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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

Fifth Session

Geneva, March 8 to 10, 1977

SUMMARY OF THE RESULTS OF THE DISCUSSIONS WITH OBSERVER DELEGATIONS
REPRESENTING NON-MEMBER STATES AND INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

prepared by the Office of the Union

This document, which is intended as a working paper for the meeting of March 10, 1977, of the Committee of Experts on the Interpretation and Revision of the Convention, summarizes the results of the discussions with the observer delegations invited to the meetings of the Committee held on March 8 and 9, 1977.

Provision of Two Forms of Protection (Special Title of Protection and Patent (Article 2(1)*)

1. The international organizations and the United States of America favored the proposal appearing in paragraph 9 of document IRC/V/2, according to which Article 2(1) should read as follows:

"(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant of a special title of protection or of a patent or of both."

Definition of the Variety (Article 2(2))

2. The international organizations, Switzerland and the United States of America declared themselves in favor of deleting Article 2(2).

Annex to the Convention; Application of the Convention to a Minimum Number of Genera or Species; National Treatment and Reciprocity (Article 4(3) to (5) and Annex)

3. No objection was raised to the deletion of the list.

4. Canada declared itself against adopting minimum numbers (Article 4(3) as proposed in paragraph 27 of document IRC/V/2): Article 4(2) was sufficient. The representatives of New Zealand and Ireland indicated that their States would find it difficult to comply with these minimum numbers, but considered Article 4(3) to be acceptable in view of the possibilities provided for in Article 4(4) and (5) (reduction of minimum numbers, prolongation of periods).

5. AIPH and AIPPI favored the national treatment principle. In its written comments, AIPH indicated that it did not support the extension of the benefit of protection to member States of the Paris Union for the Protection of Industrial Property.

6. Japan and the United States of America expressed their general agreement with the proposed new wording of Article 4 appearing in paragraph 27 of document IRC/V/2.

Scope of Protection (Article 5)

7. Farmer's Privilege. The United States of America and Canada insisted that sales of seed from farm to farm without advertisement be exempted from protection under the UPOV Convention. This could be achieved by an interpretation of the term "commercial marketing." On the other hand, the international organizations objected to the wording in document IRC/V/2, paragraph 32, last sentence. The representatives of AIPH proposed that the words "for purposes of commercial marketing" be deleted in Article 5(1).

8. Extension of Protection to Cultivation. CIOPORA indicated that the minimum scope of protection provided by Article 5(1) was not sufficient in the case of vegetatively reproduced ornamental plants since it did not enable the breeder to control the cultivation of a protected variety for commercial purposes, and thus allowed a cut flower producer to produce such flowers from plants imported from a country in which no protection was granted in respect of that variety. He therefore proposed that Article 5(1) be redrafted as follows:

"(1) The effect of the right...is that his prior authorization shall be required for the production and for the cultivation, for commercial purposes, of the reproductive or vegetative propagating material, as such, of the new variety..."

* The Articles referred to are Articles of the Convention.

9. Protection of the Marketed Product. The extension of protection to the marketed product in the case of vegetatively propagated ornamental plants was favored by AIPPI and CIOFORA. CIOFORA recalled its proposal made at the third session of the Committee, namely that the last sentence of Article 5(1) be drafted as follows:

"With respect to vegetatively propagated ornamental plants, the right of the breeder shall extend to plants and parts of plants (cut flowers...) even if the latter are produced, offered for sale or marketed for purposes other than propagation."

That amendment should, as proposed by CIOFORA, be completed by the following amendment to the end of the first sentence of Article 5(4):

"... a more extensive right than that defined in paragraph (1) of this Article capable, in particular, of extending, in the same way as for vegetatively propagated ornamental plants, to the marketed product."

10. Both proposals described above were strongly opposed by AIPH, and also by New Zealand.

11. Sale of Plantlets. The Netherlands proposed deletion of the word "vegetative" in the second sentence of Article 5(1), which would thus read as follows:

"Propagating material shall be deemed to include whole plants."

12. Commercial Multiplication. It was proposed by FIS that the words "for purposes of commercial marketing" be replaced by "for commercial purposes" (see also paragraph 8 above).

Conditions Required for Protection (Article 6)

13. World Novelty Principle. No problem was seen.

14. Expression "Important Characteristics." The general opinion was that that expression should or could be maintained. The representatives of Switzerland proposed that it be completed by "for diagnosis."

15. Sale of Propagating Material for Purposes of Experimentation. The question of the conditions under which sales of propagating material for purposes of experimentation were to be considered prejudicial to the novelty of the variety was thoroughly discussed. The following proposals were made:

(i) to amend Article 6(1)(b), second subparagraph, to read as follows:

"... the new variety must not have been offered for sale or marketed for purposes other than experimentation..." (FIS);

(ii) to introduce a period during which the variety may be sold for such purposes and to oblige the breeder who wishes to make use of that period to state his intention to apply for protection (CIOFORA).

(iii) to introduce a system of deferred examination in the Convention (AIPPI).

16. Period of Grace. The United States of America declared that it could agree to either of the proposals made in document IRC/V/2, paragraphs 42 and 43. AIPH and CIOFORA favored the proposal according to which any member State would have the possibility of introducing a one-year period of grace.

17. Prior Commercialization in States Other than the State in which the Application is filed. The extension to eight years of the four-year period provided for in Article 6(1)(b) for trees and vines, proposed by AIPH and supported by ASSINSEL (see document IRC/V/8), was not favored by the United States of America.

18. Application for or Grant of Protection in Another State Prior to an Application in the United States of America. The problems arising in connection with Section 102(d) of the Patent Law of the United States of America (no right must yet have been granted, prior to the application in the United States, to the applicant, his representatives or assigns for the same variety in another State on an application filed more than 12 months before the filing of the application in the United States) needed further examination by the Office of the Union.

Examination of New Varieties (Article 7(1) and (2))

19. No observations were made.

Provisional Protection (Article 7(3))

20. It was proposed to recommend to member States that they make more use of the provisions of Article 7(3), in other words, that they introduce provisional protection.

Period of Protection (Article 8)

21. The authorities of the United States of America would recommend that a period of protection of 18 years be introduced in the Plant Variety Protection Act. Extension of the periods of protection to, for instance, 20 and 25 years according to the species was proposed by ASSINSEL and AIPPI.

Nullity and Forfeiture of the Rights Protected (Article 10)

22. AIPPI repeated that the grounds for nullity and forfeiture provided for in Article 10 in its present wording were sufficient and repeated its objection to the ground proposed in paragraph 58 of document IRC/V/2. The United States of America did not ask for the introduction of further grounds for nullity and forfeiture.

Validity of Priority Claim (Article 12(1) and (3))

23. The addition to Article 12(3) of the sentence appearing in paragraph 62 of document IRC/V/2 was supported by AIPH, ASSINSEL and FIS.

Four-Year Period of Article 12(3) in the Case of States not Undertaking Official Growing Trials

24. The question whether States not undertaking official growing trials should also provide for a four-year period for submitting the additional documents and material needed further consideration. ASSINSEL proposed that Article 12(3) be relevant only to those States which undertook such trials. The question whether Article 12(3) was compatible with paragraph 1(b) of the Statement concerning Article 7 (Annex II to document IRC/V/2) also needed further consideration.

Priority and Interference Proceedings

25. A suggestion was made that the problem mentioned in the preceding paragraph be solved by restricting the application of Article 12 to States which did not grant protection to the first inventor (breeder) but to the person filing the first application.

Variety Denominations (Article 13)

26. The following proposals were made:

(i) to delete "in particular, it may not consist solely of figures" in Article 13(2) (United States of America, supported by ASSINSEL, CIOPORA and FIS), or even the whole first subparagraph of Article 13(2) (CIOPORA);

(ii) to delete the final part of Article 13(3), beginning with the words "unless he undertakes to renounce" (CIOPORA);

(iii) to insert in Article 13(3) and (7) the words "applying the Convention to the genus or species concerned" after "in a member State of the Union" (FIS);

(iv) to replace, in Article 13(5), "so submitted" by "submitted in the member State of the Union where protection was applied for first" (AIPPI);

(v) to amend the first sentence of Article 13(8)(b) to read as follows:

"(b) the denomination of the new variety shall, in any member State of the Union applying the Convention to the genus or species concerned, be regarded as the generic name of the variety" (FIS);

(vi) to delete all references to trademarks (FIS);

(vii) to delete the whole of Article 13 (AIPH; United States of America) or to simplify it.

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