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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**MEETING
WITH INTERNATIONAL ORGANIZATIONS****Geneva, November 9 and 10, 1983**

INTERNATIONAL COOPERATION

Document prepared by the Office of the Union

This document contains a summary of the provisions of the Convention that concern international cooperation in the protection of new varieties of plants, work done in that area by UPOV and the options available for the future.

INTERNATIONAL COOPERATION

Provisions of the Convention

1. The Convention refers specifically to international cooperation in three articles: Articles 29, 30(2) and 13(6). Those Articles read as follows in the 1978 Revised Act of the Convention:

(i) Article 29: "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."

(ii) Article 30(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."

(iii) Article 13(6): "The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination."

2. In fact the Convention is by its very nature an instrument of international cooperation: it groups within the Union those States that "deem it highly desirable that these problems [that is, the special problems arising from the recognition and protection of the rights of breeders] ... should be resolved ... in accordance with uniform and clearly defined principles" (see the preamble to the Convention).

Achievements

3. National legislation. A number of comparative studies have been made on certain aspects of national legislation. Even if they have not always lead to specific recommendations to member States, they have resulted in harmonization of legislation. This development is bound to be slow.

4. Lists of taxa protected in member States. Even though they are also a result of national legislation, these lists deserve to be dealt with separately, as do fees, which are considered in the next paragraph. The lists are gradually being harmonized under the influence of two factors peculiar to UPOV: the synopsis list drawn up annually by the Office of the Union for the purposes of the ordinary session of the Council (document No. 8 of the "Collection of Texts and Other Important Documents", hereinafter referred to as "the Collection") enables every member State to find out where, depending on its circumstances, there are gaps in its own list as compared with those of other member States; cooperation in the examination of varieties enables a State to extend protection to a taxon without having to introduce a system of national examination.

5. Fees. The most recent work has resulted in the Recommendation on Fees in Relation to Cooperation in Examination (document No. 21 of the Collection), which sets a reference amount for the fees charged for the examination of varieties of the more important genera and species, and also an administrative fee in the event of "purchase" of an examination report. This Recommendation has been implemented by the majority of member States.

6. Administrative procedures. Models of various forms have been drawn up in order to facilitate the work of national authorities and users of the system for the protection of new varieties of plants (including especially application forms for plant breeders' rights and for variety denominations, "technical questionnaires"--in other words concise descriptions of varieties--designations of the samples of varieties on which the examination of applications has to be based, interim reports and final reports on the examination of varieties, official gazettes--documents Nos 9 to 13, 16 and 22 to 25 of the Collection). Work also started recently on the computerized facilities that are or will be used by national authorities.

7. Examination of variety denominations. This is an area of cooperation, as provided in Article 13(6) of the Convention (see paragraph 1 above), and harmonization, with regard to the criteria governing the suitability of denominations. It is covered by item 4 of the agenda of the present meeting and by document IOM/I/5.

8. Examination of varieties. This is another area of cooperation and harmonization.

9. Harmonization, the oldest and the most time-consuming of the two activities, has been given material form in the "Introduction to the Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability of New Varieties of Plants" and in the "Test Guidelines" corresponding to particular species (Part II of the Collection), and also in recommendations on matters of detail. This is an activity in which interest will never wane, as it has to do with an area that is constantly developing, in line with progress in fundamental knowledge, plant improvement techniques, assortments of varieties and the plant variety protection system generally. The present discussions on "minimum distances between varieties" (item 2 of the agenda of the present meeting and document IOM/I/3) testify to that interest and to that development.

10. As for cooperation, it relies on the one hand on Article 30(2) of the Convention (see paragraph 1 above) and on the other on the UPOV Model Agreement for International Cooperation in the Testing of Varieties (document No. 19 of the Collection). It takes place within the framework of bilateral administrative agreements based on the Model Agreement, concluded between authorities responsible for the protection of new varieties of plants, with in some cases the participation of the authorities responsible for the national catalogue of varieties accepted for marketing. The principal characteristic of this system is its extreme flexibility. Another is the fact that it is also applicable to the testing of varieties for the purposes of inclusion in national catalogues.

Options Available for the Future

11. Three introductory remarks have to be made:

(i) None of the achievements mentioned above should ever be regarded as a final, unchangeable result.

(ii) At the Information Meeting with International Non-Governmental Organizations which took place on November 15, 1982, some organizations commented on international cooperation and related matters. At the request of the Office of the Union, some of them later submitted those comments in writing. They are reproduced in the Annex to this document.

(iii) Certain organs of UPOV have already held discussions on the future development of the Union and have marked out three main areas of activity, bearing in mind that any activity in one of the those areas would have implications for the other two:

(a) intensification of existing cooperation, established on the basis of bilateral administrative agreements;

(b) harmonization of national legislation and practice between member States;

(c) consideration of a system or systems of cooperation more ambitious than the present one.

The harmonization of national legislation and practice between member States was accorded high priority at that time, in view of the fact that the member States had--indeed some of them still have--to amend their national legislation to permit ratification of the 1978 Revised Act of the Convention, and also the fact that this common necessity provided a good opportunity for such harmonization (UPOV Newsletter No. 24, page 4).

12. The options that are in any event available for more ambitious cooperation systems may be listed as follows, in rising order of complexity:

(i) filing of a common application (operating in several States);

(ii) examination of the application with respect to form by one authority (and possibly also the charging of fees by one authority) on behalf of several States;

(iii) examination of the distinctness, homogeneity and stability of the variety by one authority (or several):

(a) with centralized testing by that authority or those authorities for the species concerned; or

(b) without centralization (authorities that possess the testing facilities for the species concerned retain those facilities but recognize the decisions of the other authorities);

(iv) examination of proposed variety denominations:

(a) provisional examination by certain authorities (for instance those that possess computerized facilities), possibly only on behalf of those States whose national languages have common characteristics;

(b) full examination and decision by certain authorities;

(v) grant of the title of protection by one authority with effect in several States:

(a) by a national authority (for instance the one that received the application); or

(b) by an international authority;

(vi) status of the title granted:

(a) the title is equivalent in each State to the national title and is governed by national law (or is transformed into a national title); or

(b) the title is supranational (unitary) and is governed by international provisions.

13. Industrial property offers examples of international treaties that provide options comparable to a certain extent to those outlined above. The following in particular could be mentioned:

(i) the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970: options comparable to those set forth in subparagraphs (i), (ii) and (iii)(a) of the preceding paragraph, with the possibility for States to confine themselves to the first two;

(ii) the Agreement on the Mutual Recognition of Inventors' Certificates and Other Titles of Protection for Inventions, signed at Havana on December 18, 1976, by the States of the Council of Mutual Economic Assistance (CMEA): options comparable to those set forth in subparagraphs (v)(a) and (vi)(a) of the preceding paragraph;

(iii) the Convention on the Grant of European Patents (European Patent Convention), signed at Munich on October 5, 1973, the Agreement Relating to the Creation of an African Intellectual Property Organization (OAPI), signed at Bangui on March 2, 1977, and Constituting a Revision of the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property, signed at Libreville on September 13, 1962, and the Agreement on the Creation of an Industrial Property Organization for English-Speaking Africa (ESARIPO), signed at Lusaka on December 7, 1976: options comparable to those set forth in subparagraphs (i) to (iii), (v)(b) and (vi)(a) of the preceding paragraph;

(iv) the Convention for the European Patent for the Common Market (Community Patent Convention), signed at Luxembourg on December 15, 1975 (not yet in force): this Convention adds the option set forth in subparagraph (vi)(b) of the preceding paragraph to those covered by the European Patent Convention.

COMMENTS OF CERTAIN INTERNATIONAL
NON-GOVERNMENTAL ORGANIZATIONS

A. ASSINSEL: extract from a letter dated February 4, 1983, from the Secretary General of ASSINSEL to the Vice Secretary-General of UPOV.

3) *International Cooperation in the field of Plant Breeders' Rights*

"ASSINSEL believes that as a long term objective one application, one test to be carried out in one UPOV Member State, preferably at the choice of the breeder and one title of protection which would automatically be valid for all UPOV Member States would be the most ideal solution, which will perhaps never be a reality. Yet, Assinsel believes that it is necessary to express an opinion on a most ideal solution so that the efforts of all concerned can be directed to that objective in order to realize a solution that approaches as closely as possible to the objective set.

"As you know, there are several important reasons why a further international cooperation is necessary. Just to mention a few :

- the cost of protection is too high and as a result breeders of some species have already decided to apply no longer for plant breeders' rights. This is certainly not what Assinsel believes to be a good development;
- there is much unnecessary duplication of work and waste of energy, money and soil that could be used for other purposes.

"Both UPOV and Assinsel are aware that an absolute condition for progress for any form of further international cooperation in this field is

- . that varieties are tested in the same uniform way on suitable testing sites;
- . that the testing authorities of each UPOV Member State have sufficient confidence in the work of variety testing of the other UPOV Member States;
- . that the breeders have sufficient confidence in the work of the variety testing authorities.

"To date these conditions are not yet fully fulfilled in all cases and for all species. In this respect, the following comments about existing obstacles can be made:

- a) Incomplete uniformity in the application of UPOV Guidelines for testing new varieties;
- b) differences in technical suitability of testing sites with big trial errors in some cases, leading to a low level of distinguishing ability between varieties that are shown to be different from each other quite clearly in other trial sites and/or other member States.

- c) some breeders, having experienced disappointments caused by the situation under b), are reluctant to support the principle of centralising d.u.s. testing in one (or two) member state(s) or on one (or two) testing site(s) and even of agreeing with bilateral arrangements concerning delegation of d.u.s. testing;
- d) several breeders appreciate the opportunity of easy and frequent verbal and personal contact with testing officials of their own nationality, speaking their own tongue, which offers them (the breeders) the possibility of informal consultation and visits to trials, with little cost involved;
- e) information obtained by the breeders on the national level may be helpful in discussing problems with foreign testing officials and authorities;
- f) centralisation of and bilateral agreements on d.u.s. testing of cultivars of crops with which little or no national expertise exists is much easier to arrange and to accept for breeders (see c)) (and national testing institutes!) than for important crops with which national authorities have gained a lot of expertise. Delegation of d.u.s. testing will lead to knowledge and expertise becoming obliterate.

"It will be clear to UPOV that all the disadvantages under c, d, e and f would be non existent if the optimal solution indicated above would become a reality.

"Although cultural value tests have in theory nothing to do with plant breeders' rights we wish to point out that for some species no lists of varieties acceptable from a point of view of cultural value exist and that in some other UPOV Member States such lists are entirely non existent. It is likely that progress in the field of international cooperation in the field of plant breeders' rights will also depend on the continuation or discontinuation of lists of admitted varieties in the agricultural sector.

"For the time being it seems that for many important species bi- or multilateral agreements seem to be the only realistic option. In view of the experiences gained it seems to be advisable that such agreements are concluded after consultation of the breeders and on a crop to crop basis. Besides, it seems advisable for a State entrusting testing to another State to carry on national testing for some years in order to be able to discuss any problems that may arise in the first years of application of the new arrangement on the basis of its own observations.

41 Simplified testing procedures

"As international cooperation in the field of plant breeders' rights progresses but slowly, another approach to come to grips with the very serious cost problem could be the introduction of simplified testing procedures. This idea has been developed in our Vegetable Section and is based on the preliminary examination as carried out in the U.S.A.

"On the one hand this system requires a greater effort on behalf of the breeder in the description of his variety and less work for the variety testing authority. The idea of the Vegetable Section is that one or a few European UPOV Member States try out this system with a relatively unimportant species, for instance radish, if possible on the basis of the form used in the United States.

"The Vegetable Section believes that the U.S. system is worth trying out in Europe and the best way to do this would of course be with a smaller species of which the number of known varieties and also the number of new applications is limited. Members of the Assinseel Vegetable Section are prepared to actively cooperate in the realization of this idea."

B. COMASSO: extract from a letter dated January 25, 1983, from the Secretary General of COMASSO to the Vice Secretary-General of UPOV.

"The European breeders grouped in COMASSO welcome the initiative of the EC Commission according to EC-Document 4646/VI/82-rev.2 for the creation of a European plant variety protection law. We are, however, of the opinion that a European plant variety protection law should be aimed within the frame of the possibilities foreseen in the UPOV Convention, that is to say a special agreement of the European member States in cooperation with the European non-member States and the representatives of the profession.

"With regard to its content, the European plant variety protection law should limit itself to establishing common rules with regard to the substance of the protection right. Rules with regard to the execution of the protection right should be excluded. Therefore any reference to the granting of licences should be avoided. A rule corresponding to Article 43 of the European Patent Convention expressly admitting the granting of territorially limited licences should be provided for."

C. FIS: extract from a letter dated January 26, 1983, from the Secretary General of FIS to the Vice Secretary-General of UPOV.

1) International cooperation on plant breeders' rights

"Our organization believes that the costs of protection particularly for smaller species are disproportionate and risk to become too important a factor in the price of seed of these species. We therefore support the idea of introducing simplified tests for these species."

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