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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**COMMITTEE OF EXPERTS ON
THE INTERPRETATION AND REVISION OF THE CONVENTION**

Third Session

Geneva, February 17 - 20, 1976

COMMENTS OF PARTICIPANTS

Comments of FIS

The International Federation of the Seed Trade (FIS) has, on January 26, 1976, transmitted its comments concerning the third session of the Committee of Experts on the Interpretation and Revision of the Convention.

[Annex follows]

Nr. 76-002

Comments by the Fédération Internationale du Commerce des Semences on the main items to be dealt with at the third session of the Committee of Experts on the Interpretation and Revision of the U.P.O.V. Convention (U.P.O.V. Doc. IRC/III/2)

1)^x Our organisation does not object to a provision in the Convention according to which Member-States are entitled to exclude controlled hybrids of sexually propagated crops from protection schemes, provided protection of the parental material remains possible.

2) F.I.S. does not object either to allow under the Convention protection of new varieties of plants belonging to the same botanical genus or species under both possible forms of protection (special title or patent). It is understood however that in both cases the variety must satisfy the conditions for protection laid down in the articles 6 and 7 of the Convention.

3)^x The question whether our organisation agrees with the suggested modification of article 4(3) of the Convention and the removal of the Annex to the Convention depends on the decisions taken with regard to the item 4 of the summary of items.

Our reaction to this is negative as will be explained below.

Notwithstanding this, F.I.S. does not object to the removal of the Annex to the Convention and to a modification of article 4 (3) according to which each Member-State of the Union shall, on the entry into force of the Convention in its territory, apply the provisions of the Convention to at least genera.

Whether the required number of genera should be limited to five or be increased, we would like to leave open to discussion. It would seem to us however, that a decrease of the required number of species is not desirable.. It is of course the wish of the seed industry to see the number of U.P.O.V. member countries increase, but not at any price.

It seems reasonable to us that protection on a minimum number of genera must be required to become a Member-State of the Convention. On the other hand it is not justified for a Union based on a Convention pretending to become of world wide importance to require protection schemes for a minimum number of species belonging to the main crops in the moderate climate zones.

Therefore we agree with the removal of the Annex.

4)^x As stated above F.I.S. is against the proposals laid down in item 4.

The main objective of the International Convention is that a breeder to whom plant variety protection rights have been granted in one country can obtain the same rights in as many other countries as possible.

The Convention has tried to achieve this mainly through the assimilation principle laid down in its article 3 in conjunction with the possibility of applying the reciprocity principle laid down in its article 4 (3).

These provisions however, were based on the existence of the Annex referred to in item 4. Generally speaking it is a natural thing that there must be an incentive for parties to come to an agreement.

The incentive under the present text of the Convention is that when plant variety protection rights were made available nationally these would, it is true, also be made available to foreign breeders, but by virtue of the Convention similar rights would in many cases become available for national breeders in other Member-States. Yet, the fact that in case only country A and B have made protection available for a given species, a breeder in country C can obtain plant variety protection in country A and B, but the breeder of country A and B are as it were "outlawed" in country C has often been criticized in the seed industry.

The incentive for country C to introduce plant variety protection will certainly be

greater if its nationals do not qualify for protection in other countries. Besides, a situation in which a country has a strong market position in some species for which it introduces protection, but it pirating in other species, but would still qualify for protection of its own varieties of that species abroad, is probably more than members of the seed industry can bear.

Therefore, our organisation is not in favour of the proposals under 4.

5) ^xFrom our comments on 4 it is automatically follows that we entirely agree with the proposal to delete the final part of article 4 (4) and article 4 (5).

6) Our organisation would welcome the proposed provision in article 5 (1). For sexually reproduced plants this provision is particularly necessary in case crop production respectively the laying out of lawns can be done in another way than by sowing seed.

7) F.I.S. supports the suggestion under 7, mainly to make varieties as quickly as possible available to the user, in so far as this is possible under the regulations referred to in article 14 of the Convention.

8) ^xOur organisation feels that for a world wide Convention the world novelty standard is the only possible solution. It is obvious however, that this requirement calls for a very close international cooperation and as the number of U.P.O.V. Member-States increases a division of work will become inevitable. F.I.S. welcomes present developments in this respect.

9) The question of "important characteristics" has been amply discussed in the Executive Committee of our federation. Nevertheless the only comment we can make is that for the time being it would be wise to stick to the present text. x

10) As the species under article 8 (1) are not covered by F.I.S. we refrain from expressing an opinion on this question.

On the question of abandoning the four year period provided in article 12 (3) we feel that the time is not yet ripe to abandon this period, which breeders need to decide whether they will maintain their application made in a second, third etc. Member-State.

F.I.S. is hopeful that international cooperation will one day make it possible to arrive at a situation as described under item 16 under ii.

As long as this situation has not yet been reached breeders will want to await the result of one application to pursue the applications made elsewhere, and as decisions on applications usually take 2 - 4 years the four year period should be maintained. An extension of the priority period to two years would not sufficiently solve the problems breeders have in this respect.

11) Our organisation supports the proposal to make a provision in article 6 of the Convention according to which release of seed or other propagating material but also of the end product (barley for experimentation in breweries, peas for canneries etc.) for purposes of experimentation is not considered commercial use. A provision to ensure preliminary protection in this case before an application is filed is necessary.

We wish to draw your attention to the fact that experimentation as mentioned above may involve invoicing of the material supplied for experimentation.

This applies particularly to experimentation on an industrial scale. It would seem to us that if the material supplied is invoiced this does not change the fact that it has been supplied for experimentation purposes as long as this has been clearly stated in the documents (contract, invoice).

12) F.I.S. is for opening the possibility of admitting new Member-States which do not perform growing tests as part of the examination as long as the conditions for the granting of plant variety rights are otherwise complied with.

13)^x A protection period of 15 years is in the opinion of our organisation an absolute minimum to enable breeders to get adequately compensated for the investments made. We would in view of the fact that in many countries other regulations may limit the effect of the protection granted be rather for an extension of the protection period. Calculating the period of protection for each variety from the same date in each Member-State is attractive on the following conditions:

- the period of protection must be uniform in all Member-States;
- the granting of plant variety protection in one Member-State has effect in all other Member-States.

As long as these conditions are not fulfilled the attractive element of this proposal, i.e. that protection will start and end at the same time in all Member-States will not be achieved.

It seems to us that this is a subject that should be studied as part of a possible Convention referred to under 16 (ii).

In any case it seems to us that it would be more realistic to calculate the period of protection from the date of the granting of rights than from the date of application.

14)^x Our organisation has not yet been in a position to study this proposal. As a preliminary opinion we would like to state that selling propagating material that is supposed to be of a protected variety but that does not show the characteristics of the variety seems to us rather a subject of seed regulations or penal law than that such sales would pertain to plant variety rights proper. Only in the case that no more material can be made available that does show the characteristics of the variety as defined when the right was granted, for instance because the variety has not been maintained properly, would there be a reason to annul the rights granted (cf. article 10 (2) of the Convention).

15)^x We agree with the conclusion under item 15.

16) F.I.S. welcomes any simplification of procedures as proposed under i of this item. Our organisation would strongly support an international agreement according to which the title of protection granted by the national office of one Contracting State would, subject to certain conditions, have effect in other Contracting States.

Amsterdam, 8th January 1976

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As these items had not been included in the tentative list annexed to U.P.O.V. document U 168/08.3 our organisation was not yet in a position to discuss these items in its competent bodies. The comments on these points therefore have a provisional character.

[End of annex and of document]