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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

TECHNICAL COMMITTEE

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**EXTENSION OF PROTECTION TO HYBRID VARIETIES THROUGH
PROTECTION OF PARENT LINES**

Document prepared by the Office of the Union

1. At its thirty-eighth session, held in Geneva from April 15 to 17, 2002, the Technical Committee (hereinafter referred to as "the TC") noted the view of the representative of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL)*, expressed at the Technical Working Party for Ornamental Plants and Forest Trees (hereinafter referred to as "the TWO") that, under the 1991 Act of the UPOV Convention, breeders of varieties who develop "improved" forms of their protected varieties would have protection for these improved varieties, if these were considered to be essentially derived varieties. It heard that, also at the TWO meeting, the representative of ASSINSEL expressed the view that the protection of selected parent lines, used in different hybrid varieties, might be the most cost-effective method of achieving protection for a series of hybrid varieties. The representative of ASSINSEL clarified to the TC that these matters were raised as possible means of encouraging breeders of seed-propagated ornamental varieties to utilize plant breeders' rights and should not be interpreted as a change to the UPOV system of protection. Nevertheless, the TC decided to refer the views of ASSINSEL to the Administrative and Legal Committee (hereinafter referred to as "the CAJ") for comment, with an explanation of the context.

* ASSINSEL and the International Seed Trade Federation (FIS) merged in May 2002 to become the International Seed Federation (ISF).

2. The CAJ discussed the matter at its forty-sixth session, held in Geneva on October 21 and 22, 2002, on the basis of document CAJ/46/6. In general, it agreed with the analysis provided in that document. However, it considered that the document should, in particular, emphasize that the 1991 Act of the UPOV Convention only allows extension of protection to a hybrid variety, by protection of one or more of the parent lines, *if there is “repeated use” of such parent lines for the production of the hybrid varieties* (emphasis added). Thus, it should be clarified that repeated use of parent lines might not be required if a “hybrid”¹ variety can be produced by vegetative propagation or apomixis.

3. The Office of the Union has established a new document, based on document CAJ/46/6 and the comments made by the CAJ in its October 2002 session, which is presented as Annex III to document CAJ/46/8 Prov. and is reproduced in the Annex to this document.

4. The TC is invited to note the analysis on the extension of protection to hybrid varieties through protection of parent lines, provided in the Annex to this document.

[Annex follows]

¹ The word “hybrid” is shown between quotation marks because a variety which is propagated vegetatively may not be considered to be a hybrid.

EXTENSION OF PROTECTION TO HYBRID VARIETIES THROUGH
PROTECTION OF PARENT LINES*

*Document agreed on October 21 and 22, 2002,
by the Administrative and Legal Committee at its forty-sixth session*

1. The purpose of this document is, in response to a request from the Technical Committee (hereinafter referred to as “the TC”), to consider the protection of hybrid varieties through protection of parent lines.
2. At its thirty-eighth session, held in Geneva from April 15 to 17, 2002, the TC heard from the International Seed Federation (ISF) that breeders of seed-propagated ornamental plants are considering how to utilize the UPOV system of plant variety protection in a way that would serve the breeding activities and economics in their sector. This discussion has, at least in part, been triggered because the development of seed-propagated varieties by breeders of ornamental plants is a relatively new development, compared to the more traditional approach of breeding vegetatively propagated varieties.
3. One particular development in seed-propagated ornamental plant varieties has been the introduction of hybrid varieties. In some cases, the same parent line is used in many different hybrid varieties and breeders, conscious of the cost of protecting all the individual hybrid varieties noted that, in such cases, protection of a series of hybrid varieties could be achieved by protection of the single parent line common to all the hybrids in the series, provided that the parent line fulfilled all the conditions for, and is granted, protection.
4. The UPOV Convention does indeed provide protection with regard to the use of the protected variety as a parent for the production and exploitation of a hybrid variety. Thus, Article 14(5)(a)(iii) of the 1991 Act states that the provisions for protected varieties extend to varieties (i.e. hybrid varieties in this case) “whose production requires the repeated use of the protected variety”—the protected variety being the parent line. This wording establishes that, regardless of whether the seed of the hybrid is produced in another country—even one without plant variety protection—seed of the hybrid must not be imported, marketed or sold in a country where a parent line is protected, without the authorization of the breeder. This is because the seed of the hybrid is the propagating material of the variety whose production requires the repeated use of the protected variety and the acts covered in Article 14(1)(a), such as selling, marketing and importing, require the authorization of the breeder. However, it should be noted that, for example, the use of parent lines might not be required if a “hybrid”¹ variety can be produced by vegetative propagation or apomixis.

* This Annex reproduces the text of Annex III of document CAJ/46/8 Prov.

¹ The word “hybrid” is shown between quotation marks because a variety which is propagated vegetatively may not be considered to be a hybrid.

5. Similarly, the 1978 Act provides protection for the hybrid through protection of a parent line in Article 5(3), which provides that authorization of the breeder is required with respect to a protected variety for the “utilization of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties ... when the repeated use of the variety is necessary for the commercial production of another variety.” However, in this case the protection of a parent line in country A might not provide effective protection of the hybrid in country A if the seed of the hybrid is produced in country B, where country B does not apply the UPOV Convention. This is because, in country B, there is no restriction on the use of the parent lines and it might be considered that there is no repeated use of the parent line in country A. Thus, it will be a matter for each State party to the 1978 Act to interpret Article 5(3) of that Act and to decide whether, in this situation, a hybrid would be covered by the protection of one or more of the parent lines.

6. In conclusion, on the basis described in this document, the UPOV Convention allows a breeder and not just breeders of ornamental plants, to extend protection to their hybrid varieties by protection of one or more of the parent lines, if there is repeated use of such parent lines for the production of the hybrid varieties. It will be for each breeder to decide whether this is the most appropriate route to protection according to their particular circumstances.

[End of Annex and of document]