



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-seventh Ordinary Session

Geneva, October 29, 1993

REPORT ON THE PROGRESS OF THE WORK OF
THE ADMINISTRATIVE AND LEGAL COMMITTEEDocument prepared by the Office of the UnionGeneral

1. Since the twenty-sixth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee" has held one session only, the thirty-second, on April 21 and 22, 1993. A large part of its work was carried out at a joint meeting with the Technical Committee, of which it was the twenty-ninth session.

2. The Committee will hold its thirty-third Session on October 27, 1993. An oral report will be given to the Council on the work of that session and on the program of future work to be determined on the outcome of that session.

3. The Committee mainly devoted its thirty-second session to the following matters (an asterisk denotes that the matter was examined jointly with the Technical Committee):

(i) Proposed central computerized data base on plant variety protection and related matters*;

(ii) Declaration on the conditions for the examination of a variety based upon trials carried out by the breeder*;

(iii) UPOV Model Administrative Agreement for International Cooperation in the Testing of Varieties*;

(iv) Guidelines relating to essentially derived varieties*;

(v) Legal questions related to the 1991 Act.

Proposed Central Computerized Data Base on Plant Variety Protection and Related Matters

4. The Committees drew up a recommendation addressed to the Consultative Committee, which held its forty-sixth Session on April 23, 1993; it is intended that the latter Committee should make recommendations to the present ordinary session of the Council as a result of the work to be done at its forty-seventh session, to be held on October 28, 1993.

Declaration on the Conditions for the Examination of a Variety Based Upon Trials Carried out by the Breeder

5. At its twenty-sixth ordinary session, the Council had adopted a revised wording for the declaration on the understanding that the Committees would jointly look at the consequences of other forms of examination in which breeders would also play a part.

6. The Committees agreed on the wording given at annex with a view to its adoption by the Council.

UPOV Model Administrative Agreement for International Cooperation in the Testing of Varieties

7. Work on the draft revised and updated version of the Model Administrative Agreement was pursued; it should be completed at the thirty-third session of the Committee and the resultant wording submitted for adoption to the Council.

Guidelines Relating to Essentially Derived Varieties

8. This item results from the Resolution on Article 14(5) adopted by the 1991 Diplomatic Conference and which invited the Secretary-General to begin immediately after the Conference with the drafting of guidelines for essentially derived varieties.

9. The Committees held that the entry into force of the provisions concerned should be awaited as should initial practical experience. It was emphasized that the discussions in the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular, would greatly contribute to defining the concept of essentially derived variety in practical cases. It was therefore agreed that the item should be postponed indefinitely.

Legal Questions Related to the 1991 Act

10. Following the request made by the Council at its twenty-sixth ordinary session, the Committees looked at the relations between Articles 1(vi), 7 and 14(5)(b) of the 1991 Act. This question concerns in great part the relations between genotype and phenotype and the concept of characteristic. The Chairman of the Committee gave an account of the history of the provisions concerned. The Delegation of the Netherlands had some comments to make on the document that the Office of the Union had drawn up as a basis for discussion on this agenda item. It was emphasized that the questions of a more technical nature that were at the basis of the relations between the above-mentioned provisions were central to the terms of reference of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular, and that the Technical Committee would also be required to examine them.

11. The Committee continued its work very briefly on four matters that had been submitted to it at its thirty-first session under the item: "harmonization of legislation and implementation of the 1991 Act." Diverging views had been expressed on the question of including in national laws provisions specifying that certain transactions would not affect the novelty of a variety or of leaving it to the courts to define the exceptions in point.

12. The question of novelty, or more exactly that of the nature and scope of the amendments made by the 1991 Diplomatic Conference, was entered on the agenda for the thirty-third session of the Committee.

13. The Office of the Union had suggested that the possibility be examined of adopting a concerted interpretation of Article 11 (right of priority) under which that right would mean:

(i) that an application comprising a priority claim had to be examined as if it had been filed on the priority date;

(ii) that the examination of the application might be deferred for two years under the conditions set out in paragraph (3) of that Article.

That interpretation obtained general agreement. The Council may wish to approve it.

14. Finally, the Committee examined the matter of the transitional application of the provisions on essentially derived varieties but, in view of the complex nature of the matter, did not reach a conclusion. It is to return to that question at its thirty-third session under the item "preservation of existing rights" (the scope of Article 40 of the 1991 Act) since ASSINSEL has submitted a statement on the above-mentioned matter.

Other Matters

15. The Committees had before them an oral report on the first session of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular. The Committee further made a recommendation to the Consultative Committee on the procedure to be followed for drafting a new Model Law On Plant Variety Protection.

Program of Future Work

16. As mentioned in the above report, the Committee should normally finalize the new text of the Model Administrative Agreement for International Cooperation in the Testing of Varieties and consider the matter of novelty and also that of preservation of existing rights.

17. The program for the thirty-fourth Session can only be defined after the thirty-third; however, it may already be said that it will comprise examination of the draft for a new Model Law on Plant Variety Protection, based on the 1991 Act. If necessary, that draft could be submitted subsequently to a Working Group. The text that will constitute the outcome of the work would be submitted to the Council for it to take note.

18. The Council is invited:

(i) to note and approve this report;

(ii) to adopt the Declaration on the Conditions for Examination of a Variety Based Upon Trials Carried out by or on Behalf of the Breeder given at annex hereto;

(iii) to approve the interpretation of Article 11 of the 1991 Act given in paragraph 13 above;

(iv) to give any necessary instructions for further work following the supplementary report on the thirty-third session of the Committee.

[Annex follows]

ANNEX

DRAFT

**DECLARATION ON THE CONDITIONS FOR THE EXAMINATION
OF A VARIETY BASED UPON TRIALS CARRIED OUT BY OR ON BEHALF OF THE BREEDER**

Text Adopted by the Administrative and Legal Committee and the Technical
Committee at Their Joint Session of April 21 and 22, 1993

The Council of the International Union for the Protection of New Varieties
of Plants,

Pursuant to Article 21(h) of the 1978 Act of the International Convention
for the Protection of New Varieties of Plants;

Considering Article 7(1) of the 1978 Act of the Convention, under which:
"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";

Considering Article 12 of the 1991 Act of the Convention, under which:
"Any decision to grant a breeder's right shall require an examination for
compliance with the conditions under Articles 5 to 9. 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. For the purposes of examination, the authority
may require the breeder to furnish all the necessary information, documents or
material";

Recognizing that Article 7(1) of the 1978 Act and Article 12 of the 1991
Act permit but do not require the authority to base its examination upon
growing and other necessary tests carried out by or on behalf of the breeder;

Declares that a system for the examination of applications based upon such
tests carried out by or on behalf of the breeder and on the information sub-
mitted by him on the basis of those tests will be considered in keeping with
the provisions of the Convention if:

1. The growing tests and other necessary tests are conducted according to
guidelines established or accepted by the authority;
2. The testing arrangement is maintained--in order to permit the checking of
data or the collecting of further data--until a decision has been made on
the application or until the authority has informed the breeder that the
arrangement is no longer necessary;
3. Access to the tests by persons properly authorized by the authority is
provided;
4. The breeder, when requested to do so, deposits in a designated place, and
within a time limit set by the authority, a sample of propagating material
representing the variety.

[End of document]