



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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

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**

REPORT OF THE WORKING GROUP ON ARTICLE 13

submitted by Mr. W. Gfeller
Chairman of the Working Group on Article 13

I. Establishment and Activity of the Working Group

1. The Working Group on Article 13 (hereinafter referred to as "the Working Group") was established by the Conference meeting in Plenary on October 9, 1978. Its main task was to examine questions with respect to variety denominations and to prepare proposals for a new wording for Article 13 of the Convention in its version of December 2, 1961, as amended on November 10, 1972.

2. According to the decision of the Conference meeting in Plenary, all member States and interested observer States were invited to delegate representatives to the Working Group; the member States were all represented and representatives of the observer States of Canada, Finland, Japan, New Zealand, Spain and the United States of America also participated in the discussions. During its first meeting, the Working Group decided to call upon further experts to assist it in its deliberations and nominated Dr. H.H. Leenders, Dr. W. Marx, Mr. D.M.R. Obst, Dr. E. Freiherr von Pechmann, Mr. R. Royon and Mr. R. Troost for that purpose.

3. At its first meeting, the Working Group elected Mr. W. Gfeller (Switzerland) as Chairman and Mr. J.U. Rietmann (South Africa) and Mr. F. Schneider (Netherlands) as Vice-Chairmen. The Working Group met from October 11 to 13 inclusive and on the morning of October 16.

II. Basis of the Discussions

4. According to the Rules of Procedure, document DC/3 formed the basis for the discussions. During the discussions, document DC/4 was introduced by the representatives of Canada and of the Federal Republic of Germany, document DC/12 by the representative of the United States of America, document DC/25 by the representative of the United Kingdom, document DC/39 by the representative of Belgium and document DC/51 by the representative of France. The representatives of the United Kingdom and of the United States of America also introduced in the discussions Annex IV of document RC/ad hoc/11.

III. Course of the Discussions

5. After short general statements had been made by several States, the Working Group started the discussions on the individual paragraphs of Article 13 on the basis of document DC/3.

6. As a result of its discussions, the Working Group recommends to the Conference meeting in Plenary that the present text of Article 13 of the Convention of December 2, 1961, as revised on November 10, 1972, be replaced by the text appearing in the Annex to this document. It further recommends that Articles 36 and 36A in document DC/3 be deleted.

7. The Working Group emphasizes, however, that it can propose this text to the Conference meeting in Plenary only if the latter can also adopt the following interpretation.

Ad paragraph (1)

The wording leaves open the question in what territorial area and under what conditions the variety denomination shall become the generic designation. This will be a matter for national legislation. The fact that denominations of varieties which are or have been protected as provided for in this Convention are to be their generic designations does not mean that denominations of other varieties are not to be their generic designations.

It is furthermore left to the member States to decide on the extent to which they wish to apply the provisions of the second sentence to those variety denominations which are registered in other member States.

Ad paragraph (5)

The term "unsuitable" covers any circumstance which, in the opinion of the competent authority of a member State, prevents the registration of the variety denomination in that State, including illegality.

Ad paragraph (7)

This paragraph merely requires that the use of the variety denomination in a member State be ensured in accordance with its provisions. It does not specify the means by which this is to be done nor does it necessarily require legislation. The paragraph does not prevent a member State from making more far-reaching provisions extending, in the member State concerned, the obligation to use the variety denomination to varieties that are protected only in another member State.

Ad paragraph (8)

This paragraph has no bearing on the regulation of the designation of varieties under other laws or regulations. The final sentence of this paragraph does not mean that the denomination of varieties other than varieties which are or have been protected as provided for in this Convention should not be easily recognizable.

[Annex follows]

Article 13

Variety Denomination

(1) A variety shall be designated by a denomination, to be its generic designation. The member States shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination, even after the expiration of the protection.

(2) Such denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating the variety in the particular member State. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraph, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The competent authority for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder to submit another suitable denomination.

(6) The competent authority of each member State of the Union shall ensure that the competent authorities of the other member States of the Union are informed of matters concerning variety denominations, including in particular the submission, registration and cancellation of such denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. Even if such an indication is associated, the denomination must be easily recognizable.

[End of document]