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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

DRAFT REPORT

(Second Part: Discussions in the Absence of Observer Delegations)

prepared by the Office of the Union

INTRODUCTION

1. On March 10 and 11, 1977, the representatives of member States in the Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to as "the Committee") and observers from South Africa and from Switzerland continued their discussions in private. The list of participants is attached in the Annex to this report.

Adoption of the Agenda

2. The Committee adopted items 4 to 9 of the draft agenda appearing in document IRC/V/1 Rev., subject to some amendments relating to the order in which various items were to be dealt with.

Part I

DISCUSSION OF THE REVISION OF THE SUBSTANTIVE PROVISIONS OF THE UPOV CONVENTION

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

3. Discussions were based on paragraphs 3 to 10 of document IRC/V/2 and on paragraph 1 of document IRC/V/12 (which summarizes the results of the discussions with observer delegations representing non-member States and international non-governmental organizations on the first two days of the fifth session).

4. Whereas the observer delegations had declared themselves in favor of the proposal appearing in paragraph 9 of document IRC/V/2, leaving it to each member State to recognize breeders' rights by the grant of a special title of protection or a patent or both, the Committee, after a thorough discussion, expressed its preference for the proposal appearing in paragraph 10 of that document, i.e., that, as

\* The Articles referred to in this document are Articles of the Convention.

a general rule, the provision of Article 2(1), second sentence, be maintained and States thus prohibited from providing more than one form of protection for one and the same botanical genus or species, but that certain States, namely those which, at a certain date (see paragraph 66 below) have a different national law, may, by an express provision in the Convention, be entitled to continue to apply such national law.

5. The Committee also considered a proposal from the Delegation of France to add to the second sentence of Article 2(1) in its present wording the phrase "and for one and the same type of propagation." This proposal was not adopted since the Committee considered that different legal treatment of plants according to their mode of propagation was a peculiarity of the law of the United States which had developed historically and that it was unlikely that further States would introduce a similar system.

6. The Delegation of the Federal Republic of Germany underlined that the provision of two separate legal systems for the protection of new varieties was undesirable since it led to difficulties in other member States. Applicants in the latter States could, for example, claim two different priorities, one based on a first application filed under the patent law, the other based on a first application filed under a plant variety protection law. States should therefore not be encouraged to introduce two different systems, as would be the case if the possibility was expressly provided for in Article 2(1).

#### Definition of a Variety (Article 2(2))

7. Discussions were based on paragraphs 11 to 19 of document IRC/V/2 and paragraph 2 of document IRC/V/12.

8. It was recalled that the definition of the term "variety" was considered superfluous by the observer delegations, which had thus favored the deletion of Article 2(2). This conclusion was endorsed by some delegations, which referred to the fact that the Convention provided legal effects only for cases where a new variety fulfills the conditions listed under Article 6. The Delegation of the Netherlands took the view, however, that the definition of the term "variety" was necessary since the expression was used in Article 6(1)(a) where it was stated that the new variety has to be different "from any other variety." In view of the latter remark, the Committee agreed that the Convention should continue to contain a definition and that Article 2(2) should be reworded as follows:

"(2) For the purposes of this Convention, the word "variety" may apply to any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (1)(c) and (d) of Article 6."

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

9. Discussions were based on paragraphs 20 to 27 of document IRC/V/2 and paragraphs 3 to 6 of document IRC/V/12.

10. The Committee adopted the proposed new version of Article 4 as appearing in paragraph 27 of document IRC/V/2, but decided that the reference to the Paris Union for the Protection of Industrial Property--in other words, the latter part of paragraph (6), beginning with the words "or to extend the benefit," and paragraph (7)--be deleted as being superfluous.

#### Scope of Protection (Article 5)

11. Farmer's Privilege. Discussions were based on paragraph 32 of document IRC/V/2 and paragraph 7 of document IRC/V/12.

12. The Committee maintained its view that it lay within the competence of member States to define what was to be regarded as "commercial marketing" in their domestic laws and that, for that reason, there seemed to be no need to amend the Convention to take account of the provisions of the legislation of the United States of America concerning the so-called "farmer's privilege."

13. Extension of Protection to Cultivation. Discussions were based on paragraph 8 of document IRC/V/12.

14. As to the proposal of CIOPORA for the extension of the mandatory minimum scope of protection provided by Article 5(1) of the Convention also to cultivation for commercial purposes (see Annex I to document IRC/III/4), different views were expressed. While one delegation considered that the practical effects of the protection granted along the lines of Article 5(1) of the Convention were certainly unsatisfactory for breeders of vegetatively reproduced plants, another delegation pointed out the special situation of breeders of flowers as compared, for instance, with the situation of breeders of trees. It was also pointed out that the present provisions were mainly disadvantageous to breeders because the import of plants was not covered by the minimum scope of protection. The real problems could therefore be seen in the fact that, in some States where protection was granted for a certain variety, plants of that variety could, without the authorization of the breeder, be imported from non-member States of UPOV where no protection existed. In the ensuing discussion, some delegations questioned whether the practical problems were serious enough to justify any amendment of Article 5, which was the result of very thorough deliberations in the course of the drafting of the Convention before 1961 and had to be understood as a compromise between diverging interests. It was finally agreed that the Office of the Union would be asked to study the problem again, if necessary in contact with CIOPORA.

15. Protection of the Marketed Product. Discussions were based on paragraph 33 of document IRC/V/2 and paragraph 9 of document IRC/V/12.

16. The Delegation of the Netherlands objected to an extension to the marketed product of the minimum mandatory scope of protection provided for by Article 5(1) of the Convention. Such extension was neither desirable nor practical for all classes of plants and it would certainly be difficult, if not impossible, to obtain parliamentary approval for it in the majority of the member States. Where necessary, the extension could and should be achieved by the different member States on the national level, species by species. The Delegation of the United Kingdom supported the latter view and added that the opinion of the users should also be taken into consideration. To some extent AIPH was representing the users, but that was not sufficient since the group of breeders had a certain influence in that organization, or at least in its Committee for Novelty Protection. It was therefore agreed to see to it that an organization representing the group of users was represented in the Diplomatic Conference.

17. Sale of Plantlets. Discussions were based on paragraph 34 of document IRC/V/2 and on paragraph 11 of document IRC/V/12.

18. The Delegation of the Netherlands repeated its proposal for an amendment of the Convention in such a way that the sale of plantlets fell under the scope of protection in each member State. Such a proposal was necessary to keep abreast of recent developments. The amendment might be achieved by simply deleting the word "vegetative" at the beginning of the second sentence of Article 5(1). The Vice Secretary-General pointed out that by deleting the word "vegetative" the second sentence of Article 5(1) was prevented from being interpreted a contrario in the sense that, in the case of sexually propagated plants, whole plants could not be considered propagating material. He explained that no problem existed where plantlets of a protected variety were grown from seed purchased from the breeder. The problem existed only in cases where the grower of the plantlets had, without the authorization of the breeder and without having paid royalties to the breeder, multiplied the seed from which the plantlets were eventually grown. The Committee left it to the Office of the Union to study the question in detail.

19. Commercial Multiplication. Discussions were based on paragraph 35 of document IRC/V/2 and paragraph 12 of document IRC/V/12.

20. The Committee did not agree with the proposal of CIOPORA to replace in Article 5(1) the words "for purposes of commercial marketing" by "commercial purposes" since such new wording might prevent growers from saving seeds grown on their own premises for use during the next season. It would not be possible to obtain parliamentary approval in most member States for such an extension of the scope of the protection.

Conditions Required for Protection (Article 6)

21. World Novelty Principle. Discussions were based on paragraph 37 of document IRC/V/2, paragraphs 2 to 7 of document IRC/V/7 and paragraph 13 of document IRC/V/12.

22. There seemed to be no problem as far as the "world novelty principle" was concerned. The Office of the Union was asked, however, to study the questions arising from section 102(d) of the Patent Act of the United States of America.

23. Expression "Important Characteristics." Discussions were based on paragraph 38 of document IRC/V/2 and on paragraph 14 of document IRC/V/12.

24. The Committee saw no need to change the wording of Article 6(1)(a) as far as the term "important characteristics" was concerned.

25. Sale of Propagating Material for Purposes of Experimentation. Discussions were based on paragraph 39 of document IRC/V/2 and on paragraph 15 of document IRC/V/12.

26. The Vice Secretary-General said that in his opinion the wording of Article 6(1)(b) allowed member States to define those actions of the breeders which were to be considered offers for sale or marketing, and therefore prejudicial to novelty, as well as those actions of the breeders which were to be considered actions merely performed for experimental purposes and therefore not prejudicial to novelty. He pointed out that already the present member States used their own judgement in interpreting terms such as "offer for sale," "marketing" and "commercial," and he saw no reason why States acceding to the Convention in the future, like the United States of America, should not interpret those terms in line with their own legal tradition. In addition, he had noted in the Committee's discussions that the practices described by member States and some non-member States differed mainly as far as borderline cases were concerned, such as the case of marketing tests performed by canning factories, while there was little or no difference in average cases. The Committee agreed, that there was no need to amend Article 6(1)(b).

27. Period of Grace. Discussions were based on paragraphs 40, 42 and 43 of document IRC/V/2 and on paragraph 16 of document IRC/V/12.

28. Six out of the seven member State delegations declared themselves in favor of the proposal appearing in paragraph 43 of document IRC/V/2, which would permit each member State to introduce a one-year period of grace.

29. Prior Commercialization in States Other than the State in which the Application is Filed. Discussions were based on paragraphs 41 and 44 of document IRC/V/2 and on paragraph 17 of document IRC/V/12.

30. The Committee agreed that, in the case of trees and vines, the four-year period provided for in Article 6(1)(b) should be extended to six years.

Nullity and Forfeiture of the Rights Protected (Article 10)

31. Discussions were based on paragraphs 51 to 58 of document IRC/V/2 and on paragraph 22 of document IRC/V/12.

32. The Committee agreed that the case of a breeder, or another person with his consent, intentionally selling propagating material fraudulently purporting to be of the protected variety should not be included in Article 10 as a further ground for forfeiture. Nor did there seem to be any need to introduce any other additional ground for nullity or forfeiture.

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

33. Discussions were based on paragraphs 59 to 62 of document IRC/V/2 and on paragraph 23 of document IRC/V/12.

34. The proposal appearing in paragraph 62 of document IRC/V/2 was adopted by the Committee.

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

35. Discussions were based on paragraphs 8 and 9 of the Annex to document IRC/V/7.

36. The Committee, while understanding the difficulty encountered by the Delegation of the United States of America showed reluctance to amend Article 12(3). It considered that the four-year period available to an applicant claiming priority in another member State was of great advantage to the breeder and should not be abandoned. As to the remark of the Delegation of the United States of America that Article 12(3) and subparagraph (b) of the Statement Concerning Article 7 Formulated by the Committee (see Annex II of document IRC/V/2) were not compatible, the Vice Secretary-General said that there was no real contradiction between the two wordings. The conditions mentioned in the Statement were established for the normal case of an application filed in States not undertaking official growing tests. The provisions for the special case where the priority of an earlier application in another State was claimed for such application--i.e., Article 12(3)--was to be given preference according to the general interpretation rule that more specific provisions had precedence over the general provision (lex specialis derogat legi generali). The Delegation of the United Kingdom asked whether the problem could not be solved by adding an Article to the Convention citing all provisions of the Convention, including Article 12(3), which a member State need not apply in cases where a patent was granted for the protection of a plant breeder's right. The Committee saw no possibility at present of amending Article 12(3), but left it to the Office of the Union to study the question in detail.

Variety Denomination (Article 13)

37. Discussions were based on paragraphs 63 to 67 of document IRC/V/2 and on paragraph 26 of document IRC/V/12.

38. Concerning the admission of denominations consisting solely of figures, the majority of the Committee declared itself in favor of maintaining the present wording of Article 13(2) and of including in the Convention a clause according to which States which admitted such denominations as of a certain date (see paragraph 66, below) would be allowed to continue such practice.

39. The Committee rejected (i) the proposal for the deletion of the final part of Article 13(3), beginning with the words "unless he undertakes to renounce," (ii) the proposal to replace the words "so submitted" in Article 13(5) by the words "submitted in the member State of the Union where protection was applied for first," (iii) the proposal to delete all references to trademarks, and (iv) the proposal to delete or simplify the whole of Article 13.

40. The Committee agreed to insert both in paragraph (3) and in paragraph (7) of Article 13 the words "applying the Convention to the genus or species concerned" after "in a member State of the Union." Concerning Article 13(3) the Delegation of the Netherlands recalled that in some member States the applicant had to renounce his right to the trademark, as required by the first subparagraph of that Article. In other States, the applicant had only to declare that he renounced to assert his rights to the trademark as from the time when the denomination was registered. It proposed, and the Committee agreed, that the Convention should be amended in order to require only that the applicant did not assert his right to the trademark, after the latter's registration as a variety denomination.

41. The proposal to insert the words "in any member State of the Union applying the Convention to the genus or species concerned" in the first sentence of Article 13(8)(b) after the words "the denomination of the new variety shall" was considered to need further consideration and was left to be discussed at the Committee's next session.

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Part II

DISCUSSION OF THE REVISION OF THE GENERAL TREATY LAW  
AND TWO TRANSITIONAL PROVISIONS OF THE UPOV CONVENTION

Cooperation with Other Organizations (Article 25)

42. Discussions were based on paragraphs 2 to 4 of document IRC/V/3.

43. The Delegation of France proposed, and the Committee agreed, that Article 25 be redrafted as follows:

"In the event that the Union for the Protection of New Varieties of Plants considers it necessary to establish technical and administrative cooperation with another international organization, the procedures for such cooperation shall be governed by rules established by the Government of the Swiss Confederation in agreement with the said organization and the said Union."

44. To explain this proposal the Delegation of France said that the Convention was concluded for an unlimited duration and that, for that reason, the wording should be flexible enough to cover all possible future developments. It seemed therefore preferable not to restrict the provision to cooperation with WIPO as proposed by the Office of the Union. However, it was mentioned that the proposal was merely to update the existing reference, which was to BIRPI, to a reference to WIPO, the successor of BIRPI. The question was raised by the Delegation of France whether in view of the above provision it was acceptable for WIPO to have the establishment of the rules for cooperation entrusted to the Swiss government.

Revision of the Convention (Article 27)

45. Discussions were based on paragraphs 5 to 11 of document IRC/V/3.

46. The Committee adopted the proposed new wording of Article 27(1) and (2) appearing in paragraph 7 of document IRC/V/3 after having agreed to the deletion of the words "from time to time" in paragraph (1). It furthermore agreed to retain paragraph (3) (subject to changing the majority envisaged; see paragraph 72 below). The Committee eventually decided that paragraph 4, containing rules for the entry into force of the revised text of the Convention, should be deleted. It took the view that the modalities of the entry into force of a revised text of the Convention should be fixed in the text itself.

47. The Committee did not approve of the introduction of a simplified procedure for the revision of the administrative provisions of the Convention as proposed by the Office of the Union in paragraph 11 of document IRC/V/3 (proposed new Article 27A). However, in the course of the subsequent discussions, and on a proposal made by the Delegation of France, the Office of the Union was asked to examine whether such a simplified procedure could be introduced for any amendment of the provision on the classes of annual contributions of member States. The Committee, however, took the view that the Secretary-General should not, as suggested by the Office of the Union, be given the authority in such a provision to propose amendments since that was a task which according to the structure of UPOV was reserved to the Council. In response to the remark of the Vice Secretary-General that a right to make proposals for amendments in a simplified amendment procedure was given to the highest official in other treaties containing provisions for such a procedure, particularly in the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Strasbourg Agreement Concerning the International Patent Classification (see the Annex to document IRC/V/3), it was replied that the Unions to which the treaties mentioned by the Vice Secretary-General applied were different in structure in so far as they had no Council. They had established only organs called assemblies or executive committees for the performance of the tasks for which the Council was competent in UPOV.

Accession of Non-Member States (Article 32(3))

48. Discussions were based on paragraphs 12 to 14 of document IRC/V/3 and paragraphs 26 to 30 of document IRC/V/5.

49. The Delegation of France declared itself in favor of maintaining the admission procedure provided for under Article 32(3) in its present wording. The President of the Council reported that, when questioned by him, the representatives of Sweden, South Africa and the United States of America had denied that the admission procedure had caused or would cause them any embarrassment. He added that the essentially technical nature of the UPOV Convention and the fact that some of its provisions aimed at a close harmonization of the laws of member States and that the present member States wished a certain technical level to be maintained within the Union required that applying States should submit to an admission procedure during which the legal provisions which they intended to introduce were examined. Such procedures were not unusual in international treaties, and in this respect the International Telecommunication Union and the Organization for Economic Cooperation and Development certification systems were cited. The Delegation finally mentioned that the experience gained so far from States wishing to accede to the UPOV Convention had proved the need for the procedure provided for under Article 32(3) of the Convention. In a number of cases legal provisions drafted by States wishing to accede to the UPOV Convention had not been considered sufficient when first examined by UPOV.

50. The Secretary-General recalled the arguments (developed in the documents presented to the Committee) in favor of abandoning the admission procedure.

51. The Delegation of the United Kingdom indicated that the Foreign and Commonwealth Office of its country had, in a first statement, expressed the view that the procedure provided for in Article 32(3) was indeed outdated and might be interpreted in other parts of the world as a relic of the old days of colonial rule or of superior thinking of members of a selected group of States. The Delegation itself was, however, somewhat startled by the fact that some drafts of national laws presented by States wishing to accede to the UPOV Convention had shown basic defects and he wondered, in the light of that experience, whether UPOV could maintain its standards once the admission procedure was abolished. The Delegation of Sweden stated that the Ministry of Justice of its country had expressed a favorable view on the deletion of Article 32(3). The Delegation of Denmark also declared itself in favor of such deletion.

52. In the context of this discussion the representative of the French Ministry of Foreign Affairs asked whether intermediate solutions could be adopted, for instance the replacement of the admission procedure by a provision imposing an obligation on States wishing to accede to the UPOV Convention to enter into consultations with UPOV on their intended legislation. A more flexible solution of such a kind could achieve the same effect without making the right to accede to the Convention formally dependent on a favorable decision of the UPOV Council. This idea was favored by the Delegations of Belgium, the Netherlands and Sweden.

53. The discussion on those questions continued when the draft Rules of Procedure were considered. For the conclusions, see paragraphs 78 and 80 below.

Signature, Ratification; Accession; Entry Into Force; Closing of Earlier Texts; Relations Between States Bound by Different Texts (Article 31, New Articles 32A and 32B)

54. Discussions were based on paragraphs 23 to 44 of document IRC/V/5.

55. The Committee adopted the proposed Articles 32A and 32B as appearing in document IRC/V/5, paragraphs 31 and 40, respectively. Article 31 was discussed in connection with the proposed Rules of Procedure of the Diplomatic Conference (see paragraph 78, below).

Communications Indicating the Genera and the Species Eligible for Protection (Article 33)

56. Discussions were based on paragraph 45 of document IRC/V/5.

57. The Committee agreed that in the amended version of Article 33(2) the words "at least thirty days before its decision takes effect" should be replaced by "without undue delay" or a similar phrase.



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Territories (Article 34)

58. Several delegations said that they wished to consult their Ministries of Foreign Affairs on the proposal to delete Article 34 contained in paragraph 46 and referred to in paragraph 47 of document IRC/V/5. Others agreed that the said Article should be deleted.

Depositary Functions

59. Discussions were based on paragraphs 20 to 22 of document IRC/V/5.

60. Those paragraphs propose that the depositary functions be entrusted to the Secretary-General of UPOV.

61. The Delegation of France stated that the French authorities were not in favor of entrusting the function of depositary for signed treaties or instruments of ratification or accession to a civil servant of an international organization. It took the view that such a practice was acceptable for treaties concluded under the auspices of an organization such as the United Nations or the World Intellectual Property Organization, but not for functions deriving from the UPOV Convention, which had been prepared on an intergovernmental level.

62. The Delegations of Belgium, Denmark, the Netherlands, Sweden, the United Kingdom and Switzerland declared that they were in favor of entrusting the Secretary-General with the depositary functions. The Delegation of the Federal Republic of Germany reserved its position until the Committee's next session. The Delegation of France then mentioned the possibility of adopting a compromise solution according to which the instruments of ratification or accession would be deposited with the Secretary-General through the Government of the Swiss Confederation.

63. In conclusion, it was agreed that the final decision should be taken in a later session.

Transitional Provisions (Articles 35 and 36)

64. The Committee adopted the new wording proposed for Articles 35 and 36(1) appearing in paragraph 24 of document IRC/V/3.

Reservations (Article 39)

65. Discussions were based on paragraph 51 of document IRC/V/5.

66. The Committee agreed that Article 39 should not be amended, and therefore that no reservations would be permitted. Any authorization for certain States to derogate from a general rule of the UPOV Convention should be embodied in a special Article. Preferably, and where possible, such authorization should be made dependent on the fact that, in the State which is to benefit from the exception, national legislation of a certain character or a specific national practice exists at the time of the opening of the revised Act for signature or at the time when the new Act is ratified, or acceded to, by that State.

Duration and Denunciation of the Convention (Article 40)

67. Discussions were based on paragraphs 52 to 55 of document IRC/V/5.

68. Article 40 as proposed in paragraph 52 of that document was adopted by the Committee subject to the final approval of the general proposal to entrust the Secretary-General of UPOV with the depositary functions.

Copies; Languages; Notifications (Article 41)

69. Discussions were based on paragraphs 56 to 59 of document IRC/V/5.

70. The Committee decided that the new text of the Convention should be drawn up in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts.

Majorities Required for Decisions of the Council (Article 22 as Amended by Article I of the Additional Act)

71. Discussions were based on paragraph 17 to 20 of document IRC/V/3.

72. The Committee agreed to the proposal made by the Office of the Union in paragraph 20 of that document that only two majorities be provided for decisions of the Council--a simple majority and a three-quarters majority--and that those majorities be fixed in Article 22 only. The question was asked whether as in the present text of the Convention in some places a quorum should be required and it was proposed to provide that decisions of the Council could be taken only if three-quarters of the member States were present. The Vice Secretary-General said that such a quorum might give rise to difficulties once the Union had a larger number of member States. It was also suggested that the Council be authorized to establish in its internal rules a quorum for all or special types of Council decisions and to provide in the Convention that for a Council decision fixing a quorum to be valid three-quarters of the member States had to be present when the decision was taken.

Finances (Article 26 as Amended by Article II of the Additional Act)

73. The Delegation of the United Kingdom asked what guarantees, if any, existed to ensure that each country would choose the contribution class commensurate with its capacity to pay. The Secretary-General replied that the present system contained no such guarantees, but had so far worked quite satisfactorily. He could not, however, exclude the possibility that a change in the system might be necessary in future.

74. In this connection, the Secretary-General drew the Committee's attention to the letter from the Luxembourg authorities in which it was suggested that the contribution classes be revised in view of the fact that even the lowest contribution possible was too high for States like Luxembourg, especially when compared with the contributions to be paid by bigger countries. The Secretary-General pointed out that the ratio between the lowest and the highest contribution under the UPOV Convention was 1 to 5, that under the WIPO Convention it was 1 to 25 and in the United Nations it was 1 to 1,250.

75. The Delegation of France mentioned the possibility of introducing an Article in the Convention which would empower the Council to amend Article 26(2) by a simplified procedure (see paragraph 47 above). The Delegation of the Netherlands suggested that Article 26(5) be amended in such a way that the Council could reduce the contribution of a State to an amount or at a rate considered appropriate. The Committee finally decided that the question should be reconsidered at its next session.

Part III

DISCUSSION OF ORGANIZATIONAL QUESTIONS  
FOR THE DIPLOMATIC CONFERENCE

76. Discussions were based on paragraphs 6 to 18 and 23 of document IRC/V/5 and its Annex.

Date and Duration of Conference

77. The Committee agreed that the Diplomatic Conference should take place within the period from October 3 to 26, 1978. The exact duration ought to be fixed once the degree of preliminary agreement on the proposed amendments between the participating States was known. The budget for 1978 should provisionally be based on the assumption that the Conference would last for two weeks.

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Rules of Procedure of the Diplomatic Conference; Status of Non-Member States

78. The Committee agreed that no Special Observer Delegation status should be provided for in the Rules of Procedure of the Diplomatic Conference. Any State represented in the Diplomatic Conference should be allowed to sign the revised Act and, having signed it, to ratify it without admission procedure. As to the other States, the Office of the Union was asked to analyze the usefulness of a possible obligation, to which such States would be subject, to present their legislation for advice, to the Council, before they deposited their instruments of accession to the Convention.

79. The Secretary-General proposed, and the Committee agreed, that Rule 47(2) be redrafted so as to provide that the Conference may amend the Rules of Procedure except for Rules 33 and 47, and that the adoption of any amendment would require a majority of three-quarters of the votes cast by the Member Delegations present and voting.

80. Subject to what is said in the two preceding paragraphs, the Committee approved the Preliminary Draft of the Provisional Rules of Procedure of the Diplomatic Conference and the proposal for Article 3i of the Convention.

International Organizations Invited to the Conference

81. As far as the intergovernmental organizations are concerned, the Committee agreed that WIPO, FAO, ISTA, OECD, ECC (Commission and Council) and EFTA should be invited to the Conference.

82. As to the non-governmental organizations, the Committee agreed that, in addition to AIPPI, ASSINSEL, AIPH, CIOPORA, FIS and ICC, the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences as well as an international organization representing the users of varieties, which is still to be determined, should be invited.

Social Program of the Diplomatic Conference

83. The Committee agreed to the proposal appearing in paragraph 12 of document IRC/V/5.

Budget of the Diplomatic Conference

84. The Secretary-General was asked to enter the necessary items in the draft budget to be presented to the Council at its next session.

Part IV

CONSIDERATION OF SOME DRAFTING QUESTIONS CONCERNING THE  
AUTHENTIC FRENCH TEXT AND THE OFFICIAL TRANSLATIONS IN  
ENGLISH AND GERMAN OF THE UPOV CONVENTION

85. Discussions were based on document IRC/V/4.

Proposal for Clarifying Certain Provisions in All Languages

86. It was pointed out that the question raised by the Office of the Union on Article 4(4) (paragraphs 5 to 9 of document IRC/V/4) did not need to be discussed in view of the Committee's decision to delete the reference to the Paris Union for the Protection of Industrial Property (see paragraph 10, above).

87. The Committee agreed that paragraphs (2) and (3) of Article 8 should be deleted and that the second sentence of paragraph 8(1) should be redrafted to state that the period must not expire earlier than fifteen years after the date of issue of the title of protection (see paragraphs 10 to 13 of document IRC/V/4).

88. The Committee approved the proposed improvement of Article 13(2) (paragraph 17 of document IRC/V/4).

Proposal Concerning the Authentic French Text Which has Repercussions on the German Translation

89. In connection with the suggestion to replace "obtention" appearing in Article 12(2) by "variété nouvelle" (see paragraphs 18 and 19 of document IRC/V/5), the Delegation of the Netherlands made a more far-reaching proposal and suggested that the expression "new variety" ("variété nouvelle") be replaced by another expression, such as "breeding product" ("obtention"). The Delegation of the Federal Republic of Germany said that the use of the term "nouvelle variété" ("new variety") caused no difficulties in its country. It could, however, agree, and would prefer, that the word "nouvelle" ("new") be deleted in the said term in most cases. The latter solution was also preferred by the majority of the other delegations.

Proposals Concerning the English Translation Only

90. The Committee agreed to the proposals made by the Office of the Union with respect to the improvement of the English versions of Article 4(4) and of Article 30(3) (see paragraphs 20 to 25 of document IRC/V/4). It also agreed that those amendments should already be made in the present English translation in UPOV publication No. 273(E) as soon as the new edition of that translation was issued.

Proposals Concerning the German Translation Only

91. Concerning the translation of the term "variation nouvelle" into "Ausgangsmaterial" in German (see paragraphs 26 to 28 of document IRC/V/4), the Delegation of the Federal Republic of Germany stated that the present translation, though not corresponding literally to the authentic text, indicated clearly enough what was intended, and should therefore be maintained. It reported that the term had been correctly interpreted by German jurisprudence. The Delegation of the Federal Republic of Germany added that it could not approve of the proposal made by the Office of the Union. The Delegation of Switzerland pointed out that, if the term "Ausgangsmaterial" was to be changed, it would prefer "Ausgangsvariation." It was finally agreed not to change the German text in this respect.

92. The Delegation of the Federal Republic of Germany agreed to the proposed modification of the German text of Article 6(1)(b) (see paragraphs 29 to 31 of document IRC/V/4).

93. In the course of the discussion of the proposal to change the German wording of Article 13(10), second sentence (see paragraphs 32 to 34 of document IRC/V/4), it was pointed out that the words "le cas échéant" were already superfluous in the authentic French text and should be deleted both in that text and in all translations.

94. The Delegation of the Federal Republic of Germany proposed that, on the occasion of a subsequent examination of the official German text, the question should be examined whether the translation of the following terms could not be improved:

- (i) the translation of "critères" by "Merkmale" in the introductory phrase of Article 6;
- (ii) the translation of "pour bénéficiaire des dispositions du paragraphe précédent..." by "Absatz 1 ist zugunsten der neuen Hinterlegung nur anwendbar..." in Article 7(1).

PART V  
OTHER DECISIONSSpecial Agreement Concerning Closer Cooperation Between Member States

95. The Delegation of the Federal Republic of Germany proposed that at the next session of the Committee an informal preliminary discussion should take place on the possibility of starting work on a special agreement providing for closer cooperation between member States, including, for instance, the grant of a title of protection valid in several or all member States or the recognition in one member State of titles granted in another member State. The discussion should not form an item of the agenda of that session. The Delegation of France said that, if the planned cooperation made harmonization of the national laws necessary, UPOV would not be the right forum. That view was not shared by the Delegations of Denmark, the Federal Republic of Germany, Sweden and the United Kingdom.

[Annex follows]

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[End of Annex and of document;  
Fin de l'annexe et du document;  
Ende der Anlage und des Dokuments]