



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirty-second Session

Geneva, April 21 and 22, 1993

HARMONIZATION OF LEGISLATIONS AND
IMPLEMENTATION OF THE 1991 ACTDocument prepared by the Office of the Union

1. At its thirty-first session, the Administrative and Legal Committee, on the basis of document CAJ/31/4, embarked upon the examination of four subjects relevant to the practical application of the 1991 Act of the Convention and in relation to which it is desirable that the competent bodies of UPOV take decisions or make recommendations with a view to securing the harmonization of the legislation of the members of UPOV. The discussions concerned a series of questions concerning novelty in certain cases and also the question whether it was appropriate to take measures to prevent an applicant from his enforcing a right, based on provisional protection, in relation to material which he may have commercialized during the "grace period," before the filing of the application, or of material derived from that material. The results of these discussions are reflected in paragraphs 11 to 16 of document CAJ/31/5.

2. Concerning the second subject, two delegations supported the analysis which appears in paragraph 11 of document CAJ/31/4--according to which the principle of exhaustion would prevent the exercise of the right; if no contrary opinions are expressed in the present session, this subject can be considered to have been dealt with.

3. The fourth subject--the transitional application of the provisions concerning essentially derived varieties--was addressed during the sixth Meeting with International Organizations. ASSINSEL was not in a position to present a final position; the statement of the representative of AIPPI would seem to be susceptible of an interpretation supporting an unconditional transition from the old to the new law. CIOPORA, on the other hand, raised the problems which would arise from the coexistence in different countries of old and new laws.

4. It seems that a system which maintains the former regime for certain varieties would be favored by some users of the system of plant variety protection. In this connection, it is perhaps desirable to underline the following points:

(i) Any recommendation concerning the progressive implementation--in the relationship between plant breeders--of the concept of the essentially derived variety and of dependence can only constitute a precedent in relation to other changes in national legislation which are required to bring it into conformity with the Act of 1991. If one envisages, for example, that the breeder of an essentially derived variety, protected before the entry into force of the new legal system should be able to continue to exploit his variety freely (without being subject to the right to prohibit of the breeder of the initial variety), it will be difficult to oppose a provision which retains, in favor of users, the right to freely import harvested product or the "farmer's privilege" in relation to varieties protected before the said entry into force.

(ii) In many countries, the lawmaker usually does not specify the conditions subject to which new legal rules replace the old rules; rather the lawmaker falls back upon the general principles of law and jurisprudence.

[End of document]