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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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.

UPOV

IOM/5/ 12
ORIGINAL : English/French/German
DATE : June 12, 1991

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

FIFTH MEETING WITH INTERNATIONAL ORGANIZATIONS

Geneva, October 10 and 11, 1990

RECORD OF THE MEETING

compiled by the Office of the Union

OPENING OF THE MEETING

1. The President of the Council, Mr. W.F.S. Duffhues (Netherlands) opened the Meeting and welcomed the participants, of which the list is given in the Annex to this record, with the following words:

> "I wish you all a hearty welcome and hope that this day will have its place in UPOV history. It is the first day of UPOV's Fifth Meeting with International Organizations. As representatives of member States, we know that it is very important to have contacts with the international organizations. We can only do our jobs in the right way if we know what is going on in the worlds of agriculture and plant breeding, in all their diversity, and in the world of science, especially of the science of biotechnology which influences the breeders' work. We know how important it is that the breeding industry produces new varieties of all kinds of species that, in their turn, produce high yields of good quality with a minimum of inputs. We need, as I said in the Budapest Symposium, robust varieties that grow well under adverse circumstances. We need varieties that have resistance to pests, diseases and pollution, and varieties that can fulfill all the wishes of the pampered western world. I refer here, of course, to varieties of flowers, bulbs, luxury vegetables, fruits and so on.

0572

"To fulfill only a few of these wishes, it is necessary that there be adequate remuneration for breeders, that there be developments in the modern science of biotechnology, that this science be accessible for the breeders' work, and that there be free access to genetic material for further breeding. The customers for the end products of all this activity, mostly the farmers, must formulate their needs precisely. Our policies must facilitate reaching the goals of all involved and must recognize the time that is necessary for scientists, breeders and farmers to develop new techniques, new varieties and so on. The resulting economic framework must favor the continuation of their activities.

"Having all this in mind, we must start with the work we have before us. We are in the last stages of preparing a new UPOV Convention, a Convention with which we can all live, not a Convention in which everything is arranged in the way that every individual person, organization or country most desires. It must be a compromise that has as its main objective the strengthening of breeders' rights whilst taking into account the wishes of the farmers and of the Governments of the member States and providing reasonable opportunities for non-member States and intergovernmental organizations to join the Convention. The Convention must require member States to work together more closely in generating the data necessary to grant a breeder's right. It is absolutely impossible for one country to do all the testing. The present draft provides the possibility for a State to grant another right, such as a patent, if it so wishes.

"If we do our work well as representatives of the member States, together with the Office of the Union of course, and have listened to the voices of the non-governmental organizations, of the scientists, and of people not in favor of breeders' rights, we shall have a draft of a new Convention that, with minor changes, can become the Convention of 1991, after the Diplomatic Conference in March. If we succeed in the next two days in clarifying where problems remain, the Council will certainly decide to go to a Diplomatic Conference with this draft with suitable modifications. Therefore, as I said at the outset, this could be a historic day in the short history of UPOV. I hope you will have fruitful discussions."

OPENING STATEMENTS

2. The Chairman then invited the international organizations which so wished to make opening statements.

3. Dr. E. von Pechmann (International Association for the Protection of Industrial Property - AIPPI) expressed his thanks for the opportunity given to his Association, with its worldwide membership of over 6,000, together with the breeders' organizations and other international organizations, to debate the new proposals for the revision of the UPOV Convention. The Executive Committee of AIPPI had met the preceding week in Barcelona, Spain, and had also discussed those proposals. For the moment, Dr. von Pechmann wished to speak of three issues only.

0573

(i) It had been noted with great satisfaction that the prohibition on double protection under the existing Article 2(1) was no longer contained in the new proposal. AIPPI had always considered that provision to be an unjustified limitation of the possible protection of inventions in the field of the breeding of new plants and had called for its deletion. The provision was indeed no longer in keeping with the times, particularly in view of new breeding methods.

(ii) AIPPI welcomed the extension of protection, that was binding on all Contracting Parties, to the final product or harvested material of protected varieties. Already at the Diplomatic Conference in 1978, it had energetically advocated that the extension be binding, on the basis of the resolution adopted by the Congress held in Munich, Germany, in May 1978. Unfortunately, its efforts had not been crowned with success at that time. The present development was therefore all the more welcome.

(iii) It was with satisfaction that AIPPI noted the withdrawal of the disputed proposal for a collision norm. Such a collision norm would have run counter to the system by interfering in other systems of protection.

4. Dr. von Pechmann further referred to the Resolution adopted the previous Friday by the Executive Committee of AIPPI with regard to the new revision proposal (see document IOM/5/11). Altogether, he wished to express the opinion, on behalf of AIPPI, that the present proposal was to be deemed a step forwards. It also showed that the preceding consultations held by UPOV with the international organizations and with the experts from WIPO that had, as always, implied considerable time and money for all interested parties, had not been to no avail.

5. The Diplomatic Conference in March 1991 would set the options for the development of plant breeding in the new millennium. Much therefore depended on that Conference, particularly the question whether industry would be prepared to continue to fund the enormous material investment in the genetic engineering development of plant breeding. In view of its importance for mankind, not only for food, but also with regard to renewable sources of energy, the significance of the new methods of plant breeding could not be overestimated. That fact implied an obligation to be aware of the high degree of responsibility involved and to act accordingly.

6. Mr. B. Le Buanec (International Association of Plant Breeders for the Protection of Plant Varieties - ASSINSEL) thanked UPOV for the invitation to participate in such an important meeting. ASSINSEL welcomed the considerable progress achieved during the preceding two years in strengthening breeders' rights, both as regarded the subject matter and the extent of rights. It considered that such strengthening was essential if the UPOV Convention were to be made an instrument adapted to the technical and economic realities of the forthcoming twenty years. However, certain items in the draft submitted for discussion still led to concern, or even anxiety, on the part of ASSINSEL's members. In their opinion, there was still time to make the necessary improvements to the draft; those improvements would be presented during discussion on the various articles. The members of ASSINSEL, who were certainly the most important users of the Convention, had no doubt that they would be heard. They hoped that compromises would be found on the items that had led to a conflict of interests and that the representatives of the member States would be able to adopt, at the beginning of the following year, a new text, the need for which was becoming ever more urgent. In that respect, the members of ASSINSEL were ready to make the necessary effort.

7. Mr. T.W. Roberts (International Chamber of Commerce - ICC) stated that ICC welcomed the new draft of a revised version of the Convention, particularly in the light of the Chairman's remarks concerning a Convention with which industry at large could live, not a perfect Convention. ICC felt that considerable progress had been made; whilst it would like a perfect Convention, it recognized that the final result might fall slightly short of that ideal. It particularly welcomed the provisions which strengthened protection for the breeder and which introduced the concept of dependency in a form which gave the breeder a worthwhile and enforceable right. It greatly welcomed the proposal to remove the ban on double protection from the current Article 2. It had some doubts on the provisions concerning the "farmer's privilege" but was very pleased in general with the new draft.

8. Mr. N.J. Downey (European Federation of Agricultural and Rural Contractors - CEETTAR) thanked UPOV for the invitation to the meeting. He stated that CEETTAR represented European agricultural contractors and that he intended to draw to the attention of the meeting when appropriate the fact that the Convention had to have regard to the hard-pressed rural economies.

9. Mr. R. Royon (International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties - CIOPORA) thanked UPOV for the opportunity to comment on the revised draft of the Convention and congratulated the Administrative and Legal Committee of UPOV on the marked improvements over previous drafts. CIOPORA was happy to find in the revised draft proposals which it had already made 30 years ago and hoped that the next Convention would incorporate a vision of the future. It should be as broad and flexible as possible in order to take into account not only present problems but also those which would come up in the future.

10. Mr. B. Lefébure (Committee of Agricultural Organisations in the European Economic Community - COPA - and General Committee for Agricultural Co-operation in the European Economic Community - COGECA) thanked UPOV for the invitation to participate in the meeting and congratulated the authors of the revised draft text of the Convention.

11. Mr. J. Winter (Association of Plant Breeders of the European Economic Community - COMASSO) expressed his thanks for the invitation and stated with the appropriate brevity that he went along, on behalf of COMASSO, with the previous remarks made on the improvement of the UPOV system. Reference in his subsequent remarks to the need for discussion of individual items that had not yet been satisfactorily settled would be sufficient proof of the fact that a meeting such as today's was indeed justified.

12. Mr. P. Ehkirch (Seed Committee of the Common Market - COSEMCO) welcomed the possibility of participating in the work on the revision of the Convention and presented his compliments for the work that had been achieved. He remarked that the creation of varieties was an absolute necessity in order to achieve progress in feeding the world. In that respect, it was essential that breeders' rights be recognized and protected in an adequate manner. There was still time, in his view, to propose a number of detail improvements to the draft revised text of the Convention, which would then become the legal instrument of which the world had a need.

0575

13. Mr. T.L. Johnson (International Federation of Industrial Property Attorneys - FICPI) stated that FICPI was honored to be invited to the meeting as observer and, since this was its first participation, he wished to explain briefly the nature of FICPI. FICPI was the only international body which represented patent attorneys practising on their own account. FICPI members covered all technical disciplines, including biotechnology and genetic engineering, and included members who were experts in those fields. It was its interest in those fields which caused FICPI to concern itself with the protection of plant varieties and the UPOV Convention since its subject matter was of concern to the clients of FICPI members. FICPI was accordingly grateful to have been granted observer status and hoped to discharge its responsibilities in a professional and responsible manner. FICPI was generally in agreement with the revised draft text and welcomed its liberalization, particularly as regards the proposal to remove the double protection bar; it was aware that there were one or two thorny problems which needed a resolution through discussion over the ensuing days, particularly the question of "farmer's privilege."

14. Mr. D. King (International Federation of Agricultural Producers - IFAP) stated that IFAP represented farmers' organizations at the international level and appreciated the opportunity to comment on the latest draft for a revised Convention. IFAP stated at the last UPOV Meeting with International Organizations in October 1989 that it was in the interest of farmers worldwide to adequately reward the great efforts of plant breeders so that farmers could continue to benefit from new and improved plant varieties, but that a revised UPOV Convention had to remain balanced with regard to the interests of farmers, consumers and breeders. The main concerns of IFAP were: first, to maintain the present ban on double protection; second, to ensure free access to genetic material; third, to avoid monopolies as well as plagiarism; fourth, to allow farmers to continue to save their own seed if they wished to do so in order to reduce production costs.

15. Mr. M. Besson (International Federation of the Seed Trade - FIS) thanked UPOV for having associated FIS in the important work on the revision of the Convention. He noted that considerable progress had been made in a short time, thanks to the remarkable spirit of cooperation shown by all the parties concerned.

16. Mr. Besson observed that the endeavors to revise the Convention had to be placed within a much broader context. In particular, account had to be taken of the Uruguay Round negotiations and of the ambitious aim set by GATT to liberalize agriculture by removing a certain number of mechanisms for protecting national markets and by considerably lowering customs duties in the field of agriculture. If the GATT negotiators achieved the aim that had been set them, the main customers of the breeders and of the seed merchants--the farmers and horticulturists--would carry out a restructuring, under the effect of liberalization, that would affect, above all, profitablility, yield and efficiency; agriculture would then be assimilated to other industries. There was no doubt that such a development would have repercussions on the variety and seed industry, and that those repercussions would not always be positive. It was to be feared, in particular, that under the pressure of competition, seed multiplication in the face of breeders' rights, contract processing and the unlawful use of seed would become more widespread and would lead to an even lower rate of use of certified seed to the detriment of breeders and seed merchants. From another point of view, it was also to be expected that the range of varieties placed on the market would diminish, for the sake of profitability, since the

present measures for protecting agriculture had the effect of preserving, albeit in a somewhat artificial way, the necessary genetic diversity. Although the present meeting was not the place to judge whether that tendency was desirable or not, it had to be agreed that it would cause considerable difficulties for the industries that were the users of the UPOV Convention.

17. That was why FIS considered it necessary to emphasize two points.

(i) The strengthening of breeders' rights was the least that could be done in the light, not only of the context already described, but also of the strengthening of intellectual property acquired or envisaged in other fields. FIS therefore supported unreservedly the legitimate and balanced demands made by ASSINSEL.

(ii) The inclusion of a provision on "farmer's privilege" represented an anachronism that was difficult to understand in a field of activity that, in the future, would become even more sensitive to market mechanisms. If agriculture was destined to become a branch of industry like any other, the proposal to introduce that concept of privilege in the Convention was, in the view of FIS, going against the stream.

18. FIS was opposed to introducing that concept into the Convention. It wished to express at the present meeting its concern for the future of the variety and seed industry if such a considerable weakening of breeder's rights were to be provided for in the Convention. It had already made known its concern in a motion adopted unanimously at the Congress that FIS had held in Seville, Spain, from June 11 to 13, 1990. That motion had indeed been brought to the attention of UPOV.

19. Dr. B.M. Roth (International Group of National Associations of Manufacturers of Agrichemical Products - GIFAP) thanked UPOV for its first invitation to a UPOV Meeting with International Organizations. He congratulated UPOV on the liberal and pluralistic approach embodied in the latest draft for a revised Convention, where, for the first time, the ban on double protection had been eliminated. By this elimination, UPOV recognized that the plant breeders' rights and patent law systems both had their justifications, merits and benefits and that both systems could coexist without the need for one system to exclude the other from certain fields.

20. Dr. K.F. Gross (Union of Industrial and Employers' Confederations of Europe - UNICE) welcomed the fact that UNICE had been given the possibility for the first time of participating in a UPOV meeting. Naturally, UNICE had followed UPOV's work towards revision of the Convention over the past years, particularly in the context of the joint meeting of UPOV and WIPO. It had noted with satisfaction that considerable progress had been achieved within a relatively short time. UNICE welcomed above all the suppression of the prohibition on double protection. Dr. Gross was also able to go along with the observations made by other speakers, particularly the representatives of AIPPI and GIFAP.

21. Dr. J.M. Davies (Union of European Practitioners in Industrial Property - UPEPI) thanked UPOV for its invitation to the meeting and stated that the members of UPEPI were European patent practitioners and professional representatives before the European Patent Office. They were particularly concerned with

0577

the impact that any changes in plant variety protection might have on the availability of patent protection and would accordingly seek a proper definition of a protectable variety under the UPOV Convention. UPEPI welcomed the removal of the ban on double protection.

22. The Chairman observed that most general statements referred to the progress achieved during the past years, a fact which augured well of the discussions to come.

DRAFT SUBSTANTIVE LAW PROVISIONS

23. The Chairman then opened the discussions on the draft substantive law provisions of the revised Convention contained in document IOM/5/2 Rev.

Article 1 - Definitions

24. The Chairman opened the discussion on Article 1. He observed that the comments would certainly concentrate on the definition of "variety," since the other definitions seemed to be clear. He noted that AIPH had no observations at this stage.

25. Dr. von Pechmann (AIPPI) stated that he had no material comments to contribute as regards the definition of variety. It appeared to make it clear that the definition of variety comprised not only whole plants, but also parts of plants which could possibly also be used for manufacturing certain substances, e.g. in cell cultures. The question could of course be raised whether such a use of cell cultures should be reserved for patent law or whether it should be protectable under the UPOV Convention as well or under the corresponding national laws. Since AIPPI was in favor of a very liberal approach to possible protection, it was in favor of the proposed formulation.

26. Mr. Le Buanec (ASSINSEL) had three observations to make and two questions to put with respect to the definition of a variety. To begin with, it was important, according to ASSINSEL, to draft the part following the first dash as follows: "can be defined by the characteristics that are the result of the expression of a given genotype..." Secondly, it would seem that there was a contradiction between the part following the second dash: "can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics" and the definition of distinctness given in Article 7(3); to ensure the coherence of those provisions, it would be necessary to delete "by at least one of the said characteristics." Finally, it also appeared necessary to introduce into Article 1 a definition of material of the variety to correspond with the provision under Article 12(5)(b) of the draft.

27. Furthermore, ASSINSEL wondered whether the definition of hybrid, as adopted by ASSINSEL at its Congress held in Seville, Spain, on June 15, 1990, and of which the text had been communicated to UPOV, was indeed covered by the formulation "or combination of genotypes." Finally, ASSINSEL wondered what the effet would be of the expression "['variety' means a group of plants, which group,] irrespective of whether the conditions for the grant of a breeder's right are fully met." It asked for clarification in that matter.

0578

28. Mr. B. Greengrass (Vice Secretary-General of UPOV) responded to Mr. Le Buanec's remarks and first addressed his second question. The suggestion had frequently been made that a plant variety should be defined as one that was protectable under the Convention, that is to say, that fulfilled the requirements of distinctness, uniformity and stability. Such a definition was not, however, adequate in the context of the examination of distinctness, since varieties were sometimes a matter of common knowledge and relevant for distinctness purposes, notwithstanding the fact that they were not uniform and stable to the extent necessary for protection. Examples of such varieties would include certain ecotypes, and also varieties released in countries where the approach to uniformity was such that varieties did not always reach the level of uniformity necessary for protection under the approach prevailing in UPOV member States. Any definition of variety had to include varieties of this type.

29. Mr. Greengrass then noted that the resolution referred to by Mr. Le Buanec in his first question had the following wording:

> "A hybrid is the result of a cross between two or more components. For varietal registration, depending on the species, the hybrid can either be represented by itself, or it can be represented by its components and the formula which associates them."

This particular text and a position paper that was passed by FIS on the same occasion had been made available to the members of the Administrative and Legal Committee at the latest session of June 1990. The particular words that were used in the proposed definition of variety ("given genotype or combination of genotypes") were not designed specifically to take into account the position of ASSINSEL on the subject of the definition of a hybrid. They were designed to encompass all the various forms which plant varieties could take, including inbred lines, pure-line varieties, cross-pollinated varieties, synthetic varieties, hybrid varieties, etc.

30. Turning more specifically to the question of whether there should be a definition of hybrid in the Convention, Mr. Greengrass noted that there was no such definition in the existing Convention. The member States had developed a practice for the application of the distinctness, uniformity and stability rules to hybrids which was embodied in the relevant UPOV Test Guidelines. Breeders were thus confronted by the existing practice of the member States in the interpretation and application of the criteria for protection, rather than by a provision of the Convention. There was no intention at present to include a provision concerning hybrids in the revised Convention. The member States were, however, aware of the ASSINSEL position and they would certainly take it into account when developing their future practice. If the member States did wish to introduce a provision into the Convention to deal specifically with hybrids, they would undoubtedly let the Secretariat know in the days ahead.

31. Mr. Le Buanec (ASSINSEL) thanked the Vice Secretary-General for that additional information and repeated that ASSINSEL might possibly wish to return to that matter.

32. Mr. Le Buanec reiterated ASSINSEL's concern to be sure that the proposed provision indeed covered its definition of hybrid. As far as the second question was concerned, he stated that he would like to re-examine it, with the members of his Association, in the light of the clarifications that had now been given, and have the opportunity of possibly returning to that question.

33. Mr. Roberts (ICC) stated that ICC proposed that the definition of "variety" be deleted. The absence of a definition had not caused any problems over recent years, and ICC felt that the introduction of a definition would cause problems. It was concerned, in particular, that the definition would influence the interpretation of the provisions of the European Patent Convention which excluded the protection of varieties by patents.

34. Mr. Roberts further stated that definitions of "derived variety" and of "material" should be included in Article 1.

35. Mr. Royon (CIOPORA) stated that CIOPORA was opposed to the inclusion of a definition of "variety" in the draft Convention. CIOPORA had lived with the 1978 Convention, which had no definition, quite satisfactorily.

36. Mr. Royon further stated that CIOPORA was not happy with the definition of "breeder's right" since, throughout the text of the Convention, "right" was sometimes used to mean the "title of protection" and sometimes to mean "the right which is conferred by the title." CIOPORA accordingly proposed the introduction of a definition for "title of protection" as follows: "'Title of protection' means a breeder's right certificate, a plant patent or a utility patent protecting a variety." "Breeder's right" should then be defined to mean "the right defined in Article 12 and attached to a title of protection granted by a Contracting Party under this Convention."

37. Finally, Mr. Royon observed that CIOPORA would also welcome the introduction of a definition of "plant material" in Article 1.

38. Mr. Lefébure (COPA and COGECA) noted that discussions bore on a text that was a draft and, consequently, the conditional would be more appropriate than the indicative in the interventions made by the speakers. With more particular reference to the definitions in Article 1, COPA and COGECA would like to see the Article extended to the concept of material and would like it to be specified that reproductive or vegetative propagating material comprised plants, parts of plants, cells and protoplasts.

39. Mr. Winter (COMASSO) assumed that it was desirable for the Convention to be preceded by the most comprehensive collection of definitions possible. In view of the technical explanations given by the Vice Secretary-General, it should also be acceptable to include further definitions in the Convention. COMASSO would therefore like to see the definition of derived variety (a term which did not occur at all as such in the draft) and the definition of material (a term which was used in a number of places, on the other hand) to be brought forward. However, account should also be taken of the observations that COMASSO would subsequently make.

40. As far as the definition of plant variety was concerned, COMASSO proposed that it refers to the expression of a genotype or combination of genotypes. The text would thus read: "['variety' means a group of plants, which group, ...] can be defined by the characteristics that are the result of the corresponding expression of the genotype or the combination of genotypes."

41. COMASSO further proposed that it be examined whether the contradiction between the reference to distinctness in Article 1(vi) and the definition thereof in Article 7(3) was intentional. The contradiction derived from the fact that the difference in at least one characteristic was no longer to be found in Article 7(3).

42. COMASSO further went along with the observations made by ASSINSEL that it would have to be ensured that the definition of variety also covered hybrids that were defined, depending on the species, by their components and the formula that associated them.

43. Finally, COMASSO considered that the remarks made by CIOPORA with regard to the name of the right were justified. It therefore also proposed that, instead of the term "breeder's right," the term "plant variety right" be inserted.

44. Mr. Ehkirch (COSEMCO) said that COSEMCO agreed with the proposal made by ASSINSEL as regards the definition of hybrid and wished to be sure that the expression "combination of genotypes" indeed covered that definition.

45. Mr. D.G. Bannerman (FICPI) supported the remarks made by CIOPORA and ICC and wished to see no definition of "variety" in the new UPOV Convention. Even after the removal of the ban on double protection, members of FICPI would still be confronted with the provisions of e.g. the European Patent Convention which made plant varieties expressly non-patentable. The proposed text contained a definition which embraced varieties which could not be protected under the UPOV Convention. There was thus a possibility that laws which excluded plant varieties from patenting would be interpreted so as to exclude such varieties from patenting also, thus creating an unfortunate situation in which there would be a class of varieties which were not protectable under either system.

46. Mr. King (IFAP) stated that after having listened to several organizations seeking to delete the definition of "variety," he found their position very strange. If the UPOV Convention was the Convention for the protection of new varieties of plants, it seemed logical to him that it should state what was meant by the word "variety." IFAP was accordingly opposed to deleting the definition of "variety" from Article 1.

47. Dr. Roth (GIFAP) stated that, notwithstanding the fact that the definition of "variety" was much improved in comparison with that in earlier drafts, GIFAP was still of the opinion that a definition was unnecessary. The Paris Convention for the Protection of Industrial Property, national patent laws and the European Patent Convention did not contain a definition of "invention." That had never caused any problems.

48. Mr. F. Chrétien (UNICE) said that UNICE shared the view of GIFAP that a definition of variety was not absolutely necessary. Experience gained in the field of patents, in which the concept of invention was not defined, was instructive in that respect.

49. Dr. Davies (UPEPI) stated that UPEPI's position was exactly the same as that of ICC, FICPI and GIFAP, and it would like to see the deletion of the definition.

50. Mr. O. Koch (AIPH) stated that, having heard a number of requests for deletion of the definition of "variety," he felt it necessary to stress that, like IFAP, AIPH was strictly opposed to the deletion of the definition. The Convention would lose all its meaning if the definition were deleted.

51. Dr. C. Gugerell (European Patent Office - EPO) stated that it was of course simpler, from the point of view of the EPO, if the UPOV Convention contained no definition of variety. He nevertheless assumed that the definition would be maintained and his comments therefore mainly concerned the way in which the definition could be improved in relation to the European Patent Convention (EPC). It was clear that the removal of the prohibition on double protection modified the problem somewhat, but would only have minor influence since the exclusion of plant varieties in Article 53(b) of the EPC would remain in existence for the moment. The definition of variety should therefore be as clear as possible and that, in his view, was not at present the case in all respects. That applied in particular to the provision that varieties that did not fully meet the conditions for the grant of a breeder's right could also be comprised in the definition of variety.

52. Mr. Gugerell further wished to comment on three specific items.

(i) An earlier definition had included the phrase "unit for the purposes of cultivation." The reintroduction of that phrase would improve the definition with respect to its extension to varieties that did not satisfy the requirements of plant variety protection, since it would maintain that extension within a reasonable scope.

(ii) In the second indented part of the sentence, the expression "of the same botanical taxon" had been used. The EPO felt again that the earlier definition with the phrase "within a species or a taxon of a rank lower than species" had been better. That made it clear that what was meant was the lowest taxon and not just any taxon. Under the present definition "variety" could also be understood as a genus or a family.

(iii) The second sentence of the definition dealt with what could be represented by a variety. The EPO considered that such a sentence did not belong to a definition. Therefore, to make it quite clear, it should also be visually separated from the definition. If it did belong to the definition, then there would be situations in which the definition would contradict Article 53(b). The latter stated, after the semicolon, that the exclusion before the semicolon did not apply to microbiological processes or the products thereof. A plant cell manufactured by means of a microbiological process would therefore not be excluded from patent protection by Article 53(b). If then a plant cell were to be deemed a variety on the basis of the second sentence of the UPOV definition, that would be in direct contradiction with Article 52(b).

53. The Chairman concluded the discussion on Article 1, noting that some organizations wished that the definition of "variety" be deleted and that others had a number of observations on it. Among the other suggestions of some importance were the proposed insertion of a definition of "material" and substitution of "title of protection" or "plant variety right" for "breeder's right."

Article 2 in the Present Text of the Convention - Forms of Protection - and Article 2 in the Proposed New Text - Obligations of Contracting Parties

54. The Chairman opened the discussions on Article 2.

55. Mr. Koch (AIPH) explained that he spoke on behalf of AIPH, the sole representative of producers of ornamental plants from five continents. Even though AIPH spoke with only one voice here amongst numerous international organizations, it spoke with some weight. AIPH had shown great interest in the revision of the Convention and sought to cooperate with many bodies and organizations--governmental and non-governmental--to secure a balanced Convention for society at large and for breeders and growers in particular. At its recent Congress in Osaka (Japan), the AIPH policy on the protection of new plant varieties had been supported by all members. In recent months, sensible compromises had been reached on many questions involved in the revision of the Convention. But in relation to Article 2 of the existing Convention, probably the most important article of all, AIPH was seriously alarmed upon hearing that the UPOV Administrative and Legal Committee voted to lift the ban on cumulative protection. The removal of Article 2 would not only allow a choice of the system but also permit the cumulation of protection in both systems and remove from UPOV control over the future form of plant variety protection. The removal of Article 2 would create imbalance and disharmony in trade, production and breeding of ornamental plants, and lead to an abundance of disputes and law suits. In his own country, Denmark, the second largest grower and exporter of pot plants in the world, both breeders and growers of ornamentals were against changing the present text of Article 2. Mr. Koch urged UPOV to maintain that text since AIPH would prefer no revision at all rather than accepting a change in Article 2 which would pave the way for monopolies and disorder in the field of plant variety protection.

56. Dr. von Pechmann (AIPPI) referred to the existing proposal for Article 2(1) and the reference therein to Article 36(2). The comments on the first Article depended on the conclusions of discussions on the second Article since the question arose whether the second was still necessary after deletion of the ban on double protection. AIPPI had no comments to make on paragraph (2).

57. Mr. Le Buanec (ASSINSEL) stated that ASSINSEL had no particular observations to make on the proposed Article 2. It did wish, however, to explain in more detail its views on the proposed suppression of the prohibition of double protection. That was one of the most important points in the revision of the Convention and one on which the members of ASSINSEL were not only divided, but were divided into three groups.

(i) The first group felt that the UPOV Convention provided the best way of protecting a plant variety and that the current revision strengthened that position. It feared that the suppression of the prohibition of double protection for plant varieties as such would weaken, in the long term, the plant breeder's certificate due to the confusion it was liable to cause. It further feared that that suppression would endanger the principle of free use of a protected variety for creating other varieties, which was the cornerstone of the Convention and was essential for carrying out the profession of breeder. Consequently, that group was in favor of maintaining the ban.

(ii) The second group felt that it could accept the proposed deletion of the prohibition on double protection subject to two conditions: one was that the criteria of distinctness, homogeneity and stability be introduced into the patent system as additional conditions for patentability of varieties in order to avoid the confusion that could arise in time due to a double system of protection; further, that a system resembling that of the "breeder's exemption" be introduced into the patent system.

(iii) The third group supported unreservedly the proposed suppression of the ban on double protection since, according to that group, it was inappropriate for the UPOV Convention to place upon member States an obligation to modify other legal systems and that the member States had to be given the possiblity of affording breeders the protection they considered the most appropriate and the most effective. According to that group, the ban on double protection, associated with the proposed definition of a variety, created an area within which no form of protection could be obtained. Finally, each of the systems involved had its advantages and disadvantages and to artificially favor one of them by means of an exclusion provision would prevent member States from acquiring experience of the two systems. If the two systems were equally valid, it should be possible to be able to use both of them in coexistence; if one was clearly superior to the other, the breeders would choose themselves.

58. Mr. Le Buanec concluded by observing that his statement bore witness to the difficulties experienced by ASSINSEL in taking a position on that matter and the concerns which the various groups of opinion had on that subject.

59. Mr. Roberts (ICC) repeated his opening statement to the effect that ICC was pleased to see the deletion of the old Article 2 from the Convention. He felt, however, some distress at the statement of AIPH that they would be willing to forgo all the benefits of a revision in order to retain the ban on double protection. There were already UPOV member States which permitted the patenting of plant varieties and no disaster had so far occurred in such countries; Mr. Roberts accepted, however, that it could be argued that "there had not yet been enough time for a disaster to occur." Furthermore, he observed that the removal of the ban on double protection did not compel member States to permit double protection, and the existing ban in Article 53(b) of the European Patent Convention would clearly stay for some years at least. It would be sad to reject all the potential benefits of an amended Convention in order to preserve the existing position on a question which, in Europe, could be settled in other fora.

60. Mr. Roberts further stated that ICC supported the views of the third group in ASSINSEL but had some sympathy with the position of the second group in that it understood the perceived need to introduce into patent laws something analogous to the "breeder's exemption." UPOV could not of itself change the patent laws, but countries and delegations present should give consideration to this problem. ICC hoped that the experimental use exemption in patent law would evolve so as to provide something analogous to the exemption of the UPOV Convention. This would not mean that the breeder would be absolutely free to exploit the results of his breeding. Whether he was free or not, would depend on whether the variety which he had produced experimentally did or did not infringe the claims of the relevant patent.

61. Mr. Royon (CIOPORA) pointed out that "double protection" had a double meaning. It may mean cumulative or alternative protection. CIOPORA supported the deletion of Article 2 of the present text, and shared the views of the third group in ASSINSEL. Some breeders of ornamental plants were happy to continue to protect their varieties by plant variety protection certificates, others with plant patents, while still others would be very happy with the utility patents of the United States of America. Diversity should be maintained and encouraged so long as UPOV remained as the international forum to coordinate everything concerned with the protection of plant varieties. CIOPORA would prefer to see a positive statement in the Convention giving Contracting Parties an explicit free choice between plant variety protection and

0584

patent protection rather than a simple non-inclusion of the present Article 2. The revision of the UPOV Convention should look towards the future and not limit the scope of the Convention. Even the exclusion provisions of Article 53(b) of the European Patent Convention might, with time, be changed. CIOPORA hoped very strongly and sincerely that a positive statement opening up this possibility could be made under a revised Article 36.

62. On the actual text of the proposed new Article 2, CIOPORA was not content with the reference to Article 36(2) since this Article was more restrictive than the former Article 37. In relation to the basic obligation of Contracting Parties in Article 2(1), CIOPORA thought that the formal nature of the right granted was unimportant so long as the Parties granted to the breeder of a variety the exclusionary right defined in the Convention. Referring to CIOPORA's earlier comments concerning the definitions of "title of protection" and "breeder's right," CIOPORA proposed that Article 2(1) should read: "Each Contracting Party shall recognize and protect the breeder's rights provided for in this Convention by the grant of a title of protection." References to "titles of protection" should also be introduced into subparagraphs (ii) and (iii) of paragraph (2). CIOPORA was of the opinion that it was essential that an existing patent office should be able to act as "the authority" for the purposes of Article 2(2)(ii) where the Government of the Contracting Party concerned decided to choose patents as a means of protection for some or all plant species, whilst applying the principles of the UPOV Convention.

63. Mr. Lefébure (COPA and COGECA) announced that COPA and COGECA went along with the position of AIPH and of the first group, as it had been called by Mr. Le Buanec, of ASSINSEL: COPA and COGECA were opposed to a change in Article 2 of the current text. European farmers were unanimous in insisting that there could not be double protection for one and the same variety and in stressing the importance of the exclusive application of the UPOV Convention to plant variety protection. COPA and COGECA therefore rejected the proposed text.

64. Mr. Winter (COMASSO) stated that COMASSO, as a European association of breeders, also based its observations on the existing European legal situation that unequivocally contained the exclusion from patentability of plant varieties in international conventions and national laws. COMASSO based itself on the fact that the future member States of UPOV should not be obliged to amend existing exclusion provisions to the effect that all systems should be open. COMASSO further based itself on the fact that, following its intended strengthening, the UPOV Convention should still offer the best possible protection of plant varieties for breeders, particularly through its requirements, such as distinctness, homogeneity and stability, and due to the particular formulation of the breeder's exemption. Neither of those two items were contained as such in any patent system.

65. Taking those comments into consideration, it would be seen that there was a genuine need for a collision norm in order to provide for possible overlaps between differing systems of protection. COMASSO reiterated its comments on that item and emphasized that such a collision norm would have to be balanced and should not lead to drawbacks for either one or the other owner of rights due to its particular formulation.

66. With regard to the proposed Article 2, it seemed to Mr. Winter appropriate to include the proviso of Article 36(2) in Article 4(2), that gave an obligation of application to all species.

67. Mr. Ehkirch (COSEMCO) stated that COSEMCO supported the recommendations and proposals made by COMASSO.

68. Mr. Bannerman (FICPI) stated that FICPI had no comments on the proposed new text of Article 2 but welcomed the proposal to delete the existing Article 2 and its ban on double protection. He had heard the view expressed that if patents were allowed for plant varieties, the UPOV system would fall into disuse. These fears were misplaced since the conditions for patentability and for the grant of breeders' rights were quite different and since many plant varieties would not meet the conditions for patentability and would only be susceptible to protection under the UPOV Convention. Few varieties produced by traditional breeding methods would meet the patentability requirements. These were most likely to be met by varieties produced by genetic engineering, which would be technical inventions in the true sense of the word. FICPI believed that it was inappropriate that any particular class of technical inventions should be excluded from patentability.

69. Mr. King (IFAP) stated that IFAP was opposed to double protection, i.e. the granting of both plant breeders' rights and patents for the same botanical genus or species. In IFAP's view there should be one predominant system of property rights for plants, namely the plant breeder's right granted under the UPOV Convention. Other intellectual property rights, such as patent rights, should not interfere with plant breeders' rights. If a plant breeder needed to use a patented gene or a patented process in the developing of a new plant variety, then he would naturally have to obtain the consent of the patent holder. However, the farmer or grower should only pay one royalty on the new plant variety to the breeder. IFAP therefore favored the intention of the existing Article 2(1) and supported the comments of AIPH, the first group of ASSINSEL, and of COPA and COGECA. In IFAP's view there was a difference of philosophy in the room. There was a large group which was looking to the future towards what ICC had called "a patent law which will provide something analogous to plant breeders' rights." That group believed in reducing the importance of the UPOV Convention and substituting plant breeders' rights by a certain kind of patents. If the objective of the revision of the Convention was to clarify and improve it, then IFAP thought that the elimination of Article 2(1) would in fact increase the confusion and lead to an abundance of law suits and disagreements within the sector. The plant breeders' rights system had proven to be a fair system with a proper balance between the interests of producers, consumers and breeders, and IFAP would like this system to continue.

70. Dr. Roth (GIFAP) stated that GIFAP was pleased with the deletion of the so-called double protection ban of the old Article 2 and believed this to be the greatest improvement in the UPOV Convention. In view of the deletion GIFAP no longer saw any need for the proposed Article 2(1) or Article 36.

71. Dr. Gross (UNICE) stated that UNICE was in favor of deleting the prohibition on double protection from the Convention. Article 2(1) of the new version was therefore superfluous and should also be deleted. As for Article 36, he was concerned that it would be used to a certain extent to maintain a ban on double protection. He hoped that clarification could be given as soon as Article 36 was discussed. However, he did not want to speak only against a ban on double protection, but also wished to go along with the proposal made by the representative of CIOPORA for a positive statement to be contained in the Convention.

72. Dr. Davies (UPEPI) stated that UPEPI welcomed the removal of the old Article 2 and had no specific comments on the proposed new Article 2. Concerning the note on page 11 of document IOM/5/2 Rev., he suggested that the description of the case where only one title of protection would be available should perhaps be reconsidered. If a Contracting Party wished to allow only one right, the choice should not be between applications but granted rights.

73. Dr. von Pechmann (AIPPI) said that he had so far restricted himself to the wording of the proposal and had therefore not taken a stance on the matter of double protection. Since contradictory views had been expressed on that matter, he wished to supplement what he had said before. He explicitly supported the ideas put forward by ASSINSEL with respect to the third group. That group, that was in favor of lifting the ban, advocated the view that, if possible, both systems, i.e. plant variety protection and patents, should represent alternative possibilities for the breeders. Which of the two systems was truly suitable for the breeders would transpire in time. In general, however, it was always best when effective protection existed since that provided the greatest incentive to innovation. AIPPI continued to fully support what had been said by CIOPORA, since it was necessary for many inventions to obtain protection beyond that provided by improved plant breeders' rights. Article 2(1) should therefore be supplemented in order to state clearly that other possibilities existed in addition to plant variety protection. A possible formulation could be: "Each Contracting Party shall protect breeders' rights notwithstanding other possibilities for the protection of new plant varieties."

74. Mr. Royon (CIOPORA), on being given the floor by the Chairman, expressed his concern that certain pressure groups were hoping to influence the scope of protection as they had in 1961. The result in 1961 was a Convention with too many loopholes which breeders could not use effectively in countries which applied the minimum scope of protection. The objective of the revision was to remove the loopholes, and in this context it was necessary to concentrate on legal and not economic questions. He was surprised to see two camps discussing plant breeders' rights systems in an industry where innovation was as important as it was in agriculture.

75. Mr. M.O. Slocock (AIPH) stated that the organizations had come together some years ago to improve the Convention; he accepted that the experience of operating the Convention and developments in technology had led to a need to update the Convention to make it more precise and effective and to clarify the interests of the parties involved. This objective having been achieved in many other parts of the revised Convention, AIPH did not wish to see an alternative to be available which would allow the producers of new plant varieties to work outside the Convention altogether, or to operate under two separate systems at the same time. It would prefer to forgo the improvements of the revised Convention rather than to allow a situation to arise where one would be forced to operate under the European Patent Convention or other legislation which was being discussed in Brussels. Many AIPH members were from countries outside the EPC territory or outside the EEC. AIPH wished to see a more precise, better and comprehensive Convention but did not wish to see the effectiveness of that Convention eliminated at a stroke by the creation of an opportunity for another system to take its place.

76. Mr. G.J. Urselmann (COMASSO) stated that COMASSO understood that in a revised Convention there would be no obligation for Contracting Parties to

0587

change existing exclusions of plant varieties from patenting, but equally there would be no obligation to maintain existing legislation. He stated that there were strong feelings within COMASSO that patent questions should be dealt with in patent legislation and that this was not a matter upon which UPOV should decide.

77. The Chairman noted the intense discussion that had taken place on the subject of double protection; he told the meeting that similar discussions had taken place within UPOV circles and that there was no wish that the protection under the UPOV Convention should be weakened in any way. It should be made clear to those who were against the deletion of the ban on double protection that the objective of UPOV was to construct a Convention that was strong enough in itself to withstand any competition from other sources. On the other hand, conditions should not be created such that farmers could no longer afford new varieties since in that case the Convention would not work at all. Participants had accordingly to continue to strive to secure a Convention with which they could all live.

Article 3 - Measures Regulating Commerce

78. The Chairman opened the discussions on Article 3.

79. Mr. Royon (CIOPORA) stated that the term "material" as it appeared in Article 3 should be changed to "plant material" and that plant material should be defined in Article 1 to mean "any plant or part of plant, whatever its botanical or commercial function may be, including in particular cut flowers, fruit and seeds."

80. Mr. Winter (COMASSO) agreed with the provision as contained in the document. However, he wished to state for the record that he based himself on the fact that no obligation would be placed on the Contracting Parties to introduce measures to regulate the market.

81. Mr. Besson (FIS) stated that FIS supported the comment made by Mr. Winter (COMASSO).

Article 4 - Genera and Species to be Protected

82. The Chairman opened the discussions on Article 4.

83. Mr. Slocock (AIPH) welcomed the thinking and the spirit behind the new text of Article 4 but questioned whether the shortness of the time periods was not too optimistic.

84. Mr. Le Buanec (ASSINSEL) wondered whether the term "all plant genera and species" covered intergeneric and interspecific hybrids; if such was not the case, ASSINSEL felt that it would have to be supplemented by "and their hybrids."

85. Mr. Roberts (ICC) wished to see the period of 10 years referred to in Article 4(1)(ii) reduced if possible. If it could not be reduced, he asked whether the Article could be strengthened by requiring the 25 plant genera or species referred to in subparagraph (i) to represent a balanced selection of genera or species for which protection would be relevant.

86. Mr. Royon (CIOPORA) stated that the proposed new text of Article 4 was meant to represent an improvement over the present Convention and, as such, it was welcomed. However, it perpetuated the principle of the progressive implementation of the Convention which had been a basic flaw of the Convention from the very beginning. CIOPORA thought that the period of 10 years in Article 4(1)(ii) should be reduced to three years since otherwise the present anomalies in the availability of protection for some species would be perpetuated in many countries. This was one of the reasons why CIOPORA insisted that Governments and breeders should be free to choose between plant variety rights, plant patents and standard patents, since the choice would permit countries which granted patent protection to protect all species, including the interspecific hybrids which were likely to be more numerous in the future.

87. The Chairman referred to the aim of getting more States to become parties to the Convention. He observed that the reason for the 10-year period was to ensure that this aim could be achieved.

88. Mr. Winter (COMASSO) referred first to the question put by ASSINSEL. COMASSO also had difficulty in determining whether the case of intergeneric and interspecific hybrids was in fact covered by the chosen wording "genera and species." The compulsory application of the Convention to all genera and species was welcome and a transitional rule had also to be foreseen for them. COMASSO wished to suggest the following addition to paragraph (1)(i): "They [the genera and species] shall concern the main crops cultivated in the member State concerned." The reason for that was that in some member States, already under the current UPOV Convention, protection was not afforded to all important species. It had to be ensured that the need for protection of breeders in all member States was indeed sufficiently taken into consideration and that could be done by such a reference to the important species.

89. Mr. Ehkirch (COSEMCO) stated that COSEMCO shared the concern expressed by ASSINSEL with regard to intergeneric and interspecific hybrids.

90. Mr. Bannerman (FICPI) welcomed the new text of Article 4 since it would provide a specific time by which plant variety protection would be extended to all species. FICPI wondered, however, whether the period of 10 years could be shortened.

91. Dr. Roth (GIFAP) expressed the view that the period of 10 years in Article 4(1)(ii) appeared very long. In order to secure harmony between national laws, he suggested that this period should be reduced to three years as proposed for existing members of the Union.

92. Dr. Gross (UNICE) stated that UNICE was also in favor of reducing the ten-year term. There was no obvious reason why a two-class society should be

0589

created. He also felt that the proposal made by the representative of COMASSO to relate the provision to the main crops cultivated in given territories was worth reflection.

93. Dr. Davies (UPEPI) stated that UPEPI agreed with the comments made by FICPI.

94. The Chairman concluded the discussions on Article 4 and stated that the questions of the 10-year period and of the intergeneric and interspecific hybrids would have to be considered in subsequent meetings.

Article 5 - National Treatment

95. The Chairman opened the discussions on Article 5.

96. The deletion of the possibility of requiring reciprocity was supported by Dr. von Pechmann (AIPPI), Mr. Le Buanec (ASSINSEL), Mr. Roberts (ICC), Mr. Royon (CIOPORA), Mr. Winter (COMASSO), Mr. Bannermann (FICPI), Mr. Besson (FIS), Dr. Roth (GIFAP) and Mr. Chrétien (UNICE).

Article 6 - First Application

97. The Chairman opened the discussions on Article 6.

98. Mr. Roberts (ICC) stated that ICC had no problems with Article 6. It had been noted, however, that there was no provision corresponding to the present Article 11(3), and ICC would appreciate some confirmation that the substance of that provision was still intended to apply.

99. Mr. Royon (CIOPORA) asked whether there was any specific reason why Article 11(3) of the 1978 Convention was being deleted and whether it could be assumed that the deletion did not entail any change in practice.

100. Mr. Winter (COMASSO) referred to the comments made by CIOPORA and other organizations and stated that the provisions of the current Article 11(3) should remain in the Convention, at some place or other.

101. Dr. Roth (GIFAP) supported the previous statements and questions in relation to Article 11(3) of the existing Convention.

102. Dr. Gross (UNICE) said that UNICE was in agreement with the proposed formulation, but would nevertheless prefer Article 11(3) of the current Convention to remain in some form within the Convention.

103. Mr. Greengrass (Vice Secretary-General) stated that the reason why Article 11(3) of the existing text did not appear in the draft revised text was

because the view had been taken that the general trend in intellectual property protection was towards increased interdependence between protection in different countries rather than towards the independence of such protection. Article 11(3) had been viewed as a 19th century provision and, as such, contrary to the increasing coordination in examining plant varieties and granting protection. The views expressed by the preceding speakers would be taken into account. Mr. Greengrass added that he was aware of two non-member States of UPOV where the granting of plant variety protection was dependent upon the existence of protection for the same variety in another country. Such a system was totally contrary to the aim of the original Article 11(3); therefore, it might perhaps be desirable to reinstate it. The comments of participants would certainly be taken into account when the proposed text was looked at afresh.

Article 7 - Conditions for the Grant of a Breeder's Right

104. The Chairman opened the discussions on Article 7.

105. Mr. Slocock (AIPH) commented in relation to Article 7(2)(a) (newness) that it seemed excessive to include the words in brackets since, although this might not affect the ornamental sector as much as it might affect other sectors, it seemed to be taking the thinking behind other parts of the Article further than was necessary or prudent. In relation to paragraph (2)(b), he found it difficult to see how a new variety could be held to be new if it already existed at the date of the extension of protection to a species not previously protected.

106. In relation to Article 7(3) (distinctness), Mr. Slocock felt that it was a pity that the reference to "important characteristics" had been removed, notwithstanding the fact that the former text supported positions taken by some UPOV Technical Working Parties. It was, however, a subject that UPOV should continue to consider carefully. The proviso to the second sentence in paragraph (3) concerned him where it talked about a variety which was the subject of an application for protection only becoming a matter of common knowledge if the application led to the grant of a breeder's right. Many circumstances could cause the refusal of a breeder's right, but it did not seem to him that this should necessarily affect common knowledge of the variety.

107. Dr. von Pechmann (AIPPI) pointed out that the expression "any product directly obtained from the harvested material of the variety" in Article 7(2)(a) was not clear and could lead to difficulties in practice. In some circumstances, it was possible that the variety concerned could not be determined from a product directly obtained from the variety. The corresponding provision should only be applicable where it was possible to determine, from the product, which had been the variety that had served as a basis for obtaining that product. Only in such case could disclosure be derived from the product. Such was also the case in relation to chemical substances. Where the process for its manufacture could not be determined from the substance, then the process was still considered new, and the product was in fact not reproducible.

108. As for paragraph (3) relating to distinctness, Dr. von Pechmann wished to point to the effect of an application "in any country." It was his view that it was rather the novelty that would be affected. There also arose the question of what was to be understood by the expression "in any country." For

0591

instance, if an application filed in China were to lead to entry in the official register of varieties ten years later, then the corresponding application in one of the member States would no longer be valid since distinctness would no longer exist. It was therefore questionable whether UPOV should really go so far as to treat an application in a non-member State in the same way as an application in a member State.

109. Mr. Le Buanec (ASSINSEL) had several comments to make on paragraph (2). On the matter of drafting, ASSINSEL felt that the expression "reproductive or vegetative propagating material" was ambiguous and should be replaced by "sexual or vegetative reproductive material." In the introductory part of subparagraph (a), ASSINSEL felt that the words between square brackets should be deleted. Furthermore, ASSINSEL wanted the words "if the law of that Contracting Party so provides" to be deleted in subparagraph (i). It felt it would be useful to add a provision to subparagraph (a) reading as follows: "The making available of a variety by the applicant under a contract by which the applicant maintains his property right in the variety, particularly for the purposes of trial, propagation, production of hybrid seed, processing and storage, shall not be understood as exploitation within the meaning of subparagraphs (i) and (ii)."

110. As for subparagraph (b), ASSINSEL felt that the word "may" should be replaced by "shall" in order to make that transitional limitation on novelty compulsory.

111. Mr. Roberts (ICC) stated that ICC had made a number of written comments on Article 7 and he was not going to repeat them. ICC supported the deletion of the words within square brackets in Article 7(2)(a) which had been previously proposed by AIPPI and ASSINSEL.

112. Mr. Royon (CIOPORA) stated that CIOPORA would like to see the words "with the consent of the breeder" replaced by the words "with the express consent of the breeder" in Article 7(2)(a)(i) and (ii). In Article 7(2)(a), the words "propagating or harvested material" should be replaced by the words "plant material," assuming that the definition that he had already proposed was adopted for these words. The text between square brackets should be deleted and the term "exploitation" should be qualified in the way suggested in the definition of the exclusionary right of the breeder which CIOPORA proposed for Article 12(1)(a).

113. Mr. Royon further noted that under the provisions of paragraphs (2) and (3) it was possible for a breeder to enter a variety on an official register and thus disqualify another breeder from securing rights for a variety which was not distinct from the variety entered on the register. The entry on the register would confer no protection and would not limit the first breeder from subsequently applying for protection at a much later date, provided he did not sell his variety. The net effect of this was to grant protection to the first to invent rather than to the first to apply, which was contrary to the general trend in industrial property. He asked whether this was intentional. Mr. Royon finally noted that, in Article 7(3), the term "important characteristics" was no longer employed. He did not think that the deletion of the term provided any improvement, particularly in the context of resolving the problem of trivial differences. The term "characteristics" was deployed in Articles 7(4) and (5), but without any proper qualification. He thought that additional words were needed in the relevant paragraphs.

0592

114. Mr. Greengrass (Vice Secretary-General) noted that under the UPOV Convention, ever since 1961, a variety remained new even if it was known, provided that it had not been sold, whereas in the patent system novelty was lost by publication. A variety of rose could accordingly be entered into some public competition as a result of which it was described, but it would remain novel provided that it was not sold. Since it became thus a matter of common knowledge, the variety would be taken into account for distinctness purposes. The position relating to novelty under the UPOV Convention was different from the position under the patent law and it was not possible to deploy the patent expressions "first to invent" and "first to apply" in this context.

115. Mr. Royon (CIOPORA) appreciated the clarification of the Vice Secretary-General but wondered whether it would be possible to block applications by putting a variety on a register and then waiting for many years or until it became convenient for the party concerned to commercialize the variety. This might create problems for the trade.

116. Mr. Winter (COMASSO) restricted his comments to paragraph (2) of the Article. He first asked for a brief explanation as to whether there was an intended difference in meaning in the use of the heading "newness" in the English text in place of "novelty" that tended to be the usual term. If not, COMASSO would advocate the use of "novelty." With respect to subparagraph (a), it proposed the deletion of the brackets and of their contents, as had various prior speakers. As for the expression in subparagraph (a)(i) and (ii), "otherwise made available," COMASSO went along with the coments of ASSINSEL, particularly the formulation that had been proposed. The main reason was that it was based to a large extent on the proposal for a Community breeder's right.

117. COMASSO further proposed that, in subparagraph (a)(i), the word "explicit" be added, resulting in the following wording: "with the explicit consent." Additionally, in the same subparagraph, the one-year period of grace for novelty should be binding. Finally, COMASSO considered the transitional limitation of the novelty requirement to be altogether desirable. However, he proposed that the provision in subparagraph (b) should also be made binding, by changing the word "may" into "shall."

118. Mr. Bannerman (FICPI) stated that, for the reasons which had been enlarged upon by the representative of AIPPI, FICPI would prefer to see the bracketed text in paragraph (2)(a) deleted.

119. Mr. King (IFAP), commenting on Article 7(3) on distinctness, said that IFAP's view was that it was important to avoid plagiary in the breeding of new varieties and that a new variety should only be protected if it incorporated improved economic characteristics. IFAP would accordingly seek to insert in Article 7(3) after the words "clearly distinguishable" the words "and a commercial improvement over." In the absence of such words it was possible to protect something that was merely botanically interesting.

120. Mr. Besson (FIS) supported, on behalf of FIS, the proposal made by Mr. Le Buanec, on behalf of ASSINSEL, to introduce a provision that safeguarded the novelty of material used for trials or propagation outside the actual trade circuit. That was everyday practice and was most important for the variety and seed industry.

0593

121. Dr. Roth (GIFAP) stated that GIFAP saw no justification in the provisions of Article 7(2)(b) and suggested that they be deleted.

122. Mr. Chrétien (UNICE) stated that UNICE requested deletion of Article 7(2)(b) due to the fact that the provision broke the uniformity of the novelty criterion.

123. Dr. Davies (UPEPI) stated that while UPEPI had no detailed comments on Article 7, he wished to draw the attention of the Secretariat to the use in Article 7(3) and (5), respectively, of the words "clearly distinguishable" and "relevant characteristics." If it was finally decided that a definition of "variety" should be included in Article 1, then these words would need to be incorporated into the relevant definition.

124. Mr. Slocock (AIPH) asked the Secretariat to explain why the expression "important characteristics" had been discarded. For years delegates had discussed in UPOV the possible extension of minimum distances, and the discarding of these words seemed to constitute a move in the opposite direction.

125. Mr. Greengrass (Vice Secretary-General), in responding to Mr. Slocock's question, stated that the existing text of the Convention required that a variety, to secure protection, had to be clearly distinguishable by one or more important characteristics from any other variety whose existence was a matter of common knowledge at the time when protection was applied for. If one referred back to the "travaux préparatoires" of the 1961 Convention, one found that the word "important" was added since it was felt that it could not be so that any variety would be protectable. There had to be some degree of difference. On the other hand, it was also firmly decided at that time that it was not essential that a variety should represent an improvement over other varieties in order to be eligible for protection. The experts at that time considered that merit was too local or too temporary to be taken into account in an international system of protection, and even in a national one. The relative merit of a variety depended upon the conditions under which it was grown. Merit in one place might not be merit in another place. However, in the light of subsequent experience the word "important" was found to be ambiguous since it had frequently been thought to indicate merit. The question had been addressed in the General Introduction to the UPOV Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability and it was stated that the term "important" meant "important for the purpose of making a distinction" and not "important in the sense of merit." Accordingly, in view of the general position taken by UPOV, the word "important" had been dropped out of the new text, simply because it was seen to be ambiguous and misleading, and for no other reason.

126. Mr. Slocock (AIPH), in response to the statement of Mr. Greengrass, stated that AIPH felt that some effort should be made in the text of the Convention to underline the need to distinguish new varieties by significant differences so as to discourage the sort of plagiarism that nobody wished to see.

127. Dr. von Pechmann (AIPPI) returned once more to the problem of novelty. Mr. Winter (COMASSO) had referred to the non-binding nature of the one-year period of grace for novelty in paragraph (2)(a)(i). However, the period given

in subparagraph (ii) was binding. The period given in subparagraph (i) should therefore also be binding since differences might otherwise arise that would be hazardous for breeders.

128. Mr. Le Buanec (ASSINSEL) wished to respond to a remark made by Mr. King (IFAP) on the requirement of an economic interest for obtaining protection. ASSINSEL was opposed to that principle for three reasons: to begin with, it was a general principle of intellectual property law that economic merits were not taken into account in the granting of rights. The second reason had already been expanded on by Mr. Greengrass (Vice Secretary-General) and there was no reason to return to the geographical aspect of the economic value. Finally, account had to be taken of the need for genetic diversity; it would be extremely risky to refuse to protect a variety of a value equal to that of an existing variety where their genetic composition was different.

Article 8 - Right of Priority

129. The Chairman opened the discussions on Article 8.

130. Mr. Slocock (AIPH) stated that AIPH welcomed the reduction of the period of years in Article 8(3) from four to two. This was realistic and appropriate.

131. Dr. von Pechmann (AIPPI) pointed out that the priority right obviously referred only to breeders' rights within the UPOV system. Presuming that, after removal of the ban on double protection, there would be the possibility of using other systems of protection for new plant varieties, the priority right should not be limited to breeders' rights under the UPOV Convention, but extended to initial applications for the grant of other rights. An American breeder who had applied for a plant patent for a vegetatively propagated variety should not be given the answer that his priority right could not be recognized, when filing an application in another UPOV member State, on the grounds that his application in the initial country was not an application within the meaning of the UPOV Convention, but a patent application. Dr. von Pechmann wished therefore to propose the replacement of the words "a breeder's right with the authority" by "protection for a new variety with the relevant authority."

132. Mr. Le Buanec (ASSINSEL) said that, for technical reasons that were important for certain species, ASSINSEL requested that the priority period be extended from 12 to 24 months. As for paragraph (3), ASSINSEL wished to maintain the four-year period contained in the current text of the Convention. Finally, Mr. Le Buanec noted that in the English version of paragraph (4), the word "facts" should be replaced by the word "events."

133. Mr. Roberts (ICC) supported the observations of ASSINSEL in respect of the priority period and the period mentioned in paragraph (3).

134. Mr. Royon (CIOPORA) suggested that the words "application for the grant of a breeder's right" in Article 8(1) should be replaced by "an application for the grant of a title of protection" since, with the definition of the words

"title of protection" proposed by CIOPORA, the breeder would be able to claim the priority of a patent filed in another country. Article 8(1) provided that the priority period should be computed from the date of filing of the first application. CIOPORA thought it advisable to specify what should be considered as the first application, particularly in cases where an application had been withdrawn and then filed again at a later date. CIOPORA felt that, provided there had not been any grant of rights, it should be possible to claim priority on the basis of the second application.

135. In relation to Article 8(3), Mr. Royon stated that CIOPORA supported ASSINSEL's suggestion that the period of four years should be maintained. In relation to Article 8(4) CIOPORA thought that rather than the term "facts" used in the present text or the term "events" proposed by ASSINSEL, the term "acts" should be preferred. CIOPORA would like to know whether there was any particular reason why the words "or to any right of personal possession" appearing in the existing text of the Convention had been omitted from the draft. In the absence of a specific reason, this language should be maintained.

136. Mr. Winter (COMASSO) basically supported the views presented by ASSINSEL and by the ICC, particularly with regard to extension of the period to 24 months in paragraph (1) and maintenance of the four-year period in paragraph (3).

137. Mr. Ehkirch (COSEMCO) stated that COSEMCO shared the views expressed on behalf of ASSINSEL and of COMASSO with regard to the periods specified in Article 8.

138. Mr. King (IFAP) noted that when the subject of the time periods in Article 8 was discussed last year, IFAP approved the shorter periods of twelve months and two years which was embodied in the present text. On the other hand, if it were a fact, as suggested by Mr. Le Buanec (ASSINSEL), that it was technically impossible to do trials within the twelve-month period, then perhaps it would be reasonable to reconsider the question. But unless there was a good technical reason, he could see no justification for changing the present text and left it to the Secretariat to determine whether a change was necessary, as opposed to "just desirable," for the breeders.

139. Dr. Roth (GIFAP) suggested that the priority period be extended from 12 to 24 months.

140. Dr. Gross (UNICE) lent his support to the proposal made by the representative of AIPPI that the priority right be extended to other applications for industrial property rights.

141. Dr. Davies (UPEPI) stated that UPEPI supported the position of AIPPI.

142. Mr. Greengrass (Vice Secretary-General) asked participants--in relation to the suggestion of CIOPORA that priority under the UPOV Convention should be available to an applicant who had applied for a patent for a plant variety in a country that granted patent protection for plant varieties--whether an application for a plant breeder's right would be accepted for priority purposes in relation to a patent application for a plant variety in any such country.

0596

143. Dr. Davies (UPEPI) stated that whilst he did not have a definitive answer on that question, the requirement of a priority-establishing document under the patent system was relatively high in terms of its descriptive content. Whilst he believed that a detailed description accompanying a patent application might well be sufficient to establish priority for a plant variety right, it was unlikely in many circumstances that the description provided with a plant variety right application would be sufficient to support the broad claims of a patent.

144. Mr. G. Brock-Nannestad (AIPPI) suggested that the documents relating to an application for a plant variety right would probably be sufficient for a design application because a design application would rely on the visual descriptive characteristics and would not be required to have claims. The abolition of the ban on double protection would open up the possibility of obtaining a design patent, but he did not wish to confuse the issue.

145. Mr. Roberts (ICC) said that he agreed with the last remark of Mr. Brock-Nannestad. It was rather late in the lengthy revision proceedings to introduce an amendment of this kind. It had not been discussed within ICC and he was not aware that anybody else had discussed this idea yet, which had many possible ramifications. His suggestion was that the proposal, though interesting, was too late in the current round of discussions.

146. Mr. Royon (CIOPORA) asked whether the reason for the deletion of the words "or to any right of personal possession" in Article 12(4) could be clarified.

147. The Chairman explained that the provision had been deleted because its meaning in this context was unclear.

148. Mr. Royon explained that the notion of prior personal possession was a well-known concept under industrial property right systems, particularly patents. In the French patent law, the concept was defined with precision. And whilst it was deleted from a later text, the tribunals continued to apply the concept for which there was much case law. More recently the conditions for an application for personal possession had been clarified. He thought that the concept should find its place also within the protection system for new plant varieties. He was glad to know that the deletion under discussion did not mean that the notion would be eliminated altogether.

Article 9 - Examination of the Application; Provisional Protection

149. The Chairman opened the discussions on Article 9.

150. Mr. Winter (COMASSO) stated that Article 9 appeared, in the view of COMASSO, to give a possibility of incorporating the provisions of the present Article (3), that had already been touched upon in the discussion on Article 6. As for paragraph (2), COMASSO explicitly welcomed the fact that a binding provision had been laid down for the introduction of provisional protection. However, it considered that the possibility for the breeder to obtain at least equitable remuneration was unsatisfactory. It therefore proposed that full compensation for any damage that was suffered should be made possible. Its opinion was that the final sentence of paragraph (2) led to legal uncertainty and it therefore proposed deletion.

151. Mr. Bannerman (FICPI) said that the new proposal for Article 9, which strengthened the protection afforded under the plant variety protection laws, was welcomed and supported by FICPI.

152. Mr. Slocock (AIPH) wondered why the opportunity had not been taken, as in a previous draft, to include a specific reference to the joint utilization of technical services. Whilst the Secretariat or the Administrative and Legal Committee might have thought that a clause of this type was not appropriate in an international Convention, it did seem appropriate when it was discussed one year ago, and he had noted that it was included in the text that was submitted to the June meeting of the Administrative and Legal Committee. He was rather surprised and disappointed that it had disappeared from this draft. He agreed with the COMASSO delegation that the final paragraph of Article 9(2) appeared to be selective, confusing and contrary to the general spirit of the Convention and its operation. Finally, he wished to repeat what he had said previously concerning the period of provisional protection. AIPH felt strongly that this should be included in the period of the protection which was subsequently granted. Provision for this could be made either in this Article, or in Article 10.

153. Dr. von Pechmann (AIPPI) referred to paragraph (2) and pointed out that AIPPI, as already expressed in its resolution, welcomed the introduction of provisional protection in the form of an obligation to remuneration during the period from publication of the application for a breeder's right up to grant of the right. The proposal made by COMASSO that full compensation for damage should be claimable in such a case obviously represented a considerable reinforcement of protection. However, it went considerably beyond what was known under patent law. Damages were liable under patent law only once the right was granted, whereas before that there existed an obligation to remuneration. He was not sure whether one really wished to go so far in that case and to set up breeders' rights that were considerably stronger in that respect than was the case for patents. He likewise did not consider the final sentence to be useful. He supported its deletion on the grounds of legislative harmonization.

154. Mr. Le Buanec (ASSINSEL) stated that, as a whole, ASSINSEL went along with the comments made by Mr. Winter on behalf of COMASSO. Although Mr. Greengrass had said that it was a provision from the last century, ASSINSEL felt it would be useful to restate in paragraph (1) of Article 9 the provision relating to independence of protection contained in Article 11(3) of the current text. ASSINSEL further held that it was essential to strengthen paragraph (2) in order to safeguard breeders' rights. In particular, it was necessary to delete the words "at least" and to replace the term "equitable remuneration" by "full compensation." Finally, ASSINSEL would like the final sentence of the paragraph to be deleted.

155. Mr. Royon (CIOPORA) stated that CIOPORA was of the view that growing tests or examinations in any one Contracting Party should be accepted by all other Contracting Parties. A provision to this effect would facilitate accession to the UPOV Convention for many countries, particularly countries that might like to join UPOV on the basis of patent protection where their patent legislation made it possible to use deposits of samples as a substitute for an enabling disclosure. In relation to Article 9(1)(b), CIOPORA suggested that the words "concerning the variety" be added at the end of the sentence after "material" since the breeder should not be obliged to supply information which did not concern his variety.

156. CIOPORA would also like to associate itself with the remarks made by ASSINSEL concerning Article 9(2). Concerning the last sentence thereof, CIOPORA wished to ensure that the breeder should be able to bring an immediate end to infringements that occurred during the period between application and grant. In France, for example, as soon as the applicant knew that his rights were infringed, he had the possibility of notifying the infringer by serving upon him a certified copy of his application. Subsequently, when the title of protection was granted, he could take legal action for all infringements which had occurred since the date of notification.

Article 10 - Duration of the Breeder's Right

157. The Chairman opened the discussions on Article 10.

158. Mr. Winter (COMASSO) explicitly welcomed the longer term of protection that had been laid down.

159. Mr. King (IFAP) stated that IFAP could see no justification for the proposed increase in the minimum period of protection. Most of the varieties of agricultural crops that were in use ceased to be commercially viable long before the expiry of the present protection period of 15 years. Accordingly, he did not think that the breeders had made a case for increasing the period of protection.

160. Mr. Besson (FIS) said that FIS agreed with the new wording of the provisions involved.

161. Dr. Gross (UNICE) referred to the fact that under Article 10(2) the right subsisted for at least 20 or 25 years as from the date of grant. On the other hand, it had been demanded in connection with Article 9 that certain legal claims to damages should already exist beforehand. That appeared contradictory to him.

162. Mr. Slocock (AIPH) agreed with Mr. King (IFAP). In view of the modern techniques and the changes in the taste of consumers, very few varieties of flowers or pot plants would outlast the period of protection. In practice the commercial life of varieties might be only five years. He suggested that the period should be 15 years, calculated from the date of application, with the possibility of increasing this period to 20 or 25 years in the case of woody plants.

163. Dr. von Pechmann (AIPPI) stated that AIPPI supported the proposed extension, but felt that when drafting Article 9 the comment made by Dr. Gross (UNICE) should be taken into acount.

164. Mr. Roberts (ICC) supported the proposed periods of protection of 20 and 25 years. No harm was done where a variety's useful life ceased after five years, but there were occasional instances of very important varieties where a

period longer than 15 years was appropriate. A further theoretical reason for supporting the proposed periods of 20 and 25 years was that it brought the period of protection under patent and the normal period of protection for plant varieties into line with each other.

165. Mr. N.J. Downey (CEETTAR) stated that CEETTAR supported the IFAP view on the period of protection.

166. Mr. Royon (CIOPORA) noted that the calculation of the period of protection from the date of application might be a better way of providing a solution to the problem of provisional protection in Article 9(2). He further noted that, insofar as some organizations had stated that a long period of protection was not necessary in view of the fast turnover of varieties, he could not see why they should be concerned. Either growers and licencees would cease to be interested in the obsolete variety, or the breeder himself would conclude that it did not pay him to maintain the rights in his variety.

167. Mr. Lefébure (COPA and COGECA) said that COPA and COGECA shared the view of IFAP and saw no reason to extend the term of protection.

168. Mr. Le Buanec (ASSINSEL) pointed out that one argument in favor of extending the term of protection was the introduction of the concept of dependence of essentially derived varieties. That argument would seem most important.

Article 11 - Nullity and Forfeiture of the Breeder's Right

169. The Chairman opened the discussions on Article 11.

170. Mr. Winter (COMASSO) referred to paragraph (2)(b)(iii) in which it was stated that one of the grounds leading to cancellation could be the case where the breeder had not proposed another suitable denomination in the event of cancellation of the variety denomination. The disproportion between the grounds and the penalty seemed so enormous to COMASSO that it proposed deletion of the provision.

171. Mr. Brock-Nannestad (AIPPI) sought to clarify the situation when a breeder had a right but did not exercise it, for which there was no provision in the draft. At what point would his right to sue be extinguished?

172. Mr. Greengrass (Vice Secretary-General) confirmed that this question was not addressed by the Convention, but was settled by national law in each case.

173. Dr. P. Lange (ASSINSEL) supported the view of COMASSO, on behalf of ASSINSEL, that item (iii) should be deleted in Article 11(2)(b).

Article 12 - Effects of the Breeder's Right

Paragraph (1) - Acts Requiring the Breeder's Authorization - and Paragraph (2) - Same, in Respect of Essentially Derived and Certain Other Varieties

174. The Chairman opened the discussions on Article 12 and invited comments on paragraphs (1) and (2).

175. Mr. Winter (COMASSO) explicitly welcomed the strengthening of the right that was intended in the proposed provision. He explained that COMASSO wished to make a comment that had already been made by ASSINSEL with respect to Article 7(2). If "reproductive material" did in fact mean "generatives Vermehrungsmaterial", then it was in agreement. Perhaps it was only a question of the English wording.

176. In the case of paragraph (1)(b) and (c), COMASSO assumed that the proposed subdivision and distinction was intended to give breeders the possibility of choosing the stage at which they wished to collect the royalties for the use of their protected varieties. However, COMASSO proposed that the word "directly" be deleted in subparagraph (c), at least in those cases where the special characteristics of the protected variety could be identified in such product.

177. With regard to paragraph (2), COMASSO noted with gratitude that a number of suggestions with respect to derived varieties and certain other varieties had been accepted. It explicitly welcomed that fact and emphasized that, in its opinion, a variety could be an initial variety within the meaning of those arrangements if it was not itself a derived variety. COMASSO therefore suggested that in the phrase "from the protected variety," in paragraph (2)(a)(i), the word "the" be replaced by "a."

178. It seemed to COMASSO that paragraph (2)(a)(ii) went along with the interests of the breeders. However, the idea had been expressed that, on the contrary, the provision in fact promoted plagiary. COMASSO therefore requested the Secretariat to examine that possibility and, should it prove to be true, to delete the provision.

179. As regards paragraph (2)(a)(iii), COMASSO wished to point out again that the provision of inbred lines for producing seed under contract should not be qualified as sale. However, it did not appear to be the right place for a relevant provision. It referred to what had already been said in respect of Article 7(2).

180. As for paragraph (2)(b), COMASSO proposed in general that the Secretariat should examine whether the definition could not be drafted in a way that was somewhat easier to understand. For item (i), it proposed that the square brackets and their contents be deleted. It further proposed that the whole provision be moved to Article 1 as a definition.

181. Mr. Ehkirch (COSEMCO) said that COSEMCO supported all of the comments and proposals made by Mr. Winter (COMASSO).

182. Mr. Bannerman (FICPI) stated that since the text of Article 12(1) and (2) greatly strengthened the rights of the breeder, it was strongly supported by FICPI.

183. Mr. King (IFAP) stated in relation to Article 12(1)(a) that item (ii) ("conditioning") should be deleted. Since "production" and "reproduction" fell within the breeder's rights, it was quite unnecessary and even provocative to add "conditioning." Item (iv) was superfluous in the light of item (iii), which covered "offering for sale," and particularly in the light of the transactions covered by items (v) to (vii). The precise meaning of item (viii) should be spelled out, or the item should be deleted.

184. Article 12(1)(b) provided for the payment of royalties on harvested material. The view of IFAP was that the plant variety right should be exercised at the reproductive or vegetative propagating material stage in relation to production in any UPOV member State. The necessity for the payment of royalties on harvested material would only seem to arise on imports from non-member States of UPOV which were obtained from propagating material of a protected variety. This being so, Mr. King suggested the redrafting of Article 12(1)(b) so as to relate solely to imported material. The alternative was its deletion.

185. Mr. King's view on Article 12(1)(c) was that it was unworkable in practice to envisage testing food products to determine whether they had been prepared from material from a protected variety, and possibly damaging to the operations of the agro-food chain. IFAP was opposed to the inclusion of Article 12(1)(c) in a new Convention.

186. Mr. King had no comments on Article 12(2) except to say that he hoped that if a farmer found a mutation on his farm, he should in some way be able to exploit it in association with the breeder of the original variety.

187. Mr. Besson (FIS) said that FIS was satisfied with the strengthening of the effect of breeders' rights that resulted from the paragraphs under discussion.

188. Dr. Roth (GIFAP) welcomed the introduction of the notion of an "essentially derived variety," but felt that the present definition was too detailed for a Convention and suggested that the text be shortened in a revised version.

189. Dr. Gross (UNICE) said that he would like to be informed by the Secretariat as to the difference between "essentially derived" and "predominantly derived."

190. Mr. Greengrass (Vice Secretary-General) stated that the word "predominantly" was used in the definition to make it clear that in order to be essentially derived, the derived variety had to have a genetic structure that was overwhelmingly derived from the initial variety.

191. Dr. Gross (UNICE) observed that the explanation did not satisfy him, but that he had made a note of it.

192. Dr. Davies (UPEPI) stated that UPEPI had no specific comment on the drafting and supported the intention behind Article 12(1) and (2) which should make the plant breeder's right extremely attractive to plant breeders.

193. Mr. Slocock (AIPH) stated that the first two paragraphs of Article 12 did not implement what he understood to be the objective of the Convention. The present Convention concentrated the right of the breeder on the reproductive or vegetative propagating material, and that was where it should stay. Paragraph (1)(a)(viii) was not acceptable in its present form. He felt that the Article should be reconstructed to make it clear that the primary aim was the collection of a royalty at the stage which was described in paragraph (1)(a), and only if this was not possible should it be possible to collect a royalty on the harvested material. He was not sure about the practicability of the provision of paragraph (1)(c), but if the product directly obtained from the harvested material should fall within the breeder's right, this should only be so if the right could not otherwise be exercised. He was confident that it was not the intention of the draftsmen to provide the breeder with three straight options concerning the point at which he exercised his right.

194. As far as paragraph (2) was concerned, Mr. Slocock did not think that subparagraph (a)(ii) read appropriately and he thought that the definition of "essentially derived" in subparagraph (b) would be adequate without the inclusion of items (ii) and (iii).

195. Dr. von Pechmann (AIPPI) welcomed the fact, on behalf of AIPPI, that Article 12(1) had made clear what was to be protected in each case. The formulation in subparagraph (a)(viii) was perhaps to be understood as a kind of safety net for uses that it had not yet been possible to clearly define. AIPPI was not sure whether that was necessary, but had no objections, however, to leaving the wording as it stood. As far as item (b) was concerned, AIPPI explicitly welcomed the inclusion of harvested material within protection since it had ever been its concern to extend obligatory protection to the final product or to the harvested material. In subpargraph (c), deletion of the word "directly" could further strengthen protection.

196. As for paragraph (2), Dr. von Pechmann wished to raise doubts, however, with respect to the extension of protection in the case of a derived variety that was formulated in subparagraph (a)(i). That could prove a disadvantage, and he wished to give an example. Assuming that someone finally succeeded in incorporating the property of nitrogen fixation from the air, by means of rhizobia, in a specific variety of wheat, that was protected as such, belonging to a first breeder. That would be of great importance for the whole of wheat breeding and production. As a result of that new genetic engineering measure by the second breeder, the wheat variety derived from the protected variety would have become a new variety of worldwide significance. Were then a third breeder to modify that likewise protected variety in respect of a clear, albeit economically unimportant, characteristic, then he would have created a further new variety and could claim that he was thus liberated from the protected variety of the second breeder since the protection for the second breeder's variety was limited under the provision in paragraph 2(i) to the variety itself since it was a variety that had been derived from that of the first breeder. It would have to be examined in such a case whether the limitation should be agreed to or whether such a new variety should also be subject to the protection of the derived variety if it also contained that variety's special properties.

197. Patent law was familiar with multiple dependency. That had not led to any great difficulties in practice since agreement had always been reached and licenses or cross-licenses had been granted. The same should happen in the case of varieties and it should therefore be considered whether the strong limitation contained in paragraph 2(a)(i) should really be included in the Convention.

198. With respect to paragraph 2(b)(iii), Dr. von Pechmann was not sure what the formulation "specific or incidental" was supposed to mean. Either differences existed that were ascertainable and important or they were so slight that they played no part. The use of the words "specific or incidental" contradicted itself in his opinion. He therefore asked that thought be given to whether a better drafting could not be found.

199. Dr. Lange (ASSINSEL) stated that Article 12 represented an important Article for the breeders. ASSINSEL was basically in agreement with the observations made by COMASSO, but nevertheless wished to specify those observations from its point of view. With regard to paragraph (1), ASSINSEL was in favor of strengthening the scope of protection as described and strongly supported it. It felt, however, that the word "reproductive" in the English text should be replaced by the word "sexual."

200. In paragraph (1)(c), the word "directly" should be deleted. In such case, there should be added at the end of the paragraph "for cases in which the specific characteristics of the variety can be identified in the product concerned and these are essential for the product."

201. With regard to paragraph (2)(a)(i), ASSINSEL considered that the initial variety could not be a derived variety. It therefore proposed that the English version be drafted as follows: "... derived from a protected variety, where that variety is not itself an essentially derived variety." ASSINSEL did not altogether understand the significance of the provision in item (ii). Although it would be desirable to prevent any kind of plagiary, it had doubts whether that could be achieved by means of that provision. The case referred to in that provision was in fact a genuine infringement of a breeder's right and the ruling was therefore in fact superfluous.

202. In paragraph (2)(b), ASSINSEL would like to supplement the expression "from another variety" with the word "protected." The sequence of items (i) and (ii) should be inverted.

203. ASSINSEL had a further basic observation to make on the matter of examining the derivation of a variety. It was of the opinion that the question of whether a variety was essentially derived from another protected variety should not be examined by the authorities. Where a dispute arose and outside help was needed to answer the question, the advice of plant breeders having relevant experience should be sought. ASSINSEL therefore proposed an additional provision with more or less the following content, as paragraph 2(c): "Each Contracting Party shall provide that the burden of proof of the absence of derivation from another variety shall be borne by the breeder of a variety if the breeder of the initial variety has shown that the variety essentially corresponds to the genotype or combination of genotypes of the initial variety."

204. Finally, ASSINSEL made two proposals for amendments to paragraph (2)(b)(i). The words "elements of" in square brackets should be deleted. Furthermore, change of ploidy should be given as an additional example.

205. Mr. Roberts (ICC) emphasized the importance of the provisions of Article 12(1) and (2) and drew attention to the drafting suggestions contained in ICC's written submissions. He stated that ICC strongly supported the general intention behind that Article. ICC was in no way interested in replacing the plant variety protection system by a patent system. It wished to see the patent system and the plant variety protection system working

amicably side by side, with each system giving the protection that it was best equipped to give. ICC believed that 99 times out of 100 the best way of protecting a plant variety was not by a patent but by a plant variety right and that one of the objectives of amending the Convention was to improve the rights of a plant variety right holder so as to balance those of a patent holder and to remove any temptation to apply for a patent simply because a patent would give stronger rights. Accordingly ICC strongly supported the idea of increasing the rights of the plant variety right holder so that they were much closer to the kind of rights which would be given by a patent.

206. ICC had expressed some concern about the wording of Article 12(1) and (2) and had proposed a revised draft which made it unnecessary in paragraph (1) to distinguish between "reproductive and vegetative propagating material" on the one hand, and "harvested material" on the other. Mr. Roberts also repeated ICC's suggestion that the term "material of a variety" should be defined in Article 1.

207. Notwithstanding the IFAP comment, Mr. Roberts supported the inclusion of the word "conditioning" in paragraph (1) since breeders would only be interested in challenging individual farmers if they could not assert their rights in any other way. It was helpful to know that it was possible to sue commercial conditioners since it was much better to assert the rights against them rather than against individual farmers.

208. ICC noted that UPOV had elected in Article 12(2) for a strong form of dependence, i.e. the form which permitted the first plant variety right holder to control commercialization of the second, dependent variety. He considered that as a specific instance where it was necessary to strengthen the rights of the plant variety right holder in order that they should be in balance with those of a biotechnology patent holder.

209. Mr. Rogers (CEETTAR) stated that CEETTAR supported FIPA on the points made concerning Article 12(1)(a), particularly in relation to item (viii). CEETTAR supported, however, the idea of widening the collection points for plant breeders beyond the farm and the immediate rural economy. The farmer resented very much the extension of the breeder's right to saved seeds and felt that if he had paid once for self-propagating material, he should not be asked to pay again, particularly when his security was under threat from economic forces. The farmer felt that if breeders' rights were extended, there were others who benefited from the breeding and should pay as well. It had been suggested in the United Kingdom that a farmer should pay a royalty on the farm-saved seed if he used his own seed. CEETTAR members who were processors of that seed would then be asked to collect the royalty. CEETTAR very strongly maintained that this would be an unpoliceable system which would leave the whole farm-saved seeds question unsolved. If the farmers did not object to paying a royalty on farm-saved seed, then CEETTAR members would not worry about collecting it. But farmers did object, and it seemed realistic that the cost of producing extra revenue should be passed to others, such as the users of harvested material and the producers of products from that material, both of whom had benefited from ever cheaper raw materials in real terms over the last few years.

210. Mr. Royon (CIOPORA) expressed on behalf of CIOPORA its very deep and sincere appreciation for the marked, but long-needed improvement in the scope of the breeder's right which was brought about by the proposed revised Convention. However, in the light of comments concerning the language used in Article 12(1), he wondered whether a different approach based on the definition of

the right in the patent system would not be more suitable. He proposed the merging of paragraph (1)(a) and (b) into an entirely different text, laying the stress on the commercial exploitation of the variety, and reading as follows:

> "The title of protection granted in accordance with the provisions of this Convention shall confer on its owner the right to exclude others from exploiting the variety and in particular:
>
> (i) from producing or reproducing the variety;
>
> (ii) from using for commercial purposes, offering for sale or selling the variety or plant material thereof;
>
> (iii) from importing or stocking the variety or plant material thereof."

211. CIOPORA's suggested definition of plant material should be read into that text so as to enable plant material in this context to mean "any plant or part of plant, whatever its botanical or commercial function may be. The term shall include in particular cut flowers, fruit and seeds."

212. In relation to Article 12(2)(i), CIOPORA had some problem with the words "where the protected variety is not itself an essentially derived variety." The definition of an essentially derived variety stated that a variety was considered to be essentially derived from another variety when it was "predominantly derived, whether directly or indirectly." CIOPORA would like to know what was meant by "whether directly or indirectly" in this context. One could have a situation where a variety produced a mutation and the mutated variety, in turn, produced another mutation. Would the mutation of the mutation be essentially derived from the first variety? If the answer to the question was "yes," CIOPORA did not have too much problem with the second part of the sentence. However, the case where the initial variety was no longer protected because it had been put out of the market by the first mutation ought to be considered carefully.

213. CIOPORA welcomed the concept of dependency which was now introduced into the Convention but regretted that the general principles of dependency under the patent laws had not been more fully incorporated into the Convention. Dependency involved not only dependency proper, whereby even a dependent product was eligible for protection, but also the question of the person entitled to apply; there seemed to be no specific provision in the proposed text on this question.

214. Mr. Royon was surprised to hear that some breeders' organizations were opposed to Article 12(2)(a)(ii), since it was the only place in the revised Convention where the concept of "minimum distances" was introduced. It gave the breeder an opportunity to sue for infringement those who propagated any variety which was a mini-variation of his variety; CIOPORA welcomed this provision and wished that it be maintained. In relation to Article 12(2)(b)(iii), CIOPORA wondered whether the word "conforms" in the expression "it conforms to the genotype or the combination of genotypes" was not too loose. CIOPORA did not understand its legal meaning.

215. Mr. Lefébure (COPA and COGECA) said that COPA and COGECA had taken good note of the preliminary remark made by Mr. Roberts on behalf of the ICC. As for the text proposed for Article 12(1), COPA and COGECA could not accept item (viii) relating to the use of reproductive or vegetative propagating material of the variety, and requested its deletion.

216. Dr. M. Roth (ASSINSEL) stated that his delegation had the impression that its previous comments on the reversal of the burden of proof might have created some confusion. The basic assumption was that the breeder of an initial variety would only have access to limited evidence regarding the presence or absence of derivation. The evidence that could conclusively establish derivation from an essentially derived variety would be in the possession of the breeder of the second variety. ASSINSEL accordingly proposed to add to Article 12(2) an additional sub-paragraph (c) which stated:

> "Each Contracting Party shall provide measures for the implementation of this Article under which the burden shall fall upon the breeder of a variety to establish the absence of a relationship of dependence, once the breeder of the initial variety has established that the variety conforms to the genotype or combination of genotypes of the initial variety."

Once the breeder of the initial variety had crossed some threshold level of proof regarding the similarity of the two varieties, the burden would shift to the second breeder to establish the absence of derivation.

217. Dr. Roth further stated that ASSINSEL had two comments on the definition of "variety." Firstly, ASSINSEL believed that the definition should not be worded or construed so as to prevent the patenting of groups of plants which were not protectable under the Convention. Secondly, ASSINSEL was of the view that the Convention should be construed by the Contracting Parties so as to encompass the protection of hybrids and that this construction should be implemented by appropriate guidelines.

218. Mr. Slocock (AIPH) stated that, on further thought, AIPH found Article 12(1) in its present form even more difficult to accept after the previous day's discussion. Whilst it recognized that there was a will among the circles involved to extend the breeder's right beyond that which was provided for in the present Convention, it felt that the present text fell short of the preferred objective which was to establish a predictable point at which a single collection of the breeder's royalty could be made. The obvious point of collection should remain what was rather extensively and perhaps generously described in Article 12(1)(a). Collection of royalty should move to the harvest stage only if it was not possible or practicable at this earlier stage, and only if that was not possible should the possibility of collection move to the derived-product stage. The present text did not indicate any sort of preference or sequence for the point of collection.

219. Mr. A. Saint-Rémy (European Communities - EC) stated that, contrary to the draft revised text for the UPOV Convention, the proposed Regulation (drawn up by the Commission) setting up Community protection arrangements for plant varieties excluded cells or parts of cells as also lines of cells from the definition of parts of plants. That being so, it seemed difficult to say, on reading paragraph (1)(a)(viii), in conjunction with paragraph (1)(b), that there was no known example of activities other than those referred to in items (i) to (vii) of paragragh (1)(a); cell cultures for producing metabolites or other useful products would be an example of such uses. Mr. Saint-Rémy asked whether it was indeed the intention of the authors of the draft to permit the owner of a breeder's right to prohibit, for example, cell cultures for the production of a metabolite. If such was indeed the intention, what was the case of a culture made from cells not originating from a protected variety, but subsequently used to regenerate whole plants that would then result in a protected variety? Mr. Saint-Rémy felt that, at first sight, that was going a bit far and perhaps well beyond the initial intentions.

220. Mr. Greengrass (Vice Secretary-General), in responding to the point made by Mr. Saint-Rémy, stated that the intention was to protect all reproduction of a protected plant variety, whether the reproduced plant variety took the form of a plant or a part of a plant from which a whole plant could be reproduced. Protection under the UPOV Convention would not be extended to a part of the plant from which a whole plant could not be reproduced, so that individual items of genetic information would not be the concern of the UPOV Convention, but of the patent system. The reproduction of the cells of a protected plant variety in cell culture was a form of propagation of the variety. It was well known that organizations were interested in the development of artificial seed and that such artificial seed would be produced by the reproduction of cells so as to produce plant embryos in an artificial environment such as a fermenter. The use of the propagating material of a plant variety in that way was certainly intended to be covered by the new Convention. It seemed highly unlikely that the cells of a protected plant variety would be used without genetic modification for the purpose of producing metabolites in an industrial process, unless of course the breeder of the protected plant variety developed it for that purpose.

221. Mr. J. Harvey (United Kingdom) stated that he fully agreed with what Mr. Greengrass had just said and that the position he had described was fully covered by Article 12(1)(a)(i) which brought any production or reproduction of the reproductive or vegetative propagating material of the protected variety within the ambit of protection. Article 12(1)(a)(viii) was not necessary in order that the intentions described by Mr. Greengrass should be implemented in the Convention.

222. Mr. Saint-Rémy (EC) did not share the view expressed by Mr. Harvey (United Kingdom). Item (i) concerned "production or reproduction" and probably related to the variety, but not necessarily to parts such as cells. The use of cells, on the other hand, was covered by item (viii).

Paragraph (3) - Acts not Requiring the Breeder's Authorization - and Paragraph (4) - Possible "Farmer's Privilege"

223. The Chairman opened the discussions on paragraphs (3) and (4).

224. Dr. Davies (UPEPI) said that UPEPI did not wish to see the introduction of an express "farmer's privilege." Its introduction was contrary to the very name of UPOV, the International Union for the Protection of New Varieties of Plants.

225. Dr. Gross (UNICE) stated that UNICE had no comments to make on Article 12(3). As for paragraph (4), it would be happy if the Convention did not contain a "farmer's privilege."

226. Dr. Roth (GIFAP) stated that GIFAP was surprised that the "farmer's privilege" was expressed in such broad terms in the proposed Convention. GIFAP was of the opinion that the "farmer's privilege" should be abolished or much more limited, in order to prevent misuse.

227. Mr. Besson (FIS) referred to his preceding comments on "farmer's privilege" and on the fears raised in the seed industry by the introduction of a provision enshrining a practice that plundered the legitimate interests of the industry. He observed that the purpose of revising the Convention was to achieve an up-to-date text, adapted to new economic and technical circumstances; everyone was agreed that a notable strengthening of the protection afforded to plant varieties was necessary. The revision could but follow the natural trend of intellectual property rights that were being reinforced in all fields and which, indeed, had even been included in the Human Rights. There was therefore reason to ask why the edifice that was being built had to be undermined by a provision from another age. Was there a reasonable ground for accepting the legality of an act that was obviously illegal in view of the principles of intellectual property? Why did an exorbitant right have to be granted to agriculture that was increasingly industrialized and which, using the machinery at its disposal, was in a position to appropriate in a single growing period and at low cost the research and breeding work carried out over numerous years and at the price of considerable investment? Such a privilege would certainly be an aberration. Even if difficult economic and political situations could arise in certain countries, that was no reason to lay it down in the Convention and to poison the relations between the seed industry and farmers for a long time. The situation varied considerably from one country to another; furthermore, the decisions taken within GATT could result in considerable change.

228. Mr. Besson closed by saying to his colleagues and friends in agriculture that the professions involved were complementary. The task of the variety and seed industry was to supply agriculture with the best possible varieties and to make unending efforts to satisfy the needs of the market. It was absolutely essential to that industry to be able to fund such continuing research; what had been called "farmer's privilege" was opposed to that task. Arrangements could certainly be found to enable the variety and seed industry's partners, that is to say the farmers, to produce their seed themselves on the basis of the industry's creations; however, a fair price had to be paid for the new varieties, and for the efforts of the industry represented by Mr. Besson to be correctly remunerated. FIS was opposed to the proposed provision and Mr. Besson did not wish to examine it, but to express the wish that the meeting gain awareness of the threat it constituted to his trade.

229. Mr. King (IFAP) said that IFAP thought that the right of farmers to save their seed should continue to be respected and that the flexibility given in the proposed text would allow national governments to determine the reasonable limits of the application of the exemption; however, the exemption should be available to farmers in all countries. One of the benefits of international agreements was that they helped to create a level playing field for international competition. Accordingly, the word "may" in the first sentence of paragraph (4) should be replaced by "shall." The words "within reasonable limits" made it superfluous to add the phrase "and provided that consideration is given to the need for the breeder to obtain adequate remuneration." IFAP proposed its deletion. The phrase in brackets at the end of the paragraph was equally superfluous. IFAP agreed that abuses of the "farmer's privilege"--and there had been abuses--should be limited. The wording in the present text, whereby each country could determine the reasonable limits for the practical application of the privilege, was a very good compromise, however.

230. Mr. Bannerman (FICPI) said that FICPI was against the introduction of specific wording in the Convention concerning the "farmer's privilege." Any "farmer's privilege" in the Convention should be restricted so that farmers could not make commercial gain from their saved seed. If they could, the breeder would be deprived of his rightful earnings, and research into improved varieties would be discouraged.

231. Mr. Ehkirch (COSEMCO) stated that, in the view of COSEMCO, it was aberrant, to say the least, to restrict a right in an international instrument. That would be tantamount to condemning the plant breeding work that was itself undertaken for the purpose of farmers. COSEMCO therefore asked that paragraph (4) be deleted. However, if that paragraph were to be maintained, COSEMCO would prefer that it contain for farmers the privilege of continuing to receive varieties that had been bred.

232. Mr. Winter (COMASSO) presented the view of COMASSO that it was not justified and, indeed, unacceptable that a Convention for the protection of new plant varieties, that belonged to the intellectual property system, should include a provision to privilege a certain professional group. Should there be an obligation for political reasons to include such a provision in the Convention, contrary to the views of COMASSO, it would have to be ensured that application of the exception be subject everywhere to the same conditions, that was to say:

(i) Use of the saved seed would have to be exclusively in return for remuneration of the breeder.

(ii) Such remuneration would have to be laid down by the breeder under his own responsibility.

(iii) The limitation of the right should refer to only a minimum number of agricultural species.

(iv) It would have to be ensured that only harvested material requiring no prior processing be used as seed.

(v) The limitation of the right should only concern seed obtained from harvested material produced on the farmer's own holding.

(vi) The limitation should refer only to that quantity that corresponded to the quantity originally bought as seed.

233. Mr. Winter further wished to point out that the new layout of the Convention, in which the paragraphs were provided with headings, was not acceptable to COMASSO if one of those headings was to read "possible farmer's privilege." There was no such thing as "farmer's privilege." There was simply a limitation of the right, if at all.

234. Mr. Lefébure (COPA and COGECA) pointed out that COPA and COGECA had always called for the maintenance and, above all, recognition of the "farmer's privilege" in the text of the Convention. They therefore welcomed the initiative of drawing up paragraph (4). According to the definition given by COPA and COGECA, "farmer's privilege" covered acts of reproduction and propagation of reproductive material in the ground and the processing carried out by the farmer using his agricultural production equipment, whether carried out by the

farmer himself or within the framework of agricultural cooperation, for the purpose of resowing or replanting his land. That right of resowing as defined was of extreme importance to European farmers.

235. As for the wording of paragraph (4), COPA and COGECA requested deletion of the final part in square brackets since the proposed text already provided that "farmer's privilege" could only be exercised within reasonable limits.

236. Mr. Lefébure concluded by saying that COPA and COGECA unreservedly supported the stance taken by IFAP.

237. Mr. Royon (CIOPORA) said that in relation to the present Convention, CIOPORA had not expressed views concerning the "farmer's privilege" for the following reasons: (a) the principle was not expressly provided for in the Convention; (b) the privilege mainly concerned plants of sexually reproduced species which were not the province of CIOPORA; and (c) ornamental plant breeders were protected against the exercise of such a privilege by the third sentence of Article 5(1) of the existing text of the Convention. Now that an express provision was proposed in the revised Convention, CIOPORA opposed it for the following reasons: CIOPORA could see no valid reason for introducing such a privilege which was inconsistent with the very concept of plant variety protection; its exercise in practice was limited to a small number of plant species. Secondly, the translation into French of the term "farmer" as "agriculteur" made the privilege available to growers in the horticulture industry since in France a "horticulteur" was also an "agriculteur."

238. The draft provision might therefore be construed as extending the "farmer's privilege" to categories of growers or users of protected plant varieties which had always been specifically excluded hitherto. This would represent an unacceptable step backwards in the UPOV Convention, and CIOPORA submitted that the entire new provision should be deleted.

239. Mr. Downey (CEETTAR) stated that CEETTAR supported the right of farmers to save seed on their farms but did not like the term "farmer's privilege." Farmers had saved their own seed since time immemorial and resented the attempts being made to deny them the exercise of this right. In practice, unless you changed the nature of the seed itself, you would not succeed in stopping the practice. In France, saved seed had been outlawed in practice for the last two planting seasons, but there was still 50% farm-saved seed. In the United Kingdom, on the other hand, there was a highly structured farm-saved seed and certified-seed industry working alongside each other. Only 25% of seed was farm-saved and despite dire warnings that it would change, it had remained around 25% for practical reasons for the last 25 or 30 years. CEETTAR proposed that the expression "farmer's privilege" be replaced by "farm-saved seed" and that the section in brackets in paragraph (4) be deleted.

240. Mr. Roberts (ICC) said that ICC had no comments on paragraph (3) and supported its wording. In relation to paragraph (4), questions of principle and of political expediency arose. As a matter of principle, ICC did not think that the "farmer's privilege" should exist. Mr. Roberts agreed with Mr. Downey (CEETTAR) in some respects. Breeders had no objection whatever to farmers saving their own seed. What the breeder objected to was the farmer saving the breeder's seed. When a farmer bought a protected variety, he paid for one planting of that seed only, and if he used it subsequently, he was doing something he had not paid for, and he should not do it. This was a very clear

principle. If, as a matter of political expediency, it was necessary to depart from the principle, then the exception should be tighter than that which was expressed in the present text. It should be limited to particular agricultural species and not be extended to species in which it was unknown or uncommon. ICC had submitted some proposed wording which it asked the draftsmen of a future document to consider.

241. Dr. Lange (ASSINSEL) stated that ASSINSEL had no comments to make on Article 12(3). As for paragraph (4), it was altogether opposed to any introduction of a so-called "farmer's privilege" in the Convention. Just as some of the previous speakers, it did not even wish to hear the word "farmer's privilege" and urgently requested that the term no longer be used since, substantively, no such thing existed. In general, as an organization for breeders, it was altogether opposed to any exception to the breeder's right. It conflicted with the principles of intellectual property to make exceptions to the effects of protection in favor of a special professional group. However, should an exception be necessary for political reasons, then it should only be applied on a country-by-country basis. Moreover, in such cases, the legitimate interests and rights of the breeders would have to be taken into account.

242. Dr. von Pechmann (AIPPI) confirmed that AIPPI agreed to paragraph (3). It was clear and unequivocal. As the other organizations had already stated, paragraph (4) was a provision that ran contrary to the system. That was in no way modified by the fact that it was to be linked to adequate remuneration. If such a provision was to be seen as a kind of compulsory license, then Dr. von Pechmann referred to the position taken by AIPPI in which it had stated that compulsory licenses should only be granted in respect of breeders' rights in cases of an essential public interest. AIPPI therefore refused that provision even if remuneration were to be provided for. Moreover, AIPPI was obliged to note that it had not been possible to achieve clarity on various points, at least in the discussions. Other organizations had already pointed out that the provision could lead to differing interpretations in the various member States. That was also a reason for not including the provision.

243. Mr. Slocock (AIPH) stated that AIPH joined IFAP in seeking a clear recognition in the Convention that the practice of saving seed on the farm existed and that it was much better if it was defined in the Convention rather than excluded on the basis that it would go away. AIPH recognized that there had been abuses of this practice which had brought it into disfavor and agreed that some attempt to limit the practice was necessary. AIPH had sympathy with the view that Contracting Parties should be obliged to make a provision for farm-saved seed and supported the substitution of the word "shall" for the word "may" in Article 12(4). AIPH, however, recognized that there was no clear boundary between agriculture and horticulture and regarded the word "farmer" as inappropriate. There were non-agricultural crops where the saving of propagating material was an established practice, and AIPH suggested that a reference to "growers" or "producers of plant crops" would be an appropriate substitution for the word "farmer." Finally, AIPH rejected the text in brackets at the end of paragraph (4) and could not see how such a provision could ever be enforced.

Paragraph (5) - Exhaustion of Right

244. The Chairman opened the discussions on paragraph (5).

0612

245. Mr. Ehkirch (COSEMCO) observed that item (iii) of Article 12(5)(a) would have to be drafted as follows in the French version: "impliquent une exportation de matériel de la variété permettant de reproduire la variété dans un pays..."

246. Mr. Winter (COMASSO) stated that COMASSO accepted the principle of exhaustion of right as formulated in the proposal. With respect to paragraph (5)(b), it proposed that the word "directly" in the final part of the provision should be deleted. Once that change was made, the definition of material should be incorporated with the other general definitions in Article 1.

247. Mr. Royon (CIOPORA) suggested that the word "material" should be changed to "plant material" with the definition already suggested by his organization.

248. Dr. Lange (ASSINSEL) put forward on behalf of ASSINSEL the same view as that expressed by COMASSO. ASSINSEL had already said on earlier occasions that the definition of variety material contained in paragraph (5)(b) should already appear in the collection of definitions at the beginning. It further requested that, as already proposed in a different context, the word "reproductive" in item (i) be replaced by the word "sexual" and that in item (iii) the word "directly" be deleted.

249. Dr. von Pechmann (AIPPI) expressed the view that the formulation in paragraph (5) was basically well-suited to the idea that was to be expressed in the provision. However, AIPPI was also of the view that the word "directly" in subparagraph (b)(iii) should be deleted. The same proposal had already been made in connection with Article 12(1)(c).

250. Mr. Slocock (AIPH) said that the wording of Article 12(5)(iii) was not clear in the English version. AIPH fully appreciated the thinking behind the provision but was concerned about its practicability. There could be situations where such a provision was invoked to the disadvantage of the producer who was exporting material in good faith but could be held by the breeder to be infringing his rights. He was concerned how the provision would work in practice in the vigorous and open market which existed in crops with which AIPH was concerned.

Article 13 - Restrictions on the Exercise of the Breeder's Right

251. The Chairman opened the discussions on Article 13.

252. Dr. Roth (GIFAP) asked whether it would be possible for the exercise of dominating patent rights to be impeded in favor of plant breeders' rights.

253. Mr. Greengrass (Vice Secretary-General), in relation to Dr. Roth's intervention, said that a reservation in favor of the public interest was typically included in laws relating to industrial property of member States. The wording was intentionally general, but it was necessary to have a provision of this kind in a Convention such as the UPOV Convention.

254. Mr. Winter (COMASSO) stated that COMASSO maintained the proposal it had already made. A provision should be included in the Convention to the effect that the Contracting Party that wished to effect a limitation on the free exercise of the breeder's right should notify such act to the Secretary-General together with a statement of grounds to enable the Council of UPOV to take a position.

255. Mr. Royon (CIOPORA) proposed that paragraph (2) of Article 13 be replaced by the following: "In such a case the breeder shall be fully compensated."

256. Mr. Roberts (ICC) supported the comments of GIFAP in relation to Article 13. He had no problems with the Article provided it was clearly understood that the breeder's right provided for in the Convention was a negative right to prevent others from exploiting the protected variety and was not a positive right for a breeder to exploit his variety.

257. Dr. von Pechmann (AIPPI) stated that AIPPI had already explained that it considered "farmer's privilege" as a kind of compulsory license. Therefore the reference to the express provisions of the Convention which--as already noted at the beginning of the discussion on that Article--would apparently refer to Article 12, should be deleted. If one of the member States considered that public interest existed in its country with respect to "farmer's privilege," that would be a solution of course. However, to avoid that solution getting out of hand, Dr. von Pechmann was personally of the opinion that the proposal made by COMASSO should be taken into serious consideration. Such public interest should be examined by UPOV in each case and the position adopted by the Council should furthermore be submitted to the Contracting Party before the limitation could become effective in law.

258. Mr. Slocock (AIPH) stated that AIPH regarded Article 13 as an essential part of the Convention and would not wish to see any change from the text which was before the meeting.

Article 14 - Variety Denomination

259. The Chairman opened the discussions on Article 14.

260. Dr. Davies (UPEPI) thought that the first sentence of Article 14(4) was unclear. It was not clear whether it related to all possible types of rights, or by what such right might be affected. He felt that clarification was needed to be certain that its implications were confined to the context of Article 14.

261. Mr. Besson (FIS) pointed out that variety denominations were a commercial field and that it was neither proper nor useful for UPOV to set up detailed regulations in that respect. FIS would associate itself with the position to be taken subsequently by ASSINSEL.

262. Mr. Winter (COMASSO) stated that COMASSO had only given a relatively brief position in that case. It recognized that certain efforts had led to some success in the drafting of that Article. However, it still had to express its

fears that the eventuality could not be excluded of much more stringent detailed regulations being introduced at national level with respect to variety denominations. It maintained its proposal with respect to paragraph (1) that the description of the variety denomination as a "generic designation" be deleted. Finally, it was of the opinion that the provision in paragraph (9) was positive. The possibility of adding a trademark to the variety denomination was essential for trade in plant material.

263. Mr. Royon (CIOPORA) said that CIOPORA was appreciative that its observations made at the previous meeting had been taken into account. CIOPORA supported the general remarks made by the representative of FIS and thought that it would be necessary to cancel the 1984 UPOV Recommendations on Variety Denominations which had been unanimously criticized by interested parties.

264. Dr. Lange (ASSINSEL) proposed on behalf of ASSINSEL that the qualification of the variety denomination as a "generic designation" be deleted in paragraph (1). That provision prevented breeders from obtaining the necessary protection of their variety denomination as a trademark in those countries in which no plant variety protection existed. ASSINSEL proposed that the second sentence in paragraph (2) be deleted. Furthermore, paragraph (7) should use a negative formulation; that is to say the user of the variety should be obliged to use no other denomination for the variety.

265. Dr. von Pechmann (AIPPI) stated that AIPPI had already mentioned in earlier discussions that the provision in paragraph (4) could lead to complications in practice since the obligation to change a variety denomination arose only when use had been prohibited on the grounds of an earlier right, i.e. when a court decision had been given. AIPPI had therefore suggested that it be examined whether the obligation could be related to ascertainment by the authority that the variety denomination conflicted with an earlier right. Finally, AIPPI welcomed the fact that paragraph (8) of the present wording had been reincorporated in the draft following a previous proposal for its deletion.

266. Mr. Slocock (AIPH) stated that AIPH had consistently supported the substance of the present draft. It supported the reinstatement of the reference to trademarks in paragraph (8) since there had been experience of abuse where trademarks and varietal denominations were mixed together. AIPH regarded the present draft of Article 14 overall as a package and could not accept changes in its individual subparagraphs.

267. Mr. Royon (CIOPORA), referring to the first proposal made by ASSINSEL, opposed the deletion of the term "generic" for two reasons. First, if an article on variety denominations was maintained in the Convention, it was essential that there be a clear difference between a denomination and a trademark. A denomination identified a variety from its birth to its death, and was nothing but a generic denomination. Secondly, if the variety denomination were filed as a trademark in a non-member State, it would become generic in circumstances where there was no other way for users to make reference to the variety. The filed trademark would very quickly become generic and then be void.

DRAFT ADMINISTRATIVE AND FINAL CLAUSES

268. The Chairman opened the discussions on the draft administrative and final clauses contained in document IOM/5/3.

Article 17 - Composition of the Council; Votes

269. Mr. Slocock (AIPH) stated that he was not entirely certain about the intention conveyed through the footnote to Article 17. It seemed to mean that an intergovernmental organization would have a vote, even if no member State of the organization was a member of UPOV, so that the link with UPOV would be very tenuous. He asked if this was the correct interpretation.

270. Mr. A. Heitz (Senior Counsellor, UPOV) responded to Mr. Slocock, saying that an intergovernmental organization would indeed have one vote if it were a member of UPOV; it was not correct, however, to suggest that the relations between the organization and UPOV would be tenuous if none of the member States of that organization were themselves members of UPOV. Since the organization would be responsible for breeders' rights throughout the territories of its member States, the relationship would in practice be very substantial.

Article 36 - Reservations

271. Dr. Gross (UNICE) said that he had already pointed out that, from the point of view of UNICE, Article 36(2) was superfluous. During the present meeting it had been repeatedly ascertained, without contradiction, that revision was to include deletion of the so-called prohibition on double protection. If such was the case, there was no obvious reason to incorporate Article 36(2) in the new Convention.

272. Dr. von Pechmann (AIPPI) stated that AIPPI supported that proposal. It had already pointed out in connection with Article 2 that once the prohibition on double protection had been deleted it would no longer be necessary to have such a provision on exception in the Convention.

273. Mr. Royon (CIOPORA) said that in view of the concern of CIOPORA to introduce the maximum flexibility into the UPOV Convention so as to embrace any form of protection of the right of a breeder under the sun, the wording "a breeder's right" in Article 36(2) should be broadened. In addition, if the substance of the existing Article 2 of the Convention was deleted, CIOPORA wondered whether the reservation provided in Article 36--which was at present clearly applicable only to the United States of America--should be modified so as to be available also to other countries.

274. Mr. Slocock (AIPH) said that AIPH vigorously opposed the deletion of the existing Article 2 and hoped that UPOV would reinstate that Article. If it did so, Article 2 in the existing Convention and Article 36(2) of the draft made a sensible package; but if Article 2 was deleted, AIPH could see no point at all in the proposed Article 36(2).

0616

275. Mr. Greengrass (Vice Secretary-General) commented that Article 36(2) applied only to a country which was a party to the Act of 1978, and therefore clearly referred only to the United States of America. The basic obligation of States which became party to the revised Act would be to grant the particular form of protection provided for in that Act to all plant genera and species. In the United States of America, there were two forms of protection: the plant patent, which was available for asexually reproduced plants other than potatoes and the Jerusalem artichoke, and the plant variety protection certificate, which was available for sexually reproduced plant species, but not for hybrids. In its detail, the United States plant patent provisions did not conform with the provisions of the UPOV Convention although their net effect was very similar to UPOV protection. Article 36(2) was designed to provide comfort to the United States of America in its existing situation. It would accordingly be necessary in the future to retain an Article with the substance of Article 36(2).

276. The Chairman asked Mr. Hoinkes if he wished to have the floor on this topic of Article 36(2).

277. Mr. H.D. Hoinkes (United States of America) said that it had been suggested by certain delegates that the deletion of both Article 2 and Article 36(2) went together. In fact, there was no relationship between the deletion of Article 2 and the reservation presently expressed in Article 36(2). The deletion of Article 2 made the Convention neutral, that is to say that it would then be basically silent on the question of cumulative or double protection for plant varieties. As the Vice Secretary-General had correctly stated, in the United States of America plant varieties were protected by two different systems depending on their mode of propagation. Asexually propagated plant varieties were protected by the patent system under Section 161 of Title 35, and sexually reproduced plant varieties were protected by the Plant Variety Protection Act. For various and sundry reasons, it was difficult to align Section 161 and other relevant Sections of Title 35 with the provisions of the UPOV Convention. The reservation contained in Article 36(2) was necessary in order for the United States of America to be able to continue to adhere to the Convention and to be a member of UPOV. He saw, however, no reason why Article 36(2) had to be as narrowly drafted as at present, and if there was support for a broadening of the provision, the United States of America would have no problems with such broadening.

278. Dr. Roth (ASSINSEL) noted in relation to Article 36(2)(a) that any variety that could be reproduced sexually could now also be reproduced asexually. It was undesirable that this provision should be interpreted so as to eliminate the need for the United States of America to provide protection for asexually reproduced varieties when sexually reproduced. He suggested the addition of the following words at the end of Article 36(2)(a): "[to those varieties] as sexually reproduced." With that addition, the provision could not be construed as eliminating the need to provide protection for the same variety when asexually reproduced.

CLOSING OF THE MEETING

279. The Chairman concluded the discussions, noting that the meeting had been timely, as the Council would have to decide in the coming week whether there would be a Diplomatic Conference, when it would take place and what would be

the basis for discussion. It was essential for Council members to know the positions of the various organizations on the draft new Convention, and he felt that in that respect the meeting had been extremely useful.

280. Dr. von Pechmann (AIPPI) expressed his thanks for the way in which the meeting had been chaired. He assumed that the international organizations would again be admitted as observers to the Diplomatic Conference as had already been the case in 1978. The organizations would of course be most grateful if the final version of the text to be submitted to the Diplomatic Conference could be distributed as soon as possible so that they could examine and discuss it and then express themselves appropriately in the Conference.

281. The Chairman assured Dr. von Pechmann (AIPPI) that the final draft would be distributed as soon as possible, and closed the meeting.

[Annex follows]

IOM/5/12

ANNEXE/ANNEX/ANLAGE

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS/TEILNEHMERLISTE

I. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/ INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS/ INTERNATIONALE NICHTSTAATLICHE ORGANISATIONEN

ASSOCIATION INTERNATIONALE DES PRODUCTEURS DE L'HORTICULTURE (AIPH)/
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH)/
INTERNATIONALER VERBAND DES ERWERBSGARTENBAUS (AIPH)

Mr. M.O. SLOCOCK, Chairman, Plant Novelty Protection Committee, Knap Hill Nursery, Woking, Surrey GU21 2IW, United Kingdom

Mr. O. KOCH, Vice-Chairman, Plant Novelty Committee, Danish Growers' Association, 29, Hvidkaervej, 5250 Odense SV, Denmark

ASSOCIATION INTERNATIONALE POUR LA PROTECTION DE LA PROPRIETE INDUSTRIELLE (AIPPI)/
INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (AIPPI)/
INTERNATIONALE VEREINIGUNG FUER GEWERBLICHEN RECHTSSCHUTZ (AIPPI)

Dr. M.J. LUTZ, Secretary General, Bleicherweg 58, 8027 Zurich, Switzerland

Dr. E. FREIHERR VON PECHMANN, Patentanwalt, Mitglied des Geschäftsführenden Ausschusses der AIPPI, Schweigerstrasse 2, 8000 München 90, Deutschland

Mr. G. BROCK-NANNESTAD, Patent Manager, DANISCO A/S, P.O. Box 17, 1001 Copenhagen K

ASSOCIATION INTERNATIONALE DES SELECTIONNEURS POUR LA PROTECTION DES OBTENTIONS VEGETALES (ASSINSEL)/
INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF PLANT VARIETIES (ASSINSEL)/
INTERNATIONALER VERBAND DER PFLANZENZUECHTER FUER DEN SCHUTZ VON PFLANZENZUECHTUNGEN (ASSINSEL)

Dr. D. CURTIS, President, ASSINSEL, Dekalb Plant Genetics, 3100 Sycamore Road, Dekalb, Ill. 60115, United States of America

M. B. LE BUANEC, Vice-président, ASSINSEL, Président de la Section maïs, Limagrain, B.P. 1, Chappes, 63720 Ennezat, France

Mme M. CAMBOLIVE, Pioneer France, Epuiseau, 41290 Oucques, France

Mr. J. DONNENWIRTH, Pioneer Overseas Corporation, 7, avenue Tedesco, 1160 Brussels, Belgium

Dr. J.A.J.M. GEERTMAN, Secretary General, Dutch Horticultural Seed Trade Association, P.O. Box 555, 2240 AM Wassenaar, Netherlands

Dr. E. JOHANSEN, Head of Department, Hilleshög AB, P.O. Box 302, 261 23 Landskrona, Sweden

Dr. G. KLEY, Mitglied des Vorstandes, Deutsche Saatgutveredelung Lippstadt-Bremen, Weissenburger Strasse 5, 4780 Lippstadt, Deutschland

Dr. P. LANGE, Syndikus, Kleinwanzlebener Saatzucht AG, Postfach 146, 3352 Einbeck, Deutschland

Dr. R.C.F. MACER, ICI Seeds, Fernhurst, Haslemere, Surrey GV27 3JE, United Kingdom

Mme M. MARCHAND, Secrétaire général, Syndicat des obtenteurs français de maïs, SEPROMA, 3, avenue Marceau, 75116 Paris, France

M. L. MERCHAT, Clause S.A., 24, boulevard Brossolette, 91221 Bretigny / Orge Cedex, France

Dr. C. PEDERSEN, Delegate, Danish Association of Plant Breeders, P.O. Box 29, 5200 Odense V

Mr. R. ROBINSON, Vice President, Golden Harvest Seeds, The J.C. Robinson Seed Co., 100 J.C. Robinson Blvd., Waterloo, Nebraska 68069, United States of America

Dr. M. ROTH, Chief Patent Counsel, Pioneer Hi-Bred International Inc., 700 Capital Square, 400 Locust Street, Des Moines, Iowa 50309, United States of America

M. G. THÉROND, Europea Patent Attorney, BIOSEM, B.P. 1, 63720 Chappes, France

Mr. J. VAN DE LINDE, Royal Sluis, P.O. Box 22, 1600 AA Enkhuizen, Netherlands

Mr. P.C.G. WEIBULL, Director of Research, Weibullsholm Plant Breeding Institute, Box 520, 261 24 Landskrona, Sweden

CHAMBRE DE COMMERCE INTERNATIONALE (CCI)/
INTERNATIONAL CHAMBER OF COMMERCE (ICC)/
INTERNATIONALE HANDELSKAMMER (IHK)

Mr. T.W. ROBERTS, Intellectual Property Manager, ICI Seeds, Jealott's Hill Research Station, Warfield, Berkshire RG12 2JP, United Kingdom

Mr. W. SMOLDERS, Vice-Director, SANDOZ Ltd., Patents and Trademarks Division, 4002 Basel, Switzerland

CONFEDERATION EUROPEENNE DES ENTREPRENEURS DE TRAVAUX TECHNIQUES AGRICOLES ET RURAUX (CEETTAR)/
EUROPEAN FEDERATION OF AGRICULTURAL AND RURAL CONTRACTORS (CEETTAR)/
EUROPAEISCHER VERBAND LANDWIRTSCHAFTLICHER UND LAENDLICHER VERTRAGSFIRMEN (CEETTAR)

Mr. N.J. DOWNEY, Representative, Chairman of NAAC Mobile Seed Cleaner, United Kingdom

Mr. T.V. ROGERS, Representative, European Federation of Agricultural and Rural Contractors, Maarson, Netherlands

COMMUNAUTE INTERNATIONALE DES OBTENTEURS DE PLANTES ORNEMENTALES ET FRUITIERES DE REPRODUCTION ASEXUEE (CIOPORA)/
INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED ORNAMENTAL AND FRUIT-TREE VARIETIES (CIOPORA)/
INTERNATIONALE GEMEINSCHAFT DER ZUECHTER VEGETATIV VERMEHRBARER ZIER- UND OBSTPFLANZEN (CIOPORA)

M. R. ROYON, Secrétaire général, 128, square du Golf, les Bois de Font Merle, 06250 Mougins, France

M. W.E.C. DELFORGE, Président, Section nationale belge, Rozenlaan, 17, 9111 Belsele, Belgique

Mr. W. FIEDLER, Board Member, Rosen Tantau, Postfach 45, 2082 Uetersen/Holstein, Germany

Mr. D.D. JEFFERY, Foley & Lardner, Schwartz, Jeffery, Schwaab, Mack, Blumenthal & Evans, Suite 510, 1800 Diagonal Road, Alexandria, Virginia 22313, United States of America

Mr. R. KORDES, Member of the Board, Reimer Kordes, 2206 Sparrieshoop bei Elshorn, Germany

COMITE GENERAL DE LA COOPERATION AGRICOLE DE LA CE (COGECA)/
GENERAL COMMITTEE FOR AGRICULTURAL COOPERATION IN THE EC (COGECA)/
ALLGEMEINER AUSSCHUSS DES LAENDLICHEN GENOSSENSCHAFTSWESENS DER EG (COGECA)

COMITE DES ORGANISATIONS PROFESSIONNELLES AGRICOLES DE LA CE (COPA)/
COMMITTEE OF AGRICULTURAL ORGANIZATIONS IN THE EC (COPA)/
AUSSCHUSS DER BERUFSSTAENDISCHEN LANDWIRTSCHAFTLICHEN ORGANISATIONEN DER EG (COPA)

M. B. LEFÉBURE, Conseil juridique, 23, rue de la Science, 1040 Bruxelles, Belgique

Mrs. A. BOGSTAD, Representative in Geneva, 18, chemin des Cytises, 1255 Veyrier, Switzerland

ASSOCIATION DES OBTENTEURS DE VARIETES VEGETALES DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE (COMASSO)/
ASSOCIATION OF PLANT BREEDERS OF THE EUROPEAN ECONOMIC COMMUNITY (COMASSO)/
VEREINIGUNG DER PFLANZENZUECHTER DER EUROPAEISCHEN WIRTSCHAFTSGEMEINSCHAFT (COMASSO)

M. V. DESPREZ, Président, Cappelle-en-Pévèle, 59242 Templeuve, France

Herr J. WINTER, Generalsekretär, Kaufmannstrasse 71, 5300 Bonn 1, Deutschland

Mr. J. JOERGENSEN, DAPB, Denmark

Mr. M. KAMPS, President, NZP, P.O. Box 516, 3800 AM Amersfoort, Netherlands

Mr. D.G. McNEIL, Chief Executive, The British Society of Plant Breeders Ltd., Woolpack Chambers, Market Street, Ely, Cambridge CB5 0LD, United Kingdom

Dr. R. MEYER, Geschäftsführer, Bundesverband Deutscher Pflanzenzüchter e.V., Kaufmannstrasse 71, 5300 Bonn, Deutschland

M. R. PETIT-PIGEARD, Directeur général, Caisse de gestion des licences végétales, SICASOV, 7, rue Coq-Héron, 75001 Paris, France

Mr. G.J. URSELMANN, Member of Intellectual Property Group, Zaadunie B.V., Box 26, 1600 AA Enkhuizen, Netherlands

Mr. A. VAN ELSEN, Secretary General, NZP, P.O. Box 516, 3800 AM Amersfoort, Netherlands

COMITE DES SEMENCES DU MARCHE COMMUN (COSEMCO)/
SEED COMMITTEE OF THE COMMON MARKET (COSEMCO)/
SAATGUTKOMITEE DES GEMEINSAMEN MARKTES (COSEMCO)

Dr. P. EHKIRCH, Secrétaire général, 15, rue du Louvre, 75001 Paris, France

Dr. O. POLITO, Consultant, CIBA-GEIGY SpA, Origgio (VA), Italy

FEDERATION INTERNATIONALE DES CONSEILS EN PROPRIETE INDUSTRIELLE (FICPI)/
INTERNATIONAL FEDERATION OF INDUSTRIAL PROPERTY ATTORNEYS (FICPI)/
INTERNATIONALE FOEDERATION VON PATENTANWAELTEN (FICPI)

Mr. D.G. BANNERMAN, Special Reporter for Biotechnology Issues, Withers & Rogers, 9, The Parade, Leamington Spa, Warwickshire, United Kingdom

Mr. T.L. JOHNSON, Office Member, c/o Edward Evans & Co., Chancery House, 53-64, Chancery Lane, London WC 2A, United Kingdom

FEDERATION INTERNATIONALE DES PRODUCTEURS AGRICOLES (FIPA)/
INTERNATIONAL FEDERATION OF AGRICULTURAL PRODUCERS (IFAP)/
INTERNATIONALE VEREINIGUNG LANDWIRTSCHAFTLICHER ERZEUGER (IFAP)

Mr. D. KING, Secretary General, IFAP, 21, rue Chaptal, 75009 Paris, France

FEDERATION INTERNATIONALE DU COMMERCE DES SEMENCES (FIS)/
INTERNATIONAL FEDERATION OF THE SEED TRADE (FIS)/
INTERNATIONALE VEREINIGUNG DES SAATENHANDELS (FIS)

Mr. M. BESSON, Secretary General, FIS, Chemin du Reposoir 5-7, 1260 Nyon, Switzerland

Dr. A. MENAMKAT, Assistant Secretary General, FIS, Chemin du Reposoir 5-7, 1260 Nyon, Switzerland

GROUPEMENT INTERNATIONAL DES ASSOCIATIONS NATIONALES DE FABRICANTS DE PRODUITS AGROCHIMIQUES (GIFAP)/
INTERNATIONAL GROUP OF NATIONAL ASSOCIATIONS OF MANUFACTURERS OF AGROCHEMICAL PRODUCTS (GIFAP)/
GRUPPE DER NATIONALEN VERBAENDE AGROCHEMISCHER HERSTELLER (GIFAP)

Dr. B.M. ROTH, Chairman of GIFAP's Patent Working Group, c/o CIBA-GEIGY AG, Basel, Switzerland

Mr. R.W. BLACK, Delegate, Du Pont de Nemours International S.A., 2, chemin du Pavillon, P.O. Box 50, 1218 Grand Saconnex (Geneva), Switzerland

UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE (UNICE)/
UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE (UNICE)/
VERBAND DER INDUSTRIE- UND ARBEITGEBERVEREINIGUNGEN EUROPAS (UNICE)

M. F. CHRÉTIEN, rue Joseph 11, 1040 Bruxelles, Belgique

Dr. K.F. GROSS, General Patent Counsel, c/o HOECHST AG, Frankfurt/Main, Germany

Dr. B.M. ROTH, c/o CIBA-GEIGY AG, Basel, Switzerland

UNION DES PRATICIENS EUROPEENS EN PROPRIETE INDUSTRIELLE (UPEPI)/
UNION OF EUROPEAN PRACTITIONERS IN INDUSTRIAL PROPERTY (UPEPI)/
UNION EUROPAEISCHER BERATER FUER DEN GEWERBLICHEN RECHTSSCHUTZ (UPEPI)

Dr. J.M. DAVIES, Member of the Union Biotechnology Commission, c/o Reddie & Grose, 16, Theobalds Road, London WC1X 8PL, United Kingdom

II. ETATS MEMBRES/MEMBER STATES/VERBANDSSTAATEN

ALLEMAGNE/GERMANY/DEUTSCHLAND

Herr W. BURR, Ministerialrat, Bundesministerium für Ernährung, Landwirtschaft und Forsten, Rochusstrasse 1, 5300 Bonn 1

Herr D. BROÜER, Ministerialrat, Bundesministerium der Justiz, Heinemann-strasse 6, 5300 Bonn 1

Herr H. KUNHARDT, Leitender Regierungsdirektor, Bundessortenamt, Postfach 61 04 40, 3000 Hannover 61

Dr. H.-W. RUTZ, Regierungsdirektor, Bundessortenamt, Postfach 61 04 40, 3000 Hannover 61

AUSTRALIE/AUSTRALIA/AUSTRALIEN

Mr. B. LOUDON, Acting Registrar, Plant Variety Rights, Plant Variety Rights Office, P.O. Box 858, Canberra A.C.T. 2601

BELGIQUE/BELGIUM/BELGIEN

M. W.J.G. VAN ORMELINGEN, Ingénieur agronome, Ministère de l'agriculture, Manhattan Center, 21, avenue du Boulevard, 1210 Bruxelles

DANEMARK/DENMARK/DAENEMARK

Mr. F. ESPENHAIN, Chairman, Plant Novelty Board, Plant Directorate, Skovbrynet 20, 2800 Lyngby

ESPAGNE/SPAIN/SPANIEN

Dr. J.M. ELENA ROSSELLO, Jefe del Registro de Variedades, Instituto Nacional de Semillas y Plantas de Vivero, José Abascal 56, 28003 Madrid

ETATS-UNIS D'AMERIQUE/UNITED STATES OF AMERICA/VEREINIGTE STAATEN VON AMERIKA

Mr. H.D. HOINKES, Senior Counsel, Office of Legislation and International Affairs, Patent and Trademark Office, U.S. Department of Commerce, Box 4, Washington, D.C. 20231

Dr. K.H. EVANS, Commissioner, Plant Variety Protection Office, National Agriculture Library Building, 10301 Baltimore Blvd., Beltsville, MD 20705

Mr. D.R. LAMBERT, Executive Vice President, American Seed Trade Association, Executive Office Building, 1030 15th Street, N.W., Washington, DC 20005

Mr. D.L. PORTER, Lawyer, Pioneer Hi-Bred International, Inc., 700 Capital Square, Des Moines, Iowa 50322

FRANCE/FRANKREICH

M. J.-F. PREVEL, Directeur du Bureau de la sélection végétale et des semences, Ministère de l'agriculture et de la forêt, 78, rue de Varenne, 75700 Paris

Mlle N. BUSTIN, Secrétaire général, Comité de la protection des obtentions végétales, Ministère de l'agriculture, 11, rue Jean Nicot, 75007 Paris

M. J. GUIARD, Directeur adjoint du GEVES, La Minière, 78280 Guyancourt

IRLANDE/IRELAND/IRLAND

Mr. J.K. O DONOHOE, Controller of Plant Breeders' Rights, Department of Agriculture and Food, Agriculture House, Kildare Street, Dublin 2

ITALIE/ITALY/ITALIEN

Mme G. MORELLI GRADI, Chef de division, Office central des brevets, Ministère de l'industrie, du commerce et de l'artisanat, Via Molise 19, Rome

Dr. A. BRUNORI, Project Leader, ENEA, C.R.E., Casaccia, Department of Agrobiotechnology, Rome

JAPON/JAPAN/JAPAN

Mr. S. TAKAKURA, First Secretary, Permanent Mission of Japan, 10, avenue de Budé, 1211 Geneva 19, Switzerland

NOUVELLE-ZELANDE/NEW ZEALAND/NEUSEELAND

Mr. F.W. WHITMORE, Commissioner, Plant Variety Rights, Plant Variety Rights Office, P.O. Box 24, Lincoln, N.2

Mr. D.C. CALHOUN, Advisor, A.J. Park & Son, P.O. Box 949, Wellington

PAYS-BAS/NETHERLANDS/NIEDERLANDE

Mr. W.F.S. DUFFHUES, Director, Forestry and Landscaping, Ministry of Agriculture and Fisheries, Griffioenlaan 2, P.O. Box 20023, 3502 LA Utrecht

Mr. B.P. KIEWIET, Chairman, Board for Plant Breeders' Rights, P.O. Box 104, 6700 AC Wageningen

Mr. P.H.M. VAN BEUKERING, Secretary, Board for Plant Breeders' Rights, P.O. Box 104, 6700 AC Wageningen

Mr. H. HIJMANS, Legal Adviser, Ministry of Agriculture and Fisheries, Bezuidenhoutseweg 73, The Hague

ROYAUME-UNI/UNITED KINGDOM/VEREINIGTES KOENIGREICH

Mr. J. HARVEY, Controller, Plant Variety Rights Office, White House Lane, Huntingdon Road, Cambridge CB3 OLF

Mr. J. ARDLEY, Deputy Controller, Plant Variety Rights Office, White House Lane, Huntingdon Road, Cambridge CB3 0LF

Dr. A. BOULD, Technical Adviser, Plant Variety Rights Office, White House Lane, Huntingdon Road, Cambridge CB3 0LF

SUEDE/SWEDEN/SCHWEDEN

Prof. L. KÅHRE, Vice Chairman, National Plant Variety Board, Department of Crop Production Science, Swedish University of Agricultural Sciences, Box 7042, 75007 Uppsala

Mr. F. VON ARNOLD, Legal Adviser, Ministry of Justice, Rosenbad, 103 33 Stockholm

SUISSE/SWITZERLAND/SCHWEIZ

Frau M. JENNI, Leiterin des Büros für Sortenschutz, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, 3003 Bern

Dr M. INGOLD, Adjoint de Direction, Station fédérale de recherche agronomique, Changins, 1260 Nyon

Frau C. METTRAUX, Juristin, Bundesamt für geistiges Eigentum, Einsteinstrasse 2, 3003 Bern

M. P.-A. MIAUTON, Chef du Service des semences, Station fédérale de recherche agronomique, Changins, 1260 Nyon

III. ETATS OBSERVATEURS/OBSERVER STATES/BEOBACHTERSTAATEN

ARGENTINE/ARGENTINA/ARGENTINIEN

Sr. H.A. ORDOÑEZ, Asesor de Gabinete, Ministerio de Economía, Subsecretaría de Agricultura, Ganadería y Pesca, Paseo Colón 982 - 1° P., 1063 Buenos Aires

FINLANDE/FINLAND/FINNLAND

Dr. A. VUORI, Adviser, Department of Agriculture, Ministry of Agriculture and Forestry, Hallituskatu 3A, 00170 Helsinki

Mr. K. LUOTONEN, Counsellor, Permanent Mission of Finland, 1, rue Pré-de-la-Bichette, Geneva, Switzerland

IV. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS/ ZWISCHENSTAATLICHE ORGANISATIONEN

ORGANISATION MONDIALE DE LA PROPRIETE INTELLECTUELLE (OMPI)/
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)/
WELTORGANISATION FUER GEISTIGES EIGENTUM (WIPO)

Mr. L. BAEUMER, Director, Industrial Property Division, 34, chemin des Colombettes, 1211 Geneva 20, Switzerland

Mr. A. ILARDI, Senior Legal Officer, Industrial Property Law Section, Industrial Property Division, 34, chemin des Colombettes, 1211 Geneva 20, Switzerland

Mr. R. WILDER, Legal Officer, Industrial Property Division, 34, chemin des Colombettes, 1211 Geneva 20, Switzerland

COMMUNAUTE ECONOMIQUE EUROPEENNE (CEE)/
EUROPEAN ECONOMIC COMMUNITY (EEC)/
EUROPAEISCHE WIRTSCHAFTSGEMEINSCHAFT (EWG)

M. D.M.R. OBST, Administrateur principal, Commission des Communautés européennes, Direction générale de l'agriculture, 200, rue de la Loi (Loi 130-4/155), 1049 Bruxelles, Belgique

M. A.A.J. SAINT-RÉMY, Administrateur, Commission des Communautés européennes, Direction générale de la science, de la recherche et du développement, 200, rue de la Loi, 1049 Bruxelles, Belgique

EUROPEAN PATENT OFFICE (EPO)/
OFFICE EUROPEEN DES BREVETS (OEB)/
EUROPAEISCHES PATENTAMT (EPA)

Dr. C. GUGERELL, Principal Examiner, Directorate General 2, Erhardtstrasse 27, 8000 Munich 2, Germany

Mrs. F. GAUYE WOLHÄNDLER, Administrator, International Legal Affairs, Erhardtstrasse 27, 8000 Munich 2, Germany

V. BUREAU/OFFICER/VORSITZ

Mr. W.F.S. DUFFHUES, Chairman

VI. BUREAU DE L'UPOV/OFFICE OF UPOV/BUERO DER UPOV

Dr. A. BOGSCH, Secretary-General
Mr. B. GREENGRASS, Vice Secretary-General
Mr. A. HEITZ, Senior Counsellor
Dr. M.-H. THIELE-WITTIG, Senior Counsellor
Mr. M. TABATA, Senior Program Officer

[Fin du document/
End of document/
Ende des Dokuments]