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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Eighth Ordinary Session
Geneva, October 24 to 26, 1974**REVISION OF THE INTERNATIONAL CONVENTION FOR
THE PROTECTION OF NEW VARIETIES OF PLANTSInstitution of a Committee of Experts

1. Article 27, paragraph (1), of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention") provides as follows:

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

According to Article 27, paragraph (2), of the Convention,

"... 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."

2. The last conference for the amendment of the Convention took place in 1972, which means that, unless the Council decides otherwise by a majority of five-sixths of the members present, the next conference of this kind should be held in 1977. There have been repeated requests from representatives of States not members of UPOV for the revision of certain Articles of the Convention in order to facilitate the accession of those States to the Convention.

3. At the sixth session (November 1972) of the Council of UPOV, the Representatives of Germany (Federal Republic of) and of the United Kingdom pointed out that preparations for the next revision conference should be started early. The Representative of Germany (Federal Republic of) further proposed that the Consultative Working Committee should make suggestions, without proposing solutions, in time for the seventh session (October 1973) of the Council. (See document UPOV/C/VI/12, paragraphs 128 to 130.)

4. At its seventh session (October 1973), the Consultative Working Committee agreed that member States should communicate to the Secretariat their ideas in respect of possible amendments to the Convention.

5. At the seventh session of the Council (October 1973), it was agreed that the Consultative Working Committee would discuss the question of the amendment of the Convention at its next session in March 1974. It was further agreed that each member State should consider this question separately and provide the Secretariat with ideas before December 1, 1973. (See document UPOV/C/VII/21, paragraphs 110 and 111.)

6. At the ninth session (April 1974) of the Consultative Working Committee, the view was expressed that a special committee ought to be instituted by the Council to examine the proposals made for amending the Convention as well as any additional proposals which might be made on the basis of the planned meeting with non-member States of UPOV. That committee should, however, receive clear guidance from the Consultative Working Committee as to which proposals should be studied. It was also agreed that, since any amendments to the Convention required ratification by all member States, a revision should be envisaged only if serious reasons justified it.

7. In addition, the Consultative Working Committee discussed a number of proposals made by delegations of member States of UPOV and decided that these proposals should first be studied by a special committee. An extract from the report of the ninth session of the Consultative Working Committee concerning these proposals and the deliberations of the Consultative Working Committee is attached as Annex I.

8. The Office of UPOV has provisionally reserved conference facilities for meetings of the Committee of Experts on the Revision of the International Convention for the Protection of New Varieties of Plants, in Geneva, for the following dates: February 25 to 28, and December 2 to 6, 1975.

9. A draft decision is attached as Annex II which might serve as a basis for the Council to discuss and make the necessary decisions.

10. The Council is invited to make the necessary decisions.

[Annex I follows]

ANNEX I

Extract from the Report of the Ninth Session of the
Consultative Working Committee (April 2 to 4, 1974)

21. After a discussion on each proposal, the Consultative Working Committee decided that the following proposals ought originally to be studied by the special committee.

(i) Article 4(3). Proposal of the Netherlands: A more flexible system of applying the provisions of the Convention to the genera and species named in the list annexed to the Convention should be adopted. The Consultative Working Committee agreed that the obligation to apply the Convention to all genera and species listed in the Annex after eight years could prevent a State from becoming party to the Convention if for special reasons that State was not in a position to grant protection to a particular species. Difficulties of that kind might arise especially in non-European countries since the genera and species listed in the Annex to the Convention were grown mainly in Europe. In order to overcome those difficulties, the possibility, on the one hand, of enlarging the number of species contained in the list, and the possibility, on the other hand, of obliging each State to apply the Convention only to a limited number of those genera and species, were to be considered.

(ii) Article 6(1). Proposal of the Federal Republic of Germany: The wording of this paragraph should be harmonized ("important" in subparagraph (a); "essential" in subparagraph (d)). The Consultative Working Committee was of the opinion that the special committee should consult the Acts of the Conferences that were about to be published in order to examine why different terms were used.

(iii) Article 6(1)(b), and Article 12(1) and (3). Proposal of Denmark and France: The question should be examined whether it is necessary to allow the breeder four years of commercialization outside UPOV member States, a priority period of one year, and four years after filing the application for furnishing further information and material.

(iv) Article 7. Proposal of Denmark: The wording of Article 7 of the Convention should be reviewed to ensure that it states more clearly whether the examination should include the question of prior commercialization and denomination, the question whether the examination of stability is necessary and the question whether it should be expressly stated that the examination ought to include field tests. On the question whether field tests are prescribed in Article 7, the Consultative Working Committee agreed that Article 7 was generally interpreted in such a way that an official examination before granting plant breeders' rights was necessary and strongly endorsed the need for such preliminary official examination. On the question whether the Convention should be open to States not conducting an examination before grant (proposal of Denmark) the Consultative Working Committee did not think it advisable that at this stage the discussion on this question should be referred to the special committee.

(v) Article 10(2) and (3)(a). Proposal of the Netherlands: The question whether paragraphs (2) and (3)(a) of Article 10 ought to be harmonized should be examined. The Consultative Working Committee thought that the Acts of the Conferences should be consulted to discover whether there was any reason to provide in the case of Article 10, paragraph (2), that the breeder shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material while, in the case of paragraph (3), failure to provide such material may only lead to the loss of the breeder's right. In this connection, it was decided that the special committee should also consider an additional proposal by the United Kingdom to the effect that the breeder should be obliged to keep the variety in commerce with the characteristics as defined at the time of grant.

(vi) Article 12(1) and (3). Proposal of the Netherlands: The question should be examined whether, in Article 12(1) and (3), priority should be granted only in the case of a valid first application. Also, on a proposal by the Netherlands, the question should be examined whether it ought to be provided that breeders' rights should be terminated at the same time in all member States or whether such a rule could be adopted at least in respect of UPOV member States belonging to a group of States forming an economic union.

(vii) Article 13. Proposal of several States: Article 13 concerning the denominations of plant varieties, especially paragraph (9) of that Article, should be revised. The views of the members of the Consultative Working Committee were split on the question whether this Article would lead to practical difficulties. While the Delegation of the United Kingdom pointed out that such difficulties existed in the United Kingdom, other delegations said that they had no such difficulties but some thought they might arise in the future. It was agreed that the member States would send a report on the experience gained in their countries with regard to this Article and the Guidelines for Variety Denominations to the Secretariat, which would analyze such reports and circulate them to the member States.

22. The Vice-Secretary General informed the Consultative Working Committee that, in the European Patent Convention of October 5, 1973, not only plant varieties but also animal varieties were excluded from patent protection. The question arose whether there was a need to provide for the protection of animal varieties by a special Convention comparable to the International Convention for the Protection of New Varieties of Plants and whether UPOV would be the adequate organization to prepare such a Convention. After a brief discussion, the Committee agreed that the question might arise in the future but a discussion on it was outside the terms of reference of UPOV.

Annex II follows

ANNEX II

Draft Decision

1. The Council of UPOV hereby establishes a Committee of Experts on the Revision of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Committee of Experts").
2. Each State member of UPOV shall be represented on the Committee of Experts by experts appointed by its Government.
3. The Committee of Experts shall elect its Chairman and Vice-Chairman and shall adopt, if necessary, its own rules of procedure.
4. The Office of UPOV shall act as the secretariat of the Committee of Experts.
5. The Committee of Experts may solicit the advice of States not members of UPOV and of interested organizations.
6. The Committee of Experts shall examine first of all the questions transmitted to it by the Council of UPOV or by the Consultative Working Committee of UPOV.
7. The Committee of Experts shall prepare proposals concerning the dates on which the next revision conference should take place, and shall prepare draft amendments to the Convention and comments on the proposed amendments.
8. The Committee of Experts shall meet at the invitation of the Secretary General.
9. The Secretary General shall report on the progress of the work of the Committee of Experts to each session of the Council and of the Consultative Working Committee.
10. The Committee of Experts shall follow the instructions of the Council and of the Consultative Working Committee.

/End of Annex II and of
document/