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UPOV

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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

(Geneva, November 7 to 10, 1972)

COMMENTS ON SOME PROVISIONS OF THE DRAFT ADDITIONAL ACT TO THE
INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

by the Secretary General

1. With regard to the questions raised by Article IV(3) of the Draft Additional Act, the Secretariat draws attention to the following:
2. The sister organization WIPO/BIRPI administers a number of Conventions which successively have been amended. With respect to most, the amendment has taken the form of an Act containing all the provisions of the original Convention with all subsequent amendments included; the earlier Acts have not been repealed or denounced. With respect to a limited number of others, the amendment has taken the form of an Act, termed either an "Additional Act" or a "Complementary Act," modifying in a limited manner the principal Convention. The latest Acts containing provisions of interest in this context were signed at Stockholm on July 14, 1967.
3. With respect to the first group of Conventions referred to in paragraph 2, in spite of the fact that the former Acts contained a provision to the effect that they were open for ratification or accession by any State, that they should remain in force without limitation as to time, and that they have not been denounced, the latest Acts provided either that after the entry into force of such Acts "a country may not accede to earlier Acts" (see for instance Article 23 of the Paris Convention for the Protection of Industrial Property) or that after the entry into force of the latest Acts "a country may accede to the original Act of only in conjunction with ratification of or accession to this Act" (that is the latest Act), see for instance Article 14(7) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Article 9(6) of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks and Article 14(6) of the Madrid Agreement Concerning the International Registration of Marks. This latter paragraph also provides that accession to Acts earlier than the immediately former Act shall not be permitted, even in conjunction with accession to the latest Act. Attention is also drawn to Article 8(b) of the Complementary Act of July 14, 1967, to the Hague Agreement Concerning the International Deposit of Industrial Designs, which provides that ratification of, or accession to, the Complementary Acts entails ratification of, or accession to, the preceding Act.

4. The Acts mentioned in paragraph 3 have been signed by the following States being member States of UPOV or having signed the UPOV Convention:

Paris Convention : all member States and signatory States;
 Lisbon Agreement : France;
 Nice Agreement : all member States and signatory States;
 Madrid Agreement (Marks): the following member States:
 Germany (Federal Republic),
 France,
 Netherlands,
 all signatory States;
 Hague Agreement : the following member States:
 (Complementary Act) Germany (Federal Republic),
 France,
 Netherlands,
 signatory States:
 Belgium,
 Switzerland.

5. The aforesaid shows that the member States have endorsed the legal principle that it can be provided in a subsequent Act that after its entry into force the former Act cannot be ratified or acceded to at all, even if this former Act is still in force and binding the States party to the latest Act in respect of the States party to earlier Acts, or that it can be ratified or acceded to only in conjunction with the ratification of or accession to the latest Act.

6. As for the question of the effect which ratification or accession of the Convention should have with respect to becoming bound to the Additional Act, reference is made to Article 10 of the Complementary Act of Stockholm of July 14, 1967, to the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, and to Article 4 of the Additional Act of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891. These Articles provide that under certain circumstances a State ratifying or acceding to the Agreement is considered bound by certain Articles of the subsequent amending Act. If at the time of the accession to the earlier Act the amending Act has not yet entered into force, the ratifying or acceding State is considered bound by these Articles of the amending Act only from the date of its entry into force. The Additional and Complementary Acts adopted at Stockholm in 1967 were signed by the following member States and signatory States of UPOV:

As for the Complementary Act:

Belgium,
 Germany (Federal Republic),
 France,
 Netherlands,
 Switzerland;

As for the Additional Act:

Germany (Federal Republic),
 France,
 Italy,
 Sweden,
 Switzerland,
 United Kingdom.

7. Thus there is legal precedent for providing that in a subsequent amending Act a State which becomes party to a former Act after the signature of the subsequent Act without referring to that subsequent Act in its instrument of ratification or accession is to be bound also by the subsequent Act, whether the deposit of the relevant instrument takes place before or after the entry into force of the subsequent Act.