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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**SECOND MEETING
WITH INTERNATIONAL ORGANIZATIONS****Geneva, October 15 and 16, 1985**APPLICATION OF THE UPOV CONVENTION
TO BOTANICAL GENERA AND SPECIESDocument prepared by the Office of the Union

1. It is recalled that member States may--but are not required to--apply the UPOV Convention to all botanical genera and species. Article 4(2) provides that "the member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species." That provision is supplemented by others that set out the minimum rate at which application of the Convention is to be extended; Article 4(3), supplemented by Article 4(4) and (5), lists the minimum number of genera and species to which the Convention must be applied by each member State when it becomes a member of UPOV, and within certain periods after that date. The general principle underlying the above provisions stems from the wish of the drafters of the UPOV Convention to set up an effective system of protection, under which varieties are examined officially, normally being grown either in the field or under glass, in order to verify that they are distinct, sufficiently homogeneous and stable. In view of the limited means available for this purpose, it was not considered possible to prescribe that the UPOV Convention be applied to the whole of the plant kingdom, either immediately or in the future.

2. Of the present member States of UPOV only Hungary, New Zealand and the United States of America are applying the Convention to all or almost all genera and species. The other member States have each drawn up their own limitative list of genera and species.

3. UPOV has been confronted with complaints that the national lists of genera and species differ greatly from country to country. It has been said that the differences between the national lists can lead to a distortion of competition at the international level. The Administrative and Legal Committee of UPOV has therefore discussed how the lists could be harmonized. During those discussions it was agreed that a perfect solution would consist in making UPOV member States extend protection to the whole plant kingdom. The discussion showed, however, that it was premature for many member States to envisage such a radical solution and that it would be more realistic to look for intermediate solutions. It was felt that one such solution would be to recommend that UPOV

member States should improve the exchange of information on the extension of, or the intention to extend, protection to further genera and species. Furthermore, the same Committee established draft recommendations which aim at harmonizing the lists of protected genera and species, a draft which is eventually to be submitted to the Council for adoption. In view of the interest that the professional circles have shown in the matter, the Committee decided that the draft recommendations should first be submitted to the international non-governmental organizations for comment. The draft recommendations, as adopted by the Administrative and Legal Committee, are reproduced in the Annex to this document.

4. It is recalled that ASSINSEL and CIOPORA have asked to discuss in general, during the second Meeting with International Organizations, the question of the application of the UPOV Convention to botanical genera and species and, in particular, problems arising from the absence of protection possibilities for a great number of genera and species. It is expected that those organizations will submit position papers of their own on this question.

[Annex follows]

IOM/II/5

ANNEX

DRAFT
UPOV RECOMMENDATIONS
ON THE HARMONIZATION OF THE LISTS OF PROTECTED SPECIES

adopted by the Administrative and Legal Committee on March 28, 1985

The Council of the International Union for the Protection of New Varieties of Plants,

Considering that Article 4(1) of the International Convention for the Protection of New Varieties of Plants provides that the Convention may be applied to all botanical genera and species;

Considering that the member States have undertaken under Article 4(2) of the Convention to adopt all measures necessary for the progressive application of the provisions of the Convention to the largest possible number of botanical genera and species;

Considering further that Article 7(1) of the Convention requires that protection be granted after examination of the variety in the light of the criteria defined in Article 6 and that such examination is to be appropriate to each botanical genus or species;

Referring to the statement noted with approval by the Council at its tenth ordinary session in 1976 that "it is clear that it is the responsibility of the member State to ensure that the examination required by Article 7(1) of the UPOV Convention includes a growing test and the authorities in the present UPOV States [in 1976] normally conduct these tests themselves";

Taking into account the fact that the main obstacle to the application of the Convention in the member States to the largest possible number of botanical genera and species is the limitation on the economic and technical and on the scientific possibilities of carrying out variety examination;

Referring to the fact that Article 30(2) of the Convention specifically sets out the possibility of the competent authorities of the member States concluding special contracts with a view to the joint utilization 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;

Noting with satisfaction that the member States have already made extensive use of that possibility, both in order to keep the cost of protection for new plant varieties at the lowest possible level and also to extend their lists of protected species;

Convinced that further progress can be achieved in this field and that such progress is also called for to maintain or even improve the effectiveness of new plant variety protection as a tool in the development of agriculture and the safeguarding of breeders' interests;

Recommends the member States of the Union:

(a) to extend protection to every genus or species for which the following conditions are met:

(i) The genus or species is the subject of plant breeding work, or it is expected that the extension of protection will be an incentive for such work to be undertaken;

(ii) There is a real or potential market in the member State of the Union concerned for reproductive or vegetative propagating material of varieties from that genus or species;

(iii) Examination facilities are existing or will be set up for the genus or species, either in the member State of the Union concerned or in another member State which offers its services for examination pursuant to the provisions of Article 30(2) of the Convention;

(iv) There are no legal, climatic or other obstacles to such extension;

(b) to offer their services to the other member States for the examination of varieties, particularly in those cases in which the other States participating in the cooperation system do not yet protect the genus or species concerned, by means of concerted action to concentrate examination of the varieties at an optimum number of the authorities concerned;

(c) to inform the other member States as early as possible of their intentions to extend protection to a given genus or species, giving sufficient details, and to offer the services of their authorities for the examination of varieties of such genus or species to enable the other States, as appropriate, to put in hand the procedures required by their legislation for an extension of the same kind.

[End of Annex and of document]