



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

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

REPORT

adopted by the Committee

PART I

INTRODUCTION

Opening of the Session

1. The fourth session of the Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to as "the Committee") was held in Geneva from September 14 to 16, 1976. On September 16, 1976, the Committee held a joint meeting with the Working Group on Variety Denominations.
2. All six member States of UPOV were represented. Of the signatory non-member States, Belgium and Switzerland were represented by observers. The list of participants is reproduced in Annex I to this document.
3. The session was opened by Mr. Skov (Denmark), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

4. The Committee decided not to adopt a report at the end of the session but to convene a short meeting for that purpose immediately before the start of the fourteenth session of the Consultative Committee on October 12, 1976. Subject to this modification, the agenda was adopted as appearing in document IRC/IV/1.

Adoption of the Reports on the Third Session of the Committee

5. The Committee unanimously adopted the draft report on the first part of its third session, which was held in the presence of observer delegations, as appearing in document IRC/III/14. The draft report on the second (internal) part of the third session was also unanimously adopted as appearing in document IRC/III/13, subject to amendment of the title of its Annex I to read "Draft Statement concerning Article 7."

PART II

PROPOSALS FOR THE REVISION OF THE CONVENTION DEALT WITH
IN DOCUMENT IRC/IV/2Providing Protection in Two Forms (Special Title of Protection and Patent)
(Article 2(1)*)

6. The discussion was based on document IRC/IV/2, paragraphs 4 to 8, and on the Annex to document IRC/IV/5 (Letter from the U.S. Department of State of August 17, 1976), pages 1 and 2.
7. The Committee agreed to amend Article 2* in order to make it easier for the United States of America, and possibly other States that granted breeders' rights according to two systems, to accede to the Convention. It felt unable, however, to agree to the main suggestion of the U.S. Department of State, or to the first alternative proposal by the Office of the Union, to cancel the last sentence of Article 2(1).
8. The Committee agreed that the last sentence of Article 2(1) no longer had any relevance for the present member States and signatory non-member States, since all of them protected or were going to protect breeders' rights according to one system. The proposal was therefore made to allow derogation from the principle embodied in the last sentence of Article 2(1) only by those newly-acceding States which, at the time of depositing their instruments of accession, or even at a fixed date, grant breeders' rights according to two systems in their national laws. The Delegation of France mentioned that this privilege might, in addition, be limited to a transitional period.
9. This proposal led to a general discussion on whether it was appropriate to give newly acceding States more extensive possibilities than those available to the present member States. It was also mentioned in this context that the aim of the Convention was to organize the protection of plant breeders' right according to uniform principles, and that this aim would be jeopardized if newly acceding States were given too many possibilities of derogating from the basic principles of the Convention.
10. In the light of these considerations the majority of the Committee showed a certain preference for the idea underlying the second alternative proposal made by the Office of the Union, which had also been mentioned in the letter from the U.S. Department of State, namely to replace, in the last sentence of Article 2(1), the phrase "botanical genus or species" by "variety." It was said, however, that this idea could be realized in an easier way, for instance by adding to the first sentence of Article 2(1): "it being understood that a single variety can be protected only by the grant of one of them," and deleting the second sentence.
11. The Secretary-General warned the Committee against misinterpretation of the statement of the U.S. Department of State. The statement indicated very clearly that any solution other than deletion of the last sentence of Article 2(1) would make it necessary to amend the present U.S. laws, and no guarantee could be given that such amendment would win the approval of the legislative bodies in the United States. Without this approval, the United States of America would not be in a position to ratify or accede to the revised Convention. It was questionable whether the matter at issue justified taking such risks.
12. The Committee eventually agreed to submit the question of how to amend Article 2(1) to the forthcoming session.

The Expression "Genus or Species"

13. The proposal to replace the expression "genus or species" by "kind" (document IRC/IV/2, paragraphs 9 to 12) was not approved by the Committee since, as pointed out by the experts from the United Kingdom, the English term "kind" had no precise meaning in scientific literature and usage, and the terms used in the French and German versions of document IRC/IV/2 were even less acceptable. It was decided that the term "genus or species" would continue to be used but that it should be used consistently throughout the Convention.

* The Articles referred to are Articles of the Convention.

Problems Connected with Article 4(3) and the Annex

14. The discussion reported in paragraphs 15 to 23 was based on document IRC/IV/2, paragraphs 13 to 21, and on the Annex to document IRC/IV/5, pages 2 and 3.

List of Genera and Species to be Made Eligible for Protection (Article 4(3) and Annex)

15. The Committee agreed that the list of genera and species to be made eligible for protection after given periods (Annex to the Convention) should be deleted, mainly in view of the insuperable difficulties that would be encountered in elaborating a list of worldwide significance.

Minimum Number of Genera or Species to be Made Eligible for Protection (Article 4(3))

16. The Committee agreed to further require member States to make a minimum number of genera or species eligible for protection within fixed periods, but to change the present figures on account of the deletion of the list of genera and species to which the Convention had to be applied. Whereas the experts from the Netherlands stated their preference for relatively high figures, to ensure that the Convention was applied broadly by member States, others feared that this might cause difficulties for certain non-member States, even if the Council were given the possibility of reducing the figures in individual cases. After a thorough discussion the following figures were found to be appropriate: 5 genera or species on the date of entry into force of the Convention, 10 genera or species in total after 3 years, 18 genera or species in total after 6 years and 24 genera or species in total after 8 years.

17. The observers from Belgium and Switzerland declared that their countries would be in the position to apply the Convention to these numbers of genera and species in the periods of time envisaged. The observer from Switzerland made this declaration conditional on receiving the necessary help from the Offices of other member States in the testing of varieties of a number of species. Several experts from the present member States assured the Swiss experts that this help would be given them.

18. A proposal that an express statement be included to the effect that the minimum numbers of genera or species had to include genera or species that were "important" to the State in question was not approved, since it was considered too difficult, if not impossible, to define which genera or species were important. It was suggested, however, that the Diplomatic Conference should adopt a recommendation to member States that they preferably make eligible for protection those genera or species which were important to the economy of each one of them.

Reduction of the Minimum Numbers of Genera or Species or Prolongation of Periods by the Council

19. It was agreed that the Council should be authorized, as proposed in document IRC/IV/2, paragraph 20, to reduce the minimum numbers of genera or species to which the Convention was to be applied within certain periods, or to extend those periods, for States wishing to accede to the Convention in which special economic or ecological conditions prevailed. For the Council decisions on this matter the same majority and the same quorum should be provided as for decisions concerning the accession of a non-member State to the Convention (four-fifths majority, presence of three-fourths of the member States).

20. The Committee discussed the question whether the Council should be given a similar authorization with respect to States already party to UPOV. After some discussion, during which it was pointed out that, by ratifying or acceding to the Convention, a member State had already undertaken to meet its obligations under Article 4(3), it was finally agreed that the Council should be allowed to extend the periods of time set forth in Article 4(3) where a member State had encountered special difficulties in the progressive application of the Convention. These decisions, not being connected with qualification for accession, should be taken by the normal majority provided for in Article 22.

21. The Committee approved the addition of the following paragraphs to Article 4 (subject to drafting improvements):

"At the request of a State applying for accession to the Convention according to Article 32, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, by the majority required and with the quorum envisaged in Article 32(3) for decisions on applications of non-member States, to reduce the minimum numbers of genera or species, set forth in paragraph (3), to which such State shall apply the Convention, or to extend the periods within which the Convention shall be applied to such minimum numbers of genera or species.

"At the request of any member State the Council may, in order to take account of special difficulties encountered by such State in the fulfilment of the obligations under paragraph (3), decide to extend the periods set forth in paragraph (3) within which such State shall apply the Convention to the minimum numbers of genera and species."

National Treatment or Reciprocity Principle

22. With regard to the question whether the revised text of the Convention should abandon the present restrictions in Article 4(4) on the national treatment principle, or whether the Convention should continue to authorize States to admit applicants from other member States only under the condition of reciprocity, it was mentioned that two of the six member States generally allowed foreign applicants to seek protection of their plant breeders' rights, while the reciprocity provisions in the national laws of the remaining four member States had almost no practical importance, since many foreign breeders had applications filed by their own agencies in the respective member State. The most reasonable and simplest solution would therefore be to provide for unrestricted national treatment. However, two experts questioned whether the national governments and parliaments of States which had introduced the reciprocity principle by law would approve of the abandonment of this principle. It was therefore decided that the possibility of applying the reciprocity principle should be maintained.

23. Concerning the second part of Article 4(4) and Article 4(5), it was noted that these provisions, though superfluous, did not cause any inconvenience. Furthermore it was mentioned that States which granted--as Italy and to a certain extent the United States of America did--protection in the form of patents might see these clauses as a measure of acceptance of their practice and consequently object to their deletion. The Committee therefore agreed that these provisions should be maintained.

Period of Grace (Article 6(1)(b))

24. The discussion was based on document IRC/IV/2, paragraphs 22 to 36, and on the Annex to document IRC/IV/5, page 5.

25. The Committee was on the whole convinced that, owing to a long tradition in the United States of America, it was extremely difficult for that country to remove its provisions concerning the period of grace. On the other hand, attention was drawn to the possible legal insecurity that arose from allowing a period of grace, both for the breeders and for the authorities. Experts of five of the six member States therefore agreed to the proposal in document IRC/IV/2, paragraph 27, whereby only States under whose law, at the time of ratification or accession to the Convention, a period of grace was allowed, might continue to provide such a period.

26. The experts of the Netherlands, however, were of the opinion, that, in order to prevent the establishment of different standards between member States, the present member States should also be given the possibility of introducing, if they wished to do so, a period of grace for all or part of the genera or species eligible for protection there.

27. The above-mentioned agreement having been reached, the introduction of a system of deferred examination did not need to be discussed. It was pointed out, however, that the Committee considered the introduction of such a system fully compatible with the Convention, and therefore a proposal to amend the Convention unnecessary.

Authorization of Sales for Experimental Purposes (Article 6(1)(b))

28. The Committee agreed that the practice applied in the United States of America, as described in document IRC/IV/5, seemed to be in line with the custom in UPOV member States, where the selling of plant material of a variety was not considered prejudicial to novelty as long as it was not sold as a variety or under the variety denomination. It was stated, however, that test sales of the variety to assess its commercial attractiveness to the customer would preclude a finding of novelty in the UPOV member States, but obviously also in the United States of America.

Cooperation with Other Organizations (Article 25)

29. The Committee declared itself in favor of the first proposal in paragraph 39 of the document IRC/IV/2.

Revision Conferences (Article 27)

30. The Committee agreed, in conformity with the proposal in document IRC/IV/2, that the obligation to hold a revision conference every five years should be removed. It further agreed that a majority of three-fourths should be required for a Diplomatic Conference to be convened.

PART III

PROPOSALS FOR THE REVISION OF THE CONVENTION
DEALT WITH IN DOCUMENT IRC/IV/3

Protection of Hybrid Varieties (Article 2(2))

31. The discussion was based on document IRC/IV/3, paragraphs 2 to 5, and on the Annex to document IRC/IV/5, page 2.

32. Mr. Bustarret (France), reporting on the history of this provision, explained that it had been intended to make it clear that lines which at that time were not generally regarded as varieties, and also hybrids, could be protected by member States. It had not been intended to require member States to protect all the types of varieties mentioned in Article 2(2). In his opinion, Article 2(2) had been important when the Convention was drafted. In the meantime, with the progress of plant breeding, further forms of varieties had developed, such as multiclones and multilines, and the definition in Article 2(2) now seemed outdated.

33. The Committee, in view of the remarks reported above, and in order to clarify the legal situation for the authorities of the United States of America, considered three possibilities for an improvement: (i) agreement on an interpretation of this and other provisions to the effect that member States were not obliged to extend the protection to hybrid varieties; (ii) deletion of Article 2(2) to avoid any different interpretation and (iii) redrafting of Article 2(2) to eliminate its present ambiguity.

34. The experts from the United Kingdom criticized the treatment of "cultivar", generally considered a synonym of the term "variety", as a subunit of it, in the same way as lines and hybrids. They proposed the adoption of an improved version of paragraph 2. Moreover, they considered that the definition could be deleted, especially in view of the fact that other basic terms like "species" or "genus" were not defined either.

35. The experts from the Netherlands raised objections to the interpretation of Article 2(2) and other relevant provisions in the sense that member States were not prevented from excluding hybrid varieties from protection. They said that the introductory sentence of Article 6(1), in conjunction with Article 2(2), obliged member States to grant protection to all forms of varieties, as defined in Article 2(2), of species eligible for protection in the respective State. No interpretation in the sense indicated was therefore possible.

36. The experts from the Federal Republic of Germany, supported by the French experts, opposed this view. In their view States were free, when extending the Convention to a given genus or species, to exclude certain kinds of varieties from protection. Some member States, for example, at present expressly excluded "ornamental varieties" of certain species from eligibility for protection.

37. The Committee was reluctant to delete the definition given in Article 2(2) since it at least provided guidance for new member States and ensured a broad interpretation of the term "variety".

38. After some proposals, which were presented by experts and which aimed at clarifying that it was for the member States to define to what kinds of plants the term "variety" was applied, had failed to find the immediate approval by the other experts, the Committee decided to assure the U.S. authorities that no objection existed against an exclusion of hybrids from the protection. The question whether and how the Convention was to be amended was to be rediscussed during the next session on the basis of one or more proposals prepared by the Office of the Union.

The Farmer's Privilege (Article 5(1))

39. The discussion was based on document IRC/IV/3, paragraphs 9 to 11, and on the Annex to document IRC/IV/5, pages 3 and 4.

40. The Committee agreed that member States should be allowed to provide in their national law that sales of seed from farmer to farmer do not fall within the scope of protection, although it was pointed out by the experts of the United Kingdom that in their country such sales were considered to be infringements of the breeders' right. The Committee discussed whether it was sufficient to agree on an interpretation of Article 5(1) in this sense, and inform the United States authorities accordingly, or whether it was necessary to amend Article 5(1).

41. Several experts emphasized that, in the absence of an explicit definition in the Convention, it was for each member State to define the terms "marketing" and "commercial marketing" in its national law. A definition could not be drawn up only for the purpose of plant variety protection.

42. The United States authorities should be informed that it was within the competence of each State to interpret Article 5(1) and to define the scope of protection for its territory, that the interpretation had to be based on the--authentic--French text of the Convention, and that the UPOV member States saw no objection to interpreting Article 5(1) as not obliging member States to extend the scope of protection to sales between farmers.

Protection of the Marketed Product (Article 5)

43. The discussion was based on document IRC/IV/3, paragraphs 12 and 13, and on the Annex to document IRC/IV/5, page 4.

44. The Committee considered that any amendment of the Convention that made it mandatory for member States to extend the scope of protection to products other than propagating material might make it difficult, or even impossible, for certain non-member States to accede to the Convention. Since Article 5(4) expressly allowed member States to provide for more extensive rights than set out under paragraph (1) of that Article, the Committee saw no need for any change in this respect.

Commercial Multiplication (Article 5)

45. The discussion was based on document IRC/IV/3, paragraphs 20 to 23, and on the Annex to document IRC/IV/5, page 3.

46. For the reasons stated under paragraph 44 above, the Committee agreed that no amendment should be proposed that would make it mandatory to protect the breeder against unauthorized multiplication of propagating material of his variety for purposes other than the commercial marketing of that material. Any such extension of the scope of protection, if considered necessary, should be effected under the national laws of the member States.

Sales of Plantlets (Article 5)

47. The discussion was based on document IRC/IV/3, paragraphs 16 to 18.

48. The experts from the Netherlands explained that, since the drafting of the Convention in 1961, considerable changes had taken place in the mode of production of vegetables. At that time, vegetable growers produced the plants they needed from seeds. At present, they generally--and in the case of certain species, always--bought plantlets which had been grown by specialized firms. According to the interpretation given to the laws of some member States, these firms were considered not to be marketing reproductive material as such. The experts felt that it was necessary to interpret the term "propagating material" to include also plantlets, or to propose the amendment of Article 5 so that the scope of protection extended to plantlets. They added that Article 5 contained special provisions for vegetative propagating material and for ornamental plants because the problems connected with these types of plants had been well known when the Convention was drafted, whereas the question of plantlets had not arisen at that time.

49. It was stated that the problem could be solved at the national level. It could, however, be envisaged that the Diplomatic Conference adopt a recommendation to extend the scope of protection to plantlets under national law. This was considered preferable, since any amendment might prejudice the well-balanced structure of Article 5 and lead to unpredictable difficulties. The Committee agreed to take note of these considerations and to rediscuss the question during the next session.

World Novelty (Distinctness) Standard (Article 6(1)(a))

50. The discussion was based on document IRC/IV/3, paragraph 24, and on the Annex to document IRC/IV/5, page 2.

51. The Committee was in full agreement with the opinion expressed by the United States Department of State, namely that the explanations given at its third session were sufficient and that the question needed no further study.

Term "Important Characteristics" (Article 6(1)(a))

52. The discussion was based on document IRC/IV/3, paragraphs 25 to 27, and on the Annex to document IRC/IV/5, page 5.

53. The Committee agreed that no amendment needed to be proposed.

Commercialization in a State Other than the State of Application (Article 6(1)(b))

54. The discussion was based on document IRC/IV/3, paragraphs 28 to 30.

55. After the experts of the United Kingdom on the one hand, had emphasized the reasons for prolonging the period in question and, on the other hand, the experts of the Federal Republic of Germany considered the proposed prolongation to 6 years to be insufficient anyhow, and after the Swedish experts had declared that they were opposed to any extension of the period, as this would jeopardize legal security, the Committee agreed that the problem should be presented to the international professional organizations, and that it would be ready to examine any realistic proposal.

Period of Protection (Article 8)

56. The discussion was based on document IRC/IV/3, paragraphs 31 to 42, and on the Annex to document IRC/IV/5, page 7.

57. It was pointed out that there were two questions to be discussed: First, the question whether the minimum period of 18 years provided for certain species in Article 8(1), second sentence, should be reduced on account of the situation in certain member States; second, the question whether Article 8(2) was intended to harmonize the laws of member States and require them to make the period of protection run from the date of the issue of the right rather than from the date of application--in which case the envisaged change in United States patent law would be in conflict with the Convention--or whether it was merely meant as a factor to

58. On the first question, the Committee took the view that the minimum period of protection for slow-growing species should not be shortened as demanded by the United States authorities. It was mentioned that one other non-member State had just adapted its law to this requirement.

59. As for the second question, the Committee noted a slight discrepancy between the French original text ("la durée de la protection ... s'entend ...") and the English translation ("the period of protection ... shall run ..."). It agreed not to raise objections against admitting States whose laws provided that the national period of protection ran from the date of the application, provided that it was in no case shorter than the minimum period computed according to Article 8. Responsibility for ensuring the latter was considered to lie with the State which introduced or maintained a system different from the one on which Article 8(2) was based.

60. The Committee agreed that the proposal that protection be made to end on the same date in all member States should not be followed up.

Additional Ground for Annulment and Forfeiture (Article 10(3))

61. The discussion was based on document IRC/IV/3, paragraphs 43 to 46, and on the Annex to document IRC/IV/5, page 8.

62. The Committee fully recognized the reasons for which the experts of the United Kingdom had proposed to introduce in Article 10, as an additional ground for annulment or forfeiture of the breeder's right, the case of the intentional marketing by the breeder or with his consent of propagating material which was fraudulently claimed to be of a protected variety.

63. Several arguments were put forward against this proposal, however. It was recalled that it had been strongly objected to by the professional organizations, and that a breeder acting in such a way could be punished otherwise, for instance by fining. The experts from the Federal Republic of Germany indicated that there were no problems in the case of species subject to seed certification, and they drew attention to Article 22 of the Seed Law of their country, which, however, had never yet had to be applied. The experts from France pointed out that a provision as proposed by the United Kingdom would be difficult to apply in practice.

64. The Committee finally decided to rediscuss this question on the basis of a new proposal which would be made by the Office of the Union.

Limitation of the Grounds for Annulment or Forfeiture

65. The discussion was based on document IRC/IV/3, paragraphs 47 and 48, and on the Annex to document IRC/IV/5, page 8.

66. The experts of the United Kingdom said that two further cases should be allowed as additional grounds for the annulment or forfeiture of plant breeders' rights, namely non-compliance with the conditions of a compulsory licence and protective direction. The easiest solution, however, as also proposed by the United States authorities, would be to delete Article 10(4), which prohibits the annulment or forfeiture of the breeders' right on grounds other than the ones set out in that Article.

67. The Committee considered deletion of Article 10(4) a dangerous step backward, as it deprived the breeder of a basic guarantee he now enjoyed, and therefore felt unable to agree to such an amendment.

68. With regard to the cases brought forward by the United States authorities, it was mentioned that the prohibition on filing a first patent application in a foreign country without permission, was designed as a safeguard to national security. Since national security was unlikely to be endangered by the filing of an application for a plant patent abroad, it was agreed that there should be a discussion with the United States representatives on whether plant breeders could not be generally authorized by the Commissioner for Patents and Trademarks, under Section 184 of the U.S. Patent Act, to file first applications for the protection of their varieties abroad. As for the second case, namely the power of courts to annul patent rights for general reasons, it was felt that further discussions with the United States representatives were necessary.

69. With regard to the cases mentioned by the experts of the United Kingdom, it was said that the sanctions of annulment or forfeiture were hardly adequate to achieve the desired aim, at least in the case of non-compliance with the conditions of a compulsory licence: if the owner of the right refused to furnish the licensee with the necessary propagating material, it was unlikely that he could be forced to do so by the threat of annulment of his right.

Validity of the Priority Claim (Article 12)

70. The discussion was based on document IRC/IV/3, paragraphs 49 to 54.

71. The Committee discussed whether, as suggested in the proposal of the Office of the Union in paragraph 53 of document IRC/IV/3, the State of the subsequent application should be authorized to demand not only the material but also additional documents. The question was finally answered in the affirmative after the Vice Secretary-General had pointed out that the proposal had to comply with Article 12(3), which normally prevented States from demanding material as well as additional documents before the expiration of the four-year period. The experts clarified that the new rule should not authorize the Offices in the States of subsequent applications to start the examination procedures earlier as this would have been admissible had the first application been valid. The proposed supplementary rule was designed merely to secure the necessary material and documentation for the Offices in the States of subsequent applications before the Office in the State of the first (withdrawn or rejected) application abandoned it.

Licensing Conditions

72. The United Kingdom experts explained the difficulties which had arisen during the last 12 months between growers and trade organizations on the one hand and breeders organizations on the other hand concerning increases in royalty rates for cereal varieties. This had resulted in a request from the trade organizations that for cereal varieties Article 5(2) of the Convention should be amended to require the breeder or his successor in title to consult and take account of the views of seed distributors and users before deciding on the conditions he would impose.

73. Representatives of other member States unanimously opposed this proposal, which they considered would undermine the whole concept of plant breeders' rights, and which in practice would serve no useful purpose, since an obligation to consult was not an obligation to agree. Adequate safeguards against unreasonable exploitation of rights were provided in Article 9. Delegates also expressed the view that in a Convention which applied to all botanical genera and species it would be inappropriate to single out one particular species for special provisions.

PART IV

QUESTIONS PERTAINING TO THE ORGANIZATION OF THE NEXT DIPLOMATIC CONFERENCE

74. The discussion was based on document IRC/IV/4.

Form of the New Act

75. The majority of the Committee agreed that the next Diplomatic Conference should adopt a revised act within the meaning of document IRC/IV/4, paragraph 4(i), namely a text comprising both the provisions of the present Convention of 1961 and Additional Act of 1972 which were left unchanged and the new, revised provisions.

Participants in the Diplomatic Conference

76. In view of the practice applied in 1972, when all member States of the United Nations had been invited to the Diplomatic Conference, the Committee felt that it was appropriate to apply a similar system in 1978. It was decided, however, that

this question, together with the further question of which States should be admitted to sign the revised Convention and the question mentioned in the following paragraph, would be discussed after consultation with the Ministries of Foreign Affairs of member States. The final decision would be taken at the eleventh session of the Council of UPOV in October 1977.

77. The Secretary-General emphasized that, in drafting paragraphs 10 and 11 of document IRC/IV/4, the Office of the Union had been guided by the intention to obviate the application of the procedure under Article 32, which provided expressly for admission of a new member State by the current member States after examination of its intended legislative measures. The Secretary-General said that this procedure was unusual in international treaties, indeed completely unknown in this form in the whole field of intellectual property. It was to be expected that many States would not be willing to accept that their accession to a multilateral Convention with a worldwide vocation should be subject to examination of their internal legislative measures. He even thought that the proposal made in document IRC/IV/4 was insufficient, and that consideration should rather be given to deleting the procedure under Article 32 in toto.

78. The experts agreed to extend the consultation of the Ministries of Foreign Affairs of member States also to the question of maintaining or deleting the procedure under Article 32.

Details of the Organization of the Diplomatic Conference

79. The Committee agreed to the proposals made by the Office of the Union with respect to date and place of the Diplomatic Conference, the preparation of documents and the organization of the work of the Conference. The tentative timetable for the preparation of the Diplomatic Conference in document IRC/IV/4 was also accepted, subject to a possible change of the dates proposed for the fifth session of the Committee.

80. The decision on the duration of the Conference was postponed until sufficient information was available on the number of States participating, the number of proposed amendments and the degree of agreement achieved between States entitled to vote at the Conference.

PART V

FUTURE PROGRAM

Program for the Next Session

81. The Committee noted the proposal to invite the same non-member States and international organizations to be represented by observers at the next session as had been invited to the third session of the Committee. It agreed to the program set forth in paragraph 21 of document IRC/IV/4.

82. This report was unanimously adopted by the Committee in its meeting held on October 12, 1976, in connection with the fourteenth session of the Consultative Committee.

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATEN

DENMARK/DANEMARK/DÄNEMARK

Mr. H. SKOV, Chief of Administration, Statens Planteavlkontor, Kongevejen 83,
2800 Lyngby

FRANCE/FRANKREICH

M. B. LACLAVIERE, Secrétaire général du Comité de la protection des obtentions
végétales, 11, rue Jean Nicot, 75007 Paris

M. J.G. BUSTARRET, Directeur général honoraire de l'INRA, 35c, Rue Henri Simon,
78000 Versailles

M. C. HUTIN, Directeur de recherches, INRA - GEVES G.L.S.M., La Minière,
78000 Versailles

M. J.J.N. VERISSI, Adjoint au Secrétaire général du Comité de la protection des
obtentions végétales, 11, rue Jean Nicot, 75007 Paris

GERMANY (FED. REP. OF)/ALLEMAGNE (REP. FED. D')/DEUTSCHLAND (BUNDESREPUBLIK)

Dr. D. BÖRINCER, Präsident, Bundessortenamt, Rathausplatz 1, 3 Hannover 72

Mr. H. KUNHARDT, Leitender Regierungsdirektor, Bundessortenamt, Rathausplatz 1,
3 Hannover 72

Mr. H.J. SCHMID, Regierungsrat, Bundesministerium der Justiz, 53 Bonn

NETHERLANDS/PAYS-BAS/NIEDERLANDE

Mr. J.I.C. BUTLER, Chairman, Board for Plant Breeders' Rights, Raad voor het
Kwekersrecht, Nudeweg 11, Postbus 104, 6140 Wageningen

Mr. K.A. FIKKERT, Lawyer, Ministry of Agriculture and Fishery, Bezuidenhoutseweg 73,
The Hague

Mr. W.R.J. VAN DEN HENDE, Lawyer, Ministry of Agriculture and Fishery,
Bezuidenhoutseweg 73, The Hague

Mr. A.W.A.M. VAN DER MEEREN, Board for Plant Breeders' Rights, Raad voor het
Kwekersrecht, Nudeweg 11, Postbus 104, 6140 Wageningen

SWEDEN/SUEDE/SCHWEDEN

Mr. M. JACOBSSON, Legal Adviser, Ministry of Justice, Fack, 10310 Stockholm

Mr. S. MEJEGARD, Judge of the Court of Appeal, Svea Hovrätt, Fack,
10310 Stockholm

UNITED KINGDOM/ROYAUME-UNI/VEREINIGTES KÖNIGREICH

Mr. H.A.S. DOUGHTY, Controller, Plant Variety Rights Office, Whitehouse Lane,
Huntingdon Road, Cambridge CB3 0LF

Mr. A.F. KELLY, Deputy Director, National Institute of Agricultural Botany,

II. SIGNATORY STATES/ETATS SIGNATAIRES/UNTERZEICHNERSTAATENBELGIUM/BELGIQUE/BELGIEN

- M. R. DERVEAUX, Inspecteur général, Ministère de l'Agriculture, Rue Joseph II-30
1040 Bruxelles
- M. L. VAN DEN EYNDE, Conseiller juridique, Ministère de l'Agriculture, Service
juridique, Rue Joseph II-30, 1040 Bruxelles

SWITZERLAND/SUISSE/SCHWEIZ

- Mr. W. GFELLER, Lic. jur., Abteilung für Landwirtschaft, Büro für Sortenschutz,
Mattenhofstrasse 5, 3003 Bern
- Mr. R. GUY, Station fédérale de recherches agronomiques de Changins, 1260 Nyon

III. OFFICERS/BUREAU/VORSITZ

- Mr. H. SKOV, Chairman

IV. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

- Dr. A. BOGSCH, Secretary-General
Dr. H. MAST, Vice Secretary-General
Dr. M.-H. THIELE-WITTIG, Administrative and Technical Officer
Mr. A. HEITZ, Administrative and Technical Officer

[End of document]
[Fin du document]
[Ende des Dokuments]