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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE**Twenty-seventh Session
Geneva, June 25 to 29, 1990**

REPORT

adopted by the CommitteeOpening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its twenty-seventh session from June 25 to 29, 1990. The list of participants is given in the annex to this report.
2. The session was opened by Mr. J.-F. Prevel (France), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as given in document CAJ/27/1. It decided that a simple summary report should be drawn up to reflect the decisions taken by the Committee and the proposals made by the participants, unless overtaken by subsequent discussions.
4. The Committee agreed that the main purpose of the session was to draw up a new proposed text for the Convention for the forthcoming Meeting with International Organizations and that the text should contain the smallest possible number of alternatives and should be as close as possible to the text that would emerge from the Diplomatic Conference. This new text is hereinafter referred to as "the next Draft."

Substantive Law Provisions

5. Discussions were based on documents CAJ/27/2, 5, 6, and 7. Document CAJ/27/2 is hereinafter referred to as "the Draft."

Article 1 - DefinitionsItem (i) - Definition of "this Convention"

6. No agreement emerged on the wording proposed in the Draft.

7. The Delegation of the Federal Republic of Germany proposed that the definition be deleted. On a more general point, it emphasized that Article 1 should be devoted to the main purpose of the Convention.

Item (vi) - Definition of "Variety"

8. The Committee examined items (vi) to (viii) of the Draft, thereafter the proposal of the Delegation of the Federal Republic of Germany given in document CAJ/27/5, and finally a new proposal drawn up jointly by that Delegation and the Office of the Union. It then agreed that the next Draft should contain the following wording:

"(vi) 'variety' means a group of plants [or parts of plants which can be used to produce plants], which group is characterized as follows: irrespective of whether the conditions for the grant of a plant breeder's right are fully met:

- it can be defined by the characteristics of its genotype or combination of genotypes and by characteristics that express its genotype or combination of genotypes,
- it can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics,
- its characteristics are inheritable or reproducible by the repeated use of its parental components.

"A variety may be represented by a single plant or part of plant whenever it can be used as the basis for the production of a group of plants that can be defined and distinguished as provided in the first sentence."

9. The square brackets in the first sentence are the result of discussions on the deletion or maintenance of the phrase "or parts of plants which can be used to produce plants." The Delegations of Belgium, Denmark, France, Spain and the United Kingdom were in favor of maintaining it; the Delegation of Hungary was also of the same opinion, but suggested that the phrase be put in square brackets. The representative of the European Communities (EC) also stated his preference for maintaining the phrase, but suggested that it be specified what parts of plants would not be referred to in the definition. The Delegations of Ireland, Italy, the Netherlands, New Zealand, Sweden and the United States of America were in favor of deletion; the Delegations of the Federal Republic of Germany and Switzerland were also able to accept deletion, but only if the second sentence were amended. The Delegations of Australia and Japan reserved their positions.

10. The second sentence was proposed by the Delegation of the Netherlands as an alternative to the proposal submitted by the Delegation of the Federal Republic of Germany and the Office of the Union on the basis of the text given in document CAJ/27/5. In substance, the issue was whether a variety "existed" in the form of a single plant or part of plant or was "represented" by such

plant or part of plant. In reply to a general question, the Delegations of France, the Federal Republic of Germany, Hungary and Switzerland supported the first solution and the Delegations of Belgium, Denmark, Ireland, Italy, the Netherlands, New Zealand, Sweden, the United Kingdom and the United States of America supported the second solution. The Delegations of Australia and Japan abstained.

11. During the discussion on the proposal given in document CAJ/27/5, and on Article 5, several delegations mentioned that it might be useful or necessary to define what was "plant kingdom" and "plant."

Item (ix) - Definition of "Essentially Derived Variety"

12. No agreement was reached on the wording proposed in the Draft.

13. It was noted that the reference to Article 8(5) and (6) would have to be deleted in the English version of the Draft.

14. The Delegation of the United Kingdom observed that the term "essentially derived variety" was not used in the Draft and that the definition should consequently refer to "essentially derived."

15. Following discussion on the proposed deletion of the examples given in the first indent, it was agreed that the Convention should contain examples, as did the Paris Convention or Berne Convention, where they clarified the meaning that was to be given to a provision.

16. The Delegation of France proposed that the expression "it is clearly distinguishable" should be replaced by "it is clearly distinct" and that the end of the third indent should be simplified to read: "the specific or incidental differences that result from the method of derivation used."

17. The Committee noted that the definition would have to be adapted to the new definition proposed for "variety."

Item (x) - Definition of "Material"

18. No agreement was reached on the wording proposed in the Draft or on the type of material that the plant breeder's right should concern. After in-depth discussion, that highlighted the reservations held by a number of delegations as regards extension of breeders' rights to the product directly obtained from harvested material, the Delegation of France spoke in favor of deleting the third indent in order to submit a realistic draft to the international non-governmental organizations at the meeting to be held in October next. No objection was raised to that proposal.

19. Examination of the matter was resumed in relation to Article 14(1). The Committee adopted a new version of the Article making a definition of "material" superfluous.

Items (xii) and (xiii) - Definitions of "Member of the Union" and "Contracting Party"

20. The Delegation of the Federal Republic of Germany felt that the expression "Contracting Party" was not appropriate and that the term "member of the

Union" should be used throughout the Convention. The Secretary-General referred in that respect to the need to distinguish between "old" and "new" members.

Item (xiv) - Definition of "Territory of a Contracting Party"

21. The Delegation of the Federal Republic of Germany doubted the need for the proposed definition and indeed for the following definition.

22. The discussion on Article 8(3) (condition of novelty) and on Article 33 (ratification, acceptance or approval; accession) highlighted the possible need to define the concept of territory in respect of the European Community, in view of the differences between the territories to which the Treaty establishing the European Economic Community applied and the territories to which the common agricultural policy applied. The representative of the EC announced that he would propose the necessary modifications in due time.

Item (xv) - Definition of "Nationals"

23. The Delegation of the United States of America observed that the word nationals was used only once, in Article 6. The Secretary-General announced that the next Draft would contain an index of the provisions containing terms defined in Article 1; where a term was used once only, it would be defined in the corresponding provision.

Item (xvii) - Definition of "Secretary-General"

24. The Delegation of the Federal Republic of Germany doubted the usefulness of the proposed definition, which seemed obvious.

Article 2 - Obligations of Contracting Parties; Implementation of the Convention on the Domestic Level

25. The Delegation of the Federal Republic of Germany proposed that the words "subject to the provisions of Article 38(2)" be deleted from the introduction to paragraph (1); in its view, the purpose of the Convention (which should be given in Article 1) should be set out in the simplest possible manner. It further would have wished that the words "such rights" be replaced by "breeders' rights" in paragraph (2)(ii) since the latter term had been covered by a definition in Article 1.

26. Following a number of observations, the Committee agreed to add to paragraph (2)(iii) references to the lists of applications for breeders' rights and of proposed denominations

27. Finally, the Delegation of the United States of America proposed that "defense" be replaced by "enforcement" in the English wording of paragraph (2)(i).

Article 3 - Forms of Protection

28. After in-depth examination, the Committee decided on a majority that the Office of the Union should not include an article on the forms of protection

in the next Draft and that the delegations that wished the matter to be dealt with by the Convention should make relevant proposals in the form of draft wordings.

29. The Delegations of Belgium, Denmark and Sweden spoke in favor of maintaining the current wording of Article 2(2). Several speakers expressed their opinion that the Article did not relate to the granting of industrial patents for plant varieties.

30. The Delegations of France and Spain recommended maintaining the proposed Article 3, if only to ensure that the debate on the patentability of plant varieties be continued.

31. The Delegations of Australia, Hungary, Ireland, Italy, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States of America, as also the representative of the EC, recommended that there should be no provision prohibiting the grant of industrial patents for plant varieties. The Delegations of the Netherlands and the United Kingdom nevertheless asked whether the Convention should not set out the conditions to which the grant of such patents would be the subject. The Delegation of Ireland proposed those conditions; they were similar to those contained in document PM/1/4, entitled "Conference of the International Chamber of Commerce (ICC) on the Interface Between Patent Protection and Plant Breeders' Rights." There being no support for the proposal, it was withdrawn.

32. The Delegation of Japan stated that discussions were ongoing in Japan on the basis of the Draft. It therefore preferred to maintain the text as given in the Draft, that is to say the wording in square brackets. Furthermore, it was concerned at the fact that various proposals formulated in the TRIPS negotiations within GATT could go beyond the intentions behind the deletion of the proposed Article 3 and impose upon the member States of UPOV an obligation to grant industrial patents for plant varieties.

Article 4 - Protection Independent of Trade Regulation

33. The Committee noted that, as a result of the decisions taken on Article 14, the word "material" was perhaps no longer entirely appropriate. Nevertheless, the majority of the Committee was in favor of maintaining it.

Article 5 - Field of Application of the Convention

34. Several delegations contested the reference to "all varieties" of the plant kingdom contained in paragraphs (1) and (2), either in the absolute or in relation to the expression "genera or species" given in paragraphs (3) and (4). The Delegation of the Federal Republic of Germany suggested that the reference be simplified to read: "to the whole plant kingdom." The Committee requested the Office of the Union to consolidate the text and to incorporate, where they were still pertinent, the following proposals made by the Delegation of the United Kingdom: merging paragraphs (1) and (2); introducing the paragraphs providing for progressive application by "notwithstanding..."; replacing "after the coming into force" by "at the time of the coming into force."

35. The Committee agreed that the present member States should be given a shorter period of time--for example three years--to apply the Convention to the whole plant kingdom.

Article 6 - National Treatment

36. Several delegations presented comments of an editorial nature on the provision that was held to be very complex: "national persons or local entities" should be replaced in the English version by "natural persons or legal entities"; the expression "of the said Contracting Party" contained at the end of the provision also required specification; "Person" should be reinserted in the German text in place of "Einheit."

Article 7 - First Application [; Independence of Protection in Different Contracting Parties]

37. The Committee unanimously decided to delete the proposed paragraph (3).

Article 8 - Conditions Required for the Granting of a Breeder's Right

Paragraph (1) - Enumeration of Conditions

38. The wording proposed in the Draft was accepted by the Committee.

Paragraph (2) - Further or Different Conditions

39. The wording proposed in the Draft was accepted by the Committee, subject to clarification of the reference to variety denomination that would read as follows: "provided that a denomination has been given to the variety in accordance with the provisions of Article 16."

Paragraph (3) - Novelty

40. Five separate questions were examined on the basis of the Draft and of the proposals submitted during the session by the Delegations of the Federal Republic of Germany, the Netherlands and Switzerland and by the Office of the Union.

41. The first question was whether novelty was to be assessed by reference to commercial exploitation (as in the Draft) or to sale or to any other act of making available certain material to others (solution recommended by the Delegation of the Federal Republic of Germany). That latter solution was chosen by the Committee. No conclusions were drawn as to whether an offer for sale was also to be taken into consideration.

42. The second question dealt with the material to be taken into consideration. It gave rise to a general question in response to which the Delegation of Italy reserved its stance. The other delegations agreed that the material should comprise not only the propagating material, but also the harvested material. As for the product directly obtained from the harvested material, six delegations (France, Japan, Netherlands, New Zealand, Switzerland, United Kingdom) spoke in favor of its inclusion; the other eight (Australia, Belgium, Denmark, Federal Republic of Germany, Hungary, Ireland, Sweden, United States of America) were in favor of insertion of the wording in square brackets. The representative of the EC was in favor of insertion, but without square brackets, where the product involved was specific to the variety. In conclusion, it was agreed to mention the product obtained directly from the harvested

material in square brackets in the next Draft and to state in a footnote that a large minority was already in favor of a provision that would also be based on such product.

43. The third question dealt with the breeder's agreement. It also gave rise to a general question in response to which the Delegation of Italy reserved its stance. With the exception of the Delegation of New Zealand (and of the representative of the EC), the delegations that voted were in favor of inserting the words "with the agreement of the breeder" in the provision setting out the novelty condition (sub-paragraph (a) in the Draft). Consequently, sub-paragraph (b), which was simply explanatory, would be deleted.

44. The fourth question concerned inclusion of a reference to woody sarmentous plants other than grapevine. As the result of a general question, on which the Delegation of Italy abstained, nine delegations spoke in favor of its inclusion and five others of its inclusion in square brackets. It was agreed that the next Draft would contain the expression without square brackets.

45. The fifth question concerned the period for marketing abroad ("period of grace"). It was agreed that, if necessary, the delegations and representatives concerned would propose a solution to possible problems raised by the existence of a unified market in Europe.

46. The text adopted by the Committee was therefore based on the following reasoning:

"The variety shall be deemed new if the reproductive or propagating material of the variety, the harvested material or the product directly obtained from harvested material has not been sold or otherwise made available to others by the breeder or with his consent..."

47. The Committee took cognizance of document CAJ/27/6. The Delegation of France commented that if a hybrid was represented by its components and the formula associating them, then the sale or making available to third parties of hybrid seed should be equivalent to sale or making available to third parties of the components. Moreover, it interpreted the wording chosen by the Committee for Article 8(3) as meaning that the making available of seed of a component to third parties for the purposes of producing hybrid seed was liable to affect the novelty of that component, whatever the nature of the contract.

Paragraph (4) - Distinctness

48. No agreement was reached on the text to be included in the next Draft.

49. The Delegation of the United States of America proposed that the text given in the Draft be simplified by combining the second and third sentences as follows: "The granting of a breeder's right in respect of a variety or the entry of a variety in an official register of varieties, among other facts, makes that variety a matter of common knowledge as from the application for grant or entry." As to substance, it nevertheless wondered whether it was appropriate to have a provision that made the fact of being a matter of common knowledge go back to the first application filed in any country whatsoever.

50. Several delegations considered that the present wording of the Convention was satisfactory. In particular, they considered that the provision mentioned in the preceding paragraph should be maintained.

Paragraph (5) - Homogeneity

51. The majority of the Committee expressed its agreement on a text with the following substance:

"(5) The variety shall be deemed uniform if it is sufficiently uniform in its characteristics, subject to the variation that may be expected from the particular features of its sexual reproduction or vegetative propagation."

52. The Delegation of Italy entered a reservation on that wording. The Delegation of the United Kingdom would have preferred to have maintained the expression "varietal characteristics."

Paragraph (6) - Stability

53. The Committee agreed to delete the phrase in square brackets and to explain in a note that, within the framework of variety examination, the examination service could assume that a variety was stable in the absence of evidence or of prima facie evidence to the contrary.

Article 9 - Transitional Limitation of the Requirement of Novelty

54. The Committee agreed that the Office of the Union should: transfer that Article to the final clauses; reinsert a reference to "recently created" varieties; render the provision coherent with Article 5 (field of application of the Convention) as regards the use of "taxa" or "genera or species"; re-establish coherence with Article 8(3) as regard acts likely to be detrimental to novelty.

Article 10 - Right of Priority

55. In general, the Committee concluded that the present wording appeared satisfactory, but that account could be taken in the next Draft of certain comments recorded below.

56. As regards paragraph (1), the Delegation of the Federal Republic of Germany proposed that the term "die gleiche Sorte" be replaced by "dieselbe Sorte." It further proposed that reference be made to a one-year period and not a period of 12 months. The Secretary-General observed in relation to that latter proposal (and to others) that the Article under examination contained a number of formulations taken from the Paris Convention for the Protection of Industrial Property and that it was perhaps appropriate to maintain the similarity.

57. As far as paragraph (2) was concerned, the Delegation of the Federal Republic of Germany proposed that "zugunsten der neuen Einreichung" be replaced by "zugunsten des weiteren Antrags."

58. On the initiative of the Delegation of the United States of America, the Committee examined whether it was appropriate to give a three-month period for submitting a certified copy of the documents constituting the first application. Some delegations felt that the period was too short for an applicant who claimed priority, whereas others felt that it was necessary to ensure efficient management of the system of protection and to protect breeders

against abusive claims to priority. A proposal that would have permitted each member State to lay down the time limit as it pleased, provided that it was not less than three months, was debated, but was not finally chosen.

59. As regards paragraph (3), the Delegation of the Federal Republic of Germany proposed that the reference to laws and regulations be replaced by a reference to laws alone ("nach den Gesetzen und sonstigen Vorschriften" being replaced by "nach den Vorschriften" in the German version). The Delegation of the United States of America proposed that the reference to supporting documents be replaced by a reference to other supporting documents (that is to say other than the certified copy of the documents that constituted the first application).

60. The Delegation of New Zealand asked whether the period specified in paragraph (3) could not be defined by each member State. It pointed out that needs differed depending on the type of examination and even depending on the individual case, and that plant health regulations (quarantine) introduced a further complication. Following the explanations given by the Delegations of Denmark and the United Kingdom, the proposal was not upheld.

61. The Delegation of the Federal Republic of Germany commented that paragraph (4) of the Article under examination did not clearly state the implications of priority. It proposed that the Conventions should record the fact that an application comprising a priority claim was to be examined as if it had been filed on the priority date. That proposal was not examined.

Article 11 - Examination of the Application; Provisional Protection

62. The Committee decided to delete paragraph (3) relating to cooperation in examination.

63. It was noted that the wording of paragraph (4) as it stood needed clarification, particularly in the English version, since the expressions "its publication" and "during the aforementioned period" were ambiguous.

Article 12 - Duration of the Breeder's Right

64. The Committee asked the Office of the Union to redraft that Article. The Delegation of France observed that the present text was altogether preferable.

Article 13 - Nullity and Cancellation of the Breeder's Right

65. A general question was put to determine whether the provisions on nullity (paragraph (1)) and cancellation (paragraphs (2) and (3)) ought to be of a compulsory or an optional nature. A large majority was in favor of a compulsory provision for nullity and of optional provisions for cancellation. The alternatives chosen were therefore: "shall" in paragraphs (1) and "may" in paragraphs (2) and (3). To support the optional nature, it was pointed out that in certain individual cases it would be unjust to cancel the breeder's right.

66. The Committee decided to delete the word "effectively" in paragraphs (1) and (2).

67. The Delegation of the Federal Republic of Germany wished to add a reference to a warning in paragraph (3)(ii) (cancellation for failure to pay fees).

Article 14 - Effects of the Breeder's Right

Paragraph (1) - Nature of the Rights Afforded

68. Discussions were initially based on the Draft.

69. During the first exchange of views, several delegations pointed to the difficulties that would be occasioned for their countries by the extension of the rights afforded to the breeder. The Delegation of Australia nevertheless stressed that those difficulties should not prevent it from adopting a revised text, even if ratification were to be delayed until those difficulties had been overcome at national level.

70. The main difficulties referred to concerned:

(i) the fact, according to certain delegations, that the text did not clearly show that the breeder had to "exercise his rights" and to collect his royalty at the first stage of exploitation that was feasible; those delegations would like a "hierarchy" of rights;

(ii) the fact that certain delegations were unable to approve a right that extended to the product directly obtained from harvested material;

(iii) the fact that the practical impact of words such as "conditioning" and "using" was not clear or had not been fully examined at national level;

(iv) the fact that a right extending to export and import could have consequences for non-member States and that those two acts were not among those normally affected by a patent.

71. To remove the first difficulty, the Delegations of the Federal Republic of Germany and of Switzerland each submitted a written proposal for a new text. On the basis of the discussions on those two proposals, the Office of the Union then submitted a further proposal drafted as follows:

"(1) Subject to paragraphs (3) and (4), the following acts shall require the authorization of the breeder:

(a) in respect of the propagating material of the protected variety

- (i) production [or reproduction]
- (ii) conditioning
- (iii) offering for sale
- (iv) sale or other putting on the market
- (v) exporting
- (vi) importing
- (vii) stocking for any of the purposes mentioned in (i) to (vi) above
- (viii) use in any way other than those mentioned in (i) to (vii) above;

(b) in respect of harvested material of the protected variety, any of the acts referred to in (a) above, provided that the harvested material was obtained through the use of a propagating material whose use, for the purposes of obtaining harvested material, was not authorized by the breeder;

(c) in respect of products directly obtained from harvested material, any of the acts referred to in (a) above, provided that such products were made using harvested material whose use, for the purposes of making such products, was not been authorized by the breeder.

"(2) Any Contracting Party may also require the authorization of the breeder for performing acts additional to those mentioned in paragraph (1)."

72. That proposal was supported both by delegations that had pronounced in favor of the text proposed in the Draft and by delegations that had entered reservations in that respect. The Committee therefore decided that it should be taken as a basis for the next Draft.

73. The Delegation of Australia, however, would have preferred maintaining a reference, for the limitation contained in sub-paragraphs (b) and (c), to material obtained in infringement of the breeder's right as had been contained in the proposal by the Federal Republic of Germany.

74. Several delegations observed that the wording proposed by the Office of the Union now spoke of "authorization" whereas the draft was based on the notion of "consent." It was noted that the intention was not to modify the text in substance. Certain members of the Committee considered that the word "authorization"--given in the present text of the Convention--could have a more formal connotation and, for example, exclude implicit consent; others felt that the two notions could be used indifferently. The representative of the EC drew attention to the link with "farmer's privilege" under which no authorization or consent was required for acts of production and subsequent acts of exploitation. The Delegation of France drew attention to the fact that, under patent law, those problems had sometimes been avoided by a reference to the lawfulness of the product involved.

75. The Delegation of the United Kingdom suggested that the reference to selling or any other form of putting on the market be supplemented by a reference to any other form of making available to third parties.

76. As regards the reference to using, the Secretary-General remarked that subject to closer examination, it could perhaps be deleted in view of the existence of sub-paragraph (b). The Delegation of the United States of America held the reference to be useful in the context of inbred lines and hybrid varieties. The Committee then examined how it could be maintained in the next Draft. The majority of delegations were in favor of inclusion without square brackets.

77. The Delegation of the United States of America noted that all the acts referred to in sub-paragraph (a) were not relevant in the context of sub-paragraphs (b) and (c). Thus, there could hardly be any question of conditioning the harvested material. The Delegation of France considered that the problems did not give reason for concern.

78. As regards the inclusion of the product directly obtained from harvested material, that certain delegations likewise questioned in relation to the proposal under examination, the Committee agreed to place the provision under sub-paragraph (c) in square brackets, either in the form of a sub-paragraph (c) or a supplement to paragraph (2) to introduced by "in particular."

Paragraph (2) - Extension of the Breeder's Right to Other Varieties

79. The great majority of delegations expressed satisfaction with the wording proposed in the Draft.

80. The Delegation of the Netherlands stated that it could not accept the proposed sub-paragraph (ii). It suggested that the words "unless equitable remuneration be offered" be added. In its opinion, the absolute nature of the right presently contained in the Draft ran counter to one of the aims of the system of plant variety protection, i.e. to promote plant plant breeding activities. Moreover, it was not compatible with the principle of free availability of reproductive or propagating material of protected varieties for the purposes of creating new varieties. The proposal of that Delegation would be linked to a modification of the patent system to introduce the principle of granting of a compulsory license for patented genes in order to establish a strict balance between the holders of breeders' rights and the holders of patents. The Delegation of Ireland supported the view expressed by the Delegation of the Netherlands.

81. The Delegation of Australia would have preferred the extension of the breeder's right to essentially derived varieties to have been optional and not compulsory.

82. The Delegation of the Federal Republic of Germany proposed that the words "whether directly or indirectly" be deleted in sub-paragraph (ii).

83. As regards the wording of the paragraph, the following proposals were made: replace "owner" by "breeder" in the introductory part; repeat the reference to varieties, in the German text, in each of the sub-paragraphs; specify in sub-paragraph (i) that they are new (subsequent) varieties.

Paragraph (3) - Limitations on the Breeder's Right

84. Subparagraph (a) was approved by the Committee.

85. In respect of sub-paragraph (b) ("farmer's privilege"), the Committee agreed on the following formulation:

"(b) By derogation from the provisions of paragraphs (1) and (2)(i) and (ii),* each Contracting Party may [, within reasonable limits and provided that due consideration is given to the need for the breeder to obtain adequate remuneration,] restrict the breeder's right in relation to any variety in order to permit farmers to use for reproductive or propagating purposes on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by paragraph (2)(i) or (ii) [, provided that such use is limited to the quantity equivalent to the quantity of propagating material of the variety originally purchased.]"

86. The Delegation of France proposed that the proposal under examination should be included in Article 15; it was of the opinion that the provision was not in its right place in an Article dealing with the effects of the breeder's right and that the "farmer's privilege" resulted in part from public interest.

*The references to the preceding paragraphs will have to be modified in view of the decisions taken in respect of paragraph (1).

87. The Committee did not examine the words "farmer" and "holding."

Paragraph (4) - Exhaustion of the Breeder's Right

88. It was noted that "in the territory of the Contracting Party concerned" would have to be added in the introductory part of the English text.

89. The representative of the EC drew attention to the fact that the expression previously mentioned could raise problems as regards the principle of free movement of goods applicable within the European Economic Community. He announced that it would perhaps be necessary to insert a provision that would enable the European Communities to provide for a derogation.

90. The Committee agreed to delete the word "express" preceding the word "consent" in the introductory part and in sub-paragraph (ii). At the suggestion of the Delegation of the United States of America, it was also agreed to add in the English version the word "or" at the end of sub-paragraph (ii) and to supplement sub-paragraph (iii) by a reference to the taxon to which the variety belonged; in other words, the principle of exhaustion would also not apply where export took place towards a country that protected plant varieties, but not the taxon involved.

Article 15 - Restrictions on the Exercise of the Right

91. At the suggestion of the Secretary-General, the Committee agreed to insert in paragraph (1) a reservation in respect of the restrictions provided for elsewhere in the Convention (particularly that of "farmer's privilege").

Article 16 - Variety Denomination

92. The Delegation of the Federal Republic of Germany proposed deleting "in accordance with the provisions of Article 11" in paragraph (3).

Administrative Provisions and Final Clauses

93. Discussions were based on document CAJ/27/4.

Article 17 - Union

94. It was agreed that the Office of the Union would examine whether the word "seat" or the word "headquarters" was the most appropriate.

Article 19 - Composition of the Council; Votes

95. The Committee invited the delegations to consult their international law specialists and to report to the next session on the status that was to be given to intergovernmental organizations. The representative of the EC announced that he would report to the next session on the status which the European Communities wished to have within the Union.

Article 28 - Finances

96. The Delegation of Denmark asked whether it would not be appropriate to amend the system of contributions in order to eliminate fractions of contribution units.

Article 29 - Revision of the Convention

97. In reply to a question by the Delegation of Denmark, the Secretary-General announced that there was no established rule on the required majority for adopting a revised text of a convention. Some conventions contained no provision and it was the diplomatic conference that decided in each case what the required majority would be. In the field of intellectual property, the present trend was to require a three-quarters majority.

Article 32 - Signature

98. The Secretary-General explained that the proposed provision that opened the new Act of the Convention to the signature of the member States only was based on usage which was to relate the right to sign such an act to the right to vote.

Article 33 - Ratification, Acceptance or Approval; Accession

99. In respect of paragraph (1)(b)(i), the Secretary-General explained that the condition that at least one of the member States of an intergovernmental organization wishing to become a member of the Union would itself have to be a member of the Union was generally held to be a good step to safeguard the interests of the other member States of the Union. The Delegation of the United Kingdom wondered whether that condition would not cause difficulties for regional economic integration organizations other than the EC.

100. In respect of paragraph (2), it was agreed that the wording would have to be amended to take into account the fact that intergovernmental organizations could not sign the new Act of the Convention.

Article 34 - Entry Into Force; Closing of Earlier Texts

101. The Secretary-General drew attention to the fact that the Article was based on the assumption that the member States that had not yet ratified the 1978 Act of the Convention would do so in the near future.

Article 36 - Communications Concerning Legislation and the Genera and Species Protected; Information To Be Published

102. The Committee noted that the list of genera and species referred to in the Article under examination was part of legislation; consequently, it requested the Office of the Union to review the Article and to examine whether it should be limited to simply mentioning legislation or, on the contrary, be extended to essential elements of such legislation other than the above-mentioned list.

Article 38 - Reservations

103. Several delegations doubted the need for paragraph (2) if the Article on forms of protection was not to be included in the new Act of the Convention. The Delegation of the United States of America said that it was basically in agreement with the proposed provision, but wished to reserve its final position.

Order of the Provisions

104. The Committee requested the Office of the Union to draw up the next Draft on the basis of the order used in documents CAJ/27/2 and 4. Following the forthcoming session of the Committee, it would have to draw up a final text to be submitted to the Council for the latter's approval for submission to the Diplomatic Conference, on the basis of the order that would be agreed at that session.

105. This report has been adopted by correspondence.

[Annex follows]

ANNEX/ANNEXE/ANLAGE

LISTE DES PARTICIPANTS*/LIST OF PARTICIPANTS*/TEILNEHMERLISTE*

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