduct of the discussions. They also wished to congratulate him on having reconciled, to the satisfaction of all participants, points of view that had been diametrically opposed. Mr. Tourkmani said that he would like to conclude by presenting a declaration: "The Delegations of Hungary, Iraq, the Libyan Arab Jamahiriya, Senegal, Yugoslavia and Morocco—conscious of the importance of increasing agricultural production in a world in which the number of people was continually expanding; convinced of the part to be played by new varieties of plants in improving agricultural production; persuaded of the necessity for protection of the rights of breeders as an encouragement to the intensification of research into the improvement of plants—desired to join the International Union for the Protection of New Varieties of Plants and to maintain close cooperation with it. Nevertheless, they declared that they were not in a position to do so for as long as States acting contrary to human rights and principles, such as South Africa, continued to form part of the Union. They expressed their gratitude to the Council of the Union for having invited them to participate in the Diplomatic Conference."

1084. The PRESIDENT thanked the Delegation of Morocco for its intervention and said that its declaration would be noted in the minutes.

1085. Mr. H. J. WINTER (United States of America) said that as the Head of an Observer Delegation he wished to thank all of the Member Delegations for their fine spirit of cooperation and for their helpfulness in arriving at compromises on some very difficult problems. His Delegation was most pleased with the outcome of the Diplomatic Conference and he could say that, on the basis of the very successful deliberations and the resulting revised text of the Convention, the United States of America intended to sign on Monday, October 23. His Delegation also wished to congratulate the President of the

Conference for his guidance and inspired leadership which had enabled the Conference to arrive at a revised text which he hoped and believed would be adopted unanimously. Finally, Mr. Winter expressed his Delegation's gratitude to the Secretariat for its excellent work throughout the Conference.

1086.1 The PRESIDENT thanked the Delegation of the United States of America for its very kind words and said that he wished to acknowledge the very real help he had received from the delegates.

1086.2 The President then said that he wished, before giving the floor to the Delegation of Mexico, to draw the attention of the Conference to a statement submitted by that Delegation and reproduced in document DC/81. The President congratulated the Delegation of Mexico on its statement.

1087. Mrs. O. REYES-RETANA (Mexico) said that her Delegation wished to thank the President of the Conference and the Member Delegations for having invited its country to participate in what had been, in its opinion, a very successful Diplomatic Conference. Also, her Delegation just wished to support the declaration made by the Delegation of Morocco.

1088.1 Dr. D. BÖRINGER (Federal Republic of Germany) said that his Delegation also wished to express its satisfaction with the course taken by the Diplomatic Conference. It believed that the Convention in its new version represented a meaningful compromise among the various points of view of all the States and organizations that had participated. On the basis of what had been achieved in 1961 the new version would now make it possible for all interested States to cooperate internationally in the field of plant variety protection, especially States of the Third World, the active interest of which was very much welcomed. The outcome of the Conference was positive and the Federal Republic of Germany would sign on Monday, October 23.

1088.2 Dr. Böringer then said that the agreeable course taken by the Conference and the high level of debate had been assured by the skilful way in which the President of the Conference had guided the discussions. The expertise and patience of the Chairmen of the working groups had also made a decisive contribution to the successful outcome of the proceedings. An important contribution had also been made by Dr. Bogsch, Secretary-General of the Union, with excellent support from Dr. Mast, Secretary General of the Conference and Vice Secretary-General of the Union. Excellent support had also been given by the staff of the Office of the Union and of the International Bureau of the World Intellectual Property Organization. His Delegation wished to express its special gratitude to the interpreters who had shown an excellent mastery of very difficult technical terminology. Without their translations several contributions would not have been so fully developed from the linguistic point of view.

1088.3 Dr. Böringer concluded by saying that, in the opinion of his Delegation, the new version of the Convention was distinguishable by several important characteristics from the existing text, was sufficiently homogeneous in all three languages and was to be wished a long-lasting stability.

1089. Mr. S. AGUILAR YEPEZ (Mexico) said that he wished to thank again the members of the Union for having given his country the great opportunity of participating in the Diplomatic Conference. He appreciated the way in which his Delegation had been received by all the Member and Observer Delegations. Mr. Aguilar Yepez concluded by acknowledging with gratitude the kind remarks of the President of the Conference regarding his statement, as reproduced in document DC/81, and by reading that statement to the Conference. He hoped that his general statement would be useful to delegates who might visit his country and that it would assist in establishing a basis for a future in which Mexico might have the opportunity of joining the Union.

1090. Dr. F. POPINIGIS (Brazil) thanked the members of the Union, the Council of the Union and the Secretariat for having invited his country to participate in the Diplomatic Conference as an Observer Delegation. Work on the drafting of plant variety protection legislation had been in progress in Brazil for some four years. He hoped that it would be possible for Brazil to join the Union at some time in the future. Mr. Popinigis concluded by congratulating the President of the Conference and the Secretariat on the successful outcome of the Conference.

1091. Mr. M. LAM (Senegal) said that he wished to express to the members of the Union the appreciation of the Government of Senegal for the opportunity to observe the entire proceedings of the Diplomatic Conference. His Delegation had found them most informative and believed itself to be in a position to faithfully report to the Government on the high level of debate and on the importance of the results achieved. It was convinced that it could act as the Ambassador of the Union and that it could provide its Government with all the advice necessary to enable a favorable decision to be reached as regards the steps to be taken regarding membership of the Union.

1092. Mr. R. LOPEZ DE HARO (Spain), on behalf of the Delegation of Spain, congratulated the President on the excellent way in which he had conducted the Conference. He also congratulated the Secretariat on its work and extended his congratulations to all the members of the Union for the understanding they had shown in revising the Convention and making it more accessible to further States. He hoped that the Government of Spain would soon reach a decision regarding the eventual signing of the new Convention.

1093.1 The PRESIDENT said that, although there would be one further meeting on Monday, October 23, he wished to take the opportunity to thank the Chairmen and Vice-Chairmen of the committees and working groups and all the delegates for the positive cooperation shown during the Conference. As a result of that cooperation the desired result had been achieved. The President said that he also wished to thank Dr. Bogsch, Dr. Mast and the staff of the Union and of the World Intellectual Property Organization for their great assistance and for the very high volume of work so efficiently completed. Last but not least, he wished to thank the interpreters for their contribution.

1093.2 The President concluded by acknowledging all the kind words addressed to him and said that those words should be addressed to all who had taken part in the Diplomatic Conference.

*Sixteenth Meeting (Last)
Monday, October 23, 1978,
noon*

1094. The PRESIDENT opened the last meeting of the Diplomatic Conference. He informed delegates that it was four years to the day since the work on the interpretation and revision of the Convention had begun. On October 23, 1974, the decision had been taken to establish the Committee of Experts on the Interpretation and Revision of the Convention. That decision followed a meeting with representatives of several non-member States and international professional organizations, held to ascertain the wishes and desires of interested circles. For him, therefore, the meeting in progress represented the culmination of what had begun exactly four years earlier. It really was a day of great importance.

Adoption of the Second Report of the Credentials Committee

1095. The PRESIDENT invited the Secretary of the Credentials Committee, in the absence of its Chairman and Vice-Chairmen, to present the Second Report of that Committee.

1096. Mr. G. LEDAKIS (Secretary of the Credentials Committee) said that, as recorded in paragraph 11 of document DC/83, the Credentials Committee had authorized its Chairman to report to the Conference on any further credentials and full powers which might be presented after the close of its meeting on October 19. Mr. Parry, as a Vice-Chairman of the Committee, had already reported on the receipt of the credentials of the Observer Delegation of Canada (see paragraph 1017.1). Subsequently, the Secretariat had received the credentials and full powers of the Member Delegations of Belgium and Italy and the credentials of the Observer Delegation of Mexico.

1097. The PRESIDENT thanked Mr. Ledakis for presenting the Second Report of the Credentials Committee. He asked whether there were any remarks thereon and noted that there were none.

1098. *The Second Report of the Credentials Committee, as presented orally by the Secretary of the Committee, was adopted.*

Final Adoption of Revised Text of the Convention submitted by the Drafting Committee

1099. The PRESIDENT introduced document DC/89 which combined document DC/84 and the amendments thereto, as adopted on Saturday, October 21 (see paragraphs 1020 to 1080).

1100. Dr. H. MAST (Secretary General of the Conference) confirmed, at the request of the President of the Conference, that the text reproduced in document DC/89 was exactly as adopted by the Conference on October 21.

1101. *The text reproduced in document DC/89 was unanimously adopted as the Revised Text of the Convention, all ten Member Delegations participating in the vote by show of hands.*

Adoption of Recommendations on Articles 4 and 5

1102. The PRESIDENT introduced documents DC/90 and DC/91, which contained respectively the texts of the Recom-

mendations on Articles 4 and 5, as previously circulated on Saturday, October 21, in documents DC/86 and DC/88 respectively (see paragraph 1081).

1103. *The Recommendations on Articles 4 and 5, as reproduced respectively in documents DC/90 and DC/91, were adopted unanimously.*

1104. The PRESIDENT informed the Conference that there were no statements to be adopted for inclusion in the Records of the Conference and that there was no final act to be adopted.

General Statements

1105. Mr. H. AKABOYA (Japan) expressed the congratulations of his Delegation on the fact that the new Convention had just been adopted unanimously. The new Convention might be quite satisfactory for his country and he hoped that it would be possible for it to join the Union at an early date. Mr. Akaboya concluded by expressing his deep gratitude for the excellent leadership of the President of the Conference and for the kind cooperation of the Secretary-General of the Union, of his staff and of all who had taken part in the Conference.

1106. H.E. Mr. F. BENITO (Spain) said that his Delegation wished to endorse the congratulations expressed by the Delegation of Japan on the unanimous adoption of the new Convention. His Delegation found the new Convention very positive and would make all necessary efforts to recommend the Spanish authorities to sign it, as provided for in Article 31, as soon as possible.

Closing of the Conference

1107. The PRESIDENT declared closed the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants. In so declaring the President said that he was sure that he could rely on all those who had taken part to use their best endeavors to promote the earliest possible entry into force of the Revised Text of the Convention.

SIGNED TEXT

**CONVENTION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES**

du 2 décembre 1961, révisée à Genève
le 10 novembre 1972 et le 23 octobre 1978

**INTERNATIONAL CONVENTION
FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS**

of December 2, 1961, as revised at Geneva
on November 10, 1972, and on October 23, 1978

**INTERNATIONALES ÜBEREINKOMMEN
ZUM SCHUTZ
VON PFLANZENZÜCHTUNGEN**

vom 2. Dezember 1961, revidiert in Genf
am 10. November 1972 und am 23. Oktober 1978

Editor's Note: Identical to the copy certified by the Secretary-General of UPOV on November 30, 1979. Signatories in subsequent part.

**Convention internationale
pour la protection
des obtentions végétales**

**du 2 décembre 1961, révisée à Genève
le 10 novembre 1972 et le 23 octobre 1978**

Convention internationale pour la protection des obtentions végétales

du 2 décembre 1961, révisée à Genève le 10 novembre 1972 et le 23 octobre 1978

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LES PARTIES CONTRACTANTES,

Considérant que la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961 modifiée par l'Acte additionnel du 10 novembre 1972 s'est avérée un instrument de valeur pour la coopération internationale en matière de protection du droit des obtenteurs;

Réaffirmant les principes figurant dans le préambule de la Convention, selon lesquels:

a) elles sont convaincues de l'importance que revêt la protection des obtentions végétales tant pour le développement de l'agriculture sur leur territoire que pour la sauvegarde des intérêts des obtenteurs,

b) elles sont conscientes des problèmes particuliers que soulèvent la reconnaissance et la protection du droit de l'obtenteur et notamment des limitations que peuvent imposer au libre exercice d'un tel droit les exigences de l'intérêt public,

c) elles considèrent qu'il est hautement souhaitable que ces problèmes auxquels de très nombreux Etats accordent une légitime importance soient résolus par chacun d'eux conformément à des principes uniformes et clairement définis;

Considérant que le concept de la protection des droits des obtenteurs a pris une grande importance dans beaucoup d'Etats qui n'ont pas encore adhéré à la Convention;

Considérant que certaines modifications dans la Convention sont nécessaires pour faciliter l'adhésion de ces Etats à l'Union;

Considérant que certaines dispositions concernant l'administration de l'Union créée par la Convention doivent être amendées à la lumière de l'expérience;

Considérant que la meilleure façon d'atteindre ces objectifs est de réviser à nouveau la Convention;

Sont convenues de ce qui suit:

Article premier**Objet de la Convention;
constitution d'une Union; siège de l'Union**

1) La présente Convention a pour objet de reconnaître et d'assurer un droit à l'obtenteur d'une variété végétale nouvelle ou à son ayant cause (désigné ci-après par l'expression « l'obtenteur ») dans des conditions définies ci-après.

2) Les Etats parties à la présente Convention (ci-après dénommés « Etats de l'Union ») constituent

entre eux une Union pour la protection des obtentions végétales.

3) Le siège de l'Union et de ses organes permanents est fixé à Genève.

Article 2 **Formes de protection**

1) Chaque Etat de l'Union peut reconnaître le droit de l'obtenteur prévu par la présente Convention par l'octroi d'un titre de protection particulier ou d'un brevet. Toutefois, un Etat de l'Union dont la législation nationale admet la protection sous ces deux formes ne doit prévoir que l'une d'elles pour un même genre ou une même espèce botanique.

2) Chaque Etat de l'Union peut limiter l'application de la présente Convention à l'intérieur d'un genre ou d'une espèce aux variétés ayant un système particulier de reproduction ou de multiplication ou une certaine utilisation finale.

Article 3 **Traitemennt national; réciprocité**

1) Les personnes physiques et morales ayant leur domicile ou siège dans un des Etats de l'Union jouissent, dans les autres Etats de l'Union, en ce qui concerne la reconnaissance et la protection du droit de l'obtenteur, du traitement que les lois respectives de ces Etats accordent ou accorderont par la suite à leurs nationaux, le tout sans préjudice des droits spécialement prévus par la présente Convention et sous réserve de l'accomplissement des conditions et formalités imposées aux nationaux.

2) Les nationaux des Etats de l'Union n'ayant ni domicile ni siège dans un de ces Etats jouissent également des mêmes droits, sous réserve de satisfaire aux obligations qui peuvent leur être imposées en vue de permettre l'examen des variétés qu'ils auraient obtenues ainsi que le contrôle de leur multiplication.

3) Nonobstant les dispositions des paragraphes 1) et 2), tout Etat de l'Union appliquant la présente Convention à un genre ou une espèce déterminé a la faculté de limiter le bénéfice de la protection aux nationaux des Etats de l'Union qui appliquent la Convention à ce genre ou cette espèce et aux personnes physiques et morales ayant leur domicile ou siège dans un de ces Etats.

Article 4

Genres et espèces botaniques qui doivent ou peuvent être protégés

1) La présente Convention est applicable à tous les genres et espèces botaniques.

2) Les Etats de l'Union s'engagent à prendre toutes les mesures nécessaires pour appliquer progressivement les dispositions de la présente Convention au plus grand nombre de genres et espèces botaniques.

3)a) Au moment de l'entrée en vigueur de la présente Convention sur son territoire, chaque Etat de l'Union applique les dispositions de la Convention à au moins cinq genres ou espèces.

b) Chaque Etat de l'Union doit appliquer ensuite lesdites dispositions à d'autres genres ou espèces, dans les délais suivants à dater de l'entrée en vigueur de la présente Convention sur son territoire:

- i) dans un délai de trois ans, à au moins dix genres ou espèces au total;
- ii) dans un délai de six ans, à au moins dix-huit genres ou espèces au total;
- iii) dans un délai de huit ans, à au moins vingt-quatre genres ou espèces au total.

c) Lorsqu'un Etat de l'Union limite l'application de la présente Convention à l'intérieur d'un genre ou d'une espèce conformément aux dispositions de l'article 2.2), ce genre ou cette espèce sera néanmoins considéré comme un genre ou une espèce aux fins des alinéas a) et b).

4) A la requête d'un Etat ayant l'intention de ratifier, d'accepter ou d'approuver la présente Convention ou d'adhérer à celle-ci, le Conseil peut, afin de tenir compte des conditions économiques ou écolologiques particulières de cet Etat, décider, en faveur de cet Etat, de réduire les nombres minimaux prévus au paragraphe 3), de prolonger les délais prévus dans ledit paragraphe, ou de faire les deux.

5) A la requête d'un Etat de l'Union, le Conseil peut, afin de tenir compte des difficultés particulières rencontrées par cet Etat pour remplir les obligations prévues au paragraphe 3)b), décider, en faveur de cet Etat, de prolonger les délais prévus dans le paragraphe 3)b).

Article 5

Droits protégés; étendue de la protection

1) Le droit accordé à l'obtenteur a pour effet de soumettre à son autorisation préalable

- la production à des fins d'écoulement commercial,
- la mise en vente,
- la commercialisation

du matériel de reproduction ou de multiplication végétative, en tant que tel, de la variété.

Le matériel de multiplication végétative comprend les plantes entières. Le droit de l'obtenteur s'étend aux plantes ornementales ou parties de ces plantes normalement commercialisées à d'autres fins que la multiplication, au cas où elles seraient utilisées commercialement comme matériel de multiplication en vue de la production de plantes d'ornement ou de fleurs coupées.

2) L'obtenteur peut subordonner son autorisation à des conditions qu'il définit.

3) L'autorisation de l'obtenteur n'est pas nécessaire pour l'emploi de la variété comme source initiale de variation en vue de la création d'autres variétés, ni pour la commercialisation de celles-ci. Par contre, cette autorisation est requise lorsque l'emploi répété de la variété est nécessaire à la production commerciale d'une autre variété.

4) Chaque Etat de l'Union peut, soit dans sa propre législation, soit dans des arrangements particuliers au sens de l'article 29, accorder aux obtenteurs, pour certains genres ou espèces botaniques, un droit plus étendu que celui défini au paragraphe 1) et pouvant notamment s'étendre jusqu'au produit commercialisé. Un Etat de l'Union qui accorde un tel droit a la faculté d'en limiter le bénéfice aux nationaux des Etats de l'Union accordant un droit identique ainsi qu'aux personnes physiques ou morales ayant leur domicile ou siège dans l'un de ces Etats.

Article 6

Conditions requises pour bénéficier de la protection

1) L'obtenteur bénéficie de la protection prévue par la présente Convention lorsque les conditions suivantes sont remplies:

a) Quelle que soit l'origine, artificielle ou naturelle, de la variation initiale qui lui a donné naissance, la variété doit pouvoir être nettement distinguée par un ou plusieurs caractères importants de toute autre variété dont l'existence, au moment où la protection est demandée, est notoirement connue. Cette notoriété peut être établie par diverses références telles que: culture ou commercialisation déjà en cours, inscription sur un registre officiel de variétés effectuée ou en cours,

présence dans une collection de référence ou description précise dans une publication. Les caractères permettant de définir et de distinguer une variété doivent pouvoir être reconnus et décrits avec précision.

b) A la date du dépôt de la demande de protection dans un Etat de l'Union, la variété

- i) ne doit pas avoir été offerte à la vente ou commercialisée, avec l'accord de l'obtenteur, sur le territoire de cet Etat — ou, si la législation de cet Etat le prévoit, pas depuis plus d'un an — et
- ii) ne doit pas avoir été offerte à la vente ou commercialisée, avec l'accord de l'obtenteur, sur le territoire de tout autre Etat depuis plus de six ans dans le cas des vignes, des arbres forestiers, des arbres fruitiers et des arbres d'ornement, y compris, dans chaque cas, leurs porte-greffes, ou depuis plus de quatre ans dans le cas des autres plantes.

Tout essai de la variété ne comportant pas d'offre à la vente ou de commercialisation n'est pas opposable au droit à la protection. Le fait que la variété est devenue notoire autrement que par l'offre à la vente ou la commercialisation n'est pas non plus opposable au droit de l'obtenteur à la protection.

c) La variété doit être suffisamment homogène, compte tenu des particularités que présente sa reproduction sexuée ou sa multiplication végétative.

d) La variété doit être stable dans ses caractères essentiels, c'est-à-dire rester conforme à sa définition, à la suite de ses reproductions ou multiplications successives, ou, lorsque l'obtenteur a défini un cycle particulier de reproductions ou de multiplications, à la fin de chaque cycle.

e) La variété doit recevoir une dénomination conformément aux dispositions de l'article 13.

2) L'octroi de la protection ne peut dépendre d'autres conditions que celles mentionnées ci-dessus, sous réserve que l'obtenteur ait satisfait aux formalités prévues par la législation nationale de l'Etat de l'Union dans lequel la demande de protection a été déposée, y compris le paiement des taxes.

Article 7

Examen officiel des variétés; protection provisoire

1) La protection est accordée après un examen de la variété en fonction des critères définis à l'article 6. Cet examen doit être approprié à chaque genre ou espèce botanique.

2) En vue de cet examen, les services compétents de chaque Etat de l'Union peuvent exiger de l'obtenteur tous renseignements, documents, plants ou semences nécessaires.

3) Tout Etat de l'Union peut prendre des mesures destinées à défendre l'obtenteur contre les agissements abusifs des tiers qui se produiraient pendant la période comprise entre le dépôt de la demande de protection et la décision la concernant.

Article 8

Durée de la protection

Le droit conféré à l'obtenteur est accordé pour une durée limitée. Celle-ci ne peut être inférieure à quinze années, à compter de la date de la délivrance du titre de protection. Pour les vignes, les arbres forestiers, les arbres fruitiers et les arbres d'ornement, y compris, dans chaque cas, leurs porte-greffes, la durée de protection ne peut être inférieure à dix-huit années, à compter de cette date.

Article 9

Limitation de l'exercice des droits protégés

1) Le libre exercice du droit exclusif accordé à l'obtenteur ne peut être limité que pour des raisons d'intérêt public.

2) Lorsque cette limitation intervient en vue d'assurer la diffusion de la variété, l'Etat de l'Union intéressé doit prendre toutes mesures nécessaires pour que l'obtenteur reçoive une rémunération équitable.

Article 10

Nullité et déchéance des droits protégés

1) Le droit de l'obtenteur est déclaré nul, en conformité des dispositions de la législation nationale de chaque Etat de l'Union, s'il est avéré que les conditions fixées à l'article 6.1)a) et b) n'étaient pas effectivement remplies lors de la délivrance du titre de protection.

2) Est déchu de son droit l'obtenteur qui n'est pas en mesure de présenter à l'autorité compétente le matériel de reproduction ou de multiplication permettant d'obtenir la variété avec ses caractères tels qu'ils ont été définis au moment où la protection a été accordée.

3) Peut être déchu de son droit l'obtenteur:

a) qui ne présente pas à l'autorité compétente, dans un délai prescrit et après mise en demeure, le matériel de reproduction ou de multiplication, les documents et renseignements jugés nécessaires au contrôle de la variété, ou ne permet pas l'inspection des mesures prises en vue de la conservation de la variété;

b) qui n'a pas acquitté dans les délais prescrits les taxes dues, le cas échéant, pour le maintien en vigueur de ses droits.

4) Le droit de l'obtenteur ne peut être annulé et l'obtenteur ne peut être déchu de son droit pour d'autres motifs que ceux mentionnés au présent article.

Article 11

Libre choix de l'Etat de l'Union dans lequel la première demande est déposée; demandes dans d'autres Etats de l'Union; indépendance de la protection dans différents Etats de l'Union

1) L'obtenteur a la faculté de choisir l'Etat de l'Union dans lequel il désire déposer sa première demande de protection.

2) L'obtenteur peut demander à d'autres Etats de l'Union la protection de son droit sans attendre qu'un titre de protection lui ait été délivré par l'Etat de l'Union dans lequel la première demande a été déposée.

3) La protection demandée dans différents Etats de l'Union par des personnes physiques ou morales admises au bénéfice de la présente Convention est indépendante de la protection obtenue pour la même variété dans les autres Etats appartenant ou non à l'Union.

Article 12

Droit de priorité

1) L'obtenteur qui a régulièrement fait le dépôt d'une demande de protection dans l'un des Etats de l'Union jouit, pour effectuer le dépôt dans les autres Etats de l'Union, d'un droit de priorité pendant un délai de douze mois. Ce délai est compté à partir de la date du dépôt de la première demande. Le jour du dépôt n'est pas compris dans ce délai.

2) Pour bénéficier des dispositions du paragraphe 1), le nouveau dépôt doit comporter une requête

en protection, la revendication de la priorité de la première demande et, dans un délai de trois mois, une copie des documents qui constituent cette demande, certifiée conforme par l'administration qui l'aura reçue.

3) L'obtenteur bénéficie d'un délai de quatre ans après l'expiration du délai de priorité pour fournir à l'Etat de l'Union, auprès duquel il a déposé une requête en protection dans les conditions prévues au paragraphe 2), les documents complémentaires et le matériel requis par les lois et règlements de cet Etat. Toutefois, cet Etat peut exiger la fourniture dans un délai approprié des documents complémentaires et du matériel si la demande dont la priorité est revendiquée a été rejetée ou retirée.

4) Ne sont pas opposables au dépôt effectué dans les conditions ci-dessus les faits survenus dans le délai fixé au paragraphe 1), tels qu'un autre dépôt, la publication de l'objet de la demande ou son exploitation. Ces faits ne peuvent faire naître aucun droit au profit de tiers ni aucune possession personnelle.

Article 13

Dénomination de la variété

1) La variété sera désignée par une dénomination destinée à être sa désignation générique. Chaque Etat de l'Union s'assure que, sous réserve du paragraphe 4), aucun droit relatif à la désignation enregistrée comme la dénomination de la variété n'entrave la libre utilisation de la dénomination en relation avec la variété, même après l'expiration de la protection.

2) La dénomination doit permettre d'identifier la variété. Elle ne peut se composer uniquement de chiffres sauf lorsque c'est une pratique établie pour désigner des variétés. Elle ne doit pas être susceptible d'induire en erreur ou de prêter à confusion sur les caractéristiques, la valeur ou l'identité de la variété ou sur l'identité de l'obtenteur. Elle doit notamment être différente de toute dénomination qui désigne, dans l'un quelconque des Etats de l'Union, une variété préexistante de la même espèce botanique ou d'une espèce voisine.

3) La dénomination de la variété est déposée par l'obtenteur auprès du service prévu à l'article 30.1)b). S'il est avéré que cette dénomination ne répond pas aux exigences du paragraphe 2), ce service refuse de l'enregistrer et exige que l'obtenteur propose, dans un délai prescrit, une autre dénomination. La dénomination est enregistrée en même temps qu'est délivré

le titre de protection conformément aux dispositions de l'article 7.

4) Il n'est pas porté atteinte aux droits antérieurs des tiers. Si, en vertu d'un droit antérieur, l'utilisation de la dénomination d'une variété est interdite à une personne qui, conformément aux dispositions du paragraphe 7), est obligée de l'utiliser, le service prévu à l'article 30.1)b) exige que l'obtenteur propose une autre dénomination pour la variété.

5) Une variété ne peut être déposée dans les Etats de l'Union que sous la même dénomination. Le service prévu à l'article 30.1)b) est tenu d'enregistrer la dénomination ainsi déposée, à moins qu'il ne constate la non-convenance de cette dénomination dans son Etat. Dans ce cas, il peut exiger que l'obtenteur propose une autre dénomination.

6) Le service prévu à l'article 30.1)b) doit assurer la communication aux autres services des informations relatives aux dénominations variétales, notamment du dépôt, de l'enregistrement et de la radiation de dénominations. Tout service prévu à l'article 30.1)b) peut transmettre ses observations éventuelles sur l'enregistrement d'une dénomination au service qui a communiqué cette dénomination.

7) Celui qui, dans un des Etats de l'Union, procède à la mise en vente ou à la commercialisation du matériel de reproduction ou de multiplication végétative d'une variété protégée dans cet Etat est tenu d'utiliser la dénomination de cette variété, même après l'expiration de la protection de cette variété, pour autant que, conformément aux dispositions du paragraphe 4), des droits antérieurs ne s'opposent pas à cette utilisation.

8) Lorsqu'une variété est offerte à la vente ou commercialisée, il est permis d'associer une marque de fabrique ou de commerce, un nom commercial ou une indication similaire, à la dénomination variétale enregistrée. Si une telle indication est ainsi associée, la dénomination doit néanmoins être facilement reconnaissable.

Article 14

Protection indépendante des mesures réglementant la production, le contrôle et la commercialisation

1) Le droit reconnu à l'obtenteur selon les dispositions de la présente Convention est indépendant des mesures adoptées dans chaque Etat de l'Union en vue d'y réglementer la production, le contrôle et la commercialisation des semences et plants.

2) Toutefois, ces dernières mesures devront éviter, autant que possible, de faire obstacle à l'application des dispositions de la présente Convention.

Article 15

Organes de l'Union

Les organes permanents de l'Union sont:

- a) le Conseil;
- b) le Secrétariat général, dénommé Bureau de l'Union internationale pour la protection des obtentions végétales.

Article 16

Composition du Conseil; nombre de voix

1) Le Conseil est composé des représentants des Etats de l'Union. Chaque Etat de l'Union nomme un représentant au Conseil et un suppléant.

2) Les représentants ou suppléants peuvent être accompagnés d'adjoints ou de conseillers.

3) Chaque Etat de l'Union dispose d'une voix au Conseil.

Article 17

Observateurs admis aux réunions du Conseil

1) Les Etats non membres de l'Union signataires du présent Acte sont invités à titre d'observateurs aux réunions du Conseil.

2) A ces réunions peuvent également être invités d'autres observateurs ou des experts.

Article 18

Président et vice-présidents du Conseil

1) Le Conseil élit parmi ses membres un Président et un premier Vice-président. Il peut élire d'autres vice-présidents. Le premier Vice-président remplace de droit le Président en cas d'empêchement.

2) La durée du mandat du Président est de trois ans.

Article 19
Sessions du Conseil

- 1) Le Conseil se réunit sur convocation de son Président.
- 2) Il tient une session ordinaire une fois par an. En outre, le Président peut réunir le Conseil à son initiative; il doit le réunir dans un délai de trois mois quand un tiers au moins des Etats de l'Union en a fait la demande.

Article 20
Règlement intérieur du Conseil;
règlement administratif et financier de l'Union

Le Conseil établit son règlement intérieur et le règlement administratif et financier de l'Union.

Article 21
Missions du Conseil

Les missions du Conseil sont les suivantes:

- a) étudier les mesures propres à assurer la sauvegarde et à favoriser le développement de l'Union;
- b) nommer le Secrétaire général et, s'il l'estime nécessaire, un Secrétaire général adjoint; fixer les conditions de leur engagement;
- c) examiner le rapport annuel d'activité de l'Union et établir le programme des travaux futurs de celle-ci;
- d) donner au Secrétaire général, dont les attributions sont fixées à l'article 23, toutes directives nécessaires à l'accomplissement des tâches de l'Union;
- e) examiner et approuver le budget de l'Union et fixer, conformément aux dispositions de l'article 26, la contribution de chaque Etat de l'Union;
- f) examiner et approuver les comptes présentés par le Secrétaire général;
- g) fixer, conformément aux dispositions de l'article 27, la date et le lieu des conférences prévues par ledit article et prendre les mesures nécessaires à leur préparation;
- h) d'une manière générale, prendre toutes décisions en vue du bon fonctionnement de l'Union.

Article 22**Majorités requises pour les décisions du Conseil**

Toute décision du Conseil est prise à la majorité simple des membres présents et votants; toutefois, toute décision du Conseil en vertu des articles 4.4), 20, 21.e), 26.5)b), 27.1), 28.3) ou 32.3) est prise à la majorité des trois quarts des membres présents et votants. L'abstention n'est pas considérée comme vote.

Article 23**Missions du Bureau de l'Union;
responsabilités du Secrétaire général;
nomination des fonctionnaires**

- 1) Le Bureau de l'Union exécute toutes les missions qui lui sont confiées par le Conseil. Il est dirigé par le Secrétaire général.
- 2) Le Secrétaire général est responsable devant le Conseil; il assure l'exécution des décisions du Conseil. Il soumet le budget à l'approbation du Conseil et en assure l'exécution. Il rend compte annuellement au Conseil de sa gestion et lui présente un rapport sur les activités et la situation financière de l'Union.
- 3) Sous réserve des dispositions de l'article 21.b), les conditions de nomination et d'emploi des membres du personnel nécessaire au bon fonctionnement du Bureau de l'Union sont fixées par le règlement administratif et financier prévu à l'article 20.

Article 24**Statut juridique**

- 1) L'Union a la personnalité juridique.
- 2) L'Union jouit, sur le territoire de chaque Etat de l'Union, conformément aux lois de cet Etat, de la capacité juridique nécessaire pour atteindre son but et exercer ses fonctions.
- 3) L'Union conclut un accord de siège avec la Confédération suisse.

Article 25**Vérification des comptes**

La vérification des comptes de l'Union est assurée, selon les modalités prévues dans le règlement adminis-

tratif et financier visé à l'article 20, par un Etat de l'Union. Cet Etat est, avec son consentement, désigné par le Conseil.

Article 26

Finances

1) Les dépenses de l'Union sont couvertes:

- par les contributions annuelles des Etats de l'Union;
- par la rémunération de prestations de services;
- par des recettes diverses.

2)a) La part de chaque Etat de l'Union dans le montant total des contributions annuelles est déterminée par référence au montant total des dépenses à couvrir à l'aide des contributions des Etats de l'Union et au nombre d'unités de contribution qui lui est applicable aux termes du paragraphe 3). Ladite part est calculée conformément au paragraphe 4).

b) Le nombre des unités de contribution est exprimé en nombres entiers ou en fractions d'unité pourvu que ce nombre ne soit pas inférieur à un cinquième.

3)a) En ce qui concerne tout Etat faisant partie de l'Union à la date à laquelle le présent Acte entre en vigueur à l'égard de cet Etat, le nombre des unités de contribution qui lui est applicable est le même que celui qui lui était applicable, immédiatement avant ladite date, aux termes de la Convention de 1961 modifiée par l'Acte additionnel de 1972.

b) En ce qui concerne tout autre Etat, il indique au moment de son accession à l'Union, dans une déclaration adressée au Secrétaire général, le nombre d'unités de contribution qui lui est applicable.

c) Tout Etat de l'Union peut, à tout moment, indiquer, dans une déclaration adressée au Secrétaire général, un nombre d'unités de contribution différent de celui qui lui est applicable en vertu des alinéas a) ou b) ci-dessus. Si elle est faite pendant les six premiers mois d'une année civile cette déclaration prend effet au début de l'année civile suivante; dans le cas contraire, elle prend effet au début de la deuxième année civile qui suit l'année au cours de laquelle elle est faite.

4)a) Pour chaque exercice budgétaire, le montant d'une unité de contribution est égal au montant total des dépenses à couvrir pendant cet exercice à l'aide des contributions des Etats de l'Union divisé par le nombre total d'unités applicable à ces Etats.

b) Le montant de la contribution de chaque Etat de l'Union est égal au montant d'une unité de

contribution multiplié par le nombre d'unités applicable à cet Etat.

5)a) Un Etat de l'Union en retard dans le paiement de ses contributions ne peut — sous réserve des dispositions du paragraphe b) — exercer son droit de vote au Conseil si le montant de son arriéré est égal ou supérieur à celui des contributions dont il est redevable pour les deux dernières années complètes écoulées. La suspension du droit de vote ne libère pas cet Etat de ses obligations et ne le prive pas des autres droits découlant de la présente Convention.

b) Le Conseil peut autoriser ledit Etat à conserver l'exercice de son droit de vote aussi longtemps qu'il estime que le retard résulte de circonstances exceptionnelles et inévitables.

Article 27

Revision de la Convention

1) La présente Convention peut être revisée par une conférence des Etats de l'Union. La convocation d'une telle conférence est décidée par le Conseil.

2) La conférence ne délibère valablement que si la moitié au moins des Etats de l'Union y sont représentés. Pour être adopté, le texte revisé de la Convention doit recueillir la majorité des cinq sixièmes des Etats de l'Union représentés à la conférence.

Article 28

Langues utilisées par le Bureau et lors des réunions du Conseil

1) Les langues française, allemande et anglaise sont utilisées par le Bureau de l'Union dans l'accomplissement de ses missions.

2) Les réunions du Conseil ainsi que les conférences de revision se tiennent en ces trois langues.

3) Le Conseil peut décider, en tant que de besoin, que d'autres langues seront utilisées.

Article 29

Arrangements particuliers pour la protection des obtentions végétales

Les Etats de l'Union se réservent le droit de conclure entre eux des arrangements particuliers pour la protection des obtentions végétales, pour autant

que ces arrangements ne contreviennent pas aux dispositions de la présente Convention.

Article 30

Application de la Convention sur le plan national; accords particuliers pour l'utilisation en commun de services chargés de l'examen

1) Chaque Etat de l'Union prend toutes mesures nécessaires pour l'application de la présente Convention et, notamment:

- a) prévoit les recours légaux appropriés permettant de défendre efficacement les droits prévus par la présente Convention;
- b) établit un service spécial de la protection des obtentions végétales ou charge un service déjà existant de cette protection;
- c) assure la communication au public des informations relatives à cette protection et au minimum la publication périodique de la liste des titres de protection délivrés.

2) Des accords particuliers peuvent être conclus entre les services compétents des Etats de l'Union en vue de l'utilisation en commun de services chargés de procéder à l'examen des variétés, prévu à l'article 7, et au rassemblement des collections et documents de référence nécessaires.

3) Il est entendu qu'au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, chaque Etat doit être en mesure, conformément à sa législation interne, de donner effet aux dispositions de la présente Convention.

Article 31

Signature

Le présent Acte est ouvert à la signature de tout Etat de l'Union et de tout autre Etat qui a été représenté à la Conférence diplomatique qui a adopté le présent Acte. Il est ouvert à la signature jusqu'au 31 octobre 1979.

Article 32

Ratification, acceptation ou approbation; adhésion

1) Tout Etat exprime son consentement à être lié par le présent Acte par le dépôt:

a) d'un instrument de ratification, d'acceptation ou d'approbation s'il a signé le présent Acte, ou
b) d'un instrument d'adhésion s'il n'a pas signé le présent Acte.

2) Les instruments de ratification, d'acceptation, d'approbation ou d'adhésion sont déposés auprès du Secrétaire général.

3) Tout Etat qui n'est pas membre de l'Union et qui n'a pas signé le présent Acte demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions du présent Acte. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé.

Article 33

Entrée en vigueur; impossibilité d'adhérer aux textes antérieurs

1) Le présent Acte entre en vigueur un mois après que les deux conditions suivantes auront été remplies:

a) le nombre des instruments de ratification, d'acceptation, d'approbation ou d'adhésion déposés est de cinq au moins;

b) trois au moins desdits instruments sont déposés par des Etats parties à la Convention de 1961.

2) A l'égard de tout Etat qui dépose son instrument de ratification, d'acceptation, d'approbation ou d'adhésion après que les conditions prévues au paragraphe 1)a) et b) ont été remplies, le présent Acte entre en vigueur un mois après le dépôt de son instrument.

3) Après l'entrée en vigueur du présent Acte conformément au paragraphe 1), aucun Etat ne peut plus adhérer à la Convention de 1961 modifiée par l'Acte additionnel de 1972.

Article 34

Relations entre Etats liés par des textes différents

1) Tout Etat de l'Union qui, à la date de l'entrée en vigueur du présent Acte à son égard, est lié par la Convention de 1961 modifiée par l'Acte additionnel de 1972 continue d'appliquer, dans ses relations avec tout autre Etat de l'Union non lié par le présent Acte, ladite Convention modifiée par ledit Acte additionnel jusqu'à ce que le présent Acte entre également en vigueur à l'égard de cet autre Etat.

2) Tout Etat de l'Union non lié par le présent Acte (« le premier Etat ») peut déclarer, par une notification adressée au Secrétaire général, qu'il appliquera la Convention de 1961 modifiée par l'Acte additionnel de 1972 dans ses relations avec tout Etat lié par le présent Acte qui devient membre de l'Union en ratifiant, acceptant ou approuvant le présent Acte ou en adhérant à celui-ci (« le second Etat »). Dès l'expiration d'un délai d'un mois à compter de la date de cette notification et jusqu'à l'entrée en vigueur du présent Acte à son égard, le premier Etat applique la Convention de 1961 modifiée par l'Acte additionnel de 1972 dans ses relations avec le second Etat, tandis que celui-ci applique le présent Acte dans ses relations avec le premier Etat.

Article 35

Communications concernant les genres et espèces protégés; renseignements à publier

1) Au moment du dépôt de son instrument de ratification, d'acceptation ou d'approbation du présent Acte ou d'adhésion à celui-ci, chaque Etat qui n'est pas déjà membre de l'Union notifie au Secrétaire général la liste des genres et espèces auxquels il appliquera, au moment de l'entrée en vigueur du présent Acte à son égard, les dispositions de la présente Convention.

2) Le Secrétaire général publie, sur la base de communications reçues de l'Etat de l'Union concerné, des renseignements sur:

a) toute extension de l'application des dispositions de la présente Convention à d'autres genres et espèces après l'entrée en vigueur du présent Acte à son égard;

b) toute utilisation de la faculté prévue à l'article 3.3);

c) l'utilisation de toute faculté accordée par le Conseil en vertu de l'article 4.4) ou 5);

d) toute utilisation de la faculté prévue à la première phrase de l'article 5.4), en précisant la nature des droits plus étendus et en spécifiant les genres et espèces auxquels ces droits s'appliquent;

e) toute utilisation de la faculté prévue à la deuxième phrase de l'article 5.4);

f) le fait que la loi de cet Etat contient une disposition permise en vertu de l'article 6.1)b)i) et la durée du délai accordé;

g) la durée du délai visé à l'article 8, si ce délai est supérieur aux quinze années, ou dix-huit, suivant le cas, prévues par ledit article.

Article 36**Territoires**

1) Tout Etat peut déclarer dans son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, ou peut informer le Secrétaire général par écrit à tout moment ultérieur, que le présent Acte est applicable à tout ou partie des territoires désignés dans la déclaration ou la notification.

2) Tout Etat qui a fait une telle déclaration ou effectué une telle notification peut, à tout moment, notifier au Secrétaire général que le présent Acte cesse d'être applicable à tout ou partie de ces territoires.

3)a) Toute déclaration faite en vertu du paragraphe 1) prend effet à la même date que la ratification, l'acceptation, l'approbation ou l'adhésion dans l'instrument de laquelle elle a été incluse, et toute notification effectuée en vertu de ce paragraphe prend effet trois mois après sa notification par le Secrétaire général.

b) Toute notification effectuée en vertu du paragraphe 2) prend effet douze mois après sa réception par le Secrétaire général.

Article 37**Dérogation pour la protection sous deux formes**

1) Nonobstant les dispositions de l'article 2.1), tout Etat qui, avant l'expiration du délai pendant lequel le présent Acte est ouvert à la signature, prévoit la protection sous les différentes formes mentionnées à l'article 2.1) pour un même genre ou une même espèce peut continuer à la prévoir si, lors de la signature du présent Acte ou du dépôt de son instrument de ratification, d'acceptation ou d'approbation du présent Acte, ou d'adhésion à celui-ci, il notifie ce fait au Secrétaire général.

2) Si la protection est demandée, dans un Etat de l'Union auquel le paragraphe 1) s'applique, en vertu de la législation sur les brevets, ledit Etat peut, nonobstant les dispositions de l'article 6.1)a) et b) et de l'article 8, appliquer les critères de brevetabilité et la durée de protection de la législation sur les brevets aux variétés protégées selon cette législation.

3) Ledit Etat peut, à tout moment, notifier au Secrétaire général le retrait de sa notification faite conformément au paragraphe 1). Un tel retrait prend effet à la date indiquée par cet Etat dans sa notification de retrait.

Article 38**Limitation transitoire de l'exigence de nouveauté**

Nonobstant les dispositions de l'article 6, tout Etat de l'Union a la faculté, sans qu'il en résulte d'obligation pour les autres Etats de l'Union, de limiter l'exigence de nouveauté prévue à l'article susvisé, en ce qui concerne les variétés de création récente existant au moment où ledit Etat applique pour la première fois les dispositions de la présente Convention au genre ou à l'espèce auquel de telles variétés appartiennent.

Article 39**Maintien des droits acquis**

La présente Convention ne saurait porter atteinte aux droits acquis soit en vertu des législations nationales des Etats de l'Union, soit par suite d'accords intervenus entre ces Etats.

Article 40**Réserves**

Aucune réserve n'est admise à la présente Convention.

Article 41**Durée et dénonciation de la Convention**

1) La présente Convention est conclue sans limitation de durée.

2) Tout Etat de l'Union peut dénoncer la présente Convention par une notification adressée au Secrétaire général. Le Secrétaire général notifie sans délai la réception de cette notification à tous les Etats de l'Union.

3) La dénonciation prend effet à l'expiration de l'année civile suivant l'année dans laquelle la notification a été reçue par le Secrétaire général.

4) La dénonciation ne saurait porter atteinte aux droits acquis, à l'égard d'une variété, dans le cadre de la présente Convention avant la date à laquelle la dénonciation prend effet.

Article 42**Langues; fonctions du dépositaire**

1) Le présent Acte est signé en un exemplaire original en langues française, anglaise et allemande, le texte français faisant foi en cas de différences entre les textes. Ledit exemplaire est déposé auprès du Secrétaire général.

2) Le Secrétaire général transmet deux copies certifiées conformes du présent Acte aux Gouvernements des Etats représentés à la Conférence diplomatique qui l'a adopté et au Gouvernement de tout autre Etat qui en fait la demande.

3) Le Secrétaire général établit, après consultation des Gouvernements des Etats intéressés qui étaient représentés à ladite Conférence, des textes officiels dans les langues arabe, espagnole, italienne, japonaise et néerlandaise, et dans les autres langues que le Conseil peut désigner.

4) Le Secrétaire général fait enregistrer le présent Acte auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Secrétaire général notifie aux Gouvernements des Etats de l'Union et des Etats qui, sans être membres de l'Union, étaient représentés à la Conférence qui a adopté le présent Acte, les signatures du présent Acte, le dépôt des instruments de ratification, d'acceptation, d'approbation ou d'adhésion, toute notification reçue en vertu des articles 34.2), 36.1) ou 2), 37.1) ou 3) ou 41.2) et toute déclaration faite en vertu de l'article 36.1).

**International Convention
for the Protection
of New Varieties of Plants**

of December 2, 1961, as revised at Geneva
on November 10, 1972, and on October 23, 1978

International Convention for the Protection of New Varieties of Plants

**of December 2, 1961, as revised at Geneva
on November 10, 1972, and on October 23, 1978**

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THE CONTRACTING PARTIES,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders,

Reaffirming the principles contained in the Preamble to the Convention to the effect that:

(a) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,

(b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,

(c) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

Considering that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention,

Considering that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,

Considering that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

Considering that these objectives may be best achieved by a new revision of the Convention,

Have agreed as follows:

Article 1**Purpose of the Convention; Constitution of a Union;
Seat of the Union**

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions herein-after defined.

(2) The States parties to this Convention (herein-after referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2**Forms of Protection**

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

Article 3**National Treatment; Reciprocity**

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be checked.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

Article 4**Botanical Genera and Species Which Must
or May be Protected**

(1) This Convention may be applied to all botanical genera and species.

(2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.

(3) (a) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.

(b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:

- (i) within three years, to at least ten genera or species in all;
- (ii) within six years, to at least eighteen genera or species in all;
- (iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of Article 2(2), that genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b), be considered as one genus or species.

(4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under paragraph (3)(b), decide, for the purposes of that State, to extend the periods referred to in paragraph (3)(b).

Article 5

Rights Protected; Scope of Protection

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

Article 6

Conditions Required for Protection

(1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.

(b) At the date on which the application for protection in a member State of the Union is filed, the variety

- (i) must not—or, where the law of that State so provides, must not for longer than one year—have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and
- (ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

(c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The variety shall be given a denomination as provided in Article 13.

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the member State of the Union in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Article 7

Official Examination of Varieties; Provisional Protection

(1) Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species.

(2) For the purposes of such examination, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) Any member State of the Union may provide measures to protect the breeder against abusive acts of third parties committed during the period between the filing of the application for protection and the decision thereon.

Article 8

Period of Protection

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection may not be less than eighteen years, computed from the said date.

Article 9

Restrictions in the Exercise of Rights Protected

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 10

Nullity and Forfeiture of the Rights Protected

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in Article 6 (1)(a) and(b) were not effectively complied with at the time when the title of protection was issued.

(2) The right of the breeder shall become forfeit when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its characteristics as defined when the protection was granted.

(3) The right of the breeder may become forfeit if:
(a) after being requested to do so and within a prescribed period, he does not provide the competent

authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

Article 11

Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

(1) The breeder may choose the member State of the Union in which he wishes to file his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he filed his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

Article 12

Right of Priority

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of paragraph (1), the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union

with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13

Variety Denomination

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30(1)(b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to

in Article 30(1)(b) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 14

Protection Independent of Measures Regulating Production, Certification and Marketing

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

Article 15

Organs of the Union

The permanent organs of the Union shall be:
(a) the Council;

(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Article 16

Composition of the Council; Votes

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.

(2) Representatives or alternates may be accompanied by assistants or advisers.

(3) Each member State of the Union shall have one vote in the Council.

Article 17

Observers in Meetings of the Council

(1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.

(2) Other observers or experts may also be invited to such meetings.

Article 18

President and Vice-Presidents of the Council

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

Article 19

Sessions of the Council

(1) The Council shall meet upon convocation by its President.

(2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

Article 20**Rules of Procedure of the Council;
Administrative and Financial Regulations
of the Union**

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Article 21**Tasks of the Council**

The tasks of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;
- (c) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (d) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions for the accomplishment of the tasks of the Union;
- (e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of Article 26;
- (f) examine and approve the accounts presented by the Secretary-General;
- (g) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation; and
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Article 22**Majorities Required for Decisions
of the Council**

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(e), 26(5)(b), 27(1), 28(3) or 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Article 23**Tasks of the Office of the Union;
Responsibilities of the Secretary-General;
Appointment of Staff**

(1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of Article 21(b), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Article 24**Legal Status**

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.

(3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

Article 25**Auditing of the Accounts**

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Article 26**Finances**

(1) The expenses of the Union shall be met from:
— the annual contributions of the member States of the Union;

- payments received for services rendered;
- miscellaneous receipts.

(2)(a) The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.

(3)(a) As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.

(b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

(4)(a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.

(b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.

(5)(a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.

(b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Article 27

Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Article 28

Languages Used by the Office and in Meetings of the Council

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

(2) Meetings of the Council and of revision conferences shall be held in the three languages.

(3) If the need arises, the Council may decide that further languages shall be used.

Article 29

Special Agreements for the Protection of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Article 30

Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

(a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;

(b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;

(c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

Article 31

Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

Article 32

Ratification, Acceptance or Approval; Accession

(1) Any State shall express its consent to be bound by this Act by the deposit of:

(a) its instrument of ratification, acceptance or approval, if it has signed this Act; or

(b) its instrument of accession, if it has not signed this Act.

(2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 33

Entry Into Force; Closing of Earlier Texts

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

(a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and

(b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.

(2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in paragraph (1)(a) and (b) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Article 34

Relations Between States Bound by Different Texts

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

(2) Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union through ratification, acceptance or approval of or accession to this Act ("the latter State"). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

Article 35

Communications Concerning the Genera and Species Protected; Information to be Published

(1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.

(2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:

(a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;

(b) any use of the faculty provided for in Article 3(3);

(c) the use of any faculty granted by the Council pursuant to Article 4(4) or (5);

(d) any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply;

(e) any use of the faculty provided for in Article 5(4), second sentence;

(f) the fact that the law of the said State contains a provision as permitted under Article 6(1)(b)(i), and the length of the period permitted;

(g) the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Article 36

Territories

(1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification, acceptance, approval, or accession in the instrument of which it was included, and any notification given

under that paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

Article 37

Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of Article 2(1), any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in Article 2(1) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.

(2) Where, in a member State of the Union to which paragraph (1) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6(1)(a) and (b) and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 38

Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Article 39**Preservation of Existing Rights**

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Article 40**Reservations**

No reservations to this Convention are permitted.

Article 41**Duration and Denunciation of the Convention**

- (1) This Convention is of unlimited duration.
- (2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.
- (3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.
- (4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Article 42**Languages; Depositary Functions**

- (1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.
- (2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.
- (3) The Secretary-General shall, after consultation with the Governments of the interested States which were represented in the said Conference, establish official texts in the Arabic, Dutch, Italian, Japanese

and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of instruments of ratification, acceptance, approval and accession, any notification received under Articles 34(2), 36(1) and (2), 37(1) and (3) or 41(2) and any declaration made under Article 36(1).

**Internationales Übereinkommen
zum Schutz
von Pflanzenzüchtungen**

vom 2. Dezember 1961, revidiert in Genf
am 10. November 1972 und am 23. Oktober 1978

Internationales Übereinkommen zum Schutz von Pflanzenzüchtungen

vom 2. Dezember 1961, revidiert in Genf am 10. November 1972 und am 23. Oktober 1978

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- Artikel 2: Schutzrechtsformen
- Artikel 3: Inländerbehandlung; Gegenseitigkeit
- Artikel 4: Botanische Gattungen und Arten, die geschützt werden müssen oder können
- Artikel 5: Inhalt des Schutzrechts; Schutzmfang
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- Artikel 11: Freie Wahl des Verbandsstaats, in dem die erste Anmeldung eingereicht wird; Anmeldungen in anderen Verbandsstaaten; Unabhängigkeit des Schutzes in verschiedenen Verbundstaaten
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- Artikel 42: Sprachen; Wahrnehmung der Verwahreraufgaben

DIE VERTRAGSSTAATEN,

In der Erwägung, daß das Internationale Übereinkommen zum Schutz von Pflanzenzüchtungen vom 2. Dezember 1961 in der durch die Zusatzakte vom 10. November 1972 geänderten Fassung sich als wertvolles Instrument für die internationale Zusammenarbeit auf dem Gebiet des Schutzes von Züchterrechten erwiesen hat,

Erneut die in der Präambel des Übereinkommens enthaltenen Grundsätze bekräftigend, wonach

- a) sie von der Bedeutung überzeugt sind, die dem Schutz neuer Pflanzensorten sowohl für die Entwicklung der Landwirtschaft in ihrem Hoheitsgebiet als auch für die Wahrung der Interessen der Züchter zukommt,
- b) sie sich der besonderen Probleme, die die Zuerkennung und der Schutz des Züchterrechts aufwerfen, und insbesondere der Beschränkungen, die die Erfordernisse des öffentlichen Interesses der freien Ausübung eines solchen Rechtes auferlegen können, bewußt sind,
- c) sie es für höchst wünschenswert halten, daß diese Probleme, denen sehr viele Staaten berechtigte Bedeutung beimessen, von jedem dieser Staaten nach einheitlichen und klar umrissenen Grundsätzen gelöst werden,

In der Erwägung, daß der Gedanke des Schutzes von Züchterrechten große Bedeutung in vielen Staaten gewonnen hat, die dem Übereinkommen noch nicht beigetreten sind,

In der Erwägung, daß bestimmte Änderungen in dem Übereinkommen erforderlich sind, um diesen Staaten den Beitritt zum Verband zu erleichtern,

In der Erwägung, daß einzelne Bestimmungen über die Verwaltung des durch das Übereinkommen geschaffenen Verbands im Licht der Erfahrungen änderungsbedürftig sind,

In der Erwägung, daß diese Ziele am besten durch die erneute Revision des Übereinkommens erreicht werden können,

Haben folgendes vereinbart:

Artikel 1**Zweck des Übereinkommens; Bildung eines Verbands;
Sitz des Verbands**

(1) Zweck dieses Übereinkommens ist es, dem Züchter einer neuen Pflanzensorte oder seinem Rechtsnachfolger (beide im folgenden als «Züchter» bezeichnet) unter den nachstehend festgelegten Bedingungen ein Recht zuzuerkennen und zu sichern.

(2) Die Vertragsstaaten dieses Übereinkommens (im folgenden als «Verbandsstaaten» bezeichnet) bilden untereinander einen Verband zum Schutz von Pflanzenzüchtungen.

(3) Als Sitz des Verbands und seiner ständigen Organe wird Genf bestimmt.

Artikel 2

Schutzrechtsformen

(1) Jeder Verbandsstaat kann das in diesem Übereinkommen vorgesehene Züchterrecht durch die Gewährung eines besonderen Schutzrechts oder eines Patents zuerkennen. Jedoch darf ein Verbandsstaat, dessen innerstaatliches Recht den Schutz in diesen beiden Formen zuläßt, nur eine von ihnen für dieselbe botanische Gattung oder Art vorsehen.

(2) Jeder Verbandsstaat kann die Anwendung dieses Übereinkommens innerhalb einer Gattung oder Art auf Sorten mit einem bestimmten Vermehrungssystem oder einer bestimmten Endnutzung beschränken.

Artikel 3

Inländerbehandlung; Gegenseitigkeit

(1) Natürliche und juristische Personen, die ihren Wohnsitz oder Sitz in einem Verbandsstaat haben, genießen in den anderen Verbandsstaaten in bezug auf die Zuerkennung und den Schutz des Züchterrechts die Behandlung, die nach den Rechtsvorschriften dieser Staaten deren eigene Staatsangehörige gegenwärtig oder künftig genießen, und zwar unbeschadet der in diesem Übereinkommen besonders vorgesehenen Rechte und unter dem Vorbehalt, daß sie die Bedingungen und Förmlichkeiten erfüllen, die den eigenen Staatsangehörigen auferlegt werden.

(2) Angehörige der Verbandsstaaten, die weder ihren Wohnsitz noch ihren Sitz in einem dieser Staaten haben, genießen ebenfalls die gleichen Rechte, sofern sie den Verpflichtungen nachkommen, die ihnen gegebenenfalls auferlegt werden, um die Prüfung der von ihnen gezüchteten Sorten und die Überwachung ihrer Vermehrung zu ermöglichen.

(3) Abweichend von den Absätzen 1 und 2 kann jeder Verbandsstaat, der dieses Übereinkommen auf eine bestimmte Gattung oder Art anwendet, den Schutz auf Angehörige von Verbandsstaaten beschränken, die dieses Übereinkommen auf die gleiche Gattung oder Art anwenden, sowie auf natürliche und juristische Personen, die ihren Wohnsitz oder Sitz in einem dieser Staaten haben.

Artikel 4

Botanische Gattungen und Arten, die geschützt werden müssen oder können

(1) Dieses Übereinkommen ist auf alle botanischen Gattungen und Arten anwendbar.

(2) Die Verbandsstaaten verpflichten sich, alle Maßnahmen zu treffen, die notwendig sind, um dieses Übereinkommen allmählich auf eine möglichst große Anzahl von botanischen Gattungen und Arten anzuwenden.

(3a) Jeder Verbandsstaat wendet dieses Übereinkommen, sobald es für sein Hoheitsgebiet in Kraft tritt, auf mindestens fünf Gattungen oder Arten an.

b) Später wendet jeder Verbandsstaat dieses Übereinkommen innerhalb folgender Fristen nach dessen Inkrafttreten für sein Hoheitsgebiet auf weitere Gattungen oder Arten an, und zwar

i) innerhalb von drei Jahren auf mindestens insgesamt zehn Gattungen oder Arten;

ii) innerhalb von sechs Jahren auf mindestens insgesamt achtzehn Gattungen oder Arten;

iii) innerhalb von acht Jahren auf mindestens insgesamt vierundzwanzig Gattungen oder Arten.

c) Beschränkt ein Verbandsstaat innerhalb einer Gattung oder Art die Anwendung dieses Übereinkommens gemäß Artikel 2 Absatz 2, so wird eine solche Gattung oder Art gleichwohl für die Zwecke der Buchstaben *a* und *b* als eine Gattung oder Art angesehen.

(4) Auf Antrag eines Staates, der beabsichtigt, dieses Übereinkommen zu ratifizieren, anzunehmen, zu genehmigen oder ihm beizutreten, kann der Rat, um außergewöhnlichen wirtschaftlichen Verhältnissen oder Umweltbedingungen in diesem Staat Rechnung zu tragen, beschließen, daß für diesen Staat die in Absatz 3 aufgeführten Mindestzahlen herabgesetzt, die dort genannten Fristen verlängert oder beide Maßnahmen getroffen werden.

(5) Auf Antrag eines Verbandsstaats kann der Rat, um besonderen Schwierigkeiten Rechnung zu tragen, denen dieser Staat sich bei Erfüllung seiner Verpflichtungen nach Absatz 3 Buchstabe *b* gegenüber sieht, beschließen, daß die in Absatz 3 Buchstabe *b* genannten Fristen für diesen Staat verlängert werden.

Artikel 5

Inhalt des Schutzrechts; Schutzmfang

(1) Das dem Züchter gewährte Recht hat die Wirkung, daß seine vorherige Zustimmung erforderlich ist, um generatives oder vegetatives Vermehrungsmaterial der Sorte als solches

- zum Zweck des gewerbsmäßigen Absatzes zu erzeugen,
- feilzuhalten,
- gewerbsmäßig zu vertreiben.

Zu dem vegetativen Vermehrungsmaterial gehören auch ganze Pflanzen. Das Recht des Züchters erstreckt sich auf Zierpflanzen oder deren Teile, die üblicherweise nicht zu Vermehrungszwecken gewerbsmäßig vertrieben werden, falls sie als Vermehrungsmaterial zur Erzeugung von Zierpflanzen oder Schnittblumen gewerbsmäßig verwendet werden.

(2) Der Züchter kann seine Zustimmung von Bedingungen abhängig machen, die er festlegt.

(3) Die Zustimmung des Züchters ist nicht erforderlich, wenn die Sorte als Ausgangsmaterial für die Schaffung weiterer Sorten verwendet wird und diese gewerbsmäßig vertrieben werden. Dagegen ist die Zustimmung erforderlich, wenn die Sorte für die gewerbsmäßige Erzeugung einer anderen Sorte fortlaufend verwendet werden muß.

(4) Jeder Verbandsstaat kann in seinem innerstaatlichen Recht oder in besonderen Abmachungen im Sinne des Artikels 29 den Züchtern für bestimmte botanische Gattungen oder Arten ein Recht gewähren, das über das in Absatz 1 bezeichnete hinausgeht und sich insbesondere bis auf das gewerbsmäßig vertriebene Erzeugnis erstrecken kann. Ein Verbandsstaat, der ein solches Recht gewährt, kann dieses auf Angehörige der Verbandsstaaten, die ein gleiches Recht gewähren, sowie auf natürliche und juristische Personen beschränken, die ihren Wohnsitz oder Sitz in einem dieser Staaten haben.

Artikel 6

Schutzvoraussetzungen

(1) Der Züchter genießt den in diesem Übereinkommen vorgesehenen Schutz, wenn folgende Voraussetzungen erfüllt sind:

a) Die Sorte muß sich ohne Rücksicht darauf, ob das Ausgangsmaterial, aus dem sie entstanden ist, künstlichen oder natürlichen Ursprungs ist, durch ein oder mehrere wichtige Merkmale von jeder anderen Sorte deutlich unterscheiden lassen, deren Vorhandensein im Zeitpunkt der Schutzrechtsanmeldung allgemein bekannt ist. Diese Offenkundigkeit kann auf Grund verschiedener Tatsachen festgestellt werden, beispielsweise durch bereits laufenden Anbau oder gewerbsmäßigen Vertrieb, bereits erfolgte oder eingeleitete Eintragung in ein amtliches Sortenregister, Anbau in einer Vergleichssammlung oder genaue Beschreibung in einer Veröffentlichung. Die Merkmale, die es ermöglichen, eine Sorte zu bestimmen und zu unterscheiden, müssen genau erkannt und beschrieben werden können.

b) Am Tag der Einreichung der Schutzrechtsanmeldung in einem Verbandsstaat darf die Sorte

i) im Hoheitsgebiet dieses Staates noch nicht — oder, wo das Recht dieses Staates dies vorsieht, nicht seit mehr als einem Jahr — mit Zustimmung des Züchters feilgehalten oder gewerbsmäßig vertrieben worden sein sowie

ii) im Hoheitsgebiet eines anderen Staates mit Zustimmung des Züchters im Fall von Reben, Wald-, Obst- und Zierbäumen jeweils einschließlich ihrer Unterlagen noch nicht seit mehr als sechs Jahren oder im Fall von anderen Pflanzen noch nicht seit mehr als vier Jahren feilgehalten oder gewerbsmäßig vertrieben worden sein.

Mit der Sorte vorgenommene Versuche, die kein Feilhalten und keinen gewerbsmäßigen Vertrieb beinhalten, beeinträchtigen nicht das Recht auf Schutz. Ebensowenig wird das Recht des Züchters auf Schutz durch die Tatsache beeinträchtigt, daß die Sorte auf andere Weise als durch Feilhalten oder gewerbsmäßigen Vertrieb allgemein bekannt geworden ist.

c) Die Sorte muß hinreichend homogen sein; dabei ist den Besonderheiten ihrer generativen oder vegetativen Vermehrung Rechnung zu tragen.

d) Die Sorte muß in ihren wesentlichen Merkmalen beständig sein, d. h. nach ihren aufeinanderfolgenden Vermehrungen oder, wenn der Züchter einen besonderen Vermehrungszyklus festge-

legt hat, am Ende eines jeden Zyklus weiterhin ihrer Beschreibung entsprechen.

e) Die Sorte muß eine Sortenbezeichnung gemäß Artikel 13 erhalten.

(2) Die Gewährung des Schutzes darf nur von den vorstehenden Voraussetzungen abhängig gemacht werden; der Züchter muß jedoch den Förmlichkeiten, die im innerstaatlichen Recht des Verbandsstaats, in dem die Schutzrechtsanmeldung eingebracht wurde, vorgesehen sind, einschließlich der Zahlung der Gebühren genügt haben.

Artikel 7

Amtliche Prüfung von Sorten; vorläufiger Schutz

(1) Der Schutz wird nach einer Prüfung der Sorte auf die in Artikel 6 festgelegten Voraussetzungen gewährt. Diese Prüfung muß der einzelnen botanischen Gattung oder Art angemessen sein.

(2) Für die Prüfung können die zuständigen Behörden eines jeden Verbandsstaats von dem Züchter alle notwendigen Auskünfte und Unterlagen sowie das erforderliche Pflanz- oder Saatgut verlangen.

(3) Jeder Verbandsstaat kann Maßnahmen zum Schutz des Züchters gegen mißbräuchliches Verhalten Dritter, das in der Zeit von der Einreichung der Schutzrechtsanmeldung bis zur Entscheidung hierüber begangen worden ist, treffen.

Artikel 8

Schutzdauer

Das dem Züchter gewährte Recht wird für eine begrenzte Zeitspanne erteilt. Diese darf nicht kürzer sein als fünfzehn Jahre, vom Tag der Erteilung des Schutzrechts an gerechnet. Für Reben, Wald-, Obst- und Zierbäume jeweils einschließlich ihrer Unterlagen darf die Schutzdauer nicht kürzer sein als achtzehn Jahre, von diesem Zeitpunkt an gerechnet.

Artikel 9

Beschränkungen in der Ausübung des Züchterrechts

(1) Die freie Ausübung des dem Züchter gewährten ausschließlichen Rechts darf nur aus Gründen des öffentlichen Interesses beschränkt werden.

(2) Erfolgt diese Beschränkung zu dem Zweck, die Verbreitung der Sorte sicherzustellen, so hat der betreffende Verbandsstaat alle notwendigen Maßnahmen zu treffen, damit der Züchter eine angemessene Vergütung erhält.

Artikel 10

Nichtigkeit und Aufhebung des Züchterrechts

(1) Das Recht des Züchters wird nach Maßgabe des innerstaatlichen Rechtes eines jeden Verbandsstaats für nichtig erklärt,

wenn sich herausstellt, daß die in Artikel 6 Absatz 1 Buchstaben *a* und *b* festgelegten Voraussetzungen bei der Erteilung des Schutzrechts tatsächlich nicht erfüllt waren.

(2) Das Recht des Züchters wird aufgehoben, wenn er nicht in der Lage ist, der zuständigen Behörde das Vermehrungsmaterial vorzulegen, das es gestattet, die Sorte mit den im Zeitpunkt der Schutzeerteilung für sie festgelegten Merkmalen zu erstellen.

(3) Das Recht des Züchters kann aufgehoben werden,

a) wenn er der zuständigen Behörde innerhalb einer vorgeschriebenen Frist und nach Mahnung das Vermehrungsmaterial, die Unterlagen und die Auskünfte, die zur Überwachung der Sorte für notwendig erachtet werden, nicht vorlegt oder wenn er die Nachprüfung der zur Erhaltung der Sorte getroffenen Maßnahmen nicht gestattet;

b) wenn er nicht innerhalb der vorgeschriebenen Frist die Gebühren entrichtet hat, die gegebenenfalls für die Aufrechterhaltung seiner Rechte zu zahlen sind.

(4) Aus anderen als den in diesem Artikel aufgeführten Gründen kann das Recht des Züchters weder für nichtig erklärt noch aufgehoben werden.

Artikel 11

Freie Wahl des Verbandsstaats, in dem die erste Anmeldung eingereicht wird; Anmeldungen in anderen Verbandsstaaten; Unabhängigkeit des Schutzes in verschiedenen Verbandsstaaten

(1) Der Züchter kann den Verbandsstaat wählen, in dem er die erste Schutzrechtsanmeldung einreichen will.

(2) Der Züchter kann den Schutz seines Rechtes in anderen Verbandsstaaten beantragen, ohne abzuwarten, bis ihm der Verbandsstaat der ersten Anmeldung ein Schutzrecht erteilt hat.

(3) Der Schutz, der in verschiedenen Verbandsstaaten von natürlichen oder juristischen Personen beantragt wird, die sich auf dieses Übereinkommen berufen können, ist unabhängig von dem Schutz, der für dieselbe Sorte in anderen Verbandsstaaten oder in Nichtverbandsstaaten erlangt worden ist.

Artikel 12

Priorität

(1) Hat der Züchter eine Schutzrechtsanmeldung in einem der Verbandsstaaten vorschriftsmäßig eingereicht, so genießt er für die Einreichung in den anderen Verbandsstaaten während einer Frist von zwölf Monaten ein Prioritätsrecht. Diese Frist beginnt mit dem Zeitpunkt der Einreichung der ersten Anmeldung. Der Tag der Einreichung wird nicht in die Frist eingezeichnet.

(2) Absatz 1 ist zugunsten der neuen Einreichung nur anwendbar, wenn diese einen Schutzrechtsantrag und die Beanspruchung der Priorität der ersten Anmeldung enthält und wenn binnen drei Monaten die Unterlagen, aus denen diese Anmeldung besteht, abschriftlich vorgelegt werden; die Abschriften müssen

von der Behörde beglaubigt sein, welche diese Anmeldung entgegengenommen hat.

(3) Dem Züchter steht eine Frist von vier Jahren nach Ablauf der Prioritätsfrist zur Verfügung, um dem Verbandsstaat, bei dem ein Schutzrechtsantrag nach Maßgabe des Absatzes 2 eingereicht worden ist, die nach den Gesetzen und sonstigen Vorschriften dieses Staates erforderlichen ergänzenden Unterlagen und das erforderliche Material vorzulegen. Jedoch kann dieser Staat die Vorlage der ergänzenden Unterlagen und des vorzulegenden Materials innerhalb einer angemessenen Frist anfordern, wenn die Anmeldung, deren Priorität in Anspruch genommen wird, zurückgewiesen oder zurückgenommen worden ist.

(4) Einer unter den obigen Bedingungen vorgenommenen Anmeldung können Tatsachen nicht entgegengehalten werden, die innerhalb der Frist des Absatzes 1 eingetreten sind, wie etwa eine andere Anmeldung, die Veröffentlichung des Gegenstands der Anmeldung oder seine Benutzung. Diese Tatsachen können kein Recht zugunsten Dritter und kein persönliches Besitzrecht begründen.

Artikel 13 **Sortenbezeichnung**

(1) Die Sorte ist mit einer Sortenbezeichnung als Gattungsbezeichnung zu kennzeichnen. Jeder Verbandsstaat stellt sicher, daß, vorbehaltlich des Absatzes 4, keine Rechte an der Bezeichnung, die als Sortenbezeichnung eingetragen ist, den freien Gebrauch der Bezeichnung in Verbindung mit der Sorte einschränken, auch nicht nach Ablauf des Schutzes.

(2) Die Sortenbezeichnung muß die Identifizierung der Sorte ermöglichen. Sie darf nicht ausschließlich aus Zahlen bestehen, außer soweit dies eine feststehende Praxis für die Kennzeichnung von Sorten ist. Sie darf nicht geeignet sein, hinsichtlich der Merkmale, des Wertes oder der Identität der Sorte oder der Identität des Züchters irrezuführen oder Verwechslungen hervorzurufen. Sie muß sich insbesondere von jeder Sortenbezeichnung unterscheiden, die in einem der Verbandsstaaten eine bereits vorhandene Sorte derselben botanischen Art oder einer verwandten Art kennzeichnet.

(3) Die Sortenbezeichnung wird von dem Züchter bei der in Artikel 30 Absatz 1 Buchstabe *b* vorgesehenen Behörde hinterlegt. Stellt sich heraus, daß diese Bezeichnung den Erfordernissen des Absatzes 2 nicht entspricht, so verweigert diese Behörde die Eintragung und verlangt von dem Züchter, daß er innerhalb einer vorgeschriebenen Frist eine andere Sortenbezeichnung vorschlägt. Die Sortenbezeichnung wird gleichzeitig mit der Erteilung des Schutzrechts gemäß Artikel 7 eingetragen.

(4) Ältere Rechte Dritter bleiben unberührt. Wird die Benutzung der Sortenbezeichnung einer Person, die gemäß Absatz 7 zu ihrer Benutzung verpflichtet ist, auf Grund eines älteren Rechtes untersagt, so verlangt die in Artikel 30 Absatz 1 Buchstabe *b* vorgesehene Behörde, daß der Züchter eine andere Sortenbezeichnung vorschlägt.

(5) Eine Sorte darf in den Verbundsstaaten nur unter derselben Sortenbezeichnung angemeldet werden. Die in Artikel 30 Absatz 1 Buchstabe *b* vorgesehene Behörde ist verpflichtet, die so hinterlegte Sortenbezeichnung einzutragen, sofern sie nicht feststellt, daß diese Sortenbezeichnung in ihrem Staat ungeeignet ist. In diesem Fall kann sie verlangen, daß der Züchter eine andere Sortenbezeichnung vorschlägt.

(6) Die in Artikel 30 Absatz 1 Buchstabe *b* vorgesehene Behörde stellt sicher, daß alle anderen Behörden über Angelegenheiten, die Sortenbezeichnungen betreffen, insbesondere über die Einreichung, Eintragung und Streichung von Sortenbezeichnungen, unterrichtet werden. Jede in Artikel 30 Absatz 1 Buchstabe *b* vorgesehene Behörde kann der Behörde, die eine Sortenbezeichnung mitgeteilt hat, etwaige Bemerkungen zu der Eintragung dieser Sortenbezeichnung zugehen lassen.

(7) Wer in einem Verbundsstaat Vermehrungsmaterial einer in diesem Staat geschützten Sorte feilhält oder gewerbsmäßig vertreibt, ist verpflichtet, die Sortenbezeichnung auch nach Ablauf des Schutzes dieser Sorte zu benutzen, sofern nicht gemäß Absatz 4 ältere Rechte dieser Benutzung entgegenstehen.

(8) Beim Feilhalten oder bei dem gewerbsmäßigen Vertrieb der Sorte darf eine Fabrik- oder Handelsmarke, eine Handelsbezeichnung oder eine andere ähnliche Angabe der eingetragenen Sortenbezeichnung hinzugefügt werden. Auch wenn eine solche Angabe hinzugefügt wird, muß die Sortenbezeichnung leicht erkennbar sein.

Artikel 14

Unabhängigkeit des Schutzes von Maßnahmen zur Regelung der Erzeugung, der Überwachung und des gewerbsmäßigen Vertriebs

(1) Das dem Züchter nach diesem Übereinkommen gewährte Recht ist unabhängig von den Maßnahmen, die in jedem Verbundsstaat zur Regelung der Erzeugung, der Überwachung und des gewerbsmäßigen Vertriebs von Saat- und Pflanzgut getroffen werden.

(2) Jedoch muß bei diesen Maßnahmen soweit wie möglich vermieden werden, daß die Anwendung dieses Übereinkommens behindert wird.

Artikel 15

Organe des Verbands

Die ständigen Organe des Verbands sind:

- a)* der Rat;
- b)* Das Generalsekretariat, das als Büro des Internationalen Verbands zum Schutz von Pflanzenzüchtungen bezeichnet wird.

Artikel 16

Zusammensetzung des Rates; Abstimmungen

(1) Der Rat besteht aus den Vertretern der Verbundsstaaten. Jeder Verbundsstaat ernennt einen Vertreter für den Rat und einen Stellvertreter.

- (2) Den Vertretern oder Stellvertretern können Mitarbeiter oder Berater zur Seite stehen.
- (3) Jeder Verbandsstaat hat im Rat eine Stimme.

Artikel 17
Beobachter in Sitzungen des Rates

- (1) Staaten, die nicht Mitglieder des Verbands sind und diese Akte unterzeichnet haben, werden als Beobachter zu den Sitzungen des Rates eingeladen.
- (2) Zu diesen Sitzungen können auch andere Beobachter oder Sachverständige eingeladen werden.

Artikel 18
Präsident und Vizepräsidenten des Rates

- (1) Der Rat wählt aus seiner Mitte einen Präsidenten und einen Ersten Vizepräsidenten. Er kann weitere Vizepräsidenten wählen. Der Erste Vizepräsident vertritt von Rechts wegen den Präsidenten bei Verhinderungen.
- (2) Die Amtszeit des Präsidenten beträgt drei Jahre.

Artikel 19
Tagungen des Rates

- (1) Der Rat tritt auf Einberufung durch seinen Präsidenten zusammen.
- (2) Er hält einmal jährlich eine ordentliche Tagung ab. Außerdem kann der Präsident von sich aus den Rat einberufen; er hat ihn binnen drei Monaten einzuberufen, wenn mindestens ein Drittel der Verbandsstaaten dies beantragt.

Artikel 20
Geschäftsordnung des Rates; Verwaltungs- und Finanzordnung des Verbands

Der Rat legt seine Geschäftsordnung sowie die Verwaltungs- und Finanzordnung des Verbands fest.

Artikel 21
Aufgaben des Rates

Der Rat hat folgende Aufgaben:

- a) Er prüft Maßnahmen, die geeignet sind, den Bestand des Verbands sicherzustellen und seine Entwicklung zu fördern.
- b) Er ernennt den Generalsekretär und, falls er dies für erforderlich hält, einen Stellvertretenden Generalsekretär und setzt die Einstellungsbedingungen von beiden fest.
- c) Er prüft den jährlichen Bericht über die Tätigkeit des Verbands und stellt das Programm für dessen künftige Arbeit auf.

- d) Er erteilt dem Generalsekretär, dessen Befugnisse in Artikel 23 festgelegt sind, alle erforderlichen Richtlinien für die Durchführung der Aufgaben des Verbands.
- e) Er prüft und genehmigt den Haushaltsplan des Verbands und setzt gemäß Artikel 26 den Beitrag eines jeden Verbundstaats fest.
- f) Er prüft und genehmigt die von dem Generalsekretär vorgelegten Abrechnungen.
- g) Er bestimmt gemäß Artikel 27 den Zeitpunkt und den Ort der dort vorgesehenen Konferenzen und trifft die zu ihrer Vorbereitung erforderlichen Maßnahmen.
- h) Ganz allgemein faßt er alle Beschlüsse für ein erfolgreiches Wirken des Verbands.

Artikel 22

Erforderliche Mehrheiten für die Beschlüsse des Rates

Ein Beschuß des Rates bedarf der einfachen Mehrheit der anwesenden und abstimmenden Mitglieder; jedoch bedarf ein Beschuß des Rates nach Artikel 4 Absatz 4, Artikel 20, Artikel 21 Buchstabe e, Artikel 26 Absatz 5 Buchstabe b, Artikel 27 Absatz 1, Artikel 28 Absatz 3 und Artikel 32 Absatz 3 einer Dreiviertelmehrheit der anwesenden und abstimmenden Mitglieder. Enthaltungen gelten nicht als Stimmabgabe.

Artikel 23

Aufgaben des Verbandsbüros; Verantwortung des Generalsekretärs; Ernennung der Bediensteten

- (1) Das Verbandsbüro erledigt alle Aufgaben, die ihm der Rat zuweist. Es wird vom Generalsekretär geleitet.
- (2) Der Generalsekretär ist dem Rat verantwortlich; er sorgt für die Ausführung der Beschlüsse des Rates. Er legt dem Rat den Haushaltsplan zur Genehmigung vor und sorgt für dessen Ausführung. Er legt dem Rat alljährlich Rechenschaft über seine Geschäftsführung ab und unterbreitet ihm einen Bericht über die Tätigkeit und die Finanzlage des Verbands.
- (3) Vorbehaltlich des Artikels 21 Buchstabe b werden die Bedingungen für die Einstellung und Beschäftigung des für die ordnungsgemäße Erfüllung der Aufgaben des Verbandsbüros erforderlichen Personals in der in Artikel 20 bezeichneten Verwaltungs- und Finanzordnung festgelegt.

Artikel 24

Rechts- und Geschäftsfähigkeit

- (1) Der Verband besitzt Rechtspersönlichkeit.
- (2) Der Verband genießt im Hoheitsgebiet jedes Verbundstaats gemäß den Gesetzen dieses Staates die zur Erreichung seines Zweckes und zur Wahrnehmung seiner Aufgaben erforderliche Rechts- und Geschäftsfähigkeit.

(3) Der Verband schließt mit der Schweizerischen Eidgenossenschaft ein Abkommen über den Sitz.

Artikel 25
Rechnungsprüfung

Die Rechnungsprüfung des Verbands wird nach Maßgabe der in Artikel 20 bezeichneten Verwaltungs- und Finanzordnung von einem Verbandsstaat durchgeführt. Dieser Staat wird mit seiner Zustimmung vom Rat bestimmt.

Artikel 26
Finanzen

(1) Die Ausgaben des Verbands werden gedeckt aus

- den Jahresbeiträgen der Verbandsstaaten,
- der Vergütung für Dienstleistungen,
- sonstigen Einnahmen.

(2)a) Der Anteil jedes Verbandsstaats an dem Gesamtbetrag der Jahresbeiträge richtet sich nach dem Gesamtbetrag der Ausgaben, die durch Beiträge der Verbandsstaaten zu decken sind, und nach der Anzahl der für diesen Verbandsstaat nach Absatz 3 maßgebenden Zahl von Beitragseinheiten. Dieser Anteil wird nach Absatz 4 berechnet.

b) Die Zahl der Beitragseinheiten wird in ganzen Zahlen oder Bruchteilen hiervon ausgedrückt, wobei sie nicht kleiner als ein Fünftel sein darf.

(3)a) Für jeden Staat, der zum Zeitpunkt des Inkrafttretens dieser Akte dem Verband angehört, ist die Zahl der für ihn maßgebenden Beitragseinheiten gleich der Zahl der für ihn unmittelbar vor diesem Zeitpunkt nach dem Übereinkommen von 1961 in der durch die Zusatzakte von 1972 geänderten Fassung maßgebenden Einheiten.

b) Jeder andere Staat gibt bei seinem Beitritt zum Verband in einer an den Generalsekretär gerichteten Erklärung die für ihn maßgebende Zahl von Beitragseinheiten an.

c) Jeder Verbandsstaat kann jederzeit in einer an den Generalsekretär gerichteten Erklärung eine andere als die für ihn nach den Buchstaben *a* oder *b* maßgebende Zahl von Beitragseinheiten angeben. Wird eine solche Erklärung während der ersten sechs Monate eines Kalenderjahrs abgegeben, so wird sie zum Beginn des folgenden Kalenderjahrs wirksam; andernfalls wird die Erklärung zum Beginn des zweiten Kalenderjahrs wirksam, das auf das Jahr folgt, in dem sie abgegeben wurde.

(4)a) Für jede Haushaltsperiode wird der Betrag, der einer Beitragseinheit entspricht, dadurch ermittelt, daß der Gesamtbetrag der Ausgaben, die in dieser Periode aus Beiträgen der Verbandsstaaten zu decken sind, durch die Gesamtzahl der von diesen Staaten aufzubringenden Einheiten geteilt wird.

b) Der Betrag des Beitrags jedes Verbandsstaats ergibt sich aus dem mit der Zahl der für diesen Staat maßgebenden Beitragseinheiten vervielfachten Betrag einer Beitragseinheit.

(5a) Ein Verbandsstaat, der mit der Zahlung seiner Beiträge im Rückstand ist, kann vorbehaltlich des Buchstabens b sein Stimmrecht im Rat nicht ausüben, wenn der rückständige Betrag die Summe der von ihm für die zwei vorhergehenden vollen Jahre geschuldeten Beiträge erreicht oder übersteigt. Die Aussetzung des Stimmrechts entbindet diesen Staat nicht von den sich aus diesem Übereinkommen ergebenden Pflichten und führt nicht zum Verlust der anderen sich aus dem Übereinkommen ergebenen Rechte.

b) Der Rat kann einem solchen Staat jedoch gestatten, sein Stimmrecht weiter auszuüben, wenn und solange der Rat überzeugt ist, daß der Zahlungsrückstand eine Folge außergewöhnlicher und unabwendbarer Umstände ist.

Artikel 27 **Revision des Übereinkommens**

(1) Dieses Übereinkommen kann von einer Konferenz der Verbandsstaaten revidiert werden. Die Einberufung einer solchen Konferenz wird vom Rat beschlossen.

(2) Die Konferenz ist nur dann beschlußfähig, wenn mindestens die Hälfte der Verbandsstaaten auf ihr vertreten ist. Die revidierte Fassung des Übereinkommens bedarf zu ihrer Annahme der Fünfsechstelmehrheit der auf der Konferenz vertretenen Verbandsstaaten.

Artikel 28 **Vom Büro und in Sitzungen des Rates benutzte Sprachen**

(1) Das Verbandsbüro bedient sich bei der Erfüllung seiner Aufgaben der deutschen, der englischen und der französischen Sprache.

(2) Die Sitzungen des Rates und die Revisionskonferenzen werden in diesen drei Sprachen abgehalten.

(3) Der Rat kann, soweit hierfür ein Bedürfnis besteht, die Benutzung weiterer Sprachen beschließen.

Artikel 29 **Besondere Abmachungen zum Schutz von Pflanzenzüchtungen**

Die Verbandsstaaten behalten sich das Recht vor, untereinander zum Schutz von Pflanzenzüchtungen besondere Abmachungen zu treffen, soweit diese Abmachungen diesem Übereinkommen nicht zuwiderlaufen.

Artikel 30 **Anwendung des Übereinkommens im innerstaatlichen Bereich;** **Vereinbarungen über die gemeinsame Inanspruchnahme** **von Prüfungsstellen**

(1) Jeder Verbandsstaat trifft alle für die Anwendung dieses Übereinkommens notwendigen Maßnahmen, insbesondere

a) sieht er geeignete Rechtsmittel vor, die eine wirksame Wahrung der in diesem Übereinkommen vorgesehenen Rechte ermöglichen;

b) richtet er eine besondere Behörde für den Schutz von Pflanzenzüchtungen ein oder beauftragt eine bereits bestehende Behörde mit diesem Schutz;

c) stellt er die öffentliche Bekanntmachung von Mitteilungen über diesen Schutz, zumindest die periodische Veröffentlichung des Verzeichnisses der erteilten Schutzrechte, sicher.

(2) Zwischen den zuständigen Behörden der Verbandsstaaten können Vereinbarungen zum Zweck der gemeinsamen Inanspruchnahme von Stellen getroffen werden, welche die in Artikel 7 vorgesehene Prüfung der Sorten und die Zusammenstellung der erforderlichen Vergleichssammlungen und -unterlagen durchzuführen haben.

(3) Es besteht Einverständnis darüber, daß jeder Staat bei Hinterlegung seiner Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde entsprechend seinem innerstaatlichen Recht in der Lage sein muß, diesem Übereinkommen Wirkung zu verleihen.

Artikel 31 **Unterzeichnung**

Diese Akte wird für jeden Verbandsstaat und für jeden anderen Staat zur Unterzeichnung aufgelegt, der auf der Diplomatischen Konferenz, welche diese Akte angenommen hat, vertreten war. Sie liegt bis zum 31. Oktober 1979 zur Unterzeichnung auf.

Artikel 32 **Ratifikation, Annahme oder Genehmigung; Beitritt**

(1) Jeder Staat bringt seine Zustimmung, durch diese Akte gebunden zu sein, dadurch zum Ausdruck, daß er

a) eine Ratifikations-, Annahme- oder Genehmigungsurkunde hinterlegt, sofern er diese Akte unterzeichnet hat, oder

b) eine Beitrittsurkunde hinterlegt, sofern er diese Akte nicht unterzeichnet hat.

(2) Die Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunden werden beim Generalsekretär hinterlegt.

(3) Jeder Staat, der dem Verband nicht angehört und diese Akte nicht unterzeichnet hat, ersucht vor Hinterlegung seiner Beitrittsurkunde den Rat um Stellungnahme, ob seine Gesetze mit dieser Akte vereinbar sind. Ist der die Stellungnahme beinhaltende Beschuß positiv, so kann die Beitrittsurkunde hinterlegt werden.

Artikel 33 **Inkrafttreten; Unmöglichkeit, früheren Fassungen beizutreten**

(1) Diese Akte tritt einen Monat nach dem Zeitpunkt in Kraft, zu dem die folgenden Bedingungen erfüllt sind:

a) Die Zahl der hinterlegten Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunden beträgt mindestens fünf;

b) mindestens drei der genannten Urkunden sind von Vertragsstaaten des Übereinkommens von 1961 hinterlegt worden.

(2) Für jeden Staat, der seine Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde hinterlegt, nachdem die in Absatz 1 Buchstaben *a* und *b* genannten Bedingungen erfüllt sind, tritt diese Akte einen Monat nach dem Zeitpunkt in Kraft, zu dem die Urkunde dieses Staates hinterlegt worden ist.

(3) Nach dem Inkrafttreten dieser Akte gemäß Absatz 1 kann ein Staat dem Übereinkommen von 1961 in der durch die Zusatzakte von 1972 geänderten Fassung nicht mehr beitreten.

Artikel 34

Beziehungen zwischen Staaten, die durch unterschiedliche Fassungen gebunden sind

(1) Ein Verbandsstaat, der an dem Tag, an dem diese Akte für ihn in Kraft tritt, durch das Übereinkommen von 1961 in der durch die Zusatzakte von 1972 geänderten Fassung gebunden ist, wendet in seinen Beziehungen zu jedem anderen Verbandsstaat, der nicht durch diese Akte gebunden ist, weiterhin das genannte Übereinkommen in der durch die Zusatzakte geänderten Fassung an, bis diese Akte auch für diesen anderen Staat in Kraft tritt.

(2) Ein Verbandsstaat, der nicht durch die vorliegende Akte gebunden ist, («erstgenannter Staat»), kann durch eine an den Generalsekretär gerichtete Notifikation erklären, daß er das Übereinkommen von 1961 in der durch die Zusatzakte von 1972 geänderten Fassung in seinen Beziehungen zu jedem durch diese Akte gebundenen Staat anwenden wird, der Verbandsstaat wird, indem er diese Akte ratifiziert, annimmt, genehmigt oder ihr beitritt («letztgenannter Staat»). Während eines Zeitabschnitts, der einen Monat nach dem Tag einer solchen Notifikation beginnt und mit dem Inkrafttreten dieser Akte für den erstgenannten Staat endet, wendet dieser das Übereinkommen von 1961 in der durch die Zusatzakte von 1972 geänderten Fassung in seinen Beziehungen zu dem letztgenannten Staat an, während dieser diese Akte in seinen Beziehungen zu dem erstgenannten Staat anwendet.

Artikel 35

Mitteilungen über die schutzfähigen Gattungen und Arten; zu veröffentlichte Informationen

(1) Jeder Staat, der nicht bereits Verbandsstaat ist, notifiziert bei der Hinterlegung seiner Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde zu dieser Akte dem Generalsekretär eine Liste der Gattungen und Arten, auf die er dieses Übereinkommen anwenden wird, sobald diese Akte für ihn in Kraft tritt.

(2) Der Generalsekretär veröffentlicht auf der Grundlage von Mitteilungen, die er von dem jeweiligen Verbandsstaat erhalten hat, Informationen über

a) die Ausdehnung der Anwendung dieses Übereinkommens auf weitere Gattungen und Arten nach dem Inkrafttreten dieser Akte für diesen Staat,

- b) jeden Fall, in dem von der in Artikel 3 Absatz 3 vorgesehenen Möglichkeit Gebrauch gemacht wird,
- c) jeden Fall, in dem von Möglichkeiten Gebrauch gemacht wird, die der Rat gemäß Artikel 4 Absatz 4 oder 5 eingeräumt hat,
- d) jeden Fall, in dem von der in Artikel 5 Absatz 4 Satz 1 vorgesehenen Möglichkeit Gebrauch gemacht wird, unter Angabe der Art der weitergehenden Rechte und unter Hinweis auf die Gattungen und Arten, auf die sich solche Rechte beziehen,
- e) jeden Fall, in dem von der in Artikel 5 Absatz 4 Satz 2 vorgesehenen Möglichkeit Gebrauch gemacht wird,
- f) die Tatsache, daß das Recht dieses Staates eine nach Artikel 6 Absatz 1 Buchstabe b Ziffer i zulässige Vorschrift enthält, unter Angabe der Länge der eingeräumten Frist,
- g) die in Artikel 8 bezeichnete Zeitdauer, wenn sie über fünfzehn beziehungsweise achtzehn Jahre hinausgeht.

Artikel 36 Hoheitsgebiete

(1) Jeder Staat kann in seiner Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde erklären oder zu jedem späteren Zeitpunkt dem Generalsekretär schriftlich notifizieren, daß diese Akte auf alle oder einzelne in der Erklärung oder Notifikation bezeichneten Hoheitsgebiete anwendbar ist.

(2) Jeder Staat, der eine solche Erklärung abgegeben oder eine solche Notifikation vorgenommen hat, kann dem Generalsekretär jederzeit notifizieren, daß diese Akte auf alle oder einzelne dieser Hoheitsgebiete nicht mehr anwendbar ist.

(3)a) Jede gemäß Absatz 1 abgegebene Erklärung wird gleichzeitig mit der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt, in deren Urkunde sie enthalten war, und jede Notifikation gemäß jenem Absatz wird drei Monate nach ihrer Notifikation durch den Generalsekretär wirksam.

b) Jede Notifikation gemäß Absatz 2 wird zwölf Monate nach ihrem Eingang beim Generalsekretär wirksam.

Artikel 37 Ausnahmeregelung für den Schutz unter zwei Schutzrechtsformen

(1) Ungeachtet des Artikels 2 Absatz 1 kann jeder Staat, der vor Ablauf der Frist, während der diese Akte zur Unterzeichnung aufliegt, Schutz unter den in Artikel 2 Absatz 1 bezeichneten unterschiedlichen Formen für dieselbe Gattung oder Art vorsieht, diesen weiterhin vorsehen, wenn er dies dem Generalsekretär zu dem Zeitpunkt notifiziert, zu dem er diese Akte unterzeichnet oder zu dem er seine Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde zu dieser Akte hinterlegt.

(2) Wird in einem Verbandsstaat, auf den Absatz 1 anwendbar ist, um Schutz nach dem Patentgesetz nachgesucht, so kann dieser Staat abweichend von Artikel 6 Absatz 1 Buchstaben a und b und Artikel 8 die Patentierbarkeitskriterien und die

Schutzdauer des Patentgesetzes auf die nach diesem Gesetz schutzfähigen Sorten anwenden.

(3) Der betreffende Staat kann jederzeit dem Generalsekretär notifizieren, daß er die nach Absatz 1 vorgenommene Notifikation zurücknimmt. Eine solche Zurücknahme wird zu dem Zeitpunkt wirksam, den der Staat in der Notifikation der Zurücknahme angegeben hat.

Artikel 38

Vorübergehende Einschränkung des Erfordernisses der Neuheit

Ungeachtet des Artikels 6 kann jeder Verbandsstaat, ohne daß daraus den übrigen Verbandsstaaten eine Verpflichtung erwächst, das in jenem Artikel vorgesehene Erfordernis der Neuheit in bezug auf Sorten einschränken, die zu dem Zeitpunkt, zu dem der betreffende Staat dieses Übereinkommen erstmalig auf die Gattung oder Art, welcher die Sorten angehören, anwendet, vorhanden sind, aber erst kurz zuvor gezüchtet wurden.

Artikel 39

Aufrechterhaltung wohlerworbener Rechte

Dieses Übereinkommen läßt Rechte unberührt, die auf Grund des innerstaatlichen Rechtes der Verbandsstaaten oder infolge von Übereinkünften zwischen diesen Staaten erworben worden sind.

Artikel 40

Vorbehalte

Vorbehalte zu diesem Übereinkommen sind nicht zulässig.

Artikel 41

Dauer und Kündigung des Übereinkommens

(1) Dieses Übereinkommen wird auf unbegrenzte Zeit geschlossen.

(2) Jeder Verbandsstaat kann dieses Übereinkommen durch eine an den Generalsekretär gerichtete Notifikation kündigen. Der Generalsekretär notifiziert unverzüglich allen Verbandsstaaten den Eingang dieser Notifikation.

(3) Die Kündigung wird zum Ende des Kalenderjahrs wirksam, das auf das Jahr folgt, in dem die Notifikation beim Generalsekretär eingegangen war.

(4) Die Kündigung läßt Rechte unberührt, die auf Grund dieses Übereinkommens an einer Sorte vor dem Tag erworben worden sind, an dem die Kündigung wirksam wird.

Artikel 42

Sprachen; Wahrnehmung der Verwahreraufgaben

(1) Diese Akte wird in einer Urkchrift in deutscher, englischer und französischer Sprache unterzeichnet; bei Unstimmigkeiten zwischen den verschiedenen Wortlauten ist der franzö-

siche Wortlaut maßgebend. Die Urschrift wird beim Generalsekretär hinterlegt.

(2) Der Generalsekretär übermittelt den Regierungen aller Staaten, die auf der Diplomatischen Konferenz, die diese Akte angenommen hat, vertreten waren, und der Regierung jedes anderen Staates auf deren Ersuchen zwei beglaubigte Abschriften dieser Akte.

(3) Der Generalsekretär stellt nach Konsultierung der Regierungen der beteiligten Staaten, die auf der genannten Konferenz vertreten waren, amtliche Wortlaute in arabischer, italienischer, japanischer, niederländischer und spanischer Sprache sowie in denjenigen anderen Sprachen her, die der Rat des Verbands gegebenenfalls bezeichnet.

(4) Der Generalsekretär lässt diese Akte beim Sekretariat der Vereinten Nationen registrieren.

(5) Der Generalsekretär notifiziert den Regierungen der Verbandsstaaten und der Staaten, die, ohne Verbandsstaaten zu sein, auf der Diplomatischen Konferenz, die diese Akte angenommen hat, vertreten waren, die Unterzeichnungen dieser Akte, die Hinterlegung von Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunden, jede nach den Artikeln 34 Absatz 2, 36 Absätze 1 und 2, 37 Absätze 1 und 3 oder 41 Absatz 2 eingegangene Notifikation und jede nach Artikel 36 Absatz 1 abgegebene Erklärung.

SIGNATORIES

EN FOI DE QUOI, les soussignés, dûment autorisés à cette fin, ont signé la présente Convention.
FAIT à Genève, le vingt-trois octobre mil neuf cent soixante-dix-huit.*

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.
DONE at Geneva, this twenty-third day of October, one thousand nine hundred and seventy-eight.*

ZU URKUND DESSEN haben die hierzu gehörig befugten Unterzeichneten dieses Übereinkommen unterschrieben.

GESCHEHEN zu Genf am dreiundzwanzigsten Oktober neunzehnhundertachtundsiebzig.*

**POUR LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
FOR THE FEDERAL REPUBLIC OF GERMANY
FÜR DIE BUNDESREPUBLIK DEUTSCHLAND**

Per Fischer

**POUR LA CONFÉDÉRATION SUISSE
FOR THE SWISS CONFEDERATION
FÜR DIE SCHWEIZERISCHE EIDGENOSSENSCHAFT**

W. Gfeller

**POUR LA RÉPUBLIQUE FRANÇAISE
FOR THE FRENCH REPUBLIC
FÜR DIE FRANZÖSISCHE REPUBLIK**

B. Laclavière

* *Note/Note/Hinweis*

Toutes les signatures ont été apposées le 23 octobre 1978, sauf si une autre date est indiquée.

All signatures were affixed on October 23, 1978, unless otherwise indicated.

Falls nichts anderes angegeben, wurde die Unterzeichnung am 23. Oktober 1978 vorgenommen.

POUR LA RÉPUBLIQUE ITALIENNE
FOR THE ITALIAN REPUBLIC
FÜR DIE ITALIENISCHE REPUBLIK

Italo Papini

POUR LA RÉPUBLIQUE SUD-AFRICAINE
FOR THE REPUBLIC OF SOUTH AFRICA
FÜR DIE REPUBLIK SÜDAFRIKA

J. F. van Wyk

POUR LE ROYAUME DE BELGIQUE
FOR THE KINGDOM OF BELGIUM
FÜR DAS KÖNIGREICH BELGIEN

P. Noterdaeme

POUR LE ROYAUME DE SUÈDE
FOR THE KINGDOM OF SWEDEN
FÜR DAS KÖNIGREICH SCHWEDEN

Sigvard Mejegård

December 6, 1978

POUR LE ROYAUME DES PAYS-BAS
FOR THE KINGDOM OF THE NETHERLANDS
FÜR DAS KÖNIGREICH DER NIEDERLANDE

W. van Soest

POUR LE ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
FOR THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
FÜR DAS VEREINIGTE KÖNIGREICH
GROSSBRITANNIEN UND NORDIRLAND

Patrick Murphy

POUR LE ROYAUME DU DANEMARK
FOR THE KINGDOM OF DENMARK
FÜR DAS KÖNIGREICH DÄNEMARK

Halvor Skov

POUR LES ÉTATS-UNIS D'AMÉRIQUE
FOR THE UNITED STATES OF AMERICA
FÜR DIE VEREINIGTEN STAATEN VON AMERIKA

Harvey J. Winter

POUR LES ÉTATS-UNIS DU MEXIQUE
FOR THE UNITED MEXICAN STATES
FÜR DIE VEREINIGTEN MEXIKANISCHEN STAATEN

R. Martínez

July 25, 1979

POUR LA NOUVELLE-ZÉLANDE
FOR NEW ZEALAND
FÜR NEUSEELAND

E. Farnon

July 25, 1979

**POUR L'IRLANDE
FOR IRELAND
FÜR IRLAND**

Seán Gaynor

September 27, 1979

**POUR LE JAPON
FOR JAPAN
FÜR JAPAN**

Masao Sawaki

October 17, 1979

**POUR LE CANADA
FOR CANADA
FÜR KANADA**

D. S. McPhail

October 31, 1979

RECOMMENDATIONS

RECOMMENDATION ON ARTICLE 4 OF THE SIGNED TEXT

*adopted by the Diplomatic Conference
on October 23, 1978*

The Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants, held in 1978,

Having regard to Article 4(2) and (3) of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978,

Considering the fact that the Convention of 1961 contains an Annex listing a number of economically important species to which each member State of the International Union for the Protection of New Varieties of Plants had to apply that Convention within certain periods,

Considering further that the Annex has been deleted in the Convention as revised in 1978, thereby giving greater freedom of choice to the member States of the Union and to those States which are intending to become members of the Union to decide which genera and species that Convention is to be applied to,

Conscious of the fact that it is in the interest both of agriculture in general and of breeders in particular that genera and species of economic importance be eligible for protection in each State,

Recommends that each member State of the Union use its best endeavours to ensure that the genera and species eligible for protection under its national law comprise as far as possible those genera and species which are of major economic importance in that State,

Recommends further that each State intending to become a member of the Union choose the genera or species to which, as a minimum, the Convention as revised in 1978 has to be applied at the time of its entry into force in the territory of that State from genera and species of major economic importance in that State.

This Recommendation was unanimously adopted by the Plenary of the Diplomatic Conference on October 23, 1978.

RECOMMENDATION ON ARTICLE 5 OF THE SIGNED TEXT

*adopted by the Diplomatic Conference
on October 23, 1978*

*The Diplomatic Conference on the Revision of the International Convention for
the Protection of New Varieties of Plants, held in 1978,*

*Having regard to Article 5(1) and (4) of the International Convention for the
Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva
on November 10, 1972, and on October 23, 1978,*

*Conscious of the fact that the scope of the protection laid down in Article 5(1)
may create special problems with regard to certain genera and species,*

*Considering it of great importance that breeders be enabled effectively to safe-
guard their interests,*

*Recognizing at the same time that an equitable balance must be struck be-
tween the interests of breeders and those of users of new varieties,*

*Recommends that, where, in respect of any genus or species, the granting of
more extensive rights than those provided for in Article 5(1) is desirable to safe-
guard the legitimate interests of the breeders, the Contracting States of the said
Convention take adequate measures, pursuant to Article 5(4).*

*This Recommendation was unanimously
adopted by the Plenary of the Diplomatic
Conference on October 23, 1978.*

**PRE-CONFERENCE AND
POST-CONFERENCE
DOCUMENTS**

LIST OF THE PRE-CONFERENCE AND POST-CONFERENCE DOCUMENTS

Pre-Conference Document

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
DC/3, Annex II	The Council of UPOV	Report on the Work of the Committee of Experts on the Interpretation and Revision of the Convention; Draft Preamble to the International Convention for the Protection of New Varieties of Plants

Post-Conference Documents

<i>Document Number</i>	<i>Prepared by</i>	<i>Subject</i>
DC/PCD/1	The Office of the Union	Summary of the Main Amendments to the Convention Incorporated in the Revised Text of 1978
DC/PCD/2	The Office of the Union	Summary of the Convention as Revised
DC/PCD/3	The Office of the Union	Provisional Summary Minutes of the Plenary Meetings of the Diplomatic Conference (in English)
DC/PCD/4	The Office of the Union	Provisional Summary Minutes of the Plenary Meetings of the Diplomatic Conference (in German)
DC/PCD/5	The Office of the Union	Provisional Summary Minutes of the Plenary Meetings of the Diplomatic Conference (in French)

TEXT OF THE PRE-CONFERENCE AND POST-CONFERENCE DOCUMENTS

Pre-Conference Document

DC/3, Annex II

January 30, 1978 (Original: English)

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

Report on the Work of the Committee of Experts on the Interpretation and Revision of the Convention (prepared by Mr. H. Skov, Chairman of the Committee of Experts on the Interpretation and Revision of the Convention and dated November 1, 1977)

I. Establishment and Activities of the Committee

1. The Committee was established by the Council at its eighth ordinary session held from October 24 to 26, 1974. The main task of the Committee was to examine questions of interpretation of the present text of the Convention and to prepare draft amendments to the Convention.

2. The decision to establish the Committee was taken following a meeting held from October 21 to 23, 1974, with representatives of several non-member States and professional international organizations, the purpose of which was to provide information on the aims and the work of UPOV and to discuss the conditions which might need to be fulfilled to make UPOV attractive to States which do not yet belong to it.

3. The Committee has met in the following six sessions:

First session: February 25 to 28, 1975

Second session: December 2 to 5, 1975

Third session: February 17 to 20, 1976

Fourth session: September 14 to 17, 1976

Fifth session: March 8 to 10, 1977

Sixth session: September 20 to 23, 1977

The third and fifth sessions were attended by a considerable number of representatives of non-member States and professional international organizations.

4. In September 1975 members of the Committee visited the United States of America and Canada. The purpose of visiting the United States of America was, first, to examine on the spot the two systems existing in the United States of America for the protection of plant breeders' rights—with particular reference to the examination of new varieties of plants—for the purpose of obtaining the necessary information from the government authorities and selected circles of breeders in that country on the prospects of the country's accession to the UPOV Convention and, second, to discuss questions of mutual interest with those government authorities and breeders' circles. The purpose of visiting Canada was to have discussions there with the Canadian Department of Agriculture and Canadian breeders' organizations in view of the fact that the introduction of a plant variety protection system was under discussion in Canada.

5. In connection with the meetings of the Committee the Working Group on Variety Denominations has met to discuss those provisions of the Convention which fall under the terms of reference of that Working Group.

II. Analysis of the Text

6. At its fourth session the Committee decided to submit a full revised Act, that is, a text comprising both the unchanged provisions of the existing Convention of 1961 and of the Ad-

ditional Act of 1972 and those provisions where changes are proposed. The Committee hereby submits the text contained in document C/XI/12¹ to serve as the basis for the deliberations of a Diplomatic Conference.

7. In the following paragraphs the main questions which have required the special attention of the Committee will be dealt with. For minor details reference is made to the text proposed by the Committee and the attached explanatory notes.

8. The Committee discussed at length the provision in the second sentence of Article 2(1) according to which protection for one and the same genus or species must be granted only under one of the two possible forms of protection, a patent or a special title of protection. The Committee felt that the provision under discussion was justified for those States which progressively extend the protection species by species, as is the case in most States, and for those States the Committee considered it desirable to maintain the principle of only one form of protection for the same genus and species. On the other hand, the Committee recognized that the said provision might lead to difficulties in States where for historical reasons vegetatively propagated plants can be protected by the grant of plant patents while sexually reproduced plants can be protected by the grant of a special title of protection. For that reason the Committee has agreed on an exceptional clause whereby such States may continue their established practice (see Article 34A of the proposed text).

9. For several reasons the Committee has found it expedient to maintain the definition of "variety" in Article 2(2) but to redraft it, first of all in order to include in the definition new types of varieties which have been developed since the adoption of the Convention, such as multilines or multiclines, and which will be developed in the future as a result of the progress in the field of plant breeding. The wording of the definition proposed by the Committee follows the generally accepted language (see for instance the International Code of Nomenclature of Cultivated Plants) and includes any population or assemblage of plants which is capable of cultivation and which is sufficiently homogeneous and stable.

10. On the other hand, the Committee is aware of the fact that some States may not be able to protect all types or categories of plants of a given species. A practical example is a division of species into ornamental plants and "utility plants" (e.g., fruit-bearing plants or fodder plants). But above all mention should be made of hybrids which are not eligible for protection in some States, because the breeders' interests are considered to be sufficiently safeguarded by the *de jure* protection or *de facto* possession of the inbred lines. For that

Editor's Note: ¹ *In substance, the contents of this document are reproduced in an adjusted format in the part of these Records entitled "Basic Texts" on pages 11 to 76.*

reason the Committee has proposed the addition of a new paragraph leaving the member States free to decide which type or types of varieties will be protected.

11. When the original text of the Convention was drafted, in 1961, the drafters confined themselves to an obligatory list of 15 important species that were of particular significance in the European context: the list contained in the Annex to the Convention and mentioning those species to which member States were obliged to apply the Convention within certain time limits. The Committee was aware of the fact that this list is less relevant in other parts of the world, and that a considerable number of non-European States would find it difficult to apply the Convention to all these species, for which reason the existing list would constitute one of the major obstacles to the accession of several States to UPOV. On the other hand, experience in the present member States has proved that, normally, States are able to extend the Convention to a far greater number than the minimum requirement in the list. For these reasons the Committee decided to propose a complete deletion of the list and to increase to 24 the minimum number of genera and species to be protected successively within a prescribed period, it being understood that the choice of the genera and species to be protected in each member State would be entirely a matter for that State (see Article 4(3) of the proposed text). However, some States may find difficulties in extending the protection to 24 genera and species, for which reason Article 4(4) and (5) of the proposed text authorizes the Council of UPOV to grant exemptions in special cases.

12. According to the existing Convention member States may derogate from the national treatment principle in the case of genera and species not included in the list (and instead may limit the benefit of protection to nationals of those other member States in which their own nationals enjoy protection for the same genus or species under the reciprocity principle), whereas the national treatment principle applies in the case of all genera and species included in the list so that nationals of member States which have not (yet) extended protection to a given genus or species included in the list are entitled to protection in other member States where the genus or species has already been made eligible for protection. As a consequence of the deletion of the list referred to in the preceding paragraph, the Committee has opted for the reciprocity principle in respect of all genera and species. The corresponding provision has been transferred from Article 4(4) of the existing text to Article 3(3) of the proposed text.

13. Several proposals have been made with a view to extending the rights of the breeders as specified in Article 5 of the present text. In particular, it has been proposed, in respect of ornamental plants, to extend the protection to the final product (typically, the cut flower). The Committee was aware of the fact that cut flowers and—to some extent—plants are imported from non-member states to member States without any royalty being paid to the breeder. Since such practice is prejudicial not only to the breeders but also to the national producers because of the distortion of competition in the importing member States, the Committee has expressed sympathy with the idea of assuring the breeders of royalties for such imported goods. However, the Committee considered that provisions to that effect should be established by national legislation by virtue of Article 5(4), since an extension of the minimum protection provided for in Article 5 might seriously jeopardize ratification of or accession to the revised text. The Committee took the same stand in the case where seed is multiplied not for the purpose of selling it but for the purpose of using it, in the same enterprise, for the production of plantlets for sale, which under the present text of the Convention does not require the authorization of the breeder. However, some members of the Committee declared their intention to raise the question of the adoption of a recommendation to member States to legislate so as to ensure the rights of the breeders in both cases.

14. In answer to the question whether or not the sale of seed from one farmer to another should be considered commercial

marketing within the meaning of Article 5, the Committee has stated that it lay within the competence of the member States to define in their domestic laws what is to be regarded as commercial marketing, and provided that the sale from farmer to farmer is performed within very narrow restrictions it may be considered as not being an infringement of the Convention.

15. The novelty requirements laid down in Article 6 of the present Convention for granting protection of a variety can be summarized as follows:

(a) the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for;

(b) at the time of application for protection in a member State the variety itself must not have been offered for sale or marketed, with the consent of the breeder, in that State or for longer than four years in another State.

ad a. The Committee has discussed a possible rewording of the expression "*important characteristics*," so as to clarify the text. However, since no practical difference was seen in the standards applied for judging distinctness, and since the Council has adopted, in connection with the establishment of test guidelines, an explanation which is generally accepted, the Committee saw no need for further clarification. The explanation which is contained in document TG/1/1, entitled "General Introduction to the Guidelines for the Examination of Distinctness, Homogeneity and Stability of New Varieties of Plants," reads as follows:

"An important characteristic is not necessarily a quality which is connected with the idea of a certain value which the variety may possess. The characteristics listed in the Guidelines are important for distinguishing varieties one from another, but these lists are not exhaustive and other characteristics may be added when they have been found useful."

ad b. Some patent and other legislations allow a period of one year before the application ("period of grace") in which it is permitted to make the invention publicly known (for plant varieties in particular: to market the varieties) without causing prejudice to novelty. The Committee was aware of the fact that States having established the tradition of a period of grace and even States envisaging the introduction of a period of grace would encounter insurmountable difficulties in acceding to the Convention unless the Convention permitted the period of grace, and therefore the Committee has decided to propose this possibility. In addition, it is proposed that the period of four years, expiring at the filing date of the application, during which the variety may have been offered for sale or marketed in a State other than the State in which the application is filed be extended to a period of six years in the case of certain groups of plants which are usually slow-growing and for which the Convention already envisages a longer minimum period of protection.

16. A special explanation should be given for the concept of "common knowledge." Under Article 6(1)(a) of the present Convention this concept is related to the other varieties with which the submitted variety must be compared in the course of examination, and the factors by which common knowledge may be established are explained in the Convention. The Committee does not propose any change in this respect. However, the Committee has felt it desirable also to specify the relation of this concept to the variety submitted for the granting of protection (the variety itself) by adding a provision in Article 6(1)(b) (*in fine*) to clarify that common knowledge (for instance, by means of a publication) of the variety itself shall not affect the right to protection unless such common knowledge has been established by offering the variety for sale or marketing. This provision contradicts the current patent novelty criteria; and would cause difficulties in some States, especially those States which provide for protection under different forms for sexually reproduced and for vegetatively propagated varieties. In order to obviate this difficulty an exemption clause is proposed in Article 34A.

17. Regarding the examination of the variety referred to in Article 7 of the present Convention, the Council adopted at its tenth ordinary session (October, 1976) the following statement:

"(1) It is clear that it is the responsibility of the member States to ensure that the examination required by Article 7(1) of the UPOV Convention includes a growing test, and the authorities in the present UPOV member States normally conduct these tests themselves; however, it is considered that, if the competent authority were to require these tests to be conducted by the applicant, this is in keeping with the provisions of Article 7(1), provided that

(a) the growing tests are conducted according to guidelines established by the authority, and that they continue until a decision on the application has been given;

(b) the applicant is required to deposit in a designated place, simultaneously with his application, a sample of the propagating material representing the variety;

(c) The applicant is required to provide access to the growing tests mentioned under (a) by persons properly authorized by the competent authority.

(2) A system of examination as described above is considered compatible with the UPOV Convention."

It should be noted that the consequence of failure to give access to the growing tests is that the application will be rejected.

18. Considering the total period of five years after the deposit of the first application in a member State during which the breeder can defer, under Article 12 of the present Convention, the furnishing of the required additional plant material to other member States where the breeder has also applied for protection, the danger exists that a breeder in order to get priority might file an application in respect of a variety which he has not yet finished, even foreseeing that protection may be rejected in the member State where the first application was lodged. In order to avoid such a situation—or at least to limit the period—the Committee has decided to propose that when the first application has been withdrawn or rejected the States where the subsequent filings have been made may require the additional documents and material to be furnished within an adequate period.

19. Whereas the present text (Article 13(3)) provides that a breeder who submits his trademark as a variety denomination must *renounce* his right to the trademark, it is proposed in the new text only to provide that he may *no longer assert* his right to the trademark. Furthermore, it is proposed that this provision should be limited to member States applying the provisions of the Convention to the genus or species to which the variety belongs.

20. No other major amendments to Article 13 have been proposed. The Committee was unable to accept a proposal to delete the second part of the first sentence of Article 13(2): "in particular, it (the denomination) may not consist solely of figures." However, considering that some States which have the established practice of admitting variety denominations consisting solely of figures might find it difficult or impossible to join UPOV on account of the provision in Article 13(2), the Committee has proposed a possibility of derogation from that provision (see Article 36A).

21. The main proposals for amendments to provisions related to the functioning of UPOV and to treaty law can be summarized as follows:

(a) to omit the provisions regarding the supervision by the Government of the Swiss Confederation;

(b) to substitute for the authority given to UPOV to decide on cooperation with BIRPI a provision giving UPOV legal capacity in general;

(c) to expand the scale of contributions from member States;

(d) to entrust the Secretary-General of UPOV with the depositary functions in respect of the new Act and to receive

instruments of ratification and accession as well as notifications;

(e) to amend the present procedure of accession to the Convention by States which have not signed the Convention;

(f) to include an Article establishing the relations between States bound by different texts.

ad a. In 1961 when the Convention was set up, BIRPI was under the supervision of the Swiss Government, and in view of the cooperation foreseen between UPOV and BIRPI it was only natural that UPOV should also be placed under the same supervision. Since then BIRPI has been replaced by WIPO, which is not under that supervision, and since UPOV is now continuing the cooperation with WIPO, it is equally natural that the supervision by the Swiss Government should be brought to an end. It should be added that the Swiss Government has declared that it would have no objection to the proposed amendment.

ad b. Considering the above-mentioned proposal to discontinue the special role of the Swiss Government and the replacement of BIRPI by WIPO, the provision on cooperation with BIRPI cannot be maintained in its present form. In order to take account of this new situation the Committee proposes to include in the new text a provision giving UPOV legal capacity in general as is the case for other international Unions of a similar nature. Furthermore, the Committee proposes the omission of a special reference to WIPO, since such reference could be interpreted as excluding the possibility of cooperation with other public or private international organizations. In this connection the Committee wishes to express its entire satisfaction with the existing relations between UPOV and WIPO and to stress that it does not envisage a change of the established cooperation.

ad c. The present contribution system operates with a relatively low range from the highest class to the lowest, namely, one to five, and only in exceptional circumstances can the lowest class be diminished to one-tenth of the highest. In order to widen this range and give more flexibility as a whole the Committee proposes additional classes above, below and between the present classes with the possibility of allowing smaller fractions in exceptional circumstances.

ad d. It is proposed to discontinue the relatively complicated system set up in the present Convention under which instruments of ratification shall be deposited with the French Government, while instruments of accession shall be deposited with the Swiss Government and some declarations shall be made to the French Government and other declarations and notifications to the Swiss Government. Instead it is proposed that the Secretary-General of UPOV shall be entrusted with all the tasks relating to depositary functions and receipt of notifications.

ad e. Under the present Convention States which have not signed it may apply for accession to the Convention and thereby become members of UPOV only if the Council by a qualified majority considers that the legislation, etc., of that State conforms with the Convention. This admission procedure is proposed to be amended in the new text in such a way that States which have not signed it should consult the Council in respect of their legislation before depositing their instruments of accession. In view of the very special requirements of the Convention regarding the national laws such procedure is desirable.

ad f. Whereas there is no problem in respect of the relationship between States which are bound only by the old text ("old members") and between States which are bound only by the new text, whether or not they are "old" or "new" members, the Committee considers it necessary to establish the relationship between "old" members some of which are also bound by the new text and some of which are not. The Committee considers it expedient to clarify that in this case the relationship shall be based on the old text. This leaves the relationship between States bound only by the old text ("old members") and States bound only by the new text ("new members"). For this case the Committee proposes that a link could be established by means of a notification made by the old member States declaring that they will consider them-

selves bound by the old text vis-à-vis the new member States with the consequence that the new member States will be bound by the new text vis-à-vis the States making such a declaration. In this connection it should be mentioned that, according to established practice, the member States constitute one Union, that is a single entity from the administrative point of view, with the consequence that there is only one Council, one budget and one set of accounts, and there is not a separate administration for each separate Act of the Convention, although the member countries are bound by different Acts and pay their contributions on the basis of these different Acts.

III. Conclusion

22. By submitting this report and the Draft Convention the Committee considers its task fulfilled. The Chairman wishes to underline the spirit of cooperation and goodwill in which all the members of the Committee as well as the Secretariat have contributed to the work. It should also be underlined that the members of the Committee have acted in a strictly personal capacity, not binding their Governments and not necessarily representing the point of view of their Governments. Necessary compromises have been found without any intention of satisfying national wishes. It is a pleasure for the Chairman to express his appreciation of the atmosphere of mutual understanding and friendship which has characterized the joint efforts to achieve the best possible solutions.

Draft Preamble to the International Convention for the Protection of New Varieties of Plants (submitted by the Chairman of the Committee of Experts on the Interpretation and Revision of the Convention)

THE CONTRACTING STATES,

Considering that the International Convention for the Protection of New Varieties of Plants, of December 2, 1961, hereinafter referred to as "the Convention", has proved a

valuable instrument for international cooperation in the field of the protection of the rights of breeders,

Reaffirming their statements contained in the Preamble to the Convention to the effect that

- (i) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (ii) they are conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- (iii) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

Considering that in recent years the idea of protecting the rights of breeders has gained a strong foothold in many States which have not yet acceded to the Convention,

Having regard to the fact that for some of these States minor amendments to the Convention are necessary before they will be able to accept it,

Considering that the necessary amendments do not in general affect the main principles of the Convention,

Anxious to reach an agreement on these principles to which other States having the same interests may be able to adhere,

Considering, furthermore, that some provisions regulating the working of the Union created by the Convention should be updated,

Have agreed as follows:

.....

Post-Conference Documents

DC/PCD/1

March 21, 1979 (Original: English)

THE OFFICE OF THE UNION

Summary of the Main Amendments to the Convention Incorporated in the Revised Text of 1978

INTRODUCTION

1. A meeting of member and non-member States of the International Union for the Protection of New Varieties of Plants (UPOV) was held in Geneva from October 21 to 23, 1974, and was also attended by representatives of an intergovernmental organization and several international non-governmental organizations. The purpose of that meeting was to provide information on the aims and the work of UPOV and to discuss the conditions which might need to be fulfilled to make UPOV attractive to States which did not yet belong to it. A permanent record of what was said at that meeting was printed in 1975 in UPOV publication No. 330.

2. As a result of the discussion, the Council of UPOV established "the Committee of Experts on the Interpretation and Revision of the Convention," which held six sessions in 1975, 1976 and 1977. That Committee prepared a draft revised text of the International Convention for the Protection of New Varieties of Plants, comprising certain unchanged provisions of the existing Convention of December 2, 1961, as amended by the Additional Act of November 10, 1972 (hereinafter referred to as "the present text of the Convention" or "the pres-

ent text"), and certain provisions where changes were proposed. This new text, which was to serve as the basis for the deliberations of the Diplomatic Conference to be held in Geneva from October 9 to 23, 1978, was distributed as document DC/3 on January 30, 1978, to all member States of the Union, to some 148 non-member States and to a number of intergovernmental and international non-governmental organizations.

3. On October 23, 1978, the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Diplomatic Conference") unanimously adopted the Revised Text of the Convention (hereinafter referred to as "the Revised Text"). The Revised Text was laid open for signature on the same date and was immediately signed by nine of the present ten member States and by the United States of America. The tenth member State signed the Revised Text on December 6, 1978.

4. The amendments incorporated in the Revised Text can conveniently be summarized under three headings:

- (a) amendments to facilitate the joining of the Union by further States;

- (b) amendments to the treaty law and administrative provisions of the Convention;
- (c) other amendments (principally of a technical and drafting nature).

AMENDMENTS TO FACILITATE THE JOINING OF THE UNION BY FURTHER STATES

Preamble

5. The desire of the Diplomatic Conference to provide an opportunity for wider membership of the Union is clearly demonstrated in the Preamble, which states: "The Contracting Parties, ... Considering that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention, [and] Considering that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States, ... Have agreed [upon the Revised Text]."

Article 4: Botanical Genera and Species Which Must or May be Protected

6. When the present text of the Convention was drafted, in 1961, a list of important genera and species was established in the Annex to the Convention and member States were obliged to apply the Convention progressively to those genera and species. The genera and species listed are of particular significance in the European context and were fixed mainly with regard to the situation prevailing in countries of the temperate climatic zone. The genera and species listed are less relevant in other parts of the world and a considerable number of non-European States would find it difficult to meet the obligation to apply the Convention progressively to all of them. If this obligation were maintained, it would constitute one of the major obstacles to the adherence of several States to UPOV. Since it was not possible to agree on an obligatory list of genera and species which would be suitable for all countries, a practical solution was sought in abandoning the concept completely. That is precisely what the new wording of Article 4 does.

7. Experience in the present member States has shown that, normally, States are able to apply the Convention to a far greater number of genera and species than the minimum required in the present text. For that reason, the minimum number of genera or species to be protected successively within a prescribed period has been increased to 24. Because some States may find it difficult to apply protection to so many genera and species, provision has been made in Article 4(4) of the Revised Text for the Council of UPOV to grant exemption in special cases, reducing, for the purposes of such States, the said minimum numbers of genera or species to be protected or extending the periods within which such States would have to apply the Convention to them. The latter form of exemption may also be granted under the provisions of Article 4(5) where a member State encounters special difficulties in fulfilling its obligations to apply the Convention to the said minimum numbers of genera or species.

8. The wording of Article 4(3) in the Revised Text would leave each member State entirely free to choose the genera and species which it would make eligible for protection in order to fulfill its obligation under the Convention in this respect. The Diplomatic Conference, "conscious of the fact that it is in the interest both of agriculture in general and of breeders in particular that genera and species of economic importance be eligible for protection in each State," adopted a Recommendation on Article 4 in which each member State of the Union is encouraged to "use its best endeavours to ensure that the genera and species eligible for protection under its national law comprise as far as possible those genera and species which are of major economic importance in that State." The Recommendation also encourages each State intending to become a member of the Union to "choose the genera or species to which, as a minimum, the Convention as revised in 1978 has to be applied at the time of its entry into

force in the territory of that State from genera and species of major economic importance in that State."

Article 2: Forms of Protection

9. Article 2(1) specifies that, where the national law of a member State of the Union admits of protection both under special titles of protection and under patents, protection for one and the same genus or species may be granted only in one of these two possible forms of protection, that is to say, by the grant either of a special title of protection or of a patent. The wording of this provision is the same as in the present text of the Convention. The Diplomatic Conference recognized, however, that some States interested in joining the Union might find it difficult to change existing laws under which, for historical reasons, protection might occasionally be granted in both the above-mentioned forms for varieties of the same genus or species. The Diplomatic Conference therefore adopted a clause providing for an exception whereby such States may continue their established practice (see Article 37(1) of the Revised Text). Such States may derogate from certain other provisions of the Convention (see Article 37(2) of the Revised Text).

10. Article 2(2) contains an entirely new provision which makes it clear that a member State may apply the Convention to only some of the varieties of a genus or species. Such varieties can be defined on the basis of the manner of reproduction or multiplication, for instance: sexually reproduced varieties and vegetatively propagated varieties; pure lines, hybrids, open-pollinated varieties, apomictic varieties, etc. They may also be defined by the intended use of the varieties, for instance: forest varieties, ornamental varieties, fruiting varieties, rootstocks, etc. This new paragraph leaves member States free to decide which type or types of varieties can be protected. To take a practical example, some States exclude hybrid varieties from protection because the breeders' interests are considered to be sufficiently safeguarded by the *de jure* protection or *de facto* possession of the components. Article 4(3)(c) specifies that such a limitation of protection does not prevent the genus or species in question from being counted as a complete genus or species in relation to the minimum numbers of genera or species to which a member State has to apply the Convention according to Article 4(3)(a) and (b).

Article 6(1)(b): Conditions Required for Protection — Prior Commercialization

11. The sole novelty requirement, as laid down in Article 6 of the present text, is that "at the time of the application for protection in a member State of the Union, the new variety must not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of that State, or for longer than four years in the territory of any other State."

12. In at least one non-member State of the Union—the United States of America—breeders are granted a period of one year, expiring on the date of the filing of the application for protection in that country, during which they can use and sell a variety without thereby causing prejudice to their right to obtain protection for it. It is understood that other States might be interested in following that example. The period of one year, called "period of grace," is favorable to breeders in so far as it allows them a certain time in which to test the economic value of a variety, and its suitability for being protected, in the country in question, before taking a decision on whether it is worth applying for protection there. The period of grace is a well-established tradition of many patent laws and some non-member States would encounter insurmountable difficulties in acceding to the Convention if it did not permit them to maintain—or to introduce—such a period. The Diplomatic Conference therefore included a provision in Article 6(1)(b) of the Revised Text which allows member States to grant a period of grace.

Article 13: Variety Denomination

13. The major changes in Article 13 are set out in paragraphs 14 to 16 below.

14. Article 13(2) now provides for an exception to the requirement that a denomination "may not consist solely of figures" by adding "except where this is an established practice for designating varieties." In a number of States which are interested in joining the Union, breeders are allowed to designate their varieties by a series of figures. Such denominations have become customary in those States, at least with respect to certain genera or species, and a continuation of the requirement set down in the present text would probably have constituted, for those States, an insurmountable obstacle to their joining the Union.

15. The original text of Article 13 contains a number of specific references to the relationship between variety denominations and trademarks. The requirements of the original text have given rise to procedural difficulties for authorities in member States of the Union and may also have prevented breeders from obtaining trademark protection in States in which they are unable to enjoy plant variety protection because such protection is simply not—yet—available. With the exception of Article 13(8), which relates to the association of "a trade mark, trade name or other similar indication with a registered variety denomination," the new wording makes no specific reference to the relationship between variety denominations and trademarks, thus leaving the question to be regulated by member States under their domestic legislation. The Revised Text, however, now expressly stipulates that member States will be obliged to ensure that no rights in the designation registered as the denomination of the variety "shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection" (Article 13(1)). Prior rights of third parties are not affected; where they would stand in the way of the use of a variety denomination, the breeder will be asked to submit another denomination.

16. Article 36 of the present text, which provides for transitional rules concerning the relationship between variety denominations and trademarks, will become superfluous and has not been included in the Revised Text.

Article 42: Languages

17. The Convention of 1961 and the Additional Act of 1972 were signed in one authentic text in the French language, while official translations were provided for in the Dutch, English, German, Italian and Spanish languages (see Article 41(1) and (3) of the Convention and Article VIII (1) and (2) of the Additional Act). According to Article 42(1) and (3) of the Revised Text, that Text is signed in three languages, namely in the French, English and German languages, the French text prevailing, however, should there be "any discrepancy among the various texts"; official texts are also to be established in the Arabic and Japanese languages in addition to the Dutch, Italian and Spanish languages, while, of course, the English and German languages have now had to be deleted from the list of those languages in which official texts have to be established.

AMENDMENTS TO THE TREATY LAW AND ADMINISTRATIVE PROVISIONS OF THE CONVENTION*Article 15: Organs of the Union*

18. In Article 15 of the Revised Text it is no longer provided that the Office of UPOV should be under the high authority of the Swiss Confederation. To that effect, the last sentence of Article 15 of the present text of the Convention was deleted by the Diplomatic Conference as were the references to the supervisory role of the Government of the Swiss Confederation in other Articles. That supervisory role was in-

deed a mere consequence of the fact that, according to Article 25 of the present text of the Convention, technical and administrative cooperation was established between UPOV and the United International Bureaux for the Protection of Intellectual Property (BIRPI), the predecessor of the World Intellectual Property Organization (WIPO), and that BIRPI was under the supervision of the Government of the Swiss Confederation. In 1967, however, with the adoption of the Convention Establishing the World Intellectual Property Organization (WIPO), BIRPI was for all practical purposes replaced by WIPO. The Government of the Swiss Confederation has no supervisory functions in relation to WIPO and it seemed logical to provide for the termination of this supervisory role in relation to UPOV as well, especially as UPOV has had since its creation an organ (its Council) which can effectively control the Union.

19. Consequential amendments are incorporated in Articles 20, 21, 23, 24, 32, 35 (33 in the present text), 36 (34 in the present text) and 41 (40 in the present text). Article 25 of the present text is omitted from the Revised Text.

Article 24: Legal Status

20. In view of its decision that UPOV should no longer be under the supervision of the Government of the Swiss Confederation, the Diplomatic Conference decided that it would be useful to insert provisions expressly mentioning UPOV's legal status. These new provisions are found in Article 24 of the Revised Text. Paragraph (1) specifies that the Union possesses legal personality within the meaning of international public law, while paragraph (2) confers on the Union legal capacity under the national laws of its member States as far as is necessary "for the fulfilment of the objectives of the Union and for the exercise of its functions." Paragraph (3) provides for the conclusion of a headquarters agreement with the Swiss Confederation.

21. The deletion of Article 25 of the present text regarding cooperation with the Unions administered by BIRPI does not mean, as the Council of UPOV expressly stated in its eleventh ordinary session in December 1977, that the Union does not wish to preserve the existing arrangements with WIPO; on the contrary, it is planned to continue the present cooperation under an agreement to be negotiated and concluded between UPOV and WIPO once the Revised Text enters into force.

Article 26: Finances

22. A more flexible system for fixing the annual contributions of member States of the Union has been introduced in this Article of the Revised Text. The present contribution system, which offers member States the choice of a number of classes each comprising a fixed number of contribution units, operates within a relatively small range from the lowest contribution to the highest (one to five) and only in exceptional circumstances can the lowest contribution be reduced to one-tenth of the highest. The new wording, which abandons the system of classes and provides only for contribution units—the minimum being one-fifth of one unit—should prove to be more flexible and equitable, allowing each State more easily to choose the appropriate level for its contribution. This change should facilitate the joining of the Union by further States.

Article 32: Ratification, Acceptance or Approval; Accession

23. Article 32(2) provides that "instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General" of UPOV.

24. This provision, which follows contemporary practice as regards treaties concluded under the aegis of an intergovernmental organization, introduces a highly practical solution compared with the complex situation prevailing in the orig-

inal text of the Convention of 1961 and in the Additional Act of 1972 under which the comparable instruments are to be deposited in some cases with the Government of the French Republic and in other cases with the Government of the Swiss Confederation.

25. Similar amendments have been introduced elsewhere in the Revised Text in respect of other depositary functions. Those functions also have been entrusted to the Secretary-General of the Union.

26. The possibility of expressing consent to be bound by the Revised Text also by depositing instruments of acceptance or approval has been introduced in order to permit States to avail themselves of that form of instrument which is most appropriate under their Constitution.

27. Article 32(3) of the Revised Text amends the present procedure for accession to the Convention by States which are not members of the Union and which have not signed the Revised Text. Under the present text of the Convention, a State which has not signed that text may apply for accession to the Convention and become a member of UPOV only if the Council considers by a qualified majority that the conditions for accession to the Convention by that State are met. This special procedure for admitting States to accession is amended in the Revised Text in such a way that States which have not signed that Text have to ask the Council for advice in respect of their legislation before depositing their instruments of accession and can deposit such instruments only if the Council's advice is positive. In view of the very special requirements of the Convention regarding national laws, such procedure seemed to be indispensable.

Article 34: Relations Between States Bound by Different Texts

28. This new Article achieves two things: *first*, it regulates the relations between States which became members of the Union by ratifying or acceding to the present text ("old members") where some of them are already bound by the Revised Text but the others are not yet bound by it; *second*, it allows the establishment of treaty relations between old members not yet bound by the Revised Text and States which become members of UPOV by ratifying, accepting, approving or acceding to the Revised Text (and the Revised Text only) ("new members").

29. As to the first relationship, the solution is that the present text continues to apply as between any old member already bound by the Revised Text and any old member not (yet) bound by the Revised Text.

30. As to the second relationship, i.e., the relationship between old members not yet bound by the Revised Text and new members, the possibility is offered of creating a relationship. The initiative lies with the old members. If an old member declares that it wishes to create such a relationship, then, such a relationship comes into existence and takes the form of the application:

(i) *of the present text* by that old member (until it becomes bound by the Revised Text) in its relations with the new members;

(ii) *of the Revised Text* by the new members in their relations with that old member.

31. All member States, old members and new members, will, however, constitute one Union, that is a single entity from the administrative point of view, with the consequence that there is only one Council, one budget and one set of accounts, and there is not a separate administration for each separate text of the Convention, although the member States are bound by different texts and pay their contributions on the basis of these different texts.

OTHER AMENDMENTS

Article 3(3): National Treatment; Reciprocity

32. This new paragraph corresponds to the first part of paragraph (4) of Article 4 in the present text, which it replaces. It allows member States to restrict under certain conditions the national treatment principle, embodied in the provisions of paragraphs (1) and (2) of Article 3, submitting the access to protection under the national law, as far as each genus or species is concerned, to the reciprocity rule. The new paragraph differs, however, from the first part of paragraph (4) of Article 4 in the present text in that it refers to *any* genus or species and not only to those genera or species which are not included in the list annexed to the Convention of 1961. This difference is a necessary consequence of the deletion of that list (see paragraphs 6 to 8 above). The change made will allow member States to restrict access to protection to a larger extent than is admissible under the present text. The Diplomatic Conference decided to add this provision to Article 3 rather than leave it in Article 4, since it authorizes member States to derogate from the first two paragraphs of Article 3 while the present links with Article 4 no longer exist in the Revised Text.

33. The second part of Article 4(4) in the present text of the Convention has been omitted as being superfluous since none of the options mentioned in that part are prevented by the Convention. For similar reasons, the possibility provided for under Article 4(5) of the present text of the Convention has also been omitted.

Article 5: Rights Protected; Scope of Protection

34. The first sentence of Article 5(1) has been rearranged to make it clearer that all the three activities specified as requiring prior authorization by the breeder relate equally to the reproductive and vegetative propagating material as such.

35. The Diplomatic Conference considered it desirable to draw greater attention to the possibilities provided for by Article 5(4) to grant "a more extensive right." It adopted a Recommendation to the effect that, "where, in respect of any genus or species, the granting of more extensive rights than those provided for in Article 5(1) is desirable to safeguard the legitimate interests of the breeders, the Contracting States of the said Convention [should] take adequate measures pursuant to Article 5(4)."

Article 6(1)(b)(ii): Conditions Required for Protection — Novelty

36. Article 6(1)(b) of the present text of the Convention provides that a variety may have been offered for sale or marketed in a State, other than the State in which an application for protection is filed, for up to a period of four years, expiring at the filing date of the application, without prejudicing the novelty. Article 6(1)(b)(ii) of the Revised Text extends that period to six years "in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks," thus taking into account the fact that these plants are usually slow-growing so that more time is needed for judging whether it is worth while to apply for protection for a variety or not. Article 8 of both the present text of the Convention and the Revised Text provides for a longer minimum period of protection for these groups of plants.

37. The last two sentences of Article 6(1)(b) of the Revised Text, which correspond to the first sentence of Article 6(1)(b) in the present text of the Convention, specify that common knowledge (acquired, for instance, by means of publication) of the variety itself shall not affect the right to protection unless such common knowledge has been established by offering the variety for sale or marketing.

38. This provision is different from the traditional patent novelty criteria, and might cause problems in States providing protection for plant varieties in the form of a patent. In order to obviate this difficulty at least for those States falling under the narrow exception of Article 37(1) of the Revised Text (see paragraph 9 above), an exemption is provided in Article 37(2) of that Revised Text.

Article 12(3): Right of Priority — Four-Year Period

39. The Diplomatic Conference decided, in view of certain procedural difficulties which were foreseen, to add a sentence to the text of Article 12(3) of the present text of the Convention. This is now the final sentence of Article 12(3) in the Revised Text. This additional sentence allows member States to shorten the four-year period which is normally granted to applicants benefiting from the right of priority for furnishing any "additional documents" (that is, other than the certified copy of the first application) and "material" (that is, a sample of the variety) to the office with which the subsequent application is filed, where the first application has been rejected or withdrawn. In such cases, it is almost certain that the authority with which the first application has been filed would have abandoned all or most documents or material received from the applicant some time after that rejection or withdrawal had taken place. Such abandoning would mean that neither the office with which the subsequent application had been filed nor courts nor private parties in the country of the subsequent application could rely, as a possible source of evidence, on the files and material kept by the office with which the first application had been filed, should the validity of the priority claim be in dispute. Under such circumstances, the office of the subsequent filing should be given a chance to ask for samples of the propagating material immediately, because the sooner the applicant is obliged to furnish them the more likely it is that they will be the same as those which were given to the office with which the first application was filed.

40. In settling the difficulties referred to in the preceding paragraph, the Diplomatic Conference has, at the same time, effectively prevented the situation in which a breeder, in order to construct a priority claim, might file an application in

respect of an unfinished variety, even anticipating that it may be rejected in the State of the first application.

Article 38: Transitional Limitation of the Requirement of Novelty

41. This Article is intended to protect the interests of a breeder who has started the commercialization of a variety without knowing that such commercialization might destroy the novelty of the variety since he could not know in advance when the provisions of the Convention would be applicable to the genus or species to which that variety belongs. Article 35 of the present text of the Convention makes an exception as to varieties (of recent creation) existing at the date of *entry into force of the Convention* in respect of the interested State; Article 38 of the Revised Text makes the exception as to varieties (of recent creation) existing at the date on which such State *applies for the first time* the provisions of the Convention to the genus or species to which the variety in question belongs. That date will be the date of entry into force of the Convention if the genus or species is among those which the State protects when it becomes a member of the Union; it will be a later date if the genus or species is one to which the State extends protection later.

FINAL REMARKS

42. The above summary by the Office of the Union is not intended to be a complete analysis of all the amendments to the present text of the Convention which are incorporated in the Revised Text. It refers only to those amendments thought to be of a certain general importance. It has especially abstained from indicating drafting improvements adopted in an endeavor to eliminate the danger of inconsistency between the authentic English, French and German versions of the Revised Text.

Editor's Note: *The two Recommendations adopted by the Diplomatic Conference which were attached as Annexes to document DC/PCD/1 are published in the part of these Records entitled "Recommendations" on pages 273 and 274.*

DC/PCD/2

March 21, 1979 (Original: English)

THE OFFICE OF THE UNION

Summary of the Convention as Revised

1. The International Union for the Protection of New Varieties of Plants—hereinafter referred to in abbreviated form as "UPOV" or "the Union"—is an intergovernmental organization which became operational in 1969. It was founded by a multilateral treaty, the International Convention for the Protection of New Varieties of Plants, which was signed at Paris on December 2, 1961. At present (March 1979), the Union has ten member States. The seat of the Union is Geneva, where the Secretariat—also called the "Office"—of the Union is located. The highest organ of the Union is its Council, composed of representatives of the member States. According to an agreement between the Union and the World Intellectual Property Organization (WIPO; a specialized agency of the United Nations), the Secretary-General of the Union is the same person as the Director General of WIPO.

2. On October 23, 1978, a Diplomatic Conference in which the representatives of all member States and twenty-seven non-member States participated and which was attended by observers from three intergovernmental organizations and six international non-governmental organizations adopted the revised text of the above-mentioned Convention. This revised text, signed so far (March 1979) by eleven States, is entitled "International Convention for the Protection of New Vari-

eties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978." It is herein-after referred to as "the Convention."* The Convention is open for signature until October 31, 1979, by those States which participated in the Diplomatic Conference (Article 31). Signature will entitle them to ratify, accept or approve the Convention (Article 32(1)(a)). States other than those which are entitled to sign the Convention and States entitled to sign but not making use of that right may accede to the Convention at any time by depositing an instrument of accession (Article 32(1)(b)). Before doing so, they must, however, obtain, upon seeking the advice of the Council of the Union, a positive decision in respect of the conformity of their laws with the provisions of the Convention (Article 32(3)).

3. Mainly for the benefit of States which might consider acceding to the Convention—but also for those States which are examining the possibility of still signing the Convention—efforts have been made in the following paragraphs to give a fairly concise summary of the main contents of the Convention. It is stressed that a complete and accurate picture of the contents of the Convention can be gained only from the text itself.

* Articles cited in this document are those of the Convention as revised.

AIMS OF THE CONVENTION

4. Member States of the Union undertake to grant a title of protection to breeders of new varieties of plants. The title confers upon its holder what is called the "plant breeder's right". Such titles are granted for the promotion of agriculture, horticulture and forestry: they should be an incentive to the creation of new plant varieties. (Preamble; Article 1(1))

BENEFICIARIES OF PROTECTION

5. Plant breeders' rights are granted to the breeder of a new plant variety or to his successor in title. Both are hereinafter referred to as "the breeder." (Article 1(1))

SCOPE OF PROTECTION

6. Any plant breeder's right granted by a member State must have, at least, the effect that the prior authorization of the breeder is required for three activities concerning seed or other propagating material, *as such*, of the variety, namely:

- (i) production for purposes of commercial marketing,
- (ii) offering for sale, and
- (iii) marketing. (Article 5(1))

7. The authorization of the breeder is also required when ornamental plants or parts thereof, normally marketed for purposes other than propagation, are used commercially as propagating material in the production of ornamental plants or cut flowers (Article 5(1), last sentence). The same applies when, in the production of another variety, the repeated use of the variety is necessary, as in the case of certain hybrids (Article 5(3), second sentence).

8. On the other hand, the authorization of the breeder may not be required for the utilization of the variety as a source for the creation of other varieties or for the marketing of such other varieties. The Convention thus does not stand in the way of the development of improved varieties through the use of material of a protected variety. Needless to say, it also does not hamper research. (Article 5(3), first sentence)

9. The commercially marketed, or final, product (the grain for milling, the vegetable to be sold for consumption purposes, cut flowers, etc.) need not be covered—but may be covered (e.g., in the case of cut flowers)—by the protection afforded under national law (Article 5(4)).

FIELD OF APPLICATION OF THE CONVENTION

10. There is no limit to the botanical genera or species to which the Convention may be applied (Article 4(1)). It should in fact be progressively applied to the largest possible number of botanical genera and species (Article 4(2)). On the other hand, any member State may start by protecting a fairly small number of genera or species, namely, five. But member States are obliged to increase the number of genera or species eligible for protection within certain periods which are enumerated in Article 4(3)(b). The highest number of genera or species to which the Convention obliges a member State to apply the Convention is 24. That number must be reached within eight years after the entry into force of the Convention for the member State concerned. A member State may limit the application of the Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use—for instance, to all but hybrid varieties or to ornamental varieties of the genus or species—in which case, the genus or species is still considered one genus or species as regards the obligation to apply the Convention to certain minimum numbers of genera or species. (Article 2(2), Article 4(3)(c))

11. Since some States in which special economic or ecological conditions prevail may find it difficult to apply the Convention to the minimum numbers referred to in the preceding

paragraph, which for other States are quite modest, the Council of the Union has been authorized to reduce these minimum numbers or to extend the periods within which the Convention has to be applied to those minimum numbers or both. The Council's decision must be taken before the Convention becomes binding for such State, more precisely, in the case of a State intending to accede to the Convention, before the deposit of its instrument of accession, in the case of a signatory State, before the deposit of its instrument of ratification, acceptance or approval. Later on, when a State has already become a member of the Union, the Council may, if the State encounters special difficulties, extend the said periods but it may not reduce the minimum number. (Article 4(4) and (5))

NATIONAL TREATMENT; RECIPROCITY

12. The basic principle of the Convention is the right known as "national treatment": each member State must, as far as the recognition and protection of plant breeders' rights are concerned, afford to the nationals of all other member States, to persons residing in other member States and to legal persons having their registered office in other member States, the same treatment as its laws provide for its own nationals; naturally, the conditions and formalities prescribed by the said laws must be complied with (Article 3(1) and (2)). The Convention provides, however, for the possibility of derogating from this principle in one respect, namely, where access to protection is concerned. Here, a member State may limit protection to nationals, residents or legal persons of those other member States which protect the same genus or species (Article 3(3)).

CONDITIONS FOR GRANTING PLANT BREEDERS' RIGHTS AND FOR THEIR VALIDITY

13. In its efforts to harmonize protection, the Convention lists the conditions which must be fulfilled before a plant breeder's right may be granted (Article 6(1)). On the other hand, it also stipulates that, where those conditions are fulfilled, the title must be granted and must not be made dependent on the fulfillment of any additional condition, except the compliance with formalities including the obligation to pay prescribed fees (Article 6(2)).

14. The said conditions are the following: the variety must be distinct and new, it must be homogeneous, it must be stable and it must have been given a variety denomination as provided in Article 13.

15. The meanings of the terms "distinct" and "new" are indicated in Article 6(1)(a) and (b). Roughly, it can be said that a variety is distinct if it is distinguishable by one or more important characteristics from any *other* variety whose existence is a matter of common knowledge at the date of application for protection. It is new when at that date *it* has not been offered for sale or marketed in the territory of the State in which the application for its protection is filed (unless that State has made use of the option to grant a so-called "period of grace," which means that the variety may already have been offered for sale or marketed for up to one year when protection is applied for), and it must not have been offered for sale or marketed for longer than four years—six years in the case of some plants—in any other State. The novelty of a variety is not affected by the fact that the variety itself was already a matter of common knowledge by other means, nor do trials of the variety affect the right to protection if they do not involve offering for sale or marketing.

16. The terms "homogeneous" and "stable" are not defined in great detail in the Convention since they are considered to be self-explanatory. As to homogeneity, the Convention merely states that a variety must be homogeneous in relation to the particular features of its reproduction or propagation. As to stability, the Convention states that the variety must be stable in its essential characteristics, namely, that it must re-

main true to its description either after repeated reproduction or propagation or at the end of each particular cycle of reproduction or multiplication defined by the breeder. (Article 6(1)(c) and (d))

17. In addition to the option to grant the period of grace already mentioned, two further exceptional rules are contained in the Convention as far as novelty is concerned. Wherever a State applies the Convention for the first time to a genus or species, it may derogate from the normal novelty rules, which means that it may treat varieties as if they were new despite the fact that they have already been offered for sale or marketed in that State within certain periods (Article 38). Another derogation has been provided for a special case, namely, the case where a plant breeder's right is to be granted under patent legislation in a member State which provides for protection for the same genus or species both in the form of a patent and in the form of a special title of protection (see paragraph 26 below). In such a case the patentability criteria (which include the novelty criteria) of the patent legislation may be applied instead of the rules provided under the Convention (Article 37(2)).

18. The Convention also contains mandatory rules for the nullity and forfeiture of the rights protected which basically correspond to the rules governing the conditions of protection. Here again the Convention states that the right of the breeder shall be declared null and void or shall, or may, become forfeit if certain conditions are not met, but that, on the other hand, it must not be annulled or become forfeit for reasons other than those provided for under the Convention. (Article 10)

VARIETY DENOMINATIONS

19. According to the Convention, protection must not be granted unless a denomination is given to the variety (Article 6(1)(e)). Article 13 of the Convention contains a number of provisions aimed at ensuring that each variety is designated by the same denomination in all member States where protection is granted, that the denomination is used by everybody when propagating material of the variety is offered for sale or marketed in a member State where that variety is protected (even after the expiration of such protection) and that, as far as possible, such use is not hampered by rights of third parties. Article 13 begins by stating that the denomination is destined to be the generic designation of the variety, thereby largely excluding its appropriation for trademark protection. It then requires member States to ensure that no rights in the designation which is registered as a variety denomination will hamper the latter's free use except where prior rights of third parties already exist—in which case, the breeder is normally obliged to submit another denomination for the variety. Thereafter, Article 13 gives some basic conditions which a denomination has to fulfill to be suitable for use as a variety denomination and fixes the procedure for the acceptance of a variety denomination in a member State: the denomination must be submitted by the breeder to the competent authority for the protection of new varieties, which examines whether it fulfills the requirements of the Convention. Article 13 expressly states that the breeder must submit a variety in all the member States under the same denomination and the competent authority of a member State must register a denomination already used for that variety in another member State unless it considers the denomination unsuitable for its State. In the latter case, the breeder may be asked to submit another denomination.

20. As far as trademarks, trade names or similar indications are concerned, Article 13 permits them to be associated with the variety denomination when the variety designated by the latter is offered for sale or marketed, on condition, however, that in such case the denomination must be easily recognizable.

21. The plant variety protection authorities of member States have to ensure that all such authorities in the other

member States are properly informed of matters concerning variety denominations. Any such authority has the right to address observations on any registration of a variety denomination to any authority having given such information.

DURATION OF PROTECTION

22. Plant breeders' rights are granted only for a limited period. The Convention does not fix this period, but provides for a minimum of 15 years, or 18 years in the case of certain groups of plants (Article 8; exception in Article 37(2)).

FREE EXERCISE OF RIGHTS; RESTRICTION

23. Already in its Preamble, the Convention refers to the possible need for member States to impose restrictions on the free exercise of plant breeders' rights in the public interest. Article 9 states, however, that the public interest is the *only* reason for such restrictions and it requires member States which impose any restriction in order to ensure the widespread distribution of a variety to see to it that the breeder receives equitable remuneration.

INDEPENDENCE OF PROTECTION

24. An important guarantee to the breeder is given in Article 14, which states that a plant breeder's right shall be independent of the measures taken by member States to regulate the production, the certification and the marketing of seeds and propagating material. Where such measures are taken, member States must, as far as possible, avoid hindering the application of the provisions of the Convention.

PRIORITY

25. In Article 12, a right of priority similar to that of the patent system, of one year, is ensured to the breeder. A breeder claiming the priority of an earlier application is granted a further four-year period for furnishing, to the authority of the member State in which the subsequent application is filed, any additional documents and material called for by the laws and regulations of that State unless the first application is rejected or withdrawn when earlier submission may be required. (Article 12(3))

FORMS OF PROTECTION

26. Plant breeders' rights may be granted in the form of a special title or in the form of a patent, but member States must not provide for protection in both forms for one and the same genus or species (Article 2(1)). An exception to the latter interdiction is made where a State provides for such protection prior to October 31, 1979, and declares its intention to continue this practice by notifying the Secretary-General of the Union of that fact when taking the final steps to become a member of the Union: in the case of an acceding State, when depositing its instrument of accession; in the case of a signatory State, either when signing or when ratifying, accepting or approving the Convention (Article 37(1)).

ORGANIZATION OF THE UNION

27. As briefly stated in paragraph 1 of this memorandum, the States parties to the Convention form a Union (Article 1(2)). The Union is an intergovernmental organization which possesses legal personality within the meaning of international public law and, on the territory of each member State, such legal capacity within the meaning of municipal law as is necessary for the fulfillment of its objectives and for the exercise of its functions (Article 24).

28. The highest organ of the Union is the Council and it is chaired by a President, who is elected for three years. At least

one Vice-President must also be elected. The Council holds one ordinary session each year and may be convened by its President to extraordinary sessions. The Council has set up subordinate bodies. Needless to say, the Convention contains a list of the tasks of the Council and the fundamental rules on the majorities required for decisions and on the functioning both of the Council and the second permanent organ of UPOV, which is the Office of the Union. The Convention also provides that the Council shall establish its own rules of procedure and the administrative and financial regulations of the Union. (Articles 16 to 23)

FINANCES

29. The expenses of the Union are mainly met by the annual contributions, expressed in "units," of the member States of the Union. Each State is free to choose the number of units according to which it will pay its annual contributions. The number of contribution units is expressed in whole numbers or fractions thereof. The smallest unit which can be chosen is one-fifth of one unit. Member States can change the number of contribution units originally chosen provided they observe certain time limits. The amount of the contribution unit is fixed by the Council each year and it is obtained by dividing the total expenditure to be met from contributions by the total number of units which member States have undertaken to pay. Each member State has to multiply the value of the contribution unit by the number of units chosen by it in order to find out the amount of its annual contribution. (Article 26)

SPECIAL AGREEMENTS

30. Member States may conclude between themselves special agreements for the protection of new varieties of plants. The provisions of such agreements must not contravene the provisions of the Convention. (Article 29)

IMPLEMENTATION OF THE CONVENTION

31. Article 30 states that member States must adopt all measures necessary for the application of the Convention, and three measures are particularly mentioned: providing for appropriate legal remedies for the effective defense of plant breeders' rights, setting up a special authority for the protection of such rights or entrusting an existing authority with that task, ensuring a certain amount of publication of information concerning the protection of plant breeders' rights. In addition, it is understood that States, when taking the final steps to join the Union—for acceding States when depositing their instruments of accession, for signatory states when depositing their instruments of ratification, acceptance or approval—must be in a position to give effect to the provisions of the Convention under their domestic law. As far as such law is concerned, it has already been mentioned that States wishing to accede to the Convention (instead of signing and

ratifying, accepting or approving it) have to ask the Council for its advice as to the conformity of that law with the provisions of the Convention, and that they can deposit an instrument of accession only if such advice is positive (Article 32(3)).

FINAL CLAUSES

32. The Convention contains those final clauses which are usual in international conventions of this kind. Depositary functions are entrusted to the Secretary-General of the Union, who is also responsible for a number of notifications and publications. The revised text of the Convention will enter into force one month after it has been ratified, accepted, approved or acceded to by not less than five States of which three were already parties to the original Convention of 1961. For each State subsequently depositing an instrument of ratification, acceptance, approval or accession the revised text will come into force one month after the corresponding deposit. (Article 33)

LANGUAGES

33. The Convention has been signed in three languages, French, English and German, the French text prevailing in case of doubt (Article 42(1)). The said three languages are to be used by the Office and in Council meetings and revision conferences (Article 28(1) and (2)). The Council can decide on the use of further languages (Article 28(3)). Other official texts of the Convention will be established, after consultation with the interested States, in Arabic, Dutch, Italian, Japanese and Spanish (Article 42(3)). The Council can designate further languages in which official texts are to be made (Article 42(3)).

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DC/PCD/5²	August 25, 1980 (Original: French)

THE OFFICE OF THE UNION

Provisional Summary Minutes of the Plenary Meetings of the Diplomatic Conference

Editor's Notes:

¹ This document is not reproduced in this volume. The final Summary Minutes, which take into account suggestions for changes made by speakers, is published in the part of these Records entitled "Summary Minutes" on pages 125 to 191.

² These documents are not reproduced in this volume.

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 discussion: 530, 636-638, 762-794, 1068
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Article 29: Special Agreements for the Protection of New Varieties of Plants
 corresponding Article in the Basic Proposal: Article 29
 text of the Article in the Basic Proposal: 54
 written observations on the Basic Proposal:
 South Africa, DC/6(85)
 written proposals for amendments: none
 discussion: 531-532, 1068
 adoption: 1101
 final text of the Article: 237

Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

corresponding Article in the Basic Proposal: Article 30
text of the Article in the Basic Proposal: 55
written observations on the Basic Proposal:
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written proposals for amendments:
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Germany (Federal Republic of), DC/29(109)
Italy, DC/69(116)
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discussion: 533, 639-678, 940-953, 1069-1072
adoption: 1101
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Article 31: Signature

corresponding Article in the Basic Proposal: Article 31
text of the Article in the Basic Proposal: 56
written observations on the Basic Proposal:
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South Africa, DC/6(85)
written proposals for amendments:
Netherlands, DC/54(113)
discussion: 533, 682-685, 1073
adoption: 1101
final text of the Article: 238

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corresponding Article in the Basic Proposal: Article 32
text of the Article in the Basic Proposal: 57
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adoption: 1101
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written observations on the Basic Proposal:
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written proposals for amendments:
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discussion: 533, 719-721, 1073
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Article 36: Territories

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corresponding Article in the Basic Proposal: Article 35
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written proposals for amendments: none
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decision to omit: 1002

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corresponding Article in the Basic Proposal: Article 37
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