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UPOV

C/XV/8

ORIGINAL: French

DATE: October 21, 1981

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Fifteenth Ordinary Session

Geneva, November 10 to 12, 1981

PROGRESS REPORT ON THE WORK OF THE ADMINISTRATIVE AND LEGAL COMMITTEE

prepared by the Office of the Union

1. Since the fourteenth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held three sessions, that is to say the sixth session on November 13 and 14, 1980, the seventh session on May 6 and 7, 1981, and the eighth session from October 12 to 14, 1981.

2. The main items dealt with by the Committee concern the following areas: plant variety protection law, variety denominations, cooperation in examination between member States.

Plant Variety Protection Law

3. At its sixth session, the Committee finalized the list of questions relating to plant variety protection law that had been drawn up by the Committee's Subgroup at its session on June 23 and 24, 1980. At its seventh session, it noted the member States' intentions as regards amendment of their legislation in relation to ratification of the revised text of the Convention or independently of that ratification. Finally, at its eighth session, it examined three individual questions:

(i) Reciprocity in all respects, particularly as regards the protection of the final product, based on the second sentence of Article 5(4) of the Convention: the Committee noted the drawbacks that could arise from its adoption.

(ii) Scope of protection for ornamental plants and fruit trees: the Committee felt that, apart from the case of plantlets, extension of protection should be envisaged only for ornamental plants and fruit crops and that the aim of the extension was to safeguard both the interests of breeders and of those producers who paid royalties and suffered the competition of products not having to bear royalties. It was generally agreed that protection should be extended to the propagation of plants intended for the production of the final product (cut flowers or fruit). Some delegations expressed reservations as to the protection of the end product itself in the case of ornamental plants. Finally, the Committee invited the small number of member States that had based their domestic legislation on an interpretation of Article 5(1) of the Convention, reducing considerably the extent of protection, particularly as regards "adult" plants sold to the final user, to re-examine their point of view.

(iii) Possibility of excluding parent hybrids from protection: the Committee noted that it was possible for a person to block or disturb the creation and marketing of a certain number of commercial hybrids [hybrids used by farmers, for example of the three way cross type (A x B) C] by obtaining protection for the intermediate or parent hybrids [A x B in our example] which has to be used when the commercial hybrids are produced. The Committee was unable to reach unanimity on the various aspects of excluding parent hybrids from protection as envisaged by one of the member States.

Variety Denominations

4. At each of its sessions, the Committee looked into the revision of the Guidelines for Variety Denominations adopted by the Council at its seventh ordinary session in October 1973. The work will continue at the forthcoming session and will be directed towards drawing up a recommendation on the interpretation to be given to Article 13 of the Convention in view of the fact that the links between such a text and the Convention would become more obvious and that this type of text would more easily obtain the support of the majority of parties concerned than would a set of rigid principles. The recommendations will be illustrated by examples of designations which are or are not suitable as variety denominations.

5. In this context, the Committee reached an agreement, at its eighth session, on the following two principles governing the choice of variety denominations:

(i) In future, combinations of letters and figures--in that order-- should be accepted in the case of species for which this type of denomination is an established international practice, that is to say, mainly for maize and sorghum. This also applies to series of denominations comprising the same alphabetical component, whereby it is understood that no breeder would have an exclusive right to such a component.

(ii) Where there exists a family of denominations constructed on the basis of a fancy name, any new denomination should not represent a simplification of the corresponding earlier denominations (for example, if 'White Snapper' has been approved, 'Snapper' cannot be approved afterwards).

6. Finally, the Committee studied three more specific matters at its sixth session:

(i) It took note of a comparative survey of provisions of the laws of member States on the relation between variety denominations and trademarks.

(ii) It discussed the question of families of denominations based on a root ("prefix") and requested member States to ensure that the variety denominations they approved were sufficiently different from each other for there to be no possible confusion.

(iii) Following a question put by the delegation of a member State, it considered that it was for each member State to take those steps it judged necessary to ascertain the suitability of a proposed denomination, and therefore to decide whether it was necessary to publish such denomination in the national Gazette in cases where it had already been published in another member State as an approved denomination.

Cooperation in Examination Between Member States

7. As regards the implementation of the UPOV Model Agreement for International Cooperation in the Testing of Varieties adopted by the Council at its ninth ordinary session in October 1975, the Committee's activities have been as follows:

(i) It adopted at its sixth session the principles governing the application in special cases of the Recommendation on Fees in Relation to Cooperation in Examination adopted by the Council at its fourteenth ordinary session in October 1980. These principles were published in No. 26 of the UPOV Newsletter. In this context, the Council is informed that a number of member States have already taken the necessary administrative and juridical steps to apply the recommendation.

(ii) It drew up at its seventh session the following rules on relations between the competent service of one member State ("Authority A") carrying out an examination at the request of a service in another member State ("Authority B"), on the one hand, and between the latter service and the applicant or breeder, on the other:

(a) Authority A would normally only have contacts with Authority B.

(b) Where it was urgent that the applicant or the breeder should visit the trial culture (for example, when an anomaly occurred which was observable for a short period of time only), Authority A would be able to contact him directly on condition that Authority B be informed at the same time.

(c) In all other cases in which Authority A felt the need to contact the applicant or the breeder, it should first get in touch with Authority B.

(iii) At its seventh session, it began looking into whether the breeders should be given the possibility of visiting trials. This study will be continued at the forthcoming session on the basis of comments received from the international professional organizations concerned.

8. As regards the study of a system of cooperation going beyond the bounds of variety examination, the Committee confirmed the view expressed by its Sub-group that work on such a system should be started quickly, as soon as the review of questions relating to plant variety protection law had progressed sufficiently. It will also be recalled that the Progress Report on the Work of the Committee submitted to the Council at its fourteenth ordinary session in October 1980 and approved by the Council explained that "the consideration of this long-term project will be continued as soon as the Committee's work on particularly urgent matters permits" (document C/XIV/8, paragraph 8(i)).

Miscellaneous

9. At its sixth session, the Committee recommended the member States to publish annually, at a date convenient to them, a list of protected varieties containing at least the following information: genus and species, variety denomination, name and address of the holder of the title of protection. This recommendation has been widely applied by the member States.

10. The Committee decided at its seventh session on a simplified procedure for collecting the data submitted annually to the Council in the document entitled "Statistics on Cooperation in Examination" which usually bore the number 7.

Program of Future Activities

11. Subject to the Council's decisions, the Committee:

(i) will examine matters of plant variety protection law submitted to it by the States;

(ii) will continue its work on drawing up recommendations on the interpretation of Article 13 of the Convention and will put in hand a study of the possibilities for harmonizing the examination procedures for proposed variety denominations;

(iii) will continue its work on improving the practical application of the UPOV Model Agreement for International Cooperation in the Testing of Varieties and, in particular, will finalize the question of access by breeders to trials and examine the usefulness of annually publishing current fees;

(iv) will, at the appropriate time, resume its study of a system of cooperation going beyond the bounds of variety examination.

12. The Council is invited:

(i) to take note of the work
carried out by the Committee;

(ii) to take the decisions
required for the future work of the
Committee.

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