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**UPOV**

UPOV/72DC/15  
Original: English/French  
Date: November 10, 1972

INTERNATIONALER VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION  
FOR THE PROTECTION OF  
NEW PLANT VARIETIES

DIPLOMATIC CONFERENCE FOR THE AMENDMENT OF THE INTERNATIONAL  
CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

(Geneva, November 7 to 10, 1972)

DRAFT REPORT

presented by Mr. L.J. Smith, General Rapporteur

I. Convening, purpose, composition and organization of the Conference

1. A Diplomatic Conference, hereinafter referred to as "the Conference," was held in Geneva, at the Headquarters of the Union for the Protection of New Plant Varieties (UPOV) from November 7 to 10, 1972. The Conference was convened by the Secretary General of UPOV in accordance with the resolution adopted on October 15, 1971, by the Council of UPOV.

2. The purpose of the Conference was to prepare and adopt an Additional Act amending the provisions of the International Convention for the Protection of New Varieties of Plants, of December 2, 1961, hereinafter referred to as "the Convention," relating to the contributions of Member States of the Union and, in the event of arrears in the payment of such contributions, to the right to vote.

3. Delegations of the following nine States took part in the work of the Conference: Belgium, Denmark, France, Germany (Fed. Rep.), Italy, Netherlands, Sweden, Switzerland, United Kingdom. In addition, the following twelve States were represented in an observer capacity: Ecuador, Finland, Gabon, Hungary, Ireland, Japan, Lebanon, New Zealand, Spain, South Africa, United States of America, Venezuela.

4. In total, nearly 50 persons were present. The list of participants is contained in document UPOV/72DC/8 Rev.

5. The Conference was opened by the Chairman of the Council of UPOV, Ministerialdirektor Professor Dr. L. Pielen (Germany (Fed. Rep.)).
6. The Conference, after introducing certain modifications to the draft which had been submitted to it (document UPOV/72DC/1 Rev.), adopted its Agenda in the form reproduced in document UPOV/72DC/10.
7. After considering the provisional text submitted to it by the Secretariat of the Conference, (document UPOV/72DC/2 Rev.), the Conference adopted its Rules of Procedure as contained in document UPOV/72DC/11.
8. On the proposal of Professor G.H.C. Bodenhausen, Secretary General of UPOV, Ministerialdirektor Professor Dr. L. Pielen, Head of the Delegation of Germany (Fed. Rep.), was elected President of the Conference by acclamation.
9. On the proposal of the Secretary General of UPOV, Mr. P. Skibsted (Denmark) and Mr. B. Laclavière (France) were elected as Vice Presidents of the Conference, and Mr. L.J. Smith (United Kingdom) was elected as General Rapporteur.
10. The Conference proceeded to the establishment of the Credentials Committee. On the proposal of the President of the Conference, the representatives of the following States were elected members of the said Committee: France, Germany (Fed. Rep.), Sweden, Switzerland, United Kingdom. During the Conference, the Credentials Committee met, under the Chairmanship of Mr. S. Mejegaard (Sweden). It examined the credentials of the representatives and reported on its work to the Conference (document UPOV/72DC/7). As authorized by the Credentials Committee, the Chairman of the said Committee reported directly to the Conference on such credentials as were communicated to the Secretariat after the meeting of the Committee and before the end of the Conference's deliberations (document UPOV/72DC/14).
11. On the proposal of its President, the Conference elected the representatives of the following States as members of the Drafting Committee: Belgium, France, Germany (Fed. Rep.), Netherlands, United Kingdom. Mr. R. Labry (France) and Mr. D.R. Gilmour (United Kingdom) were elected Chairman and Vice-Chairman, respectively. The Drafting Committee drew up, on the basis of the deliberations of the Main Commission, the draft of an international instrument, hereinafter referred to as "the draft text." Document UPOV/72DC/12 reflects the results of its work.
12. The Conference constituted itself as the Main Commission and in accordance with the Rules of Procedure, the President of the Conference acted as Chairman of the Main Commission.
13. The Secretariat of the Conference was provided by the Secretariat of UPOV and by the International Bureau of the World Intellectual Property Organization (WIPO). Mr. H. Skov, Vice Secretary General of UPOV acted as Secretary General of the Conference and was assisted by Mr. C. Masouyé, Senior Counsellor, Head of the External and Public Relations Division of WIPO.

## II. Preparation of the draft Additional Act

14. Most of the deliberations of the Conference took place in its Main Commission, in which all the Member States of UPOV and the States signatory of the Convention were entitled to participate and in which they all participated.

15. The discussions in the plenary meetings of the Conference and in the Main Commission will be reflected in detail in the summary minutes which will be established by the Secretariat of the Conference and distributed subsequently to the participants. Consequently, this Report mentions only those points which may be important for understanding the intentions of the Conference in adopting certain provisions, including those which the Conference agreed should be mentioned in this Report. These points are dealt with in the order adopted by the Conference for the provisions of the Additional Act.

16. The deliberations of the Main Commission were based upon a draft Additional Act set forth in document UPOV/72DC/3 Rev. As mentioned in the Report of the Secretary General of UPOV to the Conference (document UPOV/72DC/4), this draft was prepared, in accordance with the decisions of the Council of UPOV, by the Secretary General of UPOV after consultation with a Consultative Working Committee. The draft so prepared is hereinafter referred to as "the Secretariat draft."

17. The Main Commission proceeded to a consideration of the provisions set forth in the Secretariat draft. The decisions of the Main Commission resulting from this consideration as well as from its examination of the draft text prepared by the Drafting Committee are reflected in the succeeding paragraphs of this Report. The draft Additional Act subsequently presented by the Main Commission to the Conference is set forth in document UPOV/72DC/13. The text of this draft was adopted by the Conference.

## III. Title of the Additional Act

18. On the proposal of the Delegation of the United Kingdom, the Main Commission decided that the title of the international instrument envisaged should reflect the purpose of the instrument, namely, to amend the Convention. The Conference agreed to give the following title to the new instrument: "Additional Act of November 10, 1972, Amending the International Convention for the Protection of New Varieties of Plants."

## IV. Preamble

19. The Main Commission accepted the suggestion of the Delegation of Germany (Fed. Rep.) to add a third preambular clause referring to Article 27 of the Convention.

## V. Articles of the Additional Act

### Article I and II

20. The Main Commission did not modify the drafts submitted to it.

21. As for Article II, the Main Commission considered a suggestion of the Delegation of Belgium according to which the proposed paragraph 6 of Article 26 should apply as well to advances made for the Working Capital Fund and to payments for services rendered. However, the Delegation of Belgium did not insist on this point.

#### Article III

22. On the proposal of the Delegation of the Netherlands (document UPOV/72DC/9), the Main Commission decided to add a new Article to the effect that the provisions of the proposed paragraph 6 of Article 26 of the Convention relating to arrears in payment of contributions should only be applicable if all Member States of UPOV ratified or acceded to the Additional Act.

#### Article IV (previously Article III of the Secretariat draft).

23. On the suggestion of the Delegation of the Netherlands, supported by the Delegation of the United Kingdom, the Main Commission decided to delete the second paragraph of Article III as set forth in the Secretariat draft. This paragraph would have obliged a State ratifying or acceding to the Convention before the entry into force of the Additional Act to declare not only in which class under the Convention it wished to be placed, but also in which class under the Additional Act. It was remarked that by such a ratification or accession the State concerned became a member State of the Union and that the question of determining its class was already governed by the proposed first paragraph of Article II. Further, the proposed paragraph seemed to have the effect of establishing for a State which ratified or acceded only to the Convention a formal legal link to the Additional Act itself.

#### Article V (previously Article IV of the Secretariat draft).

24. On the suggestion of the Delegation of Germany (Fed. Rep.), the Main Commission decided to utilize in the first two paragraphs of this Article the terminology employed in Article 31, paragraphs (1) and (2) and in Article 32, paragraph (1) in order to ensure uniformity in the wording of the two instruments. On the suggestion of the same delegation, the Main Commission decided to refer in the first paragraph of this Article, rather than in Article VIII of the Secretariat draft, to the date until which the Additional Act would remain open for signature.

25. On the suggestion of the Delegation of the United Kingdom, the Main Commission decided that ratification and accession should be dealt with in separate paragraphs and that the paragraph on accession should refer to the provisions of paragraphs (2) and (3) of Article 32 of the Convention.

26. The Main Commission took note of the comments of the Secretary General of UPOV concerning Article IV, paragraph (3), as set forth in the Secretariat

draft (document UPOV/72DC/5). On the proposal of the Delegation of the Netherlands (document UPOV/72DC/9), the Main Commission decided to replace the first sentence of this paragraph by a text which limited its scope to the case of States which accede to the Convention. In addition, the Main Commission decided to delete the second sentence of the said paragraph which provided that a State ratifying the Convention before the entry into force of the Additional Act should be considered bound by the Additional Act after its entry into force.

27. Finally, the Main Commission did not modify the fourth paragraph of Article IV of the Secretariat draft. In this regard, the Main Commission took note of the communications of the Government of the French Republic (document UPOV/72DC/6) and the Government of the Swiss Confederation (document UPOV/72DC/4) by which these Governments agreed to assume the functions of depositary for the Additional Act and for the instruments of ratification and accession relating to that Act.

Article VI (previously Article V of the Secretariat draft).

28. The Main Commission did not modify the drafts submitted to it.

Article VII (previously Article VI of the Secretariat draft).

29. The Main Commission did not modify the drafts submitted to it.

30. During the course of the Main Commission's consideration of this Article, and with reference to a question posed by the Delegation of the Netherlands, the Main Commission noted that a distinction should be made between a reservation and a declaration of territorial application. It concluded that the existence of Article VII did not prevent a declaration of territorial application from being made with respect to the Additional Act. The Main Commission also decided that it was not necessary to introduce in the Additional Act a provision concerning territorial application. It noted the view expressed by the Delegation of the United Kingdom that it was for each State in accordance with its practices to decide on the steps, if any, relative to a declaration of territorial application of the Additional Act.

Article VII of the Secretariat draft

31. The Main Commission decided to delete this provision which provided that the Additional Act should have the same validity and duration as the Convention.

Article VIII

32. After considering a suggestion of the Delegation of France, the Main Commission decided to add a provision in the Secretariat draft to the effect that official translations of the Convention should also be established by the Secretary General of UPOV in any language designated by the Council of UPOV for the establishment of official translations of the Additional Act.

33. As for the transmission of certified copies of the Additional Act, provided for in the fourth paragraph of this Article, the Main Commission decided, in the interest of simplicity, that such copies should be transmitted by the Secretary General of UPOV to the Governments of the Member States of UPOV, to the Governments of the States signatory of the Convention and, on request, to the Government of any other State.

34. As suggested by the Delegation of Germany (Fed. Rep.), the Main Commission decided that the provision in the Secretariat draft concerning the notification of signatures and the deposits of instruments of ratification or accession should be redrafted to distinguish the functions to be performed by each of the Governments concerned.

VI. Adoption of the Additional Act

35. ....

VII. Adoption of the Report

36. ....

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