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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

Fourth Session

Geneva, September 14 to 17, 1976

QUESTIONS CONCERNING THE NEXT REVISION CONFERENCE

prepared by the Office of the UnionBackground

1. According to Article 27 of the International Convention for the Protection of New Varieties of Plants of December 9, 1961 (hereinafter referred to as "the Convention"), a diplomatic conference for the purpose of revising (in the English text "reviewing," in the French text "revision") the Convention has to be held every five years unless the Council, by a majority of five-sixths of the members present, decides that the convening of a conference is to be brought forward or postponed. The last, and so far the only, revision conference took place in 1972. Consequently, the next revision conference would have to be held in 1977, unless the Council decides to postpone it. The Consultative Committee has already taken the view that the next revision conference should be postponed until 1978 (see document CC/XIII/6, paragraph 12). It is expected that the Council will deal with this question in its tenth ordinary session (see item 11(b) of its draft agenda, contained in document C/X/1 Rev.).

2. In presenting the draft agenda for the tenth ordinary session of the Council, the Office of the Union has proposed that in that session the Council should, in addition to the date of the next revision conference consider certain other questions concerning the organization of that conference (see document C/X/1, item 11(b)). The Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to as "the Committee") has the task of preparing the consideration of the said questions by the Council, and the present document, prepared at the request of the Chairman of the Committee, is intended to serve as a basis for discussion in the fourth session of the Committee.

Form of the New Instrument

3. The nature of the proposals for revising the Convention which are presently under discussion (see documents IRC/IV/2 and 3) is such that the revised text will have the same structure as the present text, that is the Articles will retain their present numbers and will deal with the same questions as in the present text, notwithstanding the fact that some of the envisaged amendments are of a fairly fundamental character.

4. The envisaged revision of the Convention could be achieved in two ways:

(i) One way would be to incorporate the changes in the existing text of the Convention (the 1961 and 1972 instruments) and adopt the resulting ("new" or "revised") text (the "new Act"), which would thus consist of both the provisions which are kept from the existing text and the provisions which are new, that is those which are not in the existing text ("Revised Act System"). Article 27(4) of the Convention calls such a text "the revised text."

(ii) The other way would be to write the changes only into an instrument called an "Additional Act" without restating those provisions of the existing texts which are unchanged; in this case, in order to see--after the second revision --what the provisions in force are, the reader would have to consider three texts (the Convention of 1961, the (first) Additional Act of 1972, and the text that would be the second (the new) Additional Act) and decide for himself which provisions of the 1961 text were superseded by the first Additional Act and which provisions of the 1961 text and the first Additional Act were superseded by the second Additional Act.

5. Under either system, the new instrument would also have to contain the usual final clauses concerning signature, ratification, accession, entry into force, languages of the authentic text or texts and official translations, deposit, notifications, etc.

6. Under either system, the same legal effects could be achieved.

7. While the "Additional Act System" has some practical advantages (mainly shortness of the text to be signed), and was probably the appropriate system to be applied at the Diplomatic Conference of 1972 when only a few short administrative provisions of the Convention were amended, there would seem to be a number of good reasons for applying the "Revised Act System" in the case of the changes that are expected to be adopted by the forthcoming Diplomatic Conference:

(i) The main reason for changing the Convention at the forthcoming Diplomatic Conference is to facilitate the adhesion of further States to UPOV. It would seem that that aim would be easier to attain through the "Revised Act System." Delegates, governments and parliaments of such States, as well as the general public in those States, would, if the "Additional Act System" were applied, have to consider three different texts: the Convention of 1961, the Additional Act of 1972 and what would be the second Additional Act. The texts of not only the second Additional Act but also the 1961 Convention and the first Additional Act would have to be presented to the parliaments of newly adhering States. Since some of the provisions of the 1961 Convention are stumbling blocks for such States, the continued physical presence of those provisions in one of the texts prescribed to their parliaments could lead to difficulties even though, admittedly, the second Additional Act would supersede the said provisions. This solution would also make it too obvious that the 1961 Convention was negotiated in the absence of representatives of the said States.

(ii) The "Revised Act System" leads to greater legal security and clarity when--as will be unavoidable--up to four versions of the Convention (original version, original version as amended by the Additional Act of 1972, either of those versions as amended in 1978) will be in force side by side for different member States over a transitional period which may be quite long. (Incidentally, the coexistence of the various versions will have to be regulated in detail in the final clauses of the new instrument.)

(iii) Under the "Revised Act System," the provisions of the Additional Act of 1972 would be incorporated. This would save those States which had not yet ratified, or acceded to, that Additional Act--two member States and all non-member States--the burden of obtaining parliamentary approval and depositing an instrument of ratification of, or accession to, the Additional Act of 1972.

Title of the New Instrument

8. Under the "Revised Act System," the text approved by the next Diplomatic Conference could have the title "International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and ..." Under the "Additional Act System," the text approved by the next Diplomatic Conference could have the title "Second Additional Act, of ..., Amending the International Convention for the Protection of New Varieties of Plants of December 2, 1972, as amended by the Additional Act of November 10, 1972."

Participants in the Diplomatic Conference; Signing of the New Instrument

9. Following the precedent of the 1972 Diplomatic Conference, all member States of the United Nations which are not members of UPOV should be invited to be represented by observers at the forthcoming Diplomatic Conference. Admittedly, the number of members of the United Nations is high (between 140 and 150), but it can be expected that only a small fraction of them would actually be represented, so that no organizational problems will arise. In 1972, 128 States were invited to send observers to the Diplomatic Conference but only 12 of them were in fact represented.

10. According to international practice, observers at a diplomatic conference have neither the right to vote at that conference nor the right to sign the text adopted by it. It is believed that the right to vote at the forthcoming Diplomatic Conference of UPOV should be reserved for States which, at the time of that Conference, are members of UPOV. However, as far as the right to sign the new text is concerned, it is proposed that, if the "Revised Act System" is adopted, the Rules of Procedure of the Diplomatic Conference should allow signature by those observer States which, without being members of UPOV, have signed the original (1961) Convention¹ and those other observer States which have shown great interest in, and contributed to, the preparatory work of the Diplomatic Conference, such as the United States of America and Canada. Giving the privilege of signature to such States should secure a decidedly positive attitude on the part of those States towards the revised Convention and thereby enhance the prospects of their ratifying it. Furthermore, such a solution would free the said States (if they sign the revised Convention) from having to apply, under Article 32, to be permitted to accede. This procedure implies uncertainty as to whether the applicant State will be admitted to membership, and might prove to be a major obstacle preventing some States from joining UPOV, since they might find themselves perfectly capable of judging whether their national legislation is in conformity with the Convention and responsible enough to ratify the Convention only if their legislation is in conformity with the Convention.

11. If the principle of allowing certain non-member States of UPOV to sign the new text (although they would not be allowed to vote at the Diplomatic Conference adopting the new text) is accepted, the best procedure would seem to consist in asking the Council of UPOV to establish the list of such States and having such list incorporated in the Rules of Procedure of the Diplomatic Conference. Thus, as at the Diplomatic Conference of Paris in 1961, the eligibility of certain States for membership in UPOV would be accepted and, again as at that Conference, it would be assumed that the national laws of such States would be in conformity with the provisions of the revised Convention when they ratified it.

12. As far as the participation of international organizations is concerned, it is suggested that invitations to be represented by observers at the next Diplomatic Conference be extended to three international intergovernmental organizations, namely the United Nations (UN), the Food and Agriculture Organization of the United Nations (FAO) and the International Seed Testing Association (ISTA), and also to four international non-governmental organizations in the field of plant breeding and the seed trade, namely, the International Association of Horticultural Producers (AIPH), the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), the International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), and the International Federation of the Seed Trade (FIS), as well as to two additional international non-governmental organizations, the International Association for the Protection of Industrial Property (AIPPI) and the International Chamber of Commerce (ICC).

13. It is suggested that, as in 1972, the Diplomatic Conference should be convened by the Secretary-General of UPOV on the basis of a resolution which the Council of UPOV would adopt for this purpose.

Place of the Diplomatic Conference

14. Unless a Government invites the Diplomatic Conference to be held on the territory of its country and the Council accepts that invitation, the Diplomatic Conference would be held in Geneva at the headquarters of UPOV, presumably in the new WIPO building, whose largest conference room, with a capacity of approximately 200 delegates, should suffice.

¹ In fact there are not expected to be any such States by the time the Diplomatic Conference takes place. Ratification procedures in the three States now in that category (Belgium, Italy, Switzerland) are already well advanced.

Working languages of the Diplomatic Conference

15. In accordance with Article 28(2) of the Convention, interpretation would be provided for in English, French and German. The need to provide for further languages, referred to in Article 28(3) of the Convention, does not seem to exist at the present time.

Preparatory Documents for the Diplomatic Conference

16. As is customary, the Office of the Union would prepare a draft agenda of the Diplomatic Conference and the draft of a preparatory document containing proposals for revision on the basis of the outcome of the final sessions of the Committee and possibly also of the Working Group on Variety Denominations. The Office of the Union would also prepare a memorandum explaining the proposals and containing any comments by governments and organizations on those proposals as well as the other usual documents which are necessary for a diplomatic conference, such as draft rules of procedure of the conference, lists of participants and information for participants on conditions in Geneva.

Organization of the Work of the Diplomatic Conference

17. The Diplomatic Conference should start and end in plenary. The detailed discussions on substantive matters should be conducted in one or two Main Committees and, if necessary, in working groups. Two Main Committees will be necessary if it is to be assumed that the question of variety denominations and trademarks will play a significant role in the Conference. It will also be necessary to set up a Credentials Committee and a Drafting Committee.

18. No need seems to exist for the employment of précis-writers if transcription of the magnetic tapes containing the statements of delegates can be ensured soon after the Conference; this would necessitate the employment, for a few weeks, of at least three typists.

Date and Duration of the Diplomatic Conference

19. At the thirteenth session of the Consultative Committee, it was proposed by one delegation not to hold the Revision Conference before April 1978. Other delegations expressed no opinion on this question. October 1978 would seem to be an acceptable period.

20. Three weeks and two days should be sufficient if it is decided that the text to be signed at the end of the Diplomatic Conference will not be a printed text but a text typed on a typewriter.

Tentative Timetable for the Preparation of the Diplomatic Conference

21. The following proposals are made for the preparation of the Diplomatic Conference:

(i) September 14 to 17, 1976: Fourth Session of the Committee of Experts on the Interpretation and Revision of the Convention; Ninth Session of the Working Group on Variety Denominations

- The Committee expresses its views on all questions dealt with in documents IRC/IV/2 and 3 and in this document. It may wish to ask the Office of the Union to study and submit further proposals on some of those questions to its fifth session.
- The Working Group on Variety Denominations decides whether the provisions of the Convention within its competence should be proposed for amendment.
- The Committee decides which non-member States and professional organizations should be invited to its fifth session.
- The Committee gives to the Office of the Union the mandate to prepare a document containing the proposals for revising the Convention on the basis of the outcome of the discussion in the fourth session and to send that document, also to certain non-member States and to the professional organizations, for comments.

- (ii) October 13 to 15, 1976: Tenth Ordinary Session of the Council
- The Council takes note of the work of the Committee during its fourth session on the basis of an oral report by the Chairman of the Committee and a progress report prepared by the Office of the Union.
- (iii) February 1 to 4, 1977: Fifth Session of the Committee of Experts on the Interpretation and Revision of the Convention; Tenth session of the Working Group on Variety Denominations
- The Committee discusses with representatives of selected non-member States and professional organizations the proposals for amending the Convention, and meets afterwards to adopt final conclusions in the light of that discussion. It makes the final recommendations as to the organization of the Diplomatic Conference.
 - The Office of the Union is asked to prepare a draft of the preparatory document for the Diplomatic Conference containing all proposals, and all other documents required in connection with the Diplomatic Conference.
- (iv) March 29 and 30, 1977: Fifteenth Session of the Consultative Committee
- The state of progress of the preparations is examined by the Consultative Committee.
- (v) September 20 to 23, 1977: Sixth Session of the Committee of Experts on the Interpretation and Revision of the Convention; Eleventh Session of the Working Group on Variety Denominations
- The Committee and possibly also the Working Group on Variety Denominations discuss the draft preparatory document containing the proposals and all other documents concerning the Diplomatic Conference.
- (vi) October 26 to 28, 1977: Eleventh Ordinary Session of the Council
- After discussion in the Consultative Committee on October 25, 1977, the Council takes note of the documents and authorizes their distribution. (It does not seem appropriate that the Council should formally approve the revision proposals since any governmental commitment should be reserved for the Diplomatic Conference.)
 - The Council approves the organizational arrangements and the list of observers to be invited to the Diplomatic Conference.
- (vii) January 1978
- The Secretary General issues the invitations to the Diplomatic Conference and distributes, with the invitation, the preparatory documents. The letters of invitation will also ask the invited governments and organizations to submit their comments and suggestions in writing before the end of June 1978.
- (viii) September 1978: Seventh (final) Session of the Committee of Experts on the Interpretation and Revision of the Convention; Twelfth Session of the Working Group on Variety Denominations
- The Committee and possibly also the Working Group on Variety Denominations meet to discuss the comments and suggestions.
- (ix) October 1978
- The Diplomatic Conference.

22. The Committee is invited to express its views on the above-mentioned questions and to ask the Office of the Union to present the Committee's conclusions to the next session of the Consultative Committee.