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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Forty-Sixth Session**

**Geneva, October 21 and 22, 2002**

**PROTECTION OF HYBRID VARIETIES THROUGH  
PROTECTION OF PARENT LINES**

*Document prepared by the Office of the Union*

1. The purpose of this document is, in response to a request from the Technical Committee (hereinafter referred to as "the TC"), to consider the protection of hybrid varieties through protection of parent lines.
2. At its thirty-eighth session, held in Geneva from April 15 to 17, 2002, the TC heard from the International Seed Federation (ISF) that breeders of seed-propagated ornamental plants are considering how to utilize the UPOV system of plant variety protection in a way that would serve the breeding activities and economics in their sector. This discussion has, at least in part, been triggered because the development of seed-propagated varieties by breeders of ornamental plants is a relatively new development, compared to the more traditional approach of breeding vegetatively propagated varieties.
3. One particular development in seed-propagated ornamental plant varieties has been the introduction of hybrid varieties. In some cases, the same parent line is used in many different hybrid varieties and breeders, conscious of the cost of protecting all the individual hybrid varieties noted that, in such cases, protection of a series of hybrid varieties could be achieved by protection of the single parent line common to all the hybrids in the series, provided that the parent line fulfilled all the conditions for, and is granted, protection.

4. The UPOV Convention does indeed provide protection with regard to the use of the protected variety as a parent for the production and exploitation of a hybrid variety. Thus, Article 14(5)(iii) of the 1991 Act states that the provisions for protected varieties extend to varieties (i.e. hybrid varieties in this case) “whose production requires the repeated use of the protected variety” —the protected variety being the parent line. This wording establishes that, regardless of whether the seed of the hybrid is produced in another country —even one without plant variety protection —seed of the hybrid must not be imported, marketed or sold in a country where a parent line is protected, without the authorization of the breeder. This is because the seed of the hybrid is the propagating material of the variety whose production requires the repeated use of the protected variety and the acts covered in Article 14(1)(a), such as selling, marketing and importing, require the authorization of the breeder.

5. Similarly, the 1978 Act provides protection for the hybrid through protection of a parent line in Article 5(3), which provides that authorization of the breeder is required with respect to a protected variety for the “utilization of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties... when the repeated use of the variety is necessary for the commercial production of another variety.” However, in this case the protection of a parent line in country A might not provide effective protection of the hybrid in country A if the seed of the hybrid is produced in country B, where country B does not apply the UPOV Convention. This is because, in country B, there is no restriction on the use of the parent lines and it might be considered that there is no repeated use of the parent line in country A.

6. Thus, on the basis described in this document, the UPOV Convention allows a breeder and not just breeders of ornamental plants, to obtain protection for his hybrid varieties by protection of one or more of the parent lines. It will be for each breeder to decide whether this is the most appropriate route to protection according to their particular circumstances.

*7. The Administrative and Legal Committee is invited to note that, on the basis described in this document, a hybrid variety can be afforded protection by protection of one or more of its parent lines.*

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