



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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/DC/3  
ORIGINAL: English/French/  
German  
DATE: October 18, 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

DRAFT

INTERNATIONAL CONVENTION FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

(Preamble and Articles 13, 26 and 37)

submitted to the Drafting Committee  
by the Secretariat

DC/DC/3

page 1

Preamble

STATES  
THE CONTRACTING PARTIES, TO THE PRESENT CONVENTION,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961 as amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders,

Reaffirming the statements contained in the Preamble to the <sup>said</sup> Convention to the effect that:

- a
- (i) 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,
- b
- (ii) they are conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- c
- (iii) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles.

Considering that in recent years the idea of protecting the rights of breeders has gained a strong foothold in many States which have not yet acceded to the Convention,

Considering, that certain technical amendments are necessary in order to facilitate the acceptance of the Convention by these States,

Considering, furthermore, that some provisions regulating the functioning of the Union created by the Convention require amendment in the light of experience,

Considering that these objectives may be best achieved by the revision of the ~~International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972,~~

Have agreed as follows:

## Article 13

Variety Denomination

*of the Union*  
 (1) *The* variety shall be designated by a denomination *which shall* be its generic designation. *Each* member State 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 *in connection with the variety,* even after the expiration of the protection.

*+ Similar of the Union in which the registration of the denomination is requested. The denomination*  
 (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 varieties~~ 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. *so*

Article 26

Finances

- (1) The expenses of the Union shall be met from:
- (a) the annual contributions of the member States of the Union;
  - (b) payments received for services rendered;
  - (c) miscellaneous receipts.
- (2) (a) The share of each member State of the Union in the total amount of the annual contributions shall depend on that amount and on the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).
- (b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that the minimum number shall be one-fifth of one.
- (3) (a) As far as any State is concerned which is a member State of the Union on the date on which this Convention enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 or the Additional Act of 1972.
- (b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary General, the number of contribution units applicable to it.
- (c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the calendar year which follows the year which is subsequent to the year in which the declaration was made.
- (4) (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.
- (b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.
- (5) (a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), 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, without, however, being relieved of its obligations under this Convention and without being deprived of any other rights thereunder.
- (b) The Council may allow the said 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 37 ~~134A in document DC/31/~~

Exceptional Rules for Protection Under Two Forms

(1) <sup>(1),</sup> Notwithstanding the provisions of ~~paragraph (1) of Article 2~~ any State which, prior to the end of the period during which this ~~Act~~ is open for signature, provides for protection under the different forms referred to in <sup>2 Convention</sup> ~~the said paragraph~~ for 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, acceptance or approval of or accession to this ~~Act~~, it notifies the Secretary-General of the Union of that fact. <sup>9 Convention</sup>  
<sup>6 Convention,</sup>

(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 <sup>patentability</sup> the ~~novelty~~ criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles <sup>(a) and (b)</sup> ~~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.

[End of document]