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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**GENEVA****COUNCIL****Twenty-fourth Ordinary Session
Geneva, October 18 and 19, 1990**

**DRAFT NEW ACT OF THE CONVENTION TO BE SUBMITTED
TO THE DIPLOMATIC CONFERENCE OF 1991
AS THE "BASIC PROPOSAL"**

Memorandum of the Office of the Union

The Administrative and Legal Committee, at its twenty-eighth session, recommended that the draft new Act of the Convention to be submitted to the Diplomatic Conference for the Revision of the UPOV Convention (1991) be as shown in the Annex to this document.

[Annex follows]

C/24/11

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DRAFT

*International Convention for the Protection
of New Varieties of Plants of December 2, 1961,
as Revised at Geneva on November 10, 1972,
on October 23, 1978, and on ...*

Chapter I

Definitions

Article 1

Definitions

For the purposes of this Act:

- (i) "this Convention" means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;
- (ii) "Act of 1961/1972" means 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;
- (iii) "Act of 1978" means the Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants;

Corresponding provision(s) in:

- present [1978] text: -
- documents IOM/5/2 Rev. and 3: **1**

(iv) "breeder" means

- the person who bred or discovered a variety,
- where the laws of the relevant Contracting Party provide that the breeder's right vests in the party who or which is the employer of such person or who or which has commissioned the work of such person, the said party, or
- the successor in title of such person or the said party, as the case may be;



(v) "breeder's right" means the right of the breeder provided for in this Convention;

(vi) "variety" means a group of plants, which group, irrespective of whether the conditions for the grant of a breeder's right are fully met,

- can be defined by the characteristics that are the ^{expression} ~~result~~ of a given genotype or combination of genotypes and
- can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics.

A ^{particular} variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts can be used for the production of entire plants of the variety;

(vii) "Contracting Party" means a State or an intergovernmental organization party to this Convention;

(viii) "territory," in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

(ix) "authority" means the authority referred to in Article ³¹⁽¹⁾⁽ⁱⁱ⁾ ~~32(2)(ii)~~;

(x) "Union" means the Union for the Protection of New Varieties of Plants constituted by the Act of 1961/1972 and further mentioned in the Act of 1978 and in this Convention;

(xi) "member of the Union" means a State party to the Act of 1961/1972 or the Act of 1978, and a Contracting Party;

(xii) "Secretary-General" means the Secretary-General of the Union.

Chapter II

General Obligations of the Contracting Parties

Article 2

Basic Obligation of the Contracting Parties

(1) ~~Protection of breeders' rights~~ Subject to the provisions of Article 36(2) Each Contracting Party shall grant and protect breeders' rights.

Corresponding provision(s) in:

- present [1978] text: 1(1)
- documents IOM/5/2 Rev. and 3: 2(1)

Article 3Genera and Species to Be Protected

¹
(1) [States already members of the Union] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of three years after the said date, to all plant genera and species.

²
(2) [New members of the Union] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 25 plant genera or species and,

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

Corresponding provision(s) in:

- present [1978] text: 4
- documents IOM/5/2 Rev. and 3: 4

Article 4National Treatment

(1) [Treatment] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, in so far as the protection of varieties is concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

(2) ["Nationals"] For the purposes of the preceding paragraph, "nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States members of that organization.

Corresponding provision(s) in:

- present [1978] text: **3**
- documents IOM/5/2 Rev. and 3: **5**

Chapter III

Conditions for the Grant of the Breeder's Right

Article 5

Conditions of Protection

(1) [Criteria ^{to be satisfied} ~~of protectability~~] ~~(a)~~ The breeder's right shall be granted where the variety is

- (i) new,
- (ii) distinct,
- (iii) uniform and
- (iv) stable.

(2) [Other conditions]

~~(b)~~ The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article ²⁰ ~~14~~, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

Corresponding provision(s) in:

- present [1978] text: 6(1), introd., and (e), and (2)
- documents IOM/5/2 Rev. and 3: 7(1)

Article 6Newness[Criteria]

¹
(1) ~~(Newness)~~ ~~(a)~~ The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, ~~reproductive or vegetative~~ propagating or harvested material of the variety ^g/or any product directly obtained from the harvested material of the variety ^g

(i) has not been sold or otherwise made available to others by or with the consent of the breeder, for ~~the~~ purposes of exploitation, ^{of the variety} in the territory of the Contracting Party in which the application has been filed or, if the law of that Contracting Party so provides, earlier than one year before that date, and

(ii) has not been sold or otherwise made available to others by or with the consent of the breeder, for ~~the~~ purposes of exploitation, ^{of the variety} in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) [Varieties of recent creation];

~~(b)~~ (Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of newness defined in ~~sub-~~ paragraph ¹ (a) even where the sale or making available to others described in that ~~sub-~~paragraph took place earlier than the time limits defined in that ~~sub-~~paragraph.

Corresponding provision(s) in:

- present [1978] text: 6(1)(b); 38
- documents IOM/5/2 Rev. and 3: 7(2)

Article 7Distinctness

~~(3) [Distinctness]~~ The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of the variety in an official register of varieties, in any country, shall be deemed to render the variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the variety in the official register of varieties, as the case may be.

Corresponding provision(s) in:

- present [1978] text: 6(1)(a)
- documents IOM/5/2 Rev. and 3: 7(3)

⑨

Article 8Uniformity

~~(1) [Uniformity]~~ The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its ~~sexual reproduction or vegetative~~ propagation, it is sufficiently uniform in its relevant characteristics.

Corresponding provision(s) in:

- present [1978] text: 6(1)(c)
- documents IOM/5/2 Rev. and 3: 7(4)

Article 9
Stability

~~(5) [Stability]~~ The variety shall be deemed to be stable if, so far as its relevant characteristics are concerned, it remains true to its description after repeated ~~reproduction or~~ propagation or, in the case of a particular cycle of ~~reproduction or~~ propagation, at the end of each such cycle.

Corresponding provision(s) in:

- present [1978] text: 6(1)(d)
- documents IOM/5/2 Rev. and 3: 7(5)

Chapter IV
Application for the Grant of the
Breeder's Right

Article § 10

Filing of ~~First~~ Applications

(1) [Place of first application] The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.

(2) [Time of subsequent applications] The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.

Corresponding provision(s) in:

- present [1978] text: 11(1) and (2)
- documents IOM/5/2 Rev. and 3: 6

Article # 11
Right of Priority

↓ [for an application for another title of protection for a variety in 2]

(1) [The right; its period] Any breeder who has duly filed an application for the grant of a breeder's right with the authority of one of the Contracting Parties (the "first application") shall, for the purpose of filing an application for ^{the grant of a breeder's right for} the same variety with the authority of any other Contracting Party (the "subsequent application"), 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) [Claiming the right] In order to benefit from the provisions of paragraph (1), the breeder shall, in the subsequent application, claim the priority of the first application. The breeder may be required to furnish, not earlier than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed.

(3) [Supporting documents and material] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any additional ~~supporting~~ documents and material ^{required by the laws of that Contracting Party.}

supporting the priority claim, as

Corresponding provision(s) in:

- present [1978] text: 12
- documents IOM/5/2 Rev. and 3: 8

⑬

(4) ^{EVENTS} [~~facts~~ occurring during the period] ^{EVENTS} ~~facts~~ occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such facts shall also not give rise to any third-party right.

Article ~~11~~ 12Examination of the Application ~~Provisional Protection~~

~~(1) [Examination] (a)~~ ^{Any decision to grant a) require} ~~(the breeder's right shall be granted after~~ an examination in the light of the criteria provided for in Article ⁵ 1. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

~~(b)~~ (For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

Corresponding provision(s) in:

- present [1978] text: 7(1) and (2)
- documents IOM/5/2 Rev. and 3: 9(1)

Article 13Provisional Protection

~~(2) [Safeguards before grant]~~ Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the ^{grant of that right} ~~decision thereon~~. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article ¹⁴ ~~13~~. A Contracting Party may provide that the said measures shall only take effect in relation to parties whom or which the breeder has expressly notified of the filing of the application.

Corresponding provision(s) in:

- present [1978] text: **7(3)**
- documents IOM/5/2 Rev. and 3: **9(2)**

Chapter V

The Rights of the Breeder

Article 14

Scope of the Breeder's Right

(1) [Acts requiring the breeder's authorization] Subject to ~~paragraphs (3) and (4)~~ ^{Articles 15 and 16}, the following acts shall require the authorization of the breeder:

(a) in respect of the ~~reproductive or vegetative~~ propagating material of the protected variety,

- (i) production or reproduction,
- (ii) conditioning, ^{for the purpose of propagation}
- (iii) offering for sale,
- (iv) sale or other putting on the market,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above,
- (viii) use in any way other than those mentioned in (i) to (vii), above;

(b) in respect of the harvested material of the protected variety, any of the acts referred to in (a), above, provided that the harvested material was obtained through the use of ~~reproductive or vegetative~~ propagating material whose use, for the purpose of obtaining harvested material, was not authorized by the breeder ^{[and if, but only if, the breeder has had no legal possibility of exercising his right in relation to the propagating material];}

Corresponding provision(s) in:

- present [1978] text: 5(1) and (4)
- documents IOM/5/2 Rev. and 3: 12(1) and (2)

(c)

Alternative A

~~Not~~ in respect of products directly obtained from harvested material of the protected variety, any of the acts referred to in (a), above, provided that such products were made using harvested material falling within the provisions of (b) above whose use, for the purposes of making such products, was not authorized by the breeder *[and if, but only if, the breeder has had no legal possibility of exercising his right in relation to the harvested material]*.

Alternative B: no (c).

(2) [Same, in respect of essentially derived and certain other varieties] (a)

Subject to ^{Articles 15 and 16} ~~paragraphs (3) and (4)~~, the acts mentioned in paragraph (1) shall also require the authorization of the breeder in relation to

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

(ii) varieties which are not clearly distinguishable in accordance with Article 7~~(2)~~ from the protected variety and

(iii) varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of sub-paragraph (a)(i), a variety shall be considered to be essentially derived from another variety ("the initial variety") when

(i) it is predominantly derived ~~/ whether directly or indirectly /~~ from the initial variety, or from a variety that is itself predominantly derived from the initial variety, particularly through methods which have the effect of conserving the essential characteristics that are the ^{expression of} ~~result of [elements of]~~ the genotype or of the combination of genotypes of the initial variety, such as the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant, back-crossings or transformation by genetic engineering,

(ii) it is clearly distinguishable from the initial variety ~~in accordance with Article 7(3)~~ and

(iii) it conforms to the genotype or the combination of genotypes of the initial variety, apart from the ~~specific or incidental~~ differences which result from the method of derivation.

Article 15
Exceptions to the Breeder's Right

¹
(f) [Acts not requiring the breeder's authorization] The breeder's right shall not extend to

- (i) acts done privately and for non-commercial purposes,
- (ii) acts done for experimental purposes and
- (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of ^{Article 14(2)} ~~paragraph (2)~~ apply, acts referred to in ^{Article 14(1)} ~~paragraph (1)~~ in respect of such other varieties.

²
(f) Farm-saved seed [~~Possible "farmer's privilege"~~] Notwithstanding ^{Article 14} ~~paragraphs (1) and (2)~~, each Contracting Party may, within reasonable limits and ^{subject to the} ~~provided that due~~ safeguarding of the legitimate interests of ~~consideration is given to the need for~~ (the breeder, to obtain adequate remuneration), restrict the breeder's right in relation to any variety in order to permit farmers* to use for ~~reproductive or~~ propagating purposes, on their own holdings*, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by ^{Article 14} ~~para-~~ ~~graph (2)(a)(i) or (ii)~~, ~~provided that such use is limited to a quantity equal to the quantity of reproductive or vegetative propagating material of the variety originally purchased~~.

* The words "farmer" and "holding" are translated into French as "agriculteur" and "exploitation" and into German as "Landwirt" and "Betrieb" in the French and German versions of this document.

Corresponding provision(s) in:

- present [1978] text: **5(3) [for para 1(iii)]**
- documents IOM/5/2 Rev. and 3: **12(3) and (4)**

Article 16Exhaustion of the Breeder's Right

¹
(~~1~~) [Exhaustion of right] ~~has~~ The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of ^{Article 14(2)} ~~paragraph (2)~~, which has been put on the market by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts

(i) involve further ~~reproduction or~~ propagation of the variety in question, [or]

(ii) involve an export of material of the variety which enables the ~~reproduction~~ ^{propagation} of the variety into a country which does not protect varieties of the plant genus or species to which the variety belongs, *except where the export is for consumption purposes* [, or

(iii) ¹ fall outside the field of use for which the breeder put material on the market or gave his consent ~~has~~].

(2) [Meaning of "material"]

~~has~~ ¹ For the purposes of ~~sub~~ paragraph (~~1~~), "material" means, in relation to a variety,

- (i) ~~reproductive or vegetative~~ propagating material of any kind,
- (ii) harvested material and
- (iii) any product directly obtained from the harvested material.

Corresponding provision(s) in:

- present [1978] text: -
- documents IOM/5/2 Rev. and 3: **12(5)**

Article ~~16~~ 17Restrictions on the Exercise of the Breeder's Right

(1) [Public interest] - Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right otherwise than for reasons of public interest.

(2) [Equitable remuneration] When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Corresponding provision(s) in:

- present [1978] text: 9
- documents IOM/5/2 Rev. and 3: 13

Article ~~17~~ 18 .Measures Regulating Commerce

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

Corresponding provision(s) in:

- present [1978] text: 14
- documents IOM/5/2 Rev. and 3: 3

Article ~~19~~ 19Duration of the Breeder's Right

(1) [Period of protection] The breeder's right shall be granted for a fixed period.

(2) [Minimum period] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

Corresponding provision(s) in:

- present [1978] text: 8
- documents IOM/5/2 Rev. and 3: 10

Chapter VI

Variety Denomination

Article ~~14~~ 20

Variety Denomination

(1) [Designation of varieties by denominations; Use of the denomination] (a).....

The variety shall be designated by a denomination destined to be its generic designation.

(b) Each Contracting Party 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 breeder's right.

(2) [Characteristics of the denomination] 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 the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.

Corresponding provision(s) in:

- present [1978] text: **13**
- documents IOM/5/2 Rev. and 3: **14**

(3) [Registration of the denomination] The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination accepted by the authority shall be registered by the authority at the same time as the breeder's right is granted.

(4) [Prior rights of third parties] 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 party who or which, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

(5) [Same denomination in all Contracting Parties] A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

(6) [Information among the authorities of Contracting Parties] The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) [Obligation to use the denomination] Any party who or which, within the territory of one of the Contracting Parties, offers for sale or markets ~~repro-~~
~~ductive or vegetative~~ propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) [Indications used in association with denominations] When a 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.

Chapter VII

Nullity and Cancellation of the Breeder's Right

Article ~~11~~ 21

Nullity ~~and Forfeiture~~ of the Breeder's Right

(1) [~~Compulsory~~ Reasons of nullity] Each Contracting Party shall declare a breeder's right granted by it null and void when it is established

(i) that the conditions laid down in Article ~~14~~^{5 6} and ~~15~~⁷ were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Article ~~14~~⁸ and ~~15~~⁹ were not complied with at the time of the grant of the breeder's right, or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it ~~can be~~^{is} transferred to the party who or which is so entitled.

(2) [Exclusion of other reasons] No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

Corresponding provision(s) in:

- present [1978] text: 10(1) and (4)
- documents IOM/5/2 Rev. and 3: 11(1) and (3)

Article 22Cancellation of the Breeder's Right

¹
(~~7~~) [~~Optional~~ Reasons for cancellation] (a) Each Contracting Party may cancel a breeder's right granted by it if it is established that the conditions laid down in Article ~~14~~⁵ and ~~15~~⁸ and ~~15~~⁹ are no longer fulfilled.

(b) Furthermore, each Contracting Party may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period,

(i) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

²
(~~8~~) [Exclusion of other reasons] No breeder's right shall be ~~declared null and void or~~ cancelled for reasons other than those referred to in paragraph (1) ~~and (2)~~.

Corresponding provision(s) in:

- present [1978] text: 10(2) to (4)
- documents IOM/5/2 Rev. and 3: 11(2) and (3)

Chapter VIII

The Union

Article ~~15~~ 23Members of the Union

~~(1) [Members]~~ The Contracting Parties shall be members of the Union.

Corresponding provision(s) in:

- present [1978] text: 1(2)
- documents IOM/5/2 Rev. and 3: 15(1)

Article 24Legal Status and Seat of the Union

¹
(1) [Legal personality] The Union has legal personality.

²
(1) [Legal ~~status~~ capacity] The Union enjoys on the territory of each Contracting Party, in conformity with the laws applicable in the said territory, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.

³
(1) [Headquarters] The headquarters of the Union and its permanent organs are at Geneva.

⁴
(1) [Headquarters agreement] The Union has a headquarters agreement with the Swiss Confederation.

Corresponding provision(s) in:

- present [1978] text: 24; 1(3)
- documents IOM/5/2 Rev. and 3: 15(2) to (5)

Article ~~14~~ 25

Organs of the Union

The permanent organs of the Union are *the Council and the Office of the Union.*

Corresponding provision(s) in:

- present [1978] text: **15**
- documents IOM/5/2 Rev. and 3: **16**

Article ~~17~~ 26~~Composition of The Council~~ ~~Votes~~

(1) [Composition] ~~17~~ The Council* shall consist of the representatives of the members of the Union.

~~17~~ Each member of the Union shall appoint one representative to the Council and one alternate.

~~17~~ Representatives or alternates may be accompanied by assistants or advisers.

(2) [Officers]

(1) ~~17~~ ~~President and Vice-Presidents~~ 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) [Term of office] The President shall hold office for three years.

3

(1) ~~17~~ ~~Convocation~~ The Council shall meet upon convocation by its President.

(2) [Sessions] 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 members of the Union so request.

Corresponding provision(s) in:

- present [1978] text: 16 to 22
- documents IOM/5/2 Rev. and 3: 17 to 23

(4) Observers

(1) ~~[States]~~ States not members of the Union may be invited as observers to meetings of the Council.

~~(2) [Other observers and experts]~~ Other observers, as well as experts, may also be invited to such meetings.

(5) [Tasks]

The tasks of the Council shall be to:

(i) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(ii) establish its rules of procedure;

*(ii)*ⁱ appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;

^{iv}~~(iii)~~ examine the annual report on the activities of the Union and lay down the programme for its future work;

~~(iv)~~ give to the Secretary-General ~~whose functions are set out in Article 24~~ all necessary directions for the accomplishment of the tasks of the Union;

(vi) establish the administrative and financial regulations of the Union;

*(v)*ⁱⁱ examine and approve the budget of the Union and fix the contribution of each member of the Union ~~in accordance with the provisions of Article 26;~~

*(vi)*ⁱⁱ examine and approve the accounts presented by the Secretary-General;

(ix) ~~(iii)~~ fix ~~in accordance with the provisions of Article 27~~ the date and place of the conferences referred to in ~~that~~ Article ³⁹ and take the measures necessary for their preparation; and

(x) ~~(iii)~~ in general, take all necessary decisions to ensure the efficient functioning of the Union.

⁶
(f) [Votes] Each member of the Union shall have one vote in the Council. ~~4~~

(7) [Majorities]

(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 21, 22(v), 26(5)(b), 27(1) or 28(3)~~ paragraphs (5)(ii), (vi) and (vii) and under 29(5)(b) and 39(1) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Article 27
The Office of the Union

(1) [Tasks and direction of the Office] 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) [Duties of the Secretary-General] 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 of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.

(3) [Staff] Subject to the provisions of Article ²⁶⁽⁵⁾⁽ⁱⁱⁱ⁾~~22(iii)~~, 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 27~~.

Corresponding provision(s) in:

- present [1978] text: **23**
- documents IOM/5/2 Rev. and 3: **24**

Article 28Languages ~~Used by the Office and in Meetings of the Council~~

- (1) [Languages of the Office] The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
- (2) [Languages in certain meetings] Meetings of the Council and of revision conferences shall be held in the three languages.
- (3) [Further languages] The Council may decide that further languages shall be used.

Corresponding provision(s) in:

- present [1978] text: 28
- documents IOM/5/2 Rev. and 3: 28

Article ~~26~~ 29~~Finances~~Income and Expenditure

- (1) [Income] The expenses of the Union shall be met from
- (i) the annual contributions of the members of the Union,
 - (ii) payments received for services rendered,
 - (iii) miscellaneous receipts.
- (2) [Contributions: ^{units} ~~Definition~~] (a) The share of each member 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 members 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 no fraction shall be smaller than one-fifth.

Corresponding provision(s) in:

- present [1978] text: 26
- documents IOM/5/2 Rev. and 3: 26

(3) [Contributions: share of each member] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.

(b) As far as any other Contracting Party is concerned, that Contracting Party 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 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 sub-paragraph (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) [Contributions: computation of shares] (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 members of the Union by the total number of units applicable to those members of the Union.

(b) The amount of the contribution of each member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that member of the Union.

(5) [Arrears in contributions] (a) A member of the Union which is in arrears in the payment of its contributions may not, subject to sub-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 shall not relieve such member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder.

(b) The Council may allow the said member of the Union 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 ~~25~~ 30Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member of the Union as provided in the administrative and financial regulations ~~referred to in Article 21~~. Such member of the Union shall be designated, with its agreement, by the Council.

Corresponding provision(s) in:

- present [1978] text: 25
- documents IOM/5/2 Rev. and 3: 25

Chapter IX

Implementation of the Convention; Other Agreements

Article 31

Implementation of the Convention

¹
(1) [Measures of implementation] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;

(ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;

(iii) ensure that the public is informed through the regular publication of information concerning

- applications for and grants of breeders' rights, and
- proposed and approved denominations.

(1)² [Conformity of laws] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.

Corresponding provision(s) in:

- present [1978] text: 30(1) and (3)
- documents IOM/5/2 Rev. and 3: 2(2); 31(4)

Article ~~31~~ 32Relations Between Contracting Parties and States Bound by Earlier Acts

(1) [Relations between States bound by this Convention] Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.

(2) [Possible relations with States not bound by this Convention] Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary-General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

Corresponding provision(s) in:

- present [1978] text: **34**
- documents IOM/5/2 Rev. and 3: **33**

Article ~~29~~ 33Special Agreements

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

Corresponding provision(s) in:

- present [1978] text: 29
- documents IOM/5/2 Rev. and 3: 29

Chapter X

(44)

Final Provisions

Article ~~29~~ 34Signature

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature for one year after that date.

Corresponding provision(s) in:

- present [1978] text: **31**
- documents IOM/5/2 Rev. and 3: **30**

Article ~~34~~ 35Ratification, Acceptance or Approval; Accession

(1) [States and certain intergovernmental organizations] (a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it provides for the grant of breeders' rights with effect in its territory.

(2) [Instrument of adherence] Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization 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 Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Corresponding provision(s) in:

- present [1978] text: 38
- documents IOM/5/2 Rev. and 3: 31(1) a (3)

Article 36Reservations

(1) [Principle] Subject to paragraph (2), no reservations to this Convention are permitted.

Notwithstanding the provisions of Article 2,

(2) [Possible exception] (a) Any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties.

(b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

Corresponding provision(s) in:

- present [1978] text: 40; 37
- documents IOM/5/2 Rev. and 3: 36

Article ~~B1~~ 37

Communications Concerning Legislation and the Genera
and Species Protected; Information to be Published

(1) [Initial notification] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of

(i) its legislation governing breeder's rights and

(ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.

(2) [Notification of changes] Each Contracting Party shall promptly notify the Secretary-General of

(i) any changes in its legislation governing breeders' rights and

(ii) any extension of the application of this Convention to additional plant genera and species.

(3) [Publication of the information] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

(i) the legislation governing breeders' rights and any changes in that legislation, and

(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

Corresponding provision(s) in:

- present [1978] text: 35
- documents IOM/5/2 Rev. and 3: 34

Article ~~32~~ 38Entry into Force; Closing of Earlier Acts

(1) [Initial entry into force] This Convention shall enter into force one month after five States or intergovernmental organizations have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

(2) [Subsequent entry into force] Any State or intergovernmental organization not covered by paragraph (1) shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.

(3) [Closing of earlier Acts] Once this Convention enters into force, ~~accord-~~
~~ing to paragraph (1),~~ no State may accede to the Act of 1978.

Corresponding provision(s) in:

- present [1978] text: 33
- documents IOM/5/2 Rev. and 3: 32

Article ~~27~~ 31 :Revision of the Convention

(1) [Conference] This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.

(2) [Quorum and majority] The proceedings of a conference shall be effective only if at least half of the members of the Union are represented at it. A majority of three quarters of the members of the Union present and voting at the conference shall be required for the adoption of any revision.

Corresponding provision(s) in:

- present [1978] text: **27**
- documents IOM/5/2 Rev. and 3: **27**

Article ~~37~~ 40Denunciation

- (1) [Notifications] Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.
- (2) [Earlier Acts] Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.
- (3) [Effective date] 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) [Acquired rights] The denunciation shall not affect any rights acquired in a variety by reason of this Act or any earlier Act prior to the date on which the denunciation becomes effective.

Corresponding provision(s) in:

- present [1978] text: 41(2) to (4)
- documents IOM/5/2 Rev. and 3: 37

Article ~~35~~ 41Preservation of Existing Rights

This Convention shall not affect existing rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other than this Convention concluded between members of the Union.

Corresponding provision(s) in:

- present [1978] text: **31**
- documents IOM/5/2 Rev. and 3: **35**

Article ~~38~~ 42~~Languages; Depository Functions~~
Original and Official Texts of the Convention

(1) [Original] This Convention 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.

⁹
(~~1~~) [Official texts] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

Corresponding provision(s) in:

- present [1978] text: 42(1) and (3)
- documents IOM/5/2 Rev. and 3: 38(1) and (3)

Article 43Depositary Functions

¹
(1) [Transmittal of copies] The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organization.

²
(1) [Registration] The Secretary-General shall register this Convention with the Secretariat of the United Nations.

[End of document]

Corresponding provision(s) in:

- present [1978] text: 42(2) and (4)
- documents IOM/5/2 Rev. and 3: 38(2) and (4)