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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Twenty-first Ordinary Session
Geneva, October 15 and 16, 1987**REPORT ON THE PROGRESS OF THE WORK OF THE
ADMINISTRATIVE AND LEGAL COMMITTEEPrepared by the Office of the Union

1. Since the twentieth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held two sessions: the nineteenth, on March 31 and April 1, 1987, and the twentieth, on June 17 and 18, 1987.
2. The Biotechnology Subgroup of the Committee (hereinafter referred to as "the Subgroup") has met twice, at the time of each of the above-mentioned sessions of the Committee.
3. The Committee will be holding its twenty-first session on October 8 and 9, 1987. An oral report will be made to the Council concerning the work of the Committee during that session.
4. The Committee has considered a wide range of issues, but its work may be grouped under the following main headings:
 - (a) Priorities in relation to extension of protection;
 - (b) UPOV Recommendations on Variety Denominations;
 - (c) The Work of the Subgroup;
 - (d) Revision of the Convention;
 - (e) Examination of hybrid varieties, and minimum distances;
 - (f) Preparations for the Third Meeting with International Organizations (hereinafter referred to as "the IOM meeting").

Priorities in Relation to Extension of Protection

5. At its nineteenth session, the Committee considered the question of priorities in relation to extending protection to species not already protected in member States. Breeders' organizations had been asked to make a list of the species to which they wished each member State to extend protection as a priority, using three levels of priority (A, B and C). The Office of the Union had made a compilation of the replies received from the breeders' organizations.

6. The Committee engaged in a general discussion of the question of priorities in extending protection, and the following points emerged: there was a link between the list of protected species and examination of varieties; the latter included an important economic aspect (the cost of the examination itself and the cost of maintaining the necessary infrastructure, especially reference collections); there was not always a reliable means of examination available for a given species.

7. The Committee decided that the Technical Committee should be asked to define the groups of species that should be protected and to report to the Committee.

UPOV Recommendations on Variety Denominations

8. At its eighteenth session, the Committee had invited member States to communicate their proposals for amendment of the UPOV Recommendations on Variety Denominations. At the nineteenth session, the Committee was in possession of written proposals and views received from six member States and from ASSINSEL, and the Committee discussed these proposals and views.

9. Following a detailed discussion, the Committee adopted a draft of a new text of the UPOV Recommendations on Variety Denominations. The Office of the Union presented the new text to the twentieth session, and, at that session, the Committee decided that this text should be presented to the IOM meeting without further changes.

10. At the twentieth session, the Committee also discussed the suitability of CIOPORA's denomination code system under the draft new text, but it did not come to any general decision on its suitability. Several delegations said that, in their countries, denominations of the type provided by the CIOPORA system would be examined on a case by case basis to determine whether they were suitable denominations.

The Work of the Subgroup

11. At the twentieth ordinary session of the Council, Mr. S.D. Schlosser (United States of America) had asked to be relieved of the chairmanship of the Biotechnology Subgroup following his election to the presidency of the Council. The Subgroup therefore elected Mr. M. Heuver (Netherlands) as its new chairman at its meeting on March 30, 1987.

12. For the nineteenth session of the Committee, the Subgroup produced a first draft of the report that it had been asked to draw up. The Committee discussed this draft and it made a number of comments on the text which it asked the

Subgroup to take into account when finalizing the report. The Subgroup did further work on the report before submitting it to the twentieth session of the Committee. The report was entitled "Possible Consequences of Biotechnology in the Field of Intellectual Property Protection" and it dealt with the following subjects:

1. Biological Taxa Eligible for Protection;
2. Subject of Protection;
3. Requirements for Granting Protection;
4. Scope of Protection;
5. Duration of Protection;
6. Reciprocity; National Treatment;
7. Interaction Between Different Kinds of Protection;
8. Protection of Micro-organisms;
9. Protection of Animals;
10. Possible Implications of Changes in the Protection of Living Matter.

13. The report discussed the issues under the above headings giving some conclusions and recommendations in relation to revision of the Convention. Therefore, at the twentieth session of the Committee, the report was discussed under the heading of "Revision of the Convention." The other subjects studied under this heading are reported on below in paragraphs 14 to 16.

14. The Committee discussed the report in detail and agreed that it could be presented to the IOM meeting as an official document of the Committee, subject to some re-drafting being done by the Subgroup. The Subgroup agreed to do the re-drafting in the parts of the document where the Committee had decided it was necessary.

Revision of the Convention

15. For the nineteenth session of the Committee, member States and a number of international non-governmental organizations were invited to submit their proposals for revision of the Convention. Thus, at that session, the Committee had before it a large number of proposals, including those received from France and the Netherlands. The Committee held a general exchange of views in order to identify those points for which a possible revision of the Convention should be studied. Those points--which in general corresponded to the points raised by the organizations--were the following, in the order of the corresponding Articles of the Convention:

(i) Article 3: abandonment of the possibility of restricting access to protection on the basis of reciprocity;

(ii) Article 4: increase of the minimum conditions for application of the Convention to botanical genera and species; obligation to apply the Convention to all genera and species;

(iii) Article 5: in general, an increase in the level of protection granted, in particular, along the lines of the protection afforded by a patent for an invention. More specifically:

(a) wider definition of the objects of protection (elements of the plant such as cells, with or without walls; elements of the cell such as genes; plant material other than propagating material, in particular, the final product);

(b) wider definition of the activities covered by protection (production and marketing, including importation, of agricultural produce, as well as medicines, flavorings, etc.; production of seeds or seedlings for the producer's own requirements ("farmer's privilege")) and restriction of the principle of freedom of use of a protected variety for the purposes of plant breeding; consequently, maintenance or deletion, as superfluous, of Article 5(4);

(iv) Article 6: concept of important characteristic;

(v) Article 7: scope and procedure of examination;

(vi) Article 8: increase of the minimum duration of protection and harmonization of such duration;

(vii) Article 11: introduction of a system whereby a single application leads to the issuing of several titles;

(viii) Article 12: extension of the priority period;

(ix) Article 13: redrafting of the provisions on variety denominations;

(x) General principles: dividing line between plant variety protection and patents.

16. During the exchange of views, several delegations emphasized the urgency of commencing revision of the Convention. The Committee agreed that the question of revision of the Convention should be included in the agenda for the IOM meeting.

17. At the twentieth session, the Committee had before it a document compiled by the Office of the Union which set out, article by article, the proposals received from non-governmental organizations. The Committee decided that this document should be used at the IOM meeting, although it should only include proposals made by invited international non-governmental organizations.

Examination of Hybrid Varieties, and Minimum Distances

18. At the nineteenth session, the Committee had before it a motion submitted by ASSINSEL on the definition of maize hybrids. In essence, the motion was to the effect that, in accordance with Article 6 of the UPOV Convention, hybrids

of maize should be defined and distinguished by their constituents and the way they are associated. The Committee was of the view that the request contained in the motion was not in conformity with Article 6(1)(a) of the Convention. However, the Committee was of the view that a possible revision of examination procedures should be studied for species such as maize and sunflower. The Committee wished to examine this question further after it had been examined by the Technical Committee.

19. For the twentieth session of the Committee, the delegation of France produced a document entitled "Definition and Examination of Hybrid Varieties." The Committee discussed this document and broadened its discussion to cover hybrid varieties in general rather than only hybrid varieties of maize.

20. In the Committee's view, the discussion was linked to the question of "minimum distances," and it decided that it would hold a joint meeting with the Technical Committee in October 1987 at which the subjects of "definition and examination of hybrid varieties" and "minimum distances" would be discussed. The Committee was of the view that the issues that had been raised should be discussed at the national level before its twenty-first session. It therefore asked the Office of the Union to prepare and send a letter to delegates setting out exactly the issues for discussion at the national level, in order that all such national discussions would relate to the same issues. The Office of the Union sent such a letter by circular dated July 22, 1987.

21. The Committee decided to submit to the IOM meeting the document which had been produced by the delegation of France for the twentieth session.

Preparations for the Third Meeting with International Organizations

22. In addition to the Committee's actions, mentioned above, in relation to the IOM meeting, the Committee also, at its twentieth session, decided which organizations should be invited to that meeting, it agreed upon the agenda for the meeting and the form of the documents to be presented.

23. The Council is requested:

(i) to take note of the work carried out by the Committee and its Subgroup and the results obtained by those two bodies;

(ii) to take the necessary decisions on the future work of the Committee.

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