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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

Seventh Session

Geneva, May 6 to 8, 1981

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The seventh session of the Administrative and Legal Committee (hereinafter referred to as "the Committee") was held on May 6 and 7, 1981. All member States were represented. The following States were represented by observers: Ireland, Japan and the United States of America. The Commission of the European Communities was represented by an observer. The list of participants is annexed to this document.

2. The session was opened by Mr. P.W. Murphy (United Kingdom), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as given in document CAJ/VII/I.

Adoption of the Report on the Sixth Session of the Committee

4. The Committee unanimously adopted the report on its sixth session as given in document CAJ/VI/10, subject to the following changes to the German wording:

(i) paragraph 9, fourth sentence: to read "Da ein solches Vorgehen anwendig ist..." in place of "Da auf ein solches Vorgehen verzichtet werden kann";

(ii) paragraph 23, last sentence: to read "...die das Recht des Sortenschutzes berühren" in place of "...die das Recht auf Sortenschutz berühren."

"Statistical" Documents Submitted each Year to the Council

5. The discussion was based on document CAJ/VII/2 and mainly concerned the statistics on cooperation in examination.

6. The Committee noted that the statistics were a useful source of information on the extent of cooperation in examination. It was therefore necessary to continue compiling them. However, in order to alleviate the work falling upon the member States, the following procedure ought to be adopted:

(i) In future, only form 2 (see Annex II to document CAJ/VII/2) would be used for collecting data.

(ii) The Office of the Union would communicate the draft document for submission to the Council to the competent authority in each member State to enable the latter to check the data concerning it supplied by the other member States.

7. As far as the reference period was concerned, the Committee decided to maintain the current period (July 1 of one year to June 30 of the following year).

Possibility for a Testing Authority Acting for Another Member State to Enter Into Direct Contact with the Applicant for Protection

8. The discussion was based on document CAJ/VII/3.

9. The Committee noted that contacts between the testing authority and an applicant for protection or a breeder, and also the purpose and results of such contacts, could have implications for the validity of the application and, in addition, for the applicant's possibility of contesting decisions by the authority that had received the application and for the relevant procedure (appeals for example). It was therefore necessary that the latter be informed as rapidly as possible. For that purpose, the Committee decided that the following rules should apply in cases where examination was carried out by an authority in one member State (Authority A) at the request of an authority in a second member State (Authority B):

(i) Authority A would normally only have contacts with Authority B.

(ii) Where it was urgent that the applicant or the breeder should visit the trial culture (for example, when an anomaly occurred which was observable for a short period of time only), Authority A would be able to contact him directly, on condition that Authority B be informed at the same time.

(iii) In all other cases in which Authority A felt the need to contact the applicant or the breeder, it should first get in touch with Authority B.

Free Access for Breeders to Tests Being made by Testing Authorities Acting for Other States

10. The discussion was based on document CAJ/VII/4.

11. The following additional information was given at the session:

(i) In the Federal Republic of Germany, a person wishing to visit trials had to state the varieties he wished to see in the trial cultures. Visits were accompanied and no information was given on varieties not stated. Varieties examined for other member States could not be visited.

(ii) According to the Delegation of Denmark, a distinction had to be made between field trials where no strict protection was provided (no fencing or guards) and greenhouse trials where access could be controlled. As far as the former was concerned, it was pointed out that breeders sometimes visited in groups and gave each other information on their varieties.

(iii) As regards France, there was some reservation as to visits during which information was given on varieties under trial; moreover, certain species such as maize posed special problems.

(iv) In Italy, access to trials for the registration of varieties in the official catalogues of varieties approved for marketing was authorized only to breeders having varieties in those trials.

(v) In the Netherlands, all breeders had access to trials.

(vi) In the United Kingdom, the breeders' organizations were opposed to all breeders being given the possibility of visiting trials.

12. The Committee concluded that the UPOV Model Agreement on International Cooperation in the Testing of Varieties enabled the member States carrying out trials both to adopt the policy of their choosing as regards the varieties they examined on their own behalf and to provide all necessary guarantees as regards those they examined for other member States. Since views were still too divergent, it decided to reexamine the matter at a later session after the opinions of the international professional organizations concerned had been sought.

#### Questions Relating to Plant Variety Protection Law

13. The discussion was based on document CAJ/VII/5.

14. The following corrections and additional information were given at the session:

(i) Paragraph 29 of document CAJ/VII/5 was to read as follows: "The Federal Republic of Germany will consider the question in the event of definite wishes and proposals being expressed."

(ii) The law had been amended in Denmark during the time that had elapsed between publication of document CAJ/VII/5 and the session. The terms of protection were henceforth as stated in paragraph 56 of the above-mentioned document. It was planned to carry out a full review of the law and the current position as regards priority and a transitional limitation of the requirement of novelty (see paragraphs 64 and 69 of the above-mentioned document) was to be reexamined.

(iii) Amendments had been made to the Plant Variety Protection Act of the United States of America and there had been changes in its application at practical level. In relation to the agenda item reported on here, the following was to be noted: reciprocity was now automatic and no longer needed official recognition; protection had been extended to the sexually reproduced varieties of all species; the term of protection had been extended to eighteen years; in order to be validly filed, an application for protection had to be accompanied by the application fee, the genealogy and the description of the variety and a seed sample.

(iv) In the Netherlands, factors involved in the validity of the application and the allocation of an application number and date were those mentioned in paragraph 40(i) to (iv) of document CAJ/VII/5. Subparagraph (v) had therefore to be deleted and in paragraph 41(iv) the word "five" replaced by "four."

(v) Sweden was not envisaging any amendment to its legislation as regards priority and should therefore be mentioned in paragraph 64 of document CAJ/VII/5.

15. The Committee requested the States to inform the Office of the Union of any new element as regards their intentions for amendment of plant variety protection legislation. The Office of the Union would subsequently communicate them to the other States.

#### Proposals for Amendment of the Guidelines for Variety Denominations

16. The discussion was based on document CAJ/VII/6.

17. The Committee's attention was drawn to the fact that it was becoming increasingly difficult to apply the rules on variety denominations, for two main reasons. The first was a general development since the increase in the

numbers of applications for protection meant that there were more and more objections to proposed denominations. The second was linked to the revision of Article 13 of the Convention that had been carried out in 1978 since various of the professional organizations and of the breeders in some of the member States were intent on claiming the same possibilities as those available in other States, particularly as regards the use of denominations composed solely of figures. Additionally, the current Guidelines for Variety Denominations had the drawback of not setting out clearly enough the links between the recommendations they contained and the provisions of the Convention on which those recommendations were based.

18. The Committee held a discussion on the principles on which the document being examined was based. It noted the following:

(i) The Guidelines for Variety Denominations constituted a recommendation and therefore had no obligatory nature and did not necessarily have to obtain the approval of all States. It was in fact probable that one or other of the principles could not be applied in a given State and it was even sure that a court would ignore any principle of which it doubted the justification. However, the fact that the Guidelines were to be accepted in a general manner, justified the revision effort being made.

(ii) For the same reason, they should not repeat the provisions of the Convention, and, in particular, they should not transform the statutory provisions of the Convention into recommendations as did the current Guidelines.

(iii) The sole legal objective that could be pursued by means of the Guidelines was to give those States that so wished agreed explanations and interpretations of those provisions and terms of Article 13 of the Convention needing them.

19. As a result of the above, it was necessary to change the form of the Guidelines. For that purpose, the Committee reviewed the articles of the current Guidelines in order to identify their primary relationship with the provisions of Article 13 of the Revised Act of the Convention. The delegation of the Federal Republic of Germany was to draw up a working paper for distribution by the Office of the Union for the next session of the Committee. Those States that so wished could submit comments on the document in preparation for that session. In addition, the States were invited to inform the Office of the Union, before July 1, 1981, of any difficulties already encountered or of potential difficulties resulting from the revision of Article 13 of the Convention.

#### Revised List of Classes

20. The discussion was based on document CAJ/VII/7.

21. The Committee was affirmative that a list of classes was needed. The principle of a genus constituting a class had to be subject to exceptions. As regards the scope of the list, some delegations were in favor of a simple list that was as limited as possible. Others felt that the classes of species should primarily satisfy the needs and concerns of the circles concerned, i.e., the breeders, the seed and planting material trade and the users of seed and planting material, and that, consequently, it was important to obtain their opinion before holding a detailed discussion on the List of Classes.

22. The Committee decided therefore that:

(i) The delegations would consult with the national professional organizations to ascertain whether they foresaw problems in applying the current List of Classes and any improvements to be made to it, and would report to the next session of the Committee;

(ii) The matter would be reexamined at the next session of the Committee, together with the members of the Technical Committee.

#### Program for the Eighth Session of the Committee

23. Subject to any new matters arising, the agenda for the eighth session of the Committee would contain the following items:

(i) Free access for breeders to the tests being made by testing authorities for other States;

(ii) Guidelines for variety denominations;

(iii) List of classes of species for the purposes of variety denomination;

(iv) Reciprocity in all respects particularly for the protection of the marketed product;

(v) Protection, in the case of maize, of commercial lines and hybrids, excluding parent hybrids.

The delegation of France would draw up a working paper on item (iv) above.

[Annex follows]

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