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In English only

UPOV

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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

COMMENTS FROM IFAP

Document prepared by the Office of the Union

The annex to this document contains the comments from the International Federation of Agricultural Producers (IFAP) on the revision of the Convention. They were transmitted to the Office of the Union by telefax on October 6, 1989.

[Annex follows]

ANNEX

COMMENTS FROM IFAP
ON THE REVISION OF THE CONVENTION

The International Federation of Agricultural Producers is the international organization of the world's farmers. It groups together nationally-representative general farmers' organizations from 50 countries, covering all the OECD member countries and an equal number of developing countries. All the member countries of the UPOV Convention are members of the Federation, with the exception of South Africa (which was a member from 1946 to 1987).

IFAP has unfortunately not been associated very closely with the work of UPOV in the past. The Executive Committee of IFAP discussed the proposed revision of the Convention for the first time at its meeting in St. Paul, Minnesota, U.S.A., 9th-10th June 1989. It decided to accept the kind invitation of UPOV to make its views known to the Geneva meeting, 9th-10th October 1989, especially on the question of the "farmer's privilege".

The following statement is based upon a consensus following detailed comments received from member organizations. It has not formally been adopted as a policy declaration of the Federation.

IFAP fully supports the need to adequately reward the creative efforts of plant breeders, so that farmers worldwide will continue to benefit from new and improved plant varieties.

Insofar as progress in plant breeding methods necessitates a revision of the UPOV Convention, most IFAP members are in favour of revising the Convention. It is essential, however, that the UPOV Convention remain balanced with regards to the interests of farmers, consumers and breeders. Society as a whole must benefit from the exploitation of the earth's plant genetic resources. Further, the Convention should ensure that innovations in the field of breeding methods introduced through public financing should not be patented by private persons or companies raising undue profits at the expense of the farmer or consumer.

Article 1

If the UPOV Convention is to be transformed from a declarative to a binding provision, then IFAP is of the view that signatory countries must be explicitly permitted to retain the flexibility to determine for themselves certain exemptions. (see comments on Articles 4 and 5). Since national circumstances differ widely among countries, it is reasonable to expect that it will be necessary to have some differences in national legislation.

Article 2

Paragraph (1):

IFAP is in favour of maintaining the present ban on double protection.

In our view it is important that in plant production there be only one system of industrial property right, the plant breeders' right system, as this system has proved to be balanced with regard to the interests of breeders, farmers and consumers. For this reason, it is important that other industrial property rights (for instance patent right) do not inter-

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ferre with plant breeders' rights (1). Any other system will lead to confusion concerning property rights. Further it could create difficulties for new members wishing to join the UPOV Convention in the future.

Paragraph 2:

See comments on Article 1. It is essential that the Convention maintain the flexibility, now in place, for governments to tailor their national legislation to their particular national circumstances, provided that the overall interest of the Convention is respected.

Proposed definition of a "breeder". IFAP believes that plant breeders should be adequately rewarded for their creative efforts in a program of crossing, selection and general improvement of plant varieties. However, some member countries oppose paying royalties to persons for the "discovery" of naturally-occurring plants in their naturally-occurring form.

The proposed definition of "material" should be clarified by adding the following words (underlined) to the third indent:

- harvested material, except farm-saved seed:

This clarification is important if confusion is to be avoided in the interpretation of Article 5.

Article 3:

Paragraph (3): We propose that the possibility of granting protection to foreigners on the basis of reciprocity should be retained. Member states should not be required to apply the Convention to all species, but each member state should be free to define the extent of application, as previously.

Article 4:

IFAP is opposed to the principle of a mandatory application of the Convention to all botanical species in all signatory countries. Individual countries should be able to join the Convention even if they are only at present in a position to guarantee plant breeders' rights for certain genera or species. Our Federation is in favour of maintaining the flexibility allowed in the present text. It does not support changing the word "may" to "shall" in paragraph (1).

The proposed new paragraph (2) which allows countries facing "exceptional difficulties" to opt for progressive implementation would be too difficult to apply in practise. How can the Council evaluate the validity of the "exceptional difficulties" on which each member state seeks to limit the application of the Convention?

(1) For the same reasons, IFAP support the proposed new Article 5.5

Article 5:

IFAP could support the rewriting of Article 5 in order to make its interpretation clearer. However, the proposed revision of what is known as the "farmer's privilege" amounts to a betrayal of the original intent of the UPOV Convention. Many farmers' organizations accepted plant breeders rights legislation in their country on the understanding from their government that royalties would not be paid on farm-saved seed.

IFAP would strongly oppose any proposal in a binding UPOV Convention to mandate that farmers pay a royalty to plant breeders for the use of seed raised for use on their own farms. We believe that such a proposal is unworkable, unenforceable and unnecessarily costly to farmers.

IFAP member organizations are unanimous in their opinion that the breeders' right be limited to propagating material for commercial purposes.

New paragraph (1): IFAP proposes that the following words (underlined) of the 1970 text be retained in the new text:

"(1)from reproducing or propagating the variety for purposes of commercial marketing"

New paragraph (2): IFAP proposes the addition of a new sub-paragraph, which would be numbered (v), with the text as follows:

(v) Acts done under the farmers' privilege. The farmers' privilege encompasses the propagation and preparation of seed material by the farmer for his own use, from his own harvested crop, and using his own farm equipment, or these acts carried out in the framework of mutual agricultural assistance among farmers.

New paragraph (3): IFAP supports the idea of introducing the concept of dependency, if a variety A* is essentially derived from a single, protected variety A. With a dependent plant breeders' right, the owner of A* will be obliged to make a reasonable remuneration of the owner of A in respect of the commercial exploitation of A*. It is of great importance that the owner of A* be free to exploit A*, and that there is no legal obligation for the participation of the owner of A in the exploitation of A*. This will ensure that monopolization of all the varieties A* that show a great resemblance to A, is prevented.

If the word "single" is omitted we are dealing with the issue of the resemblance of a new variety to one or more existing varieties. This is a matter of minimum distances. The dependent plant breeders' right should not be considered as a solution to the problem that minimum distances tend to become smaller.

We generally agree with the conditions with regards to dependency as mentioned in note 6 of Document IOM/IV/2.

New paragraph (4): IFAP is concerned that this new text, if agreed, could become the discretionary basis for the application of the farmers' privilege by national governments. Our members feel that farmers in all UPOV-countries should be treated equally with respect to the farmers' privilege,

hence the importance of our comments on new paragraphs (1) and (2).

New paragraph (5): IFAP supports this new text, for the reasons already outlined in relation to Article 2.1. However, is it still necessary if the double ban of Article 2.1 is not lifted, as proposed by IFAP?

Article 6:

New paragraph (b): In the view of our members, the plant breeder should be granted a right for developing new varieties which show an improvement over existing varieties, and not only for those which are different. This is necessary to avoid simply copying the essential characteristics of a variety and changing some minor element to gain a plant breeders' right.

Article 7

No comments received from members.

Article 8

IFAP is opposed to any extension of the minimum duration of the right, as is proposed in new paragraph (2). In fact, some IFAP member countries presently outside the UPOV Convention have requested that, in order to facilitate their joining, different protection periods should be introduced for different plant species. For example, the protection on cereals and oilseeds should be less than 15 years.

Articles 9 to 11

No comments received from members.

Article 12

Paragraph (3): IFAP supports the reduction in the time period allowed for the expiration of the period of priority.

Article 13 and 14

No comments received from members.

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