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IOM/5/ 3.

ORIGINAL: English

DATE: August 2, 1990

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**FIFTH MEETING
WITH INTERNATIONAL ORGANIZATIONS**

Geneva, October 10 and 11, 1990

REVISION OF THE CONVENTION:

DRAFT ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES

Document prepared by the Office of the Union

INTRODUCTION

1. The present document contains a further draft of the administrative and final clauses proposed for inclusion in a revised Convention. An earlier draft of these clauses was considered at the twenty-seventh session of the Administrative and Legal Committee held from June 25 to 29, 1990.
2. The document will first be used for the purposes of the fifth Meeting with International Organizations (a hearing organized by UPOV for international non-governmental organizations) to be held on October 10 and 11, 1990. For this reason, it has received the reference "IOM/5/3." The document will thereafter be considered by the twenty-eighth session of the Administrative and Legal Committee to be held from October 12 to 16, 1990.
3. Titles, appearing between square brackets, have been introduced into the text of the draft provisions in the present document. The insertion of titles is intended to facilitate the reading of the Convention and follows the practice established during the last decade in treaties administered by the World Intellectual Property Organization (WIPO). It is recommended that the practice be adopted in the new text of the Convention. The titles are placed within square brackets in order to indicate that they do not themselves constitute part of the provisions of the Convention.

LIST OF THE ARTICLES OF THE PROPOSED NEW TEXT

- Article 1: Definitions*
- Article 2: Obligations of Contracting Parties*
- Article 3: Measures Regulating Commerce*
- Article 4: Genera and Species to be Protected*
- Article 5: National Treatment*
- Article 6: First Application*
- Article 7: Conditions Required for the Grant of a Breeder's Right*
- Article 8: Right of Priority*
- Article 9: Examination of the Application: Provisional Protection*
- Article 10: Duration of the Breeder's Right*
- Article 11: Nullity and Forfeiture of the Breeder's Right*
- Article 12: Effects of the Breeder's Right*
- Article 13: Restrictions on the Exercise of the Breeder's Right*
- Article 14: Variety Denomination*
- Article 15: Union
- Article 16: Organs of the Union
- Article 17: Composition of the Council; Votes
- Article 18: Observers in Meetings of the Council
- Article 19: Officers of the Council
- Article 20: Sessions of the Council
- Article 21: Rules of Procedure of the Council; Administrative and Financial Regulations of the Union
- Article 22: Tasks of the Council
- Article 23: Majorities Required for Decisions of the Council
- Article 24: Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff
- Article 25: Auditing of the Accounts
- Article 26: Finances
- Article 27: Revision of the Convention
- Article 28: Languages Used by the Office and in Meetings of the Council
- Article 29: Special Agreements
- Article 30: Signature
- Article 31: Ratification, Acceptance or Approval; Accession
- Article 32: Entry into Force; Closing of Earlier Acts
- Article 33: Relations Between Contracting Parties and States Bound by Earlier Acts
- Article 34: Communications Concerning Legislation and the Genera and Species Protected; Information to be Published
- Article 35: Preservation of Existing Rights
- Article 36: Reservations
- Article 37: Denunciation
- Article 38: Languages; Depositary Functions

* Contained in document IOM/5/2.

Present [1978] TextArticle 1...; Constitution of a Union; Seat of the Union

- (1) [See opposite Article 2 in the proposed new text]
- (2) The States parties to this Convention (hereinafter referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.
- (3) The seat of the Union and its permanent organs shall be at Geneva.

Article 24Legal Status

- (1) The Union shall have legal personality.
- (2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.
- (3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

Proposed New Text

Article 15

Union

- (1) [Members] The Contracting Parties shall be members of the Union.*

- (2) [Legal personality] The Union has legal personality.

- (3) [Legal status] The Union enjoys on the territory of each Contracting Party, in conformity with the laws applicable in the said territory, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.

- (4) [Headquarters] The headquarters of the Union and its permanent organs are at Geneva.

- (5) [Headquarters agreement] The Union has a headquarters agreement with the Swiss Confederation.

* The Union is one and the same both for the Contracting Parties (to the present Convention) and for those States that are party only to earlier Acts than the present Convention.

Present [1978] Text**Article 15****Organs of the Union**

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Proposed New Text

Article 16

Organs of the Union

The permanent organs of the Union are

(i) the Council and

(ii) the Secretariat General, entitled the Office of the International

Union for the Protection of New Varieties of Plants.

Present [1978] TextArticle 16Composition of the Council; Votes

- (1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.
- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

Proposed New Text

Article 17

Composition of the Council; Votes

(1) [Composition] (a) The Council* shall consist of the representatives of the members of the Union.

(b) Each member of the Union shall appoint one representative to the Council and one alternate.

(c) Representatives or alternates may be accompanied by assistants or advisers.

(2) [Votes] Each member of the Union shall have one vote in the Council.**

* The Council is one and the same for the members whether they joined the Union by becoming a party to this Convention or to an earlier Act.

** This provision means that an intergovernmental organization would have a vote irrespective of whether one, some or all of its member States is/are member(s) of the Union.

Present [1978] Text

Article 17

Observers in Meetings of the Council

- (1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.
- (2) Other observers or experts may also be invited to such meetings.

Proposed New TextArticle 18Observers in Meetings of the Council

(1) [States] States not members of the Union may be invited as observers to meetings of the Council.*

(2) [Other observers and experts] Other observers, as well as experts, may also be invited to such meetings.

* States which are members of the Union but which are not party to this Convention are members of the Council as the Council is one and the same for all members of the Union.

Present [1978] Text

Article 18

President and Vice-Presidents of the Council

- (1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.
- (2) The President shall hold office for three years.

Proposed New Text

Article 19

Officers of the Council

- (1) [President and Vice-Presidents] The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

- (2) [Term of office] The President shall hold office for three years.

Present [1978] TextArticle 19Sessions of the Council

- (1) The Council shall meet upon convocation by its President.
- (2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

Proposed New Text

Article 20

Sessions of the Council

(1) [Convocation] The Council shall meet upon convocation by its President.

(2) [Sessions] An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the members of the Union so request.

Present [1978] Text

Article 20

Rules of Procedure of the Council;
Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Proposed New Text

Article 21

**Rules of Procedure of the Council;
Administrative and Financial Regulations of the Union**

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Present [1978] TextArticle 21Tasks of the Council

The tasks of the Council shall be to:

(a) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(b) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;

(c) examine the annual report on the activities of the Union and lay down the programme for its future work;

(d) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions for the accomplishment of the tasks of the Union;

(e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of Article 26;

(f) examine and approve the accounts presented by the Secretary-General;

(g) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation; and

(h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Proposed New TextArticle 22Tasks of the Council

The tasks of the Council shall be to:

- (i) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (ii) appoint the Secretary-General* and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;
- (iii) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (iv) give to the Secretary-General, whose functions are set out in Article 24, all necessary directions for the accomplishment of the tasks of the Union;
- (v) examine and approve the budget of the Union and fix the contribution of each member of the Union in accordance with the provisions of Article 26;
- (vi) examine and approve the accounts presented by the Secretary-General;
- (vii) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation; and
- (viii) in general, take all necessary decisions to ensure the efficient functioning of the Union.

* Article 4(1) of the Agreement Between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants provides that the Council of UPOV shall appoint as Secretary-General of UPOV the Director General of WIPO.

Present [1978] TextArticle 22Majorities Required for Decisions of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(e), 26(5)(b), 27(1), 28(3) or 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Proposed New Text

Article 23

Majorities Required for Decisions of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 21, 22(v), 26(5)(b), 27(1) or 28(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Present [1978] Text**Article 23****Tasks of the Office of the Union;
Responsibilities of the Secretary-General;
Appointment of Staff**

- (1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.
- (2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.
- (3) Subject to the provisions of Article 21(b), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Proposed New Text**Article 24****Tasks of the Office of the Union;
Responsibilities of the Secretary-General;
Appointment of Staff**

(1) [Tasks and direction of the Office] The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) [Duties of the Secretary-General] The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.

(3) [Staff] Subject to the provisions of Article 22(ii), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 21.

Present [1978] Text**Article 25****Auditing of the Accounts**

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Proposed New Text**Article 25****Auditing of the Accounts**

The auditing of the accounts of the Union shall be effected by a member of the Union as provided in the administrative and financial regulations referred to in Article 21. Such member of the Union shall be designated, with its agreement, by the Council.

Present [1978] Text**Article 26****Finances**

(1) The expenses of the Union shall be met from:

- the annual contributions of the member States of the Union;
- payments received for services rendered;
- miscellaneous receipts.

(2)(a) The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.

[Continued]

Proposed New Text

Article 26

Finances

(1) [Income] The expenses of the Union shall be met from

- (i) the annual contributions of the members of the Union,
- (ii) payments received for services rendered,
- (iii) miscellaneous receipts.

(2) [Contributions: definition] (a) The share of each member of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the members of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one-fifth.

[Continued]

Present [1978] Text[Article 26, continued]

(3)(a) As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.

(b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

[Continued]

Proposed New Text

[Article 26, continued]

(3) [Contributions: share of each member] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.

(b) As far as any other Contracting Party is concerned, that Contracting Party shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any member of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under sub-paragraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise, it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

[Continued]

Present [1978] Text[Article 26, continued]

(4)(a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.

(b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.

(5)(a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.

(b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Proposed New Text

[Article 26, continued]

(4) [Contributions: computation of shares] (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the members of the Union by the total number of units applicable to those members of the Union.

(b) The amount of the contribution of each member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that member of the Union.

(5) [Arrears in contributions] (a) A member of the Union which is in arrears in the payment of its contributions may not, subject to sub-paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote shall not relieve such member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder.

(b) The Council may allow the said member of the Union to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Present [1978] Text**Article 27****Revision of the Convention**

- (1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.
- (2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Proposed New Text

Article 27

Revision of the Convention

(1) [Conference] This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.

(2) [Quorum and majority] The proceedings of a conference shall be effective only if at least half of the members of the Union are represented at it. A majority of three quarters of the members of the Union present and voting at the conference shall be required for the adoption of any revision.

Present [1978] Text**Article 28****Languages Used by the Office and in Meetings of the Council**

- (1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
- (2) Meetings of the Council and of revision conferences shall be held in the three languages.
- (3) If the need arises, the Council may decide that further languages shall be used.

Proposed New Text**Article 28****Languages Used by the Office and in Meetings of the Council**

- (1) [Languages of the Office] The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

- (2) [Languages in certain meetings] Meetings of the Council and of revision conferences shall be held in the three languages.

- (3) [Further languages] The Council may decide that further languages shall be used.

Present [1978] TextArticle 29Special Agreements for the Protection of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Proposed New Text**Article 29****Special Agreements**

Members of the Union reserve the right to conclude among themselves special agreements for the protection of varieties, in so far as such agreements do not contravene the provisions of this Convention.

Present [1978] TextArticle 31Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

Proposed New Text

Article 30

Signature

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature for one year after that date.

Present [1978] TextArticle 32Ratification, Acceptance or Approval; Accession

(1) Any State shall express its consent to be bound by this Act by the deposit of:

(a) its instrument of ratification, acceptance or approval, if it has signed this Act; or

(b) its instrument of accession, if it has not signed this Act.

(2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 30Implementation of the Convention on the Domestic Level;
Contracts on the Joint Utilisation of Examination Services

(1) [See opposite Article 2 of the proposed new text.]

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.*

(3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

* The proposed new text does not contain any corresponding provision.

Proposed New TextArticle 31Ratification, Acceptance or Approval; Accession

(1) [States and certain intergovernmental organizations] (a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it provides for the grant of breeders' rights with effect in its territory.

(2) [Instrument of adherence] Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

(4) [Conformity of laws] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.

Present [1978] TextArticle 33Entry into Force; Closing of Earlier Texts

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

(a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and

(b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.

(2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in paragraph (1)(a) and (b) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Proposed New Text

Article 32

Entry into Force; Closing of Earlier Acts

(1) [Initial entry into force] This Convention shall enter into force one month after five States or intergovernmental organizations have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

(2) [Subsequent entry into force] Any State or intergovernmental organization not covered by paragraph (1) shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.

(3) [Closing of earlier Acts] Once this Convention enters into force according to paragraph (1), no State may accede to the Act of 1978.

Present [1978] TextArticle 34Relations Between States Bound by Different Texts

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

(2) Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union through ratification, acceptance or approval of or accession to this Act ("the latter State"). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

Proposed New Text

Article 33

Relations Between Contracting Parties and States Bound by Earlier Acts

(1) [Relations between States bound by this Convention] Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.

(2) [Possible relations with States not bound by this Convention] Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary-General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

Present [1978] TextArticle 35Communications Concerning the Genera and Species Protected;
Information to be Published

(1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.

[The present text does not contain any provision corresponding to paragraph (2) of Article 34 of the proposed new text.]

(2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:

(a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;

(b) any use of the faculty provided for in Article 3(3);

(c) the use of any faculty granted by the Council pursuant to Article 4(4) or (5);

(d) any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply;

(e) any use of the faculty provided for in Article 5(4), second sentence;

(f) the fact that the law of the said State contains a provision as permitted under Article 6(1)(b)(i), and the length of the period permitted;

(g) the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Proposed New Text

Article 34

Communications Concerning Legislation and the Genera
and Species Protected; Information to be Published

(1) [Initial notification] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of

- (i) its legislation governing breeder's rights and
- (ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.

(2) [Notification of changes] Each Contracting Party shall promptly notify the Secretary-General of

- (i) any changes in its legislation governing breeders' rights and
- (ii) any extension of the application of this Convention to additional plant genera and species.

(3) [Publication of the information] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

- (i) the legislation governing breeders' rights and any changes in that legislation, and
- (ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

Present [1978] TextArticle 36Territories

(1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification, acceptance, approval or accession in the instrument of which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

Proposed New Text**Note**

The proposed new text does not contain any provision corresponding to Article 36 of the present text.

Present [1978] Text

Article 39

Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Proposed New Text**Article 35****Preservation of Existing Rights**

This Convention shall not affect existing rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other than this Convention concluded between members of the Union.

Present [1978] TextArticle 40Reservations

No reservations to this Convention are permitted.

Article 37Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of Article 2(1), any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in Article 2(1) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.

(2) Where, in a member State of the Union to which paragraph (1) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6(1)(a) and (b) and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Proposed New Text**Article 36****Reservations**

(1) [Principle] Subject to paragraph (2), no reservations to this Convention are permitted.

(2) [Possible exception] (a) Any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties.

(b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

Present [1978] TextArticle 41Duration and Denunciation of the Convention

- (1) This Convention is of unlimited duration.*
- (2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.

[The present text does not contain any position corresponding to paragraph (2) of Article 37 of the proposed new text.]

- (3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.
- (4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

* The proposed new text does not contain any corresponding provision.

Proposed New Text**Article 37****Denunciation**

(1) [Notifications] Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.

(2) [Earlier Acts] Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.

(3) [Effective date] The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) [Acquired rights] The denunciation shall not affect any rights acquired in a variety by reason of this Act or any earlier Act prior to the date on which the denunciation becomes effective.

Present [1978] TextArticle 42Languages; Depositary Functions

- (1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.
- (2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.
- (3) The Secretary-General shall, after consultation with the Governments of the interested States which were represented in the said Conference, establish official texts in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.
- (4) The Secretary-General shall register this Act with the Secretariat of the United Nations.
- (5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of instruments of ratification, acceptance, approval and accession, any notification received under Articles 34(2), 36(1) and (2), 37(1) and (3) or 41(2) and any declaration made under Article 36(1).

Proposed New TextArticle 38Languages; Depositary Functions

(1) [Original] This Convention shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) [Transmittal of copies] The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organization.

(3) [Official texts] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

(4) [Registration] The Secretary-General shall register this Convention with the Secretariat of the United Nations.

[End of document]