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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**FOURTH MEETING
WITH INTERNATIONAL ORGANIZATIONS**

Geneva, October 9 and 10, 1989

POSITION OF ASSINSEL

Document prepared by the Office of the Union

The annex to this document contains the position of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) on the revision of the Convention. This text was unanimously adopted by its General Assembly at its Congress held in Jerusalem on June 1 and 2, 1989.

[Annex follows]

REVISION OF THE UPOV CONVENTION

POSITION PAPER ADOPTED BY ASSINSEL
IN JERUSALEM ON JUNE 2, 1989

General principles which should guide the revision of the UPOV Convention

The IPG has evolved a certain number of general principles on which the revision should be based. They are in particular:

- a) Strengthening the protection granted by the Convention
- b) Generalizing the application of the Convention to all species
- c) Extending the scope of the protection
- d) Admitting the principle of dependence
- e) Resolving the problem of the distinction between varieties
- f) Promoting international collaboration

A. Strengthening the protection

This is a key element. It should help encourage the pursuit of breeding work, biotechnological researches and other forms of investments by the breeders as well as by other participants in this field. The IPG is convinced that the strengthened breeders' right, which is specific, would guarantee the most adequate protection for plant varieties per se, in most of the member countries of UPOV.

It is necessary to determine clearly the border line between the systems of protection of biotechnological inventions and plant varieties to ensure that there is no conflict or invasion of one area by the other. The IPG welcomes, in this perspective, the study under way on this matter between UPOV and WIPO.

B. Generalizing the application of the Convention to all species

If the Convention has to become a strong instrument of general and largely international application, one should uphold the principle that it be applied to all the species; the limits and exclusions should remain the exceptions to be justified by the States.

In this respect, the IPG feels that the UPOV suggestion of basing the preliminary examination on the data submitted by the breeder could contribute, to a great extent, to this generalization.

C. Extension of the scope of protection

Here the question is that of attaining the general objectives outlined under A. In broad terms, the CAJ proposal can be accepted, subject to clarifications and modifications. The breeder has a stronger control on his variety material as well as on the material of another variety produced through the repeated use of his variety. In addition, a significant innovation, the right extends also to a variety essentially derived from a first variety (with the introduction of the principle of dependence).

Finally, it is indispensable that there be specific provisions for the protection of hybrids, because this type of breeding, rare when the Convention was adopted, has made a considerable headway since and should progress even further in the future. For the IPG, the parental lines should be able to find an appropriate protection. An intersection committee has been set up within ASSINSEL to examine this particular issue and to evolve principles of general application. UPOV is called upon to reconsider its stand in this area.

In addition to the exhaustion of right, the acts escaping the scope of protection are mentioned in a limited manner. In the case of farm-saved seed especially, the situation in many countries is excessively prejudicial to the legitimate interests of the owner of the rights. The right of the State to make further additions to the relevant list should be limited still more than what is foreseen in the proposal and all restrictions should be submitted to the Council of UPOV.

D. Admission of the principle of dependence

The IPG unanimously accepts the concept of dependence. For the application of that concept, a problem must be solved: the question as to whether the access to the protected invention or the protected plant variety is free against equitable remuneration or it should be subjected to a system of permission.

There is a majority view for free access against proper remuneration but a definitive decision is premature and depends upon the level of protection provided in both systems of protection.

In all cases the holders of the respective rights should be assured of an equitable remuneration and a perfect equilibrium should exist in the treatment reserved for the holders of patents on the one hand and plant breeders rights on the other.

The above only concerns the commercial exploitation of plant varieties, genes and other biotechnological inventions. The IPG admits without reservation the principle of exemption for the purpose of research, but not for subsequent commercial applications.

The introduction of the principle of dependence for essentially derived varieties is considered as an essential progress on condition that it does not encourage plagiarism. The concern here is to prevent by all means breeding works which modify one or several characteristics of an existing variety without adding at all or adding only marginally to the generally recognized performance of this variety ("cosmetic" selection). On the other hand, the IPG agrees perfectly that varieties and performances of close resemblance could be obtained by different methods of breeding.

This principle of dependence is considered the natural bridge between the two systems of protection at the disposal of traditional and new technologies. Its application, however, is not simple and the IPG is not able to give all the responses to the difficult questions that are posed. The proposed approach is to define the dependence by examining a certain number of situations in order to decide then to what extent one should admit it. For instance, the IPG feels that the notion of dependence should be recognized at least in the 3 following cases:

- a) Introduction of a recombinant DNA into a variety
- b) Natural or induced mutation
- c) Repeated back-crossing

In any case, it is clearly recognized that new varieties resulting from a cross followed by a programme of selection within the progeny of that cross would not fall into the principle of dependence.

E. Problem of distinction between varieties (minimum distance)

To this difficult question, there is no easy answer. That is the reason why ASSINSEL has taken the steps which should lead to a refinement of the concept species by species.

These efforts now under way will produce results within a few years from now. In any case, the IPG thinks that the expert remains the key element capable of deciding whether a new variety is distinct enough to deserve protection.

F. Promotion of international collaboration

The IPG holds the view that this collaboration is indispensable for the standardization of tests, not to mention the reduction of their costs. It should also allow the extension of the protection to all the species.

For the rest, the State interventions should be limited to the bare essential (notably in the area of variety denominations). The State should also show maximum discretion in imposing restrictions on plant breeders in the name of public interest.
