



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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



DC/11

ORIGINAL: English

DATE: September 28, 1978

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

GENEVA

**DIPLOMATIC CONFERENCE  
ON THE REVISION OF THE INTERNATIONAL CONVENTION  
FOR THE PROTECTION OF NEW VARIETIES OF PLANTS****Geneva, October 9 to 23, 1978**

FOURTH SET OF OBSERVATIONS

Submitted by Governmental authorities on  
documents DC/1 to DC/4

The Annex to this document contains the observations from Denmark on the draft revised Convention. It is recalled that the observations from Barbados, Canada, Pakistan, South Africa and Sweden are contained in document DC/6, the observations from Bangladesh and Sri Lanka in document DC/8 and the observations of the Netherlands in document DC/9.

[Annex follows]

## ANNEX

## OBSERVATIONS OF THE GOVERNMENT OF DENMARK

(Letter of the Danish Ministry for Foreign Affairs  
to the Secretary-General of UPOV  
of September 27, 1978)

General Comments

The Danish Government is in general satisfied with the present text of the Convention. However, some of the proposed amendments do not, in the view of the Danish Government, represent any improvement of the Convention. If the revised text is adopted, this may lead to a reduction of the uniformity of legislation in the member States. Some of the amendments, however, are proposed in order to make it easier for certain States at present not members of UPOV to adhere to the Convention. The Danish Government considers it important that more States become parties to the Convention. For this reason, the Danish Government will limit its comments to only a few points.

Article 5

The Danish Government notes with satisfaction that no amendment of substance has been proposed in respect of this Article, and in particular that the faculty which paragraph (4) gives member States to extend the protection to the final product has not been changed to an obligation for member States. The Danish Government wishes to emphasize that such change would cause great difficulties for Denmark to become party to the new text.

Article 6

Under the proposed text of this Article, the Convention will allow Contracting States to grant in their national laws a so-called "period of grace" of one year (Article 6(1)(b)(i)), during which the new variety may have been marketed before the application. The Danish Government considers it a step backward to introduce this possibility in the Convention. It is aware, however, of the fact that some States might find it impossible to ratify the Convention unless they were permitted to maintain in their national law a provision for such period of grace. The Danish Government accepts the necessity of providing for a period of grace for these States but would prefer the provision to take the form of a special derogation analogous with Article 34A in document DC/3.

In the draft (Article 6(1)(b)(ii)) it is proposed to extend, in case of certain groups of plants (vines, forest trees, fruit trees and ornamental trees), from four to six years the period during which a variety may, without prejudicing its novelty, have been offered for sale or marketed in a State other than the State in which the application is filed. The Danish Government does not consider such extension desirable. As the extension is proposed only for groups of plants which are usually slow-growing, the Danish Government will, however, not oppose the amendment.

Article 12

Denmark also reserves its rights to raise the question of the lawfulness of the provision of Article 12(4), second sentence, regarding rights of third parties.

Article 13

In the text of the alternative proposal submitted in document DC/4 - as compared with the present text - the word "trademark" appears only in paragraph (9). According to the now proposed wording of paragraph (4)(a), the breeder may not assert the right he enjoys in the use of a designation (e.g. trade mark or trade name) in order to hamper the free use of the variety denomination. Since this wording is broader in scope than that of the present paragraph (3), Denmark has no objection to it.

Denmark finds that only Alternative 3 in paragraphs (4)(a) and (8)(b) reading "in any member State of the Union" provides a satisfactory solution. Failing selection of that alternative, the proposed provision could have unreasonable consequences. In some member States breeders could have variety protection, which subsists for a limited period, while breeders in other member States could have trade mark protection, which may subsist for an indefinite period. Trade mark protection could thus be asserted after expiration of variety protection. Such a solution could tend to make variety protection less attractive and it could result in unreasonable restrictions for exporting in countries where variety protection has expired and where the name used is generic for the variety concerned.

[End of Annex  
and of document]