



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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

UPOV

CAJ/III/ 2

ORIGINAL: English

DATE: February 8, 1979

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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Third Session

Geneva, April 24 and 25, 1979

## FUTURE DEVELOPMENT OF THE UNION

Document prepared by the Office of the Union

1. At its twelfth ordinary session, held in December 1978, the Council asked the Administrative and Legal Committee (hereinafter referred to as "the Committee") "to continue its activities as reported upon in document C/XII/5, in particular as far as the discussion of possible closer cooperation between member States on the basis of a special agreement in accordance with Article 29 of the UPOV Convention was concerned" (see document C/XII/15, paragraph 11).
2. Document C/XII/5 had mentioned the following points in particular (paragraph 7):
  - (i) Agreement among at least some of the member States on one or more of the following points: list of species eligible for protection; national treatment without reciprocity; extension of the scope of protection in certain cases, for example the sale of plantlets; definition of novelty; duration of protection; variety denominations; fees (their kinds and levels); plant breeders' rights gazettes.
  - (ii) Establishment of a system under which one application for protection filed with one State would have the effect of an application in the other States party to the system. (Each State would continue to grant separate titles of protection.)
  - (iii) Conclusion of a special agreement among certain member States under which the title of protection granted in one member State would be effective also in the other member States.
3. The mandate thus given to the Committee is the result of a first exchange of views held in the Consultative Committee during its seventeenth session, in April 1978, on the basis of a working paper prepared by experts from the Federal Republic of Germany (document CC/XVII/3) and in the Committee itself during its second session in November 1978. At the latter session, the Office of the Union was asked to prepare a working paper on the problems involved (see document CAJ/II/8, paragraphs 9 to 12).

4. Prior to this, discussions of a similar kind had taken place in the Committee of Experts on International Cooperation in Examination in November 1974 on the basis of proposals by the former Controller of the Plant Variety Rights Office of the United Kingdom contained in a letter to the Secretary-General of UPOV dated March 6, 1974, and entitled "Centralized Testing of New Varieties of Major Crops." In that Committee of Experts it was, however, decided to begin international cooperation on a step-by-step basis and collect practical experience before starting work on a formal agreement.

5. The mandate marks the intention of the Council to continue the efforts which the Union has been undertaking, practically since its creation, with a view to bring about harmonization of legislation of member States, uniformity in the implementation of the provisions of the Convention, including the definition of a common understanding on a number of notions and principles and, last but not least, co-operation in examination. These efforts have led to a number of achievements, such as UPOV Test Guidelines and the General Introduction to them, the--almost achieved--common understanding on Data Recording and Interpretation in the Examination of Distinctness, Homogeneity and Stability of New Varieties of Plants and the UPOV Model Agreement for Cooperation in the Testing of Varieties, as well as the various UPOV Model Forms.

6. The proposals made so far for the future development of the Union, especially in the above-mentioned working paper by experts from the Federal Republic of Germany, are intended to promote two aims deriving from the UPOV Convention, namely the achievement of greatest possible uniformity of legislation in UPOV member States and of practices in their plant varieties authorities--a desire reflected in the third paragraph of the Preamble to the UPOV Convention<sup>1</sup>--and the establishment of close<sup>2</sup> cooperation between the plant varieties authorities--mentioned in Article 30(2)<sup>2</sup> of the UPOV Convention and more particularly in the Recommendation in respect of Articles 7 and 30 of that Convention which was adopted on the occasion of the signature of the UPOV Convention on December 2, 1961.<sup>3</sup>

---

<sup>1</sup> This paragraph reads:

"Deeming it highly desirable that these problems to which very many States rightly attach importance should be resolved by each of them in accordance with uniform and clearly defined principles,"

<sup>2</sup> This paragraph reads:

"(2) Special agreements may also be concluded between member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of new varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents."

<sup>3</sup> This Recommendation reads:

"Recommendation

The Conference,

Having regard to Articles 7 and 30 of the Convention,

Having regard to the fact that the examination of new varieties of plants will constitute for each of the member States of the Union an onerous task from a technical and financial point of view, which it is possible and desirable to alleviate by organising such examination on an international basis,

Having regard to the fact that such international co-operation will result in the possibility of extending the Union to include a larger number of States and to cover a larger number of botanical genera and species,

Recommends the States represented at the Conference to undertake as soon as possible the necessary studies for organising the examination on an international basis and for making the agreements provided for in Article 30 of the Convention."

## AIMS FOR THE FUTURE DEVELOPMENT OF THE UNION

7. The aim to achieve uniformity of legislation in member States has, to a great part, already been accomplished by the UPOV Convention of December 2, 1961, which contains a number of basic rules to be followed by member States, according to Article 1(1) of the Convention, when "recognizing and ensuring" plant breeders' rights. Though these basic rules comprise all conditions to which the grant of protection may be made subject and have resulted in a remarkable conformity between the laws and regulations of member States, it must be admitted that in some respects the desired harmony between such laws and regulations has not been obtained in full. In the course of the preparatory work for the 1978 Diplomatic Conference, it appeared that it would be disadvantageous to improve this situation by adding further mandatory rules to the UPOV Convention--or simply endorsing the meaning of some of the existing ones--since that would make it impossible, or at least more difficult, for a number of States not at present members to accede to the UPOV Convention. It was felt, on the contrary, that the mandatory rules of the UPOV Convention should be made more flexible to facilitate accession to it and in some respects the revised text of the Convention, as adopted by the 1978 Diplomatic Conference, achieved a greater flexibility of this kind. Thus, two of UPOV's aims seem to be in direct conflict: the aim to increase uniformity between the national legislations of UPOV member States, which could call for a large number of unequivocal, rigid, mandatory rules in the UPOV Convention, and the aim to keep the Convention open to additional States at present not members of the Union, which would argue in favor of the greatest possible flexibility in such rules, or even for the deletion of some of them. Since experience in the present member States shows that difficulties in applying common rules going beyond those already contained in the UPOV Convention occur mainly at the beginning of a State's membership of the Union, and that after a certain period it appears easier to adjust the existing system of protection to agreed standards for the sake of uniformity, a way out of the dilemma of conflicting aims might be found by envisaging special agreements under Article 29 of the Convention which could be concluded among a restricted number of member States only, namely those in a position to comply with additional mandatory rules going beyond the rules contained in the Convention. This would lead to a greater legal uniformity at least in a smaller circle of member States while, on the other hand, the higher standard of uniformity would not be imposed on all member States.

8. The measures to establish closer cooperation between authorities of member States aim at reducing the burden of work involved in the granting of plant variety protection, both for the breeders and the offices. The final aim is to secure that as many procedural steps as possible--in particular the testing of the variety--be performed once only for all member States or at least for a number of them, for instance those of a certain climatic or economic region. Such division of work between the authorities of member States would have highly desirable side effects. It would for example avoid or help to avoid conflicting decisions on the protectability of the same variety in different member States, it would thereby improve the transparency of markets and would facilitate licensing in different countries, etc.

9. Though both basic aims (achieving greater uniformity and establishing closer cooperation) can be pursued independently, they are closely interlinked. Greater uniformity of national legislations is not aimed at for its own sake but, inter alia, as a necessary condition for closer cooperation between the authorities of UPOV member States. It thus seems appropriate, in the following more detailed examination of proposals for the further development of the Union, to start with the suggestions for establishing systems of cooperation and to treat the proposals for unifying statutory standards and procedures afterwards, thus permitting in each case the usefulness of the proposed harmonization for the intended cooperation to be assessed.

## SYSTEMS OF COOPERATION

Transnational Application

10. The experts from the Federal Republic of Germany have suggested that the establishment of a system be discussed under which one application for protection filed with the authority of one member State would have the effect of an application in the other States participating in the system, or some of them, while each of these States would continue to grant separate titles of protection.

11. Where protection is required in several member States, applications have to be filed at present separately in each of these States. It could be envisaged instead that within a group of States the breeder would be required to file a simple application only, stating in the application for which of the States participating in the system it was to have the effect of an application valid under the national law of those States. The authority receiving such "transnational" application (hereinafter referred to as "Receiving Office") would register it and examine it for compliance with the necessary formalities before forwarding copies to the other Offices (the "Designated Offices"). This would, of course, mean that, when establishing the system, uniform rules would have to be adopted for the formalities and contents of the application for which the UPOV Model Application Form might serve as a basis. Certain rules regulating the furnishing of samples of propagating material for the examination might also have to be standardized. There are two main alternatives possible for determining which authority is to serve as the Receiving Office. One would consist in establishing a central Receiving Office at which all transnational applications were to be filed. This solution would lead to the greatest possible uniformity at the filing stage and to the greatest savings at that stage for the national offices. The other solution would be for the national plant varieties authorities of the participating States to serve as Receiving Offices, either for all applicants or for certain groups of them (i.e. nationals or residents of that State) or certain groups of applications (i.e. all applications filed in a certain language or pertaining to a given species). This rather cautious solution would imply less interference with the existing system.

12. Whatever solution is chosen for the Receiving Office, the problem of the languages in which the transnational application has to be filed needs to be solved unless the language used by the Receiving Office is also used by all Designated Offices. Once the Receiving Office has decided that the application is acceptable from a formal point of view, translations will have to be made in the official languages of the States of those Designated Offices in which an official language other than that of the Receiving Office is used. Should, as will be discussed below, further procedural steps be regionalized, the moment for furnishing translations might be deferred to a later stage. There are several possible solutions for furnishing a translation. The easiest solution would be to require the breeder to furnish it to the Designated Office in question at the time the transnational application is forwarded to that Office, and to authorize the Designated Office to reject the application for its country if the translation is not furnished within a certain period of time thereafter. It should be noted, however, that some of the achievements of UPOV, in particular the UPOV Model Application Form and Technical Questionnaires constitute a practical approach to overcoming language problems.

13. The system of transnational filing would offer definite advantages for applicants. The application would have to be filed once only and no translation furnished until the breeder was certain that the application met with no formal objections. Furthermore, the applicant would have to comply with only one set of formal rules and to submit his application to formal examination only once and in one language. Whether those advantages alone would be sufficient to justify the introduction of a system of that kind seems, however, to need discussion. The system is in any case of great value if supplemented by further steps of regionalization, as described in the following paragraphs.

Regional Testing

14. At present, generally under bilateral agreements, the examination of distinctness, homogeneity and stability (hereinafter referred to as "testing")--that means the most time-consuming and costly part of the granting procedure--is performed for a number of species by the authority of one member State on behalf of the authority of one other member State, or test results already obtained by the authority of one member State are made available to the authority of one other member State. In a few cases, such testing is performed by the authority of one member State for the authorities of several other member States.

15. It is desired that this cooperation should grow until a situation is reached in which the testing of varieties of certain species is performed by one authority only for all other or at least for a large number of the other UPOV member States of the same climatic region. Once this aim is attained for a given species, the system described in the preceding paragraphs could be improved in the following manner: the Receiving Office could, before transmitting the transnational application to the Designated Offices, have the testing performed by the authority determined for the species in question as Regional Testing Authority under that system. Transmission to the Designated Offices would take place only after testing of the variety was completed (except in those special cases where, for statutory reasons, a Designated Office needs a copy of the application at an earlier stage, for instance for the purposes of nationally prescribed publication or for granting provisional protection). The applicant could decide on the basis of the test report whether the application was to be transmitted at all. The applicant who wished for protection in more than one of the States participating in the system would thus be relieved of the burden of looking after more than one proceeding (i.e. correspondence and other contacts would be with one authority only, visits would be to one test station only). Where the test report was negative, the application could be withdrawn by the applicant who would thus avoid a number of expenses that otherwise would have already occurred, for instance expenses for translating the first application into the languages of other countries in which protection was required. It has to be admitted, however, that a breeder can at present obtain the same result by postponing his subsequent applications in other countries until he has obtained the test results from the authority in the country of his first application. In this case, however, the applicant loses the benefit of the priority for his application in the countries of the subsequent applicat

16. The system of regional testing offers a number of additional advantages which are listed in detail in document ICE/I/3 (CEC/I/3), Chapter B. The authority in which the tests for certain species would be concentrated and carried out on behalf of all States participating in the system would receive a sufficient number of applications to ensure the rational employment of its staff specializing in those species. That staff would develop a high degree of expertise in the species in question, so that efficient and qualified work would be ensured. A disadvantage might, however, be implied by the fact that the same expertise would be lacking in the authorities of other member States, a consequence which member States of UPOV might not accept in the field of certain extremely important crops or in cases where the expertise is also needed for examinations which cannot be performed by the Regional Testing Office. For this reason the system must also offer the possibility of the Regional Testing Office carrying out tests for the other States participating in the system after the grant of protection or for purposes other than plant variety protection (i.e. national listing).

17. A further advantage of regional testing is that the same reference collection will be used, within the regional group, for the examination of all varieties of a certain species, namely that assembled by the Regional Testing Office. In practice, this will result in a regional unification of the assessment of "common knowledge" and other basic factor for judging distinctness.

18. In earlier documents (see, for instance, ICE/I/3 (CEC/I/3), paragraph 30) the possibility has been mentioned of setting up one central institute to test all varieties for which applications for protection are filed in more than one member State. It has been said that such a solution, ideal as it would seem in theory, was probably impossible to achieve. It is indeed more realistic to think of a system under which the task of Regional Testing Office is carried out for the different species by the authorities of the various member States participating in the system.

### Regional Granting

19. The question arises whether, where regional testing is performed, the authority responsible for the testing (or another authority) might not be entrusted with granting the title for all States participating in the system, for which protection is required. Such an arrangement would offer the additional advantage of ensuring that the title (including the description) would be fully identical for all those States and would bear the same date.<sup>1</sup>

20. Such a system of regional granting would have to overcome the difficulty that the novelty concept prescribed under Article 6(1)(b) of the UPOV Convention is a national one since it refers to offering for sale or marketing in the territory of the State of application. Thus a variety might be new in one of the States participating in the regional system, meaning that protection can be granted there, but no longer new in another of those States. Regional granting thus seems to require specific rules on novelty in the special agreement setting up the system, for instance stipulating that any offering for sale or marketing in any of the States participating in the system would prevent the granting of a regional title of protection with effect for such State.

21. Under each system of regional granting, it would have to be decided whether the right which is granted remains a truly international right ("unitary title of protection") subject to international rules during its subsequent lifetime and which can only be annulled or declared forfeit by a central instance and for all States for which the grant is effective, or whether it is subject after granting to national rules in each of the States. The latter solution is easier to achieve since it interferes less with the national system in each State. However, it would not always result in the same legal situation for the individual varieties in each of the States participating in the system.

### Variety Denominations

22. The more advanced systems of regional cooperation might be confronted with the problem of the variety denomination since it is one of the prerequisites for the granting of a plant breeders' rights that the variety be given a denomination (Article 6(1)(e)). Should the regional system be extended to the examination of the variety denomination, additional rules going beyond what is mandatory under Article 13 of the UPOV Convention would have to be adopted in the special agreement setting up the regional system. Even where this is done, practical problems would remain: the question whether a certain denomination is misleading, causes confusion, is identical with denominations designating existing varieties or is in conflict with rights of third parties, etc., can only be decided, with the necessary degree of certainty, for each individual State. It could, however, be examined whether the unavoidable uncertainty could not be reduced to a--maybe negligible--minimum by practical measures. If, for instance, a central index of existing variety denominations were established and kept up-to-date, it would be possible to have any proposed denomination examined against such existing variety denominations by a regional office, which could be the Receiving or Testing Office competent in the specific case under the regional system, or one office at which the examination of all variety denominations in regional applications under that system were concentrated. It ought to be discussed which other information of value for the examination of variety denominations might be included in a central index of that kind.

### Deposit of Samples Representing the Varieties

23. A number of instruments (national law and implementing decrees, test guidelines, statement concerning the interpretation of Article 7 of the Convention)<sup>2</sup> require or recommend that a sample of the variety to be protected be deposited in a designated place, in particular in a reference collection. This means that, in general, breeders are at present requested to deposit as many samples as they file applications for protection and each member State has to run and maintain its own collection of samples of protected varieties. A system of cooperation under which samples of varieties would be deposited only with one State would bring about rather substantial economies to both the breeders and the member States party to the system.

---

<sup>1</sup> But also see paragraph 31 as to the value of "the same date".

<sup>2</sup> Diplomatic Conference 1978, see document DC/3, Annex I, page 18.

### Intermediate Solutions

24. The Office of the Union has restricted itself in this document to the main types of possible cooperation on the lines of the suggestions made, in order to prevent the first discussion on these ideas being sidetracked by matters of detail. Intermediate solutions or combinations of general measures are, of course, not excluded.

25. One intermediate solution might consist in providing for a system comprising different steps which the States, interested in closer cooperation would not necessarily have to introduce at once. A special agreement could offer such differing steps of cooperation of which only the basic step (for instance the transnational application) had to be adopted by the Contracting States as from the entry into force of the agreement, while it was left to the Contracting States to make the more advanced steps (for instance the regional testing and the regional granting) operative by a special notification. These steps would apply among those States having made such notification and within the limits mentioned in the notification (for instance restricted to certain species).

### GREATER UNIFORMITY

#### Lists of Species Eligible for Protection

26. The 1961 Convention presently in force in all member States contains in an Annex a list of certain genera and species to which the Convention has to be applied within certain periods. This list has been abandoned in the Revised Text of the Convention as adopted on October 23, 1978, in order to open the Convention to certain non-member States for which this list might have been too rigid. Although this change is a step forward in opening the Convention to further States, it must be noted that it would be desirable that the member States of UPOV, at least in the same regions, apply the Convention, to an even greater degree than at present, to the same genera or species. Systems of close regional cooperation as described in the preceding chapter will fail to be efficient if the participating States do not apply the Convention to basically the same species. Consideration might therefore be given to establishing, for each region or for the member States participating in a system of regional cooperation, lists of species to which all member States of that region or participating in that system must apply the Convention. It seems that it is not absolutely necessary to establish such a mandatory list by a special agreement. A recommendation of the Council would be sufficient. Should, however, a system of closer regional cooperation be established, a list of genera or species to be made eligible for protection before a State can participate in the regional system ought to be attached to the agreement.

#### National Treatment and Reciprocity

27. The 1961 Convention authorizes member States to introduce the reciprocity principle for all genera or species which are not listed in the Annex to the Convention, i.e. to limit the benefit of the protection of varieties of any such non-listed genera or species to nationals of member States of the Union protecting that genus or species and to natural or legal persons resident or having their headquarters in any of those States. The majority of member States has made use of this option. The revised text of the Convention of October 23, 1978, has extended that option to all genera or species.

28. Certain member States might wish to exclude, on a mutual basis, that possibility of restricting the national treatment rule, i.e. to accept applications for the protection of varieties of all genera or species by nationals or residents of (or legal persons having their headquarters in) the States of a regional group. The introduction of such a measure would seem necessary in any more advanced system of regional cooperation (unless full access for those nationals, residents or legal persons is ensured in practice under such a system by the fact that the same species will be made eligible for protection according to the stipulations of the agreement in question by all member States participating in that system) (see paragraph 26, last sentence, above).

### Extension of the Scope of Protection in Certain Cases

29. It is recalled that the scope of protection mandatory under the Convention (Article 5(1)) is restricted to a necessary minimum in order to keep the Convention open for a number of States which are at present not members of UPOV. UPOV member States which have already progressed further in applying the Convention might wish to extend the scope of protection or take other adequate measures in some cases where the present situation is unsatisfactory for breeders. In doing so, they would follow a Recommendation adopted by the Diplomatic Conference on October 23, 1978 (document DC/91). The following measures can be listed as deserving discussion in this respect:

(i) Extension of protection to commercially used (final) products (cut flowers) in the case of ornamental plants.

(ii) Extension of protection to the multiplication of certain groups of plants (i.e. fruit trees) with a view to using them for the production of final products for commercial purposes in own establishments.

(iii) Extension of protection to the multiplication of seed by cooperatives in order to distribute the seed thus obtained among their members or by enterprises to distribute such seed to farmers under contract.

30. In none of these cases does harmonization of the measures to be taken seem to be necessary in order to make any system of closer cooperation, as described in the preceding chapter, work except where a unitary title of protection is to be granted (see paragraph 21 above). The extension of the scope of protection is simply a matter of keeping the Convention attractive for certain groups of breeders.

31. From a legal point of view, the extension of the scope of protection or any other measures to be taken in such cases does not call for a special agreement under Article 29 of the UPOV Convention. Article 5(4) of the Convention is a sufficient international basis for such extension by the national legislators. A recommendation of the UPOV Council in connection with the Recommendation on Article 5 already adopted by the 1978 Diplomatic Conference might give additional support. However, it remains to be seen whether the compelling force of such measures is strong enough to achieve the desired aim or whether a stipulation in a special agreement is needed.

### Duration of Protection

32. Both the Convention presently in force and the Revised Text of the Convention of October 23, 1978, simply contain rules on the minimum duration of protection (Article 8). This is often seen as one of the reasons why the legal situation, as far as the protection of a certain variety of plant is concerned, differs greatly from State to State. A variety might continue to enjoy protection in one member State while its term of protection has run out in others. Adopting a uniform term of protection in all or in a group of member States is, however, not alone sufficient to improve this situation. The rule on novelty (see Article 6 (1)(b) under the present and revised texts of the Convention) as well as the rules on priority (see in particular Article 12(3)), which probably cannot be easily changed, lead to a distortion which by far outweighs the possible differences due to different national periods of protection. In addition, it must be stated that in all member States not only may the authorities annul protection, but it also lapses if the breeder does not pay the annual fees. Under the present system and that of the Revised 1978 Text, it depends on the authority, and even the breeder himself, whether protection is maintained for the full duration allowed under national law or is discontinued in some countries after a number of years. It thus seems very difficult to ensure that varieties are protected during the same period of time in all UPOV member States, or at least in a regional group of member States, unless it is laid down in a special agreement under Article 29 of the Convention that, when protection lapses in one of the States participating in the system, it lapses automatically for the other States. The admissibility of such stipulation might, however, be contested.

### Period of Grace, Transitional Limitation of the Requirement of Novelty

33. Two special aspects of the novelty concept under the Convention are the period of grace and the transitional limitation of the requirement of novelty. The period of grace which member States will be able to introduce under the revised text of the 1978 Convention (see Article 6(1)(b)(i)) will permit breeders to market a variety for one year in the State of application before filing the application without detriment to its novelty. A transitional limitation of the requirement of novelty can be applied by member States under Article 35 of the present text of the Convention and,--in a broader way, corresponding more to usual practice--in Article 38 of the revised text of the 1978 Convention. The requirement of novelty may be limited for varieties which are already in existence whenever the member State applies the Convention for the first time to the genus or species to which the variety belongs.

34. Certain member States might find it useful to apply uniform rules as far as the two above-mentioned aspects of novelty are concerned. This can be achieved by coordinated legislative measures in the States concerned or, with a greater guarantee of continuing observation of the mutual consent achieved among these States, by a special agreement. Whenever specific rules on novelty are to be adopted, under a regional system, special attention will have to be paid to those two aspects.

### Variety Denominations

35. The provisions of the Convention on variety denominations contain only minimum requirements to be enforced by member States. Many member States have more restrictive rules. For instance, some member States do not accept letter/figure combinations as variety denominations while others do. This creates difficulties for the breeder who obtains protection under a variety denomination which is admissible in the State of the first application but not acceptable in other member States. If the breeder submits the same denomination in those other member States that apply more restrictive rules than in the State of his first application (as he is obliged to do under Article 13(5) of the Convention), the competent authorities of those other member States might require him to submit another suitable denomination. This situation is also rather undesirable under general policy aspects since it results in the use of synonyms for the same variety within UPOV member States.

36. For this reason, consideration ought to be given to the possibility of a number of member States of a regional group agreeing on identical rules for the variety denominations. In theory, this could be achieved without a formal agreement under Article 29 of the Convention. However, only a formal agreement gives the necessary safeguard that the rules will be observed in each of the States party to it and will be recognized by the national parliaments and courts of all the participating States. Under a regional system it seems, in any case, indispensable to provide for uniform rules on variety denominations under a treaty stipulation (see also paragraph 22 above).

### National Procedures

37. The competent organs of the Union have also taken a number of measures in past years to harmonize points of national procedure for granting plant breeders' rights. Decisions have been taken, recommendations have been adopted, guidelines and model forms have been established by the Council or its subordinate bodies. The aim of these measures has been either to facilitate or prepare international cooperation or to eliminate differences in the practices of member States which had proved to hamper the exchange of information between the authorities of member States or which caused difficulties for breeders. Some measures also aimed at helping new member States to initiate a national plant breeders' rights system.

38. It is evident that the introduction of any regional system would call for common procedural rules, many of which would have to form part of a special agreement establishing the regional system or of implementing regulations to such an agreement.

39. At the exclusively national level, i.e. merely for national procedures in member States, a continuation of the activities already performed by the Union will certainly be desirable. Also some additional measures will be useful. As a matter of fact, it has already been decided to work on a model plant varieties law as a guide to new member States.

Plant Breeders' Rights Gazettes

40. The question of plant breeders' rights gazettes is also already under discussion in the Administrative and Legal Committee and will be treated separately. Any closer cooperation between a limited group of member States might call for special entries in the national plant breeders' rights gazettes. This can be agreed upon in an informal manner and does not call for stipulations in a special agreement.

## CONCLUSION

41. The previous preliminary discussions on the matters treated in this document as well as parts of this document itself show that a number of possibilities are open for member States to achieve both aims. In the view of the Office of the Union the following approach is called for:

(i) Check whether the representatives of member States wish to make further proposals for the future development of the Union.

(ii) Explore which of the above proposals, or any additional proposals made in the meeting, will meet with sufficient interest on the part of the member States to justify their further discussion.

(iii) Determine which priorities should be set in the further examination of those proposals.

42. The Committee is invited to take the necessary decisions.

[End of document]