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UPOV

CAJ/XI/ 11

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

**Eleventh Session
Geneva, April 26 and 27, 1983**

REPORT

adopted by the Committee

Opening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its eleventh session on April 26 and 27, 1983. The list of participants appears in Annex I to this document.
2. The session was opened by Mr. M. Heuver (Netherlands), Chairman of the Committee, who welcomed the participants.
3. The Committee welcomed Mr. J.K. O'Donohoe and Mr. K. Shioya. Mr. J.K. O'Donohoe was recently appointed to the post of Controller of Plant Breeders' Rights in Ireland. Mr. K. Shioya has been seconded to the Office of the Union by the Japanese Office as Associate Officer, in order that he may acquire experience in plant variety protection with the Office of the Union and with the competent authorities of other member States. He will also be responsible for facilitating relations between the competent authorities in Japan on the one hand and the Office of the Union and the competent authorities of other member States on the other.

Adoption of the Agenda

4. The Committee adopted the agenda as appearing in document CAJ/XI/1.

Adoption of the Report on the Tenth Session of the Committee

5. The Committee adopted the report on its tenth session as appearing in document CAJ/X/8, subject to the following amendments to paragraph 18(ii):
 - (i) in the English version of paragraph (a), the words "bromeliaceae and orchids" are to be replaced by "Bromeliaceae and Orchidaceae";
 - (ii) the beginning of paragraph (b) should read thus: "where there is disagreement on the taxonomic position of the taxa concerned."

Intentions of Member States Regarding Amendment of National Plant Variety Protection Law

6. The Delegation of South Africa mentioned that an amendment of its legislation was being made in order to remove the obstacles to cooperation in the examination of varieties.

7. The Delegation of the United States of America mentioned that the Plant Variety Protection Office was in the process of drawing up the amendments to be made to the Regulations and Rules of Practice under the Plant Variety Protection Act that were necessary to bring the protection system based on that Law and applicable to sexually reproduced varieties into line with the 1978 Revised Act of the Convention.

8. The Delegation of the United Kingdom announced that the British Parliament had just passed an amendment to the Plant Varieties and Seeds Act 1964. The amendment was mainly intended to make ratification of the 1978 Revised Act of the Convention possible; it also lengthened the term of protection and provided for the extension of protection to the import of certain products of varieties such as cut flowers. The amendment was to receive the Royal Assent towards the end of May.

9. The Delegation of Sweden announced that its country had deposited its instrument of ratification of the Revised Act of the Convention on December 1, 1982. At the time of the amendment of its Law, prior to the above deposit, the term of protection had been lengthened to 20 years for all species.

UPOV Recommendations on Variety Denominations

10. Recommendation 6.- Discussions were based on document CAJ/X/9, which contains the wording of the Recommendations as provisionally drawn up at the tenth session of the Committee, and on document CAJ/XI/2, which contains a study by the Office of the Union of the problems involved.

11. The Committee noted the study in document CAJ/XI/2, and in particular the fact that the Recommendations did not prevent the use of "distinctive words" in variety denominations (words common to series of denominations and intended to identify the breeder concerned), as was made clear in the first part of the study. The second part of the study dealt with the eventuality of a denomination proposed by a breeder fitting into a series of denominations made up by another breeder in such a way that the denominations concerned make it possible to identify that other breeder. In that connection the Committee took note most particularly of the recommendation proposed by the Office of the Union in paragraph 13(iv) of document CAJ/XI/2, according to which the authorities of member States should submit any cases that might arise to the Committee when it seemed appropriate to consider them in concert. It further stated that it preferred to have the reference to such cases removed from the wording of the Recommendations. Consequently, Recommendation 6(2) as appearing in document CAJ/X/9 was deleted, as was the reference to denominations containing geographical names, made in the examples for Recommendation 6(1).

12. Transliteration and translation of denominations.- Discussions were based on document CAJ/XI/10.

13. A number of delegations voiced the fear that acceptance of the proposals appearing in document CAJ/XI/10 might lead to a proliferation of denominations that in fact were nevertheless synonyms. It was noted on the other hand that, where a denomination was not suitable in any one country, its replacement by a transliteration or translation was a lesser evil. From a practical standpoint, application of the proposals came up against a problem of knowledge of foreign languages. In that connection the Delegation of Japan mentioned that its plant variety protection bulletin drawn up in English for the benefit of interested foreigners contained only transliterations of the denominations. The Committee eventually preferred, in view of the foregoing, not to follow up the proposals for the amendment of the Recommendations, but at the same time invited the authorities of member States to keep the problem in mind when the Recommendations were implemented.

14. Miscellaneous.- The Committee was presented with a proposal that there should be a definition, in Recommendation 1(1), of the meaning of the expression "generic designation," in view of the fact that the words "generic" and "genus" had the same root. It considered that no such definition was necessary.

15. The Committee was also presented with the question of the suitability of combinations of words and figures, and more especially series of such denominations with one word in common. It was pointed out that the Recommendations did not rule out that type of denomination (see Recommendation 2(2)), subject of course to their conforming in other respects. In that connection the denominations of maize varieties were a special case, inasmuch as figures could be

a source of confusion with earliness indices. One delegation announced that it did not, in the case of maize, accept figures that appeared in the range of earliness indices of varieties grown in its country.

16. List of classes for variety denomination purposes.- Discussions were based on document CAJ/XI/3 Rev.

17. The Committee adopted the amended list of classes appearing in Annex II to this document.

18. Recommendations to the Consultative Committee concerning the hearing of the international professional organizations on November 9 and 10, 1983.- Discussions were based on document CAJ/XI/4.

19. The Committee recommended to the Consultative Committee that it should also include in the agenda of the hearing the matter of the UPOV Recommendations on Variety Denominations, including the list of classes for variety denomination purposes (which would form an Annex to the Recommendations). It further recommended that the consultation procedure set out in paragraphs (a) to (d) of paragraph 3(iii) of document CAJ/XI/4 should be followed.

Minimum Distances Between Varieties

20. Document intended to serve as the basis for the hearing of the international professional organizations on November 9 and 10, 1983.- The Committee considered that it was not necessary for it to examine the draft document appearing in Annex I to document CAJ/XI/5, which it considered entirely satisfactory.

21. Legal questions.- Discussions were based on document CAJ/XI/6 and its two addenda.

22. After having thoroughly considered the replies to the questionnaire circulated by the Office of the Union, which appears in Annex I to document CAJ/XI/6, the Committee requested the Office of the Union to draw up, for its next session, a brief document recapitulating the replies to the questions. It further requested the Office to make a study on the concept of offering for sale and marketing and the interpretation of that concept in the various member States for the purposes of novelty within the meaning of Article 6(1)(b) of the Convention.

23. Recommendations to the Consultative Committee concerning the hearing of the international professional organizations on November 9 and 10, 1983. Discussions were based on document CAJ/XI/7.

24. The Committee recommended to the Consultative Committee that it should not include legal aspects of the problem of minimum distances in the agenda of the hearing, recognizing on the one hand that the organizations might raise such questions, and on the other hand that the list of keywords sent them pursuant to the decisions of the eighteenth session of the Technical Committee referred to the question of common knowledge. With regard to the hearing on technical aspects, it noted the envisaged procedure as described in paragraph 3 of document CAJ/XI/7.

25. The Committee's attention was drawn to the desirability of embarking on other subjects, such as international cooperation, at the hearing. It considered that question to be for the Consultative Committee to decide.

Examination of Variety Denominations

26. Harmonization of procedures for the examination of proposed variety denominations.- Discussions were based on document CAJ/IX/4 and its two addenda.

27. A number of directions could be followed in the search for more rational procedures for the examination of variety denominations (or more precisely for the comparison of proposed denominations with "existing" denominations). The complete centralization of examination--either at one office or at a number of offices after sharing out of species--seemed excessively idealistic to the Committee, as the final decision depended to a large extent on the peculiarities of national languages. On the other hand, one could work on the centralization of the computer searching of existing denominations liable to determine the unsuitability of a proposed denomination. There did seem to be

interest in such a system, on the part of both the States that possessed computer facilities and those that did not.

28. A more promising course of action for the time being was the exchange of information between offices on software used, and the exchange of basic data. More specifically, the persons responsible for computer services could be asked to make their data bases compatible, which would enable savings to be made in their design and continuous updating. In view of the fact that a Technical Working Party on Automation and Computer Programs would shortly be meeting and that it had included the question of the examination of variety denominations in its agenda, the Committee decided to defer the consideration of the question until the findings of the Working Party were known. It further decided to include the question in its agenda periodically, in order that developments in the field concerned might be followed.

29. Cooperation with international registration authorities.- Discussions were based on document CAJ/XI/8.

30. Mr. Schneider (Netherlands) drew attention to the fact that he would be publishing an article in Chronica horticultrae, in which he would set out the procedures and rules used within UPOV in the examination of variety denominations, which would serve to make international registration authorities aware of the possibilities for cooperation between them and the official services of UPOV. Moreover, the Symposium in the autumn of 1983 would enable views to be exchanged with those authorities. Under those circumstances, the Committee considered it unnecessary for the time being to proceed further with the consideration of the matter.

31. Miscellaneous. The authorities of member States were requested to fix the deadlines for the presentation of observations regarding the suitability of proposed denominations in such a way that the observations submitted by other States might be taken into consideration.

32. The Committee decided to include in the agenda of its next session the matter of the comparison basis used in the examination of proposed denominations (denominations of varieties whose existence is recognized, for instance by the grant of a title of protection or inclusion in the catalogue; denominations that are "approved" although their protection or inclusion is still pending; proposed denominations).

Varieties Originating from Natural Mutations

33. Discussions were based on document CAJ/XI/9.

34. It was widely accepted that the ease with which certain species mutated presented breeders with real and serious problems, and that consequently the three solutions put forward by the Delegation of France deserved careful attention. However, certain delegations were of the opinion that it was in the first instance for the breeder of the parent variety to take the necessary precautions to prevent the market potential of his variety from being impaired as a result of the marketing by a competitor of a very close mutant. It was also mentioned that there was great difficulty in distinguishing natural from induced mutations.

35. Right of access. "Right of access" should be taken to mean a right available to the breeder of the parent variety which would consist in making subject to his prior authorization the filing (by another person) of an application for protection for a natural mutant of that variety. The result would therefore be the "dependant" status of the title of protection granted for the mutant in relation to the title granted for the parent variety. As document CAJ/XI/9 made clear, the conferment of such a right called for amendment of the Convention. The Committee considered such a step inadvisable for the time being.

36. In that connection attention was drawn to the contractual route advocated by certain circles and used by certain breeders. That route could only apply to multipliers under contract to the breeder, however. Moreover, under French law at least, clauses providing for the "return" of any mutants that might be discovered to the breeder of the original variety were null and void.

37. Variety registers and repositories determining common knowledge. The purpose of such registers and repositories would be to bring commercially uninteresting mutants to the notice of the public, and to prevent third

parties from securing protection for them. It was acknowledged that the solution was only a partial one, as it would never prevent a third party who had found or produced such a mutant from marketing it and thereby competing with the parent variety. It was also pointed out that, once a third party had marketed a mutant previously registered in the name of the breeder of the parent variety, the latter could no longer secure protection for the mutant. The Delegation of the Netherlands pointed out that a comparable, albeit unofficial, system also operated in its country, on the initiative of the Royal Dutch Horticulture Society.

38. Streamlined examination. It was mentioned that a proposal had already been made to the same effect within the technical bodies of UPOV, notably as a means of contending with the proliferation of applications for protection that were filed, in the case of chrysanthemums, solely for defensive purposes, in other words to preserve the market potential of the parent variety and its protection. In view of the fact that, with certain species, natural mutations often related to a whole set of characteristics, it was considered that the procedure proposed by the Delegation of France, and illustrated by the case of the carnation, could prove unsuitable for one or other of those species. Another possible problem was the fact that examination of the parent variety might take longer than was necessary for a mutant to be found or its appearance to be induced. It was also queried whether examination of suitability for the benefits of protection could be limited in all cases to a comparison of the mutant and the parent variety, as contemplated by the French proposal (see paragraph V of document II, reproduced in the Annex to document CAJ/XI/9). It was indeed possible that the variety resulting from mutation might not --unlike the parent variety--be sufficiently distinct from a third variety.

39. In the light of the problems mentioned above, the Committee considered that France should introduce the streamlined examination system as an experiment, and that it should report to a subsequent session on whatever experience had been gained from its practical application. Then would be the time to examine, in the light of that experience, whether the system should be extended to other species and to other States.

Any Other Business

40. It was proposed that consideration be given to the possibility of merging the Administrative and Legal Committee with the Technical Committee because, as the present session of the Committee had shown, the competence of the two sometimes overlapped. The Committee considered that the matter was rather one for the Consultative Committee.

Program for the Twelfth Session of the Committee

41. Subject to any new matters that might arise, the agenda of the twelfth session of the Committee would include the following items:

(i) Intentions of member States regarding amendment of national plant variety protection law (reports on any new events);

(ii) Consideration of observations submitted in writing by international organizations in preparation for the hearing to be held on November 9 and 10, 1983;

(iii) Legal aspects of the problem of minimum distances between varieties;

(iv) Examination of proposed variety denominations:

(a) Report on the session of the Technical Working Party on Automation and Computer Programs;

(b) Criteria for comparison.

42. This report has been adopted by correspondence in accordance with Rule 37(5) of the Rules of Procedure of the Council.

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[Annex II follows/
L'annexe II suit/
Anlage II folgt]

ANNEX II/ANNEXE II/ANLAGE II

LIST OF CLASSES FOR VARIETY DENOMINATION PURPOSES

(Recommendation 9)

LISTE DES CLASSES AUX FINS DE LA DENOMINATION DES VARIETES

(Recommandation 9)

KLASSENLISTE FÜR ZWECKE DER BEZEICHNUNG VON SORTEN

(Anleitung 9)

Note: Classes which contain subdivisions of a genus may lead to the existence of a complementary class containing the other subdivisions of the genus concerned (example: Class 9 (*Vicia faba*) leads to the existence of another class containing the other species of the genus *Vicia*).

Note : Les classes contenant des subdivisions d'un genre peuvent entraîner l'existence d'une classe complémentaire contenant les autres subdivisions du genre concerné (exemple : La classe 9 (*Vicia faba*) entraîne l'existence d'une autre classe contenant les autres espèces du genre *Vicia*).

Anmerkung: Klassen, die Unterteilungen einer Gattung enthalten, können zum Bestehen einer zusätzlichen Klasse führen, die die anderen Unterteilungen der betreffenden Gattung enthält (Beispiel: Klasse 9 (*Vicia faba*) führt zum Bestehen einer anderen Klasse, die die sonstigen Arten der Gattung *Vicia* enthält).

Class 1 / Classe 1 / Klasse 1

Avena, Hordeum, Secale, Triticale, Triticum

Class 2 / Classe 2 / Klasse 2

Panicum, Setaria

Class 3 / Classe 3 / Klasse 3

Sorghum, Zea

Class 4 / Classe 4 / Klasse 4

Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum

Class 5 / Classe 5 / Klasse 5

Brassica oleracea

Class 6 / Classe 6 / Klasse 6

Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis

Class 7 / Classe 7 / Klasse 7

Lotus, Medicago, Ornithopus, Onobrychis, Trifolium

Class 8 / Classe 8 / Klasse 8

Lupinus albus L., L. angustifolius L., L. luteus L.

Class 9 / Classe 9 / Klasse 9

Vicia faba L.

Class 10 / Classe 10 / Klasse 10

Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima

Class 11 / Classe 11 / Klasse 11

Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris

Class 12 / Classe 12 / Klasse 12

Lactuca, Valerianella, Cichorium

Class 13 / Classe 13 / Klasse 13

Cucumis sativus

Class 14 / Classe 14 / Klasse 14

Citrullus, Cucumis melo, Cucurbita

Class 15 / Classe 15 / Klasse 15

Anthriscus, Petroselinum

Class 16 / Classe 16 / Klasse 16

Daucus, Pastinaca

Class 17 / Classe 17 / Klasse 17

Anethum, Carum, Foeniculum

Class 18 / Classe 18 / Klasse 18

Bromeliaceae

Class 19 / Classe 19 / Klasse 19

Picea, Abies, Pseudotsuga, Pinus, Larix

Class 20 / Classe 20 / Klasse 20

Calluna, Erica

Class 21 / Classe 21 / Klasse 21

Solanum tuberosum L.

Class 22 / Classe 22 / Klasse 22

Nicotiana rustica L., N. tabacum L.

Class 23 / Classe 23 / Klasse 23

Helianthus tuberosus

Class 24 / Classe 24 / Klasse 24

Helianthus annuus

Class 25 / Classe 25 / Klasse 25

Orchidaceae

Class 26 / Classe 26 / Klasse 26

Epiphyllum, Rhipsalidopsis, Schlumbergera, Zygocactus

Class 27 / Classe 27 / Klasse 27

Proteaceae