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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

DRAFT

INTERNATIONAL CONVENTION FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

(except the title and Articles 1, 5, 13, 24, 26, 34,  
37, 39, 40, 42)

submitted to the Drafting Committee  
by the Secretariat

INTERNATIONAL CONVENTION FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

of December 2, 1961,  
as revised at Geneva on November 10, 1972, and  
on October 23, 1978

- [ Article 26: Finances ]
- Article 27: Revision of the Convention
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## Article 1

Purpose of the Convention; Constitution  
of a Union; Seat of the Union

- (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 States parties to this Convention (hereinafter referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.
- (3) The seat of the Union and its permanent organs shall be at Geneva.

## Article 2

Forms of Protection; ~~Particulars~~ Within a Genus or Species

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

~~(2) For the purposes of this Convention, the word "variety" is applicable to any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 6.~~

<sup>2</sup>  
(2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

## Article 3

National Treatment; Reciprocity

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be controlled.

(3) Notwithstanding <sup>the provisions of</sup> paragraphs (1) and (2), any member State of the Union apply-  
/ this ing ~~the~~ Convention to a given genus or species shall be entitled to limit the benefit  
+ this the Convention to the same genus or species and to natural and legal persons resident or having their registered office in any of those States.

## Article 4

Botanical Genera and Species Which Must  
or May Be Protected

(1) This Convention may be applied to all botanical genera and species.

(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.

(3) (a) Each member State of the Union shall, on the entry into force of ~~the~~ <sup>this</sup> Convention in its territory, apply the provisions of ~~the~~ <sup>this</sup> Convention to at least five genera or species.

<sup>this</sup> (b) Subsequently, each member State shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of ~~the~~ Convention in its territory:

(i) within three years, to at least ten genera or species in all;

(ii) within six years, to at least eighteen genera or species in all;

(iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of ~~the~~ <sup>this</sup> Convention within a genus or species in accordance with the provisions of ~~paragraph (3)~~ <sup>Article 4</sup>, ~~such~~ <sup>2</sup> genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b), ~~of the present paragraph~~ be considered as one genus or species.

2(2), (4) At the request of any State intending to ratify or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purposes of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State, the Council may, in order to take account of special difficulties encountered by such State in the fulfilment of the obligations under ~~subparagraph (b)~~ <sup>(b)</sup> of paragraph (3) ~~of this Article~~, decide, for the purposes of that State, to extend the periods referred to in ~~that subparagraph~~ <sup>(3) (b)</sup>.

## Article 5

Rights Protected; Scope of Protection

(1) The effect of the right granted to the breeder of a variety is that his prior authorisation shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the variety, and for the offering for sale or marketing of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as <sup>an</sup> initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

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[Article 5, continued]

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), ~~(1) of this Article,~~ extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

## Article 6

Conditions Required for Protection

(1) The breeder of a variety shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or a precise description in a publication. ~~A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must~~ be capable of precise recognition and description. *The*

*Which permit a variety to be defined and distinguished* (b) At the date on which the application for protection in a member State of the Union is filed, the variety

(i) must not--or, where the law of that State so provides, must not for longer than one year--have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and

(ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

(c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The variety shall be given a denomination in accordance with the provisions of Article 13.

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the State in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Article 7

Official Examination of Varieties;  
Provisional Protection

Appropriate

(1) Protection shall be granted only after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be ~~adapted~~ <sup>adapted</sup> to each botanical genus or species, ~~having regard to its normal manner of reproduction or multiplication~~.

(2) For the purposes of such examination, the competent authorities of each ~~country~~ <sup>member State of the Union</sup> may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) <sup>With respect to</sup> ~~during~~ the period between the filing of the application for protection and the decision thereon, any member State of the Union may take measures to protect the breeder against wrongful acts by third parties.

Article 8

Period of Protection

The right conferred on the breeder shall be granted for a limited period, ~~this~~ <sup>which</sup> ~~period~~ may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including their rootstocks, ~~the minimum~~ <sup>the</sup> period shall be ~~not~~ <sup>may</sup> less than eighteen years computed from the said date.

in each case,

the prescribed period

Article 9

Restrictions in the Exercise  
of Rights Protected

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 10

Nullity and Forfeiture  
of the Rights Protected

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in ~~subparagraphs (a) and (b) of paragraph (1) of Article 6~~ were not effectively complied with at the time when the title of protection was issued.

(1)(a) and (b)

(2) The <sup>right of the</sup> breeder shall <sup>become</sup> ~~forfeit his right~~ when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its ~~morphological and physiological~~ characteristics as defined when the right was granted.

(3) The right of the breeder may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or



[Article 10, continued]

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

Article 11

Free Choice of the Member State in Which the  
First Application is Filed; Application in  
Other Member States; Independence of  
Protection in Different Member States

(1) The breeder may choose the member State of the Union in which he wishes to make his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

Article 12

Right of Priority

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. ~~This period which~~ shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute the application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13

Denomination of Varieties of Plants

(1) A variety shall be given a denomination.

[Article 13, continued]

(2) Such denomination must enable the variety to be identified; in particular, it may not consist solely of figures. 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 or a closely related botanical 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) If the breeder submits as the denomination of the variety either a designation in respect of which he enjoys the protection accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, he may not, as from the time when it is registered, continue to assert his right to the trade mark, in respect of the above-mentioned products, in any member State of the Union applying the provisions of ~~the~~ Convention to the genus or species to which the variety belongs. <sup>this</sup>

(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, <sup>which</sup> In ~~this~~ case, it may require the breeder to submit a translation of the original denomination or another suitable denomination.

(6) When the denomination of a variety is submitted to the competent authority of a member State of the Union, the latter shall communicate it to the Office of the Union referred to in Article 15, which shall notify it to the competent authorities of the other member States of the Union. Any member State of the Union may address its objections, if any, through the said Office, to the State which communicated the denomination.

(7) The competent authority of each member State of the Union shall notify each registration of the denomination of a variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union.

(8) Any person in a member State of the Union who offers for sale or markets reproductive or vegetative propagating material of a variety 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 (11), prior rights do not prevent such use.

(9) From the date of issue of a title of protection to a breeder in a member State of the Union:

(a) the denomination of the variety may not be used, in any member State of the Union, as the denomination of another variety of the same or a closely related botanical species;

(b) the denomination of the variety shall be regarded as the generic name for that variety. Consequently, subject to the provisions of paragraph (11), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law.

(10) It shall be permitted, in respect of the same product, to add a trade mark to the denomination of the variety.

[Article 13, continued]

(11) Prior rights of third parties in respect of signs used to distinguish their products or enterprises 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 (8), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

Article 14

Protection Independent of Measures Regulating  
Production, Certification and Marketing

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

Article 15

Organs of the Union

The permanent organs of the Union shall be:

- (a) the Council; and
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Article 16

Composition of the Council; Votes

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.

- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

Article 17

Observers in Meetings of the Council

(1) States not members of the Union which have signed ~~but not yet ratified~~ this Act shall be invited as observers to meetings of the Council.

(2) Other observers or experts may also be invited to such meetings.

## Article 18

Officers of the Council

- (1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.
- (2) The President shall hold office for three years.

## Article 19

Meetings of the Council

- (1) Meetings of the Council shall be convened by its President.  
*An ordinary*
- (2) A ~~regular~~ session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if ~~a~~ *one-* third of the member States of the Union so request.

## Article 20

Rules of Procedure of the Council;  
Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

## Article 21

Tasks of the Council

The tasks of the Council shall be ~~X~~:

- (a) <sup>to</sup> study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) <sup>to</sup> examine the annual report on the activities of the Union and lay down the programme for its future work;
- (c) <sup>to</sup> give to the Secretary-General, whose functions are set out in Article 23, all necessary directions ~~including those concerning relations with national authorities~~ *for the accomplishment of the tasks of the Union;*
- (d) <sup>to</sup> examine and approve the budget of the Union and fix the contribution of each member State in accordance with the provisions of Article 26;
- (e) <sup>to</sup> examine and approve the accounts presented by the Secretary-General;
- (f) <sup>to</sup> fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) <sup>to</sup> *and,* appoint the Secretary-General ~~if it finds it necessary, appoint a Vice Secretary-General after consultation with and the agreement of the Secretary-General~~ *and* determine the terms of appointment of each;
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

## Article 22

Majorities Required for Decisions  
of the Council

102 Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(d), 26(5), 27(1), 28(3) ~~and~~ 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

## Article 23

Tasks of the Office of the Union; Responsibilities  
of the Secretary-General; Appointment of Staff

(1) The Office of the Union shall ~~have the task of~~ carrying out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible <sup>to the Council; he shall be responsible</sup> for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of Article 21(g), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Article 24 ~~23A in document DC/31~~Legal Status

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Union's objectives and for the exercise of its functions.

Article 25 ~~24 in document DC/31~~Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Article 26

Finances

(1) The expenses of the Union shall be met from:

- (a) annual contributions of member States of the Union;
- (b) payments received for services rendered; and
- (c) miscellaneous receipts.

(2) (a) For the purposes of determining the amount of their annual contributions, the member States of the Union shall be divided into the following classes:

Class A .....	15	units
Class B .....	12.5	units
Class C .....	10	units
Class D .....	7.5	units
Class I .....	5	units
Class I <u>bis</u> .....	4.5	units
Class II .....	4	units
Class II <u>bis</u> .....	3.5	units
Class III .....	3	units
Class III <u>bis</u> .....	2.5	units
Class IV .....	2	units
Class IV <u>bis</u> .....	1.5	units
Class V .....	1	unit
Class V <u>bis</u> .....	0.6	unit
Class V <u>ter</u> .....	0.2	unit

(b) Each member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of member States of the Union by the total number of units.

(4) (a) Each State shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

(b) Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change of class is to take effect.

(5) A member State of the Union which is in arrears in the payment of its contributions may not exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years, but it shall not be relieved of its obligations under this Convention, nor shall it be deprived of any other rights thereunder. However, the Council may allow such a State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Article 27

Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Article 28

Languages To Be Used by the Office  
and in the Council

- (1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
- (2) Meetings of the Council and of revision conferences shall be held in the three languages.
- (3) If the need arises, the Council may decide that further languages shall be used.

Article 29

Special Agreements for the Protection  
of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Article 30

Implementation of the Convention on the Domestic  
Level; Contracts on the Joint Utilisation of  
Examination Services

- (1) Each member State of the Union shall undertake to adopt all measures necessary for the application of this Convention. In particular, each member State shall undertake to:
  - (a) ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of the rights provided for in this Convention;
  - (b) set up a special authority for the protection of new varieties of plants or ~~to~~ entrust their protection to an existing authority; ~~and~~
  - (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.
- (2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.
- (3) It shall be understood that, on depositing its instrument of ratification or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

Article 31

Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

## Article 32

Acceptance or Approval;  
Ratification, / Accession

- (1) Any State shall express its consent to be bound by this Act by the deposit of:
- its instrument of ratification, <sup>acceptance or approval,</sup> if it has signed this Act; or
  - its instrument of accession, if it has not signed this Act. <sub>, acceptance, approval</sub>
- (2) Instruments of ratification <sup>or</sup> accession shall be deposited with the Secretary-General.
- (3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 33 ~~[32A in document DC/3]~~Entry Into Force; Closing of Earlier Texts

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

<sup>a</sup> (1) the number of instruments of ratification <sup>, acceptance, approval</sup> or accession deposited is not less than five; and

<sup>b</sup> (2) <sup>at least</sup> ~~not less than~~ three of the said instruments are instruments deposited by States party to the Convention of 1961, ~~as amended by the Additional Act of 1972~~

<sup>(a) and (b)</sup> (2) <sup>With to which</sup> ~~In~~ respect <sup>s</sup> of any State depositing its instrument of ratification <sup>, acceptance, approval</sup> or accession after the conditions referred to in paragraph (1) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Article 34 ~~[32B in document DC/3]~~Relations Between States Bound by Different Texts

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

<sup>9 of 1961</sup> (2) Any member State of the Union not bound by this Act ~~but bound by the~~ <sup>6 of 1972</sup> ~~Convention of 1961 as amended by the Additional Act of 1972~~ ("the former State") may declare, in a notification addressed to the Secretary-General, that it shall apply the said Convention <sup>as amended by the said Additional Act</sup> in its relations with any State bound by this Act which becomes a member of the Union through ratification <sup>of</sup> or accession to this Act ("the latter State"); ~~as from the beginning~~ <sup>of</sup> one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

<sup>L</sup> acceptance or approval



Article 35 ~~[33 in document DC/3]~~Communications Concerning the Genera and Species Protected;  
Information To Be Published

(1) When depositing its instrument of ratification<sup>, acceptance or approval</sup> of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of ~~the~~ genera and species to which, on the entry into force of this Act ~~in~~ respect ~~of~~ that State, it will apply the provisions of this Convention. <sup>with</sup> ~~to~~

(2) The Secretary-General shall, on the basis of communications received from each member State concerned, publish information ~~on~~:

<sup>a</sup>  
(i) ~~on~~ the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act ~~in~~ respect ~~of~~ that State; <sup>with</sup> ~~to~~

<sup>b</sup>  
(ii) ~~on~~ any use of the faculty provided for in Article 3(3);

<sup>c</sup>  
(iii) ~~on~~ the use of any faculty granted by the Council pursuant to Article 4(4) or (5);

<sup>d</sup>  
(iv) ~~on~~ any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply;

<sup>e</sup>  
(v) ~~on~~ any use of the faculty provided for in Article 5(4), second sentence;

<sup>f</sup>  
(vi) ~~on~~ the fact that the law of the said State contains a provision <sup>as permitted</sup> ~~allowed~~ ~~under~~ by Article 6(1)(b)(i), and the length of the period ~~allowed by such provision~~ <sup>permitted</sup>;

<sup>g</sup>  
(vii) ~~on~~ the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Article 36 ~~[34 in document DC/3]~~Territories

<sup>, acceptance, approval</sup>  
(1) Any State may declare in its instrument of ratification<sup>, acceptance, approval</sup> or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of ~~the~~ <sup>these</sup> territories designated in the declaration or notification, ~~for the external relations of which it is responsible~~.

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification<sup>, acceptance, approval</sup> or accession in the instrument of which it was included, and any notification given under ~~such~~ <sup>that</sup> paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

<sup>h, acceptance, approval</sup>

Article 37 ~~[34A in document DC/3]~~

Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of ~~paragraph (1) of~~ Article 2<sup>(1)</sup>, any State which, at the date of opening for signature of this Act, provides for protection under different forms for sexually reproduced and for vegetatively propagated varieties of one and the same genus or species may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification<sup>(1)</sup> of or accession to this Act, it notifies the Secretary-General of the Union of that fact.

*acceptance or approval*

(2) Where, in a member State of the Union to which the preceding paragraph applies, protection is sought under patent legislation, the said State may apply the novelty criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6 and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 38 ~~[35 in document DC/3]~~

Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Article 39 ~~[36 in document DC/3]~~

Transitional Rules Concerning the Relationship Between  
Variety Denominations and Trade Marks

(1) If, at the date of entry into force of this Convention ~~in~~<sup>with</sup> respect <sup>to</sup> of a member State of the Union, the breeder of a variety protected in that State enjoys in that State the protection of the denomination of that variety as a trade mark for identical or similar products within the meaning of trade mark law, he may either renounce the protection in respect of the trade mark or submit a new denomination. If a new denomination has not been submitted within a period of six months, the breeder may not continue to assert his right to the trade mark for the above-mentioned products.

(2) If a new denomination is registered for the variety, the breeder may not prohibit the use of the previous denomination by persons obliged to use it before the entry into force of this Convention, until a period of one year has expired from the publication of the registration of the new denomination.

Article 40 ~~[36A in document DC/31]~~

*on which this Act is opened*

Exceptional Rules for the Use of Denominations Consisting Solely of Figures

*(2),*

(1) Notwithstanding the provisions of ~~paragraph (2) of~~ Article 13, any State which, at the date ~~of opening for signature, of this Act,~~ *of opening* has the established practice of admitting variety denominations consisting solely of figures may continue such practice in respect of all or certain genera and species if, at the time of signing this Act or of depositing its instrument of ratification, or accession to this Act, it notifies the Secretary-General of the Union of its intention to do so and, unless it intends to do so in respect of all genera and species, of the genera and species in respect of which it intends to continue the said practice.

(2) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has ~~made~~ *given* under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

*[, acceptance or approval of ...]*

Article 41 ~~[37 in document DC/31]~~

Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Article 42 ~~[38 in document DC/31]~~

Settlement of Disputes

(1) Any dispute between two or more member States of the Union concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of the States concerned, be submitted to the Council, which shall endeavour to bring about agreement between the member States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of all the parties concerned.

Article 43 ~~[39 in document DC/31]~~

Reservations

~~Signature and ratification of and accession to this Convention shall not be subject to any reservation.~~ *No reservations to this Convention are permitted.*

Article 44 ~~[40 in document DC/31]~~

Duration and Denunciation of the Convention

(1) This Convention ~~shall be~~ *is* of unlimited duration.

(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of the notification of denunciation.

[Article 44, continued]

(3) ~~The~~ Denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) ~~The~~ Denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Article 45 ~~44~~ in document DC/3/

~~Copies~~ Languages; ~~Notifications~~ <sup>Depositary Functions</sup>

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States ~~which have been~~ represented in the Diplomatic Conference that ~~has~~ adopted it and, on request, to the Government of any other State.

(3) The Secretary-General shall, after consultation with the Governments of the interested States ~~which have been~~ represented in the said Conference, establish official texts in the ~~Dutch, Italian and Spanish~~ languages and such other languages as the Council may designate.

Arabic,

Japanese

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, ~~have~~ <sup>were</sup> ~~been~~ represented in the Diplomatic Conference that ~~has~~ adopted it of the signature of this Act, the deposit of instruments of ratification and accession, ~~and any~~ <sup>denunciation</sup>, as well as of any notification received under Articles 34, 36, 37, ~~or 40~~ and ~~or~~ any declaration made under Article 36.

or 44

, acceptance, approval

[End of document]

\* ~~32B, 34, 34A or 36A~~ in document DC/3/

\*\* ~~34~~ in document DC/3.