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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixteenth Session

Geneva, November 14 and 15, 1985

THE FIELD OF APPLICATION
OF THE UPOV CONVENTIONDocument prepared by the Office of the Union

The Annex to this document contains the draft of one of the two papers whose preparation was decided in October 1985 by the Consultative Committee of UPOV and which is intended as a preparatory paper in the joint UPOV-WIPO information meeting convened for January 10, 1986. The Consultative Committee decided that the draft of the paper should be considered by the Administrative and Legal Committee at its sixteenth (present) session (see document CC/XXXII/5 Prov. 2, paragraphs 39 and 40).

[Annex follows]

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ANNEX

THE FIELD OF APPLICATION
OF THE UPOV CONVENTION

1. The purpose of the International Convention for the Protection of New Varieties of Plants (in French: Convention internationale pour la protection des obtentions végétales; in German: Internationales Uebereinkommen zum Schutz von Pflanzenzüchtungen) clearly appears from its title. It is also defined as follows in Article 1, paragraph (1):

"(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined."

2. The UPOV Convention specifies its field of application in article 4(1): it "may be applied to all botanical genera and species." It does not, however, define what is to be understood by 'botanical' or by the words 'plant' and (in French) 'végétal' belonging to the same semantic field.

3. According to its article 4(2), "The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species." Many of them respond to that undertaking by setting up a list of the genera and species (and other taxonomic units) which they make eligible for protection. Those lists show that in practice the States apply the Convention to the plants used in agriculture (in its wide sense), i.e. to agricultural plants, vegetables, fruit crops, ornamental plants and forest trees. These are 'higher plants.'

4. Member States apply it also, as need be, to 'lower plants.' Japan, for example, now protects 12 species of edible mushrooms (i.e. all mushrooms cultivated in that country as varieties or--to use mushroom growers's terminology --strains) and two species of algae. The Netherlands protect the common mushroom (the genus *Agaricus*), and other European States intend to do the same. These plants also belong to the field of agriculture.

5. Indeed the main aim of the Convention is the development of that activity. It is written down in the preamble, in which the Contracting Parties affirmed that "they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders."

6. However, the Convention is not necessarily confined to that domain. This may be demonstrated by the general language chosen by some States in defining the field of application of their plant variety protection laws. In New Zealand, for example, the law applies to "all varieties and species of plants other than fungi, algae and bacteria." In the United States of America, the Plant Variety Protection Act applies to "any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids)." Those States have felt the need to exclude some categories of living things which are thus implicitly considered as plants and are thus implicitly able to come under those laws. The case of the United States of America deserves special mention because bacteria and fungi are not sexually reproduced and, therefore, there was in fact no need to mention them as being excluded.

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7. On the other hand these States confirm that the plant variety protection law is not really intended for an area other than agriculture at large. A further element in that direction is the fact that the law is generally implemented by an authority under the Ministry of Agriculture.

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