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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Fourth Ordinary Session
Geneva, October 26, 2000****REPORT ON THE PROGRESS OF THE WORK OF
THE ADMINISTRATIVE AND LEGAL COMMITTEE***Document prepared by the Office of the Union*

1. Since the thirty-third session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "Committee") has held one session, its forty-first, on April 6, 2000.

2. The Committee examined the following matters:

(a) The notion of breeder: The discussions revealed differences of opinion concerning the criterion of "discovery and development" in Article 1(iv) of the 1991 Act of the UPOV Convention. One view was that the criterion of "discovery and development" is only satisfied if a plant discovered in nature is subsequently changed, or in other words "improved" in some way. However, the majority view was that no requirement for "plant improvement" for the protection of a discovery exists in the Convention. The selection of a variety from natural variation with the professional expertise and skills of a breeder, a normal breeding practice, would fulfill the requirement of "discovered and developed". The Committee agreed with the proposal of the Chairman that this item should be placed on the agenda of the next session and the Office of the Union would prepare a revised position paper for the next session, reflecting opinions expressed in the session.

(b) Revision of the General Introduction to the Test Guidelines: The Committee agreed to discuss some outstanding matters of a legal nature in the New General Introduction document in its next session.

(c) Notion of “Trees” and “Vines” for the Purpose of the Provisions on Novelty and the Duration of Protection: The Committee discussed possible solutions for avoiding different treatments of the same species in different member States, but concluded that discussions on the revision of the Convention and on the adoption of a resolution in the Council were not likely to provide any meaningful consensus. It therefore decided to continue, in its next session, only a discussion on the lists of genera and species that could be considered by member States to constitute “trees” or “vines”.

(d) Signs Which May Constitute a Variety Denomination: The Committee took note of the implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species adopted as European Commission Regulation and agreed to examine the full text of the rules with a view to a possible revision of the UPOV Recommendations on Variety Denominations.

(e) Links Between a Hybrid Variety and its Components From the Point of View of Novelty: The Committee discussed whether the exploitation of a hybrid variety should destroy the novelty of its parent lines. The Committee noted that the majority of member States took the position that the novelty of the inbred lines should be influenced by the exploitation of the hybrid in order to prevent breeders from enjoying further *de facto* protection of the hybrid variety after the expiration of its protection by applying for protection of its parent lines some years after protecting the hybrid. The Committee took note of the differing views expressed by the representatives of the breeders’ organizations and the European Community.

(f) Breeder’s Exemption: The Committee discussed the question as to whether the free access to protected varieties for other breeders for the purpose of further breeding should be legally facilitated given the spirit of the breeder’s exemption. It also discussed the situation when propagating material of protected varieties is inaccessible to the public. The Committee concluded that the UPOV Convention does not specifically allow breeders to keep varieties secret. Equally, it does not impose an obligation to make plant material available to third parties. It was a matter to be decided at the national level.

(g) Marking of Protected Varieties: The Committee heard several reports on the use of symbols at the national level as an indication of the protected status of varieties. With regard to a possible internationally standardized mark, the Committee noted that the importation of varieties with such a mark might be liable to cause confusion concerning the territoriality of protection. The representatives of the breeders’ organizations will report the results of their internal discussions at the next session.

3. The forty-second session of the Committee will be held on October 23 and 24, 2000. In addition to the matters described in items (a), (b), (c), (d) and (g) of the preceding paragraph, the Committee will receive a report on important questions raised in the Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular. An oral report will be given to the Council on the work accomplished in that session.

4. *The Council is invited to note and approve this report.*

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