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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

ORGANIZATIONAL QUESTIONS FOR THE DIPLOMATIC CONFERENCE,  
INCLUDING ITS RULES OF PROCEDURE AND CERTAIN FINAL  
CLAUSES OF THE PROPOSED NEW ACT

Memorandum by the Office of UPOV

THE PRESENT DOCUMENT

1. As the Diplomatic Conference is scheduled for October 1978, it seems to be indispensable that the Council make certain decisions at the latest in its October 1977 session (that is, approximately one year before the Diplomatic Conference). Proposals for such decisions would have to be worked out at the March 1977 sessions of the Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to also as "this Committee" or "the present Committee") and of the Consultative Committee, and no later than in the September 1977 session of the present Committee and the October 1977 session of the Consultative Committee.
2. Furthermore, the President of the Council has expressed the wish that the Office of the Union establish a list of the organizational questions that need to be decided, or tentatively decided, before the Diplomatic Conference.
3. The present document endeavors to respond to the need and to the wish formulated above.
4. It is believed that several of these questions can best be examined on the basis of a preliminary draft text of the Provisional Rules of Procedure of the Diplomatic Conference and of the final clauses of the proposed new Act since such preliminary draft texts unavoidably raise such questions and require clear answers. That is why the present document contains the following preliminary drafts: the draft of the Provisional Rules of Procedure (in the Annex) and the draft of most of the final clauses (in the part of the present document entitled "Final Clauses", paragraphs 19 to 59).
5. It is emphasized that, by presenting these preliminary draft texts and some of the reasons underlying them, the Office is not attempting to impose any of its views--which in any case are tentative--but merely wishes to make sure that all the questions that will have to be solved are considered well in advance, with sufficient time left for reflection and preliminary discussions.

LIST OF QUESTIONS

6. What should be the date and the duration of the Conference? October 3 to 26, 1978, could be considered as a possible reply.

7. Which States should be invited to the Conference and in what capacity? This question is analyzed in some detail in paragraphs 14 to 18, below, and is treated in Rule 2 of the preliminary draft of the Provisional Rules of Procedure (see the Annex).
8. Which intergovernmental organizations should be invited as observers to the Conference? The United Nations and the Food and Agriculture Organization of the United Nations (FAO) were invited to the Revision Conference of 1972. Other possible invitees are the Organization for Economic Cooperation and Development (OECD), the Commission of the European Communities and the semi-governmental International Seed Testing Association (ISTA).
9. Which international non-governmental organizations should be invited as observers to the Conference? The International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), the International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), the International Federation of the Seed Trade (FIS) and the International Association of Horticultural Producers (AIPH) probably in any case. Other possible invitees are the International Association for the Protection of Industrial Property (AIPPI), the International Chamber of Commerce (ICC) and the European Association for Research on Plant Breeding (EUCARPIA).
10. When should the invitations be dispatched? It would seem desirable to dispatch them in January 1978 the latest. The provisional agenda and the Provisional Rules of Procedure should accompany them. A preliminary draft of the Provisional Rules of Procedure is, as already stated, attached to this document in the Annex. The drafts of the letter of invitation and of the provisional agenda would have to be prepared by the Office of the Union and submitted first to this Committee (September 1977) and then to the Consultative Committee and the Council (October 1977).
11. Should the new Act be adopted and signed at the Conference in French only or also in English and German? See proposed Article 41(1) (paragraphs 56 to 59, below). The question needs a decision because it will influence the composition of the Drafting Committee and the time needed by that Committee and also for the preparation of the copy of the text(s) to be signed on the last day of the Conference.
12. What receptions and meals should be offered to approximately how many persons in connection with the Conference? According to custom, it would be appropriate to offer (i) a reception on the first evening to all participants, (ii) a dinner to the Heads of Delegations (and Observer Organizations), and (iii) a vin d'honneur at the signing ceremony.
13. What amounts should be provided for in the 1978 budget for the costs of the Conference? Proposals to this effect will be made by the Secretary-General in his proposed draft budget submitted to the Consultative Committee and the Council when they meet in October 1977.

#### RULES OF PROCEDURE

14. The Annex to this document contains a preliminary draft of the Provisional Rules of Procedure of the Diplomatic Conference. It is generally in line with the rules of procedure of comparable diplomatic conferences, except on one question: Whether, among the 155-odd States (Members of the United Nations) which would be invited as observers,<sup>1</sup> a few should not be granted a special status (i) because of the interest which they have shown in becoming members of UPOV if the Convention is revised in certain ways to make their accession possible, or at least easier, and (ii) because the present members of UPOV would like to see an increase in the membership thanks to the accession of the United States of America and other States. Making such new accessions possible seems to be the principal if not the only aim of the proposed revision, since the present member States have not indicated any urgent desire to change their existing mutual relations under the present texts (the Convention of 1961 with or without the Additional Act of 1972), but they certainly have given strong signs of their interest in the pos-

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<sup>1</sup> All States Members of the United Nations not members of UPOV were invited to the UPOV Diplomatic Conference of 1972 as observers.

sibility of new accessions as witnessed by (i) the convocation of, and the subject matters treated in, the "Meeting of Member and Non-Member States" of 1974, (ii) the study mission by members of the UPOV Council to the United States of America and Canada in 1975, and (iii) the invitations, to two out of the five sessions of the Committee of Experts on the Interpretation and Revision of the Convention so far convened, of a number of non-member States.

15. The preliminary draft of the Provisional Rules of Procedure (see the Annex) and the preliminary draft of the final clauses of the proposed new Act (see paragraphs 19 to 59, below) propose to provide for a "special observer" status for certain States, a status which would distinguish them from the other ("ordinary") observers in the following three respects:

(i) special observers would not only be allowed to participate in the discussions of the Conference but would also be eligible to become non-voting (observer) members of any committee or working group of the Conference (their representatives could not be elected as officers, however);

(ii) special observers would be allowed to propose amendments during the Conference although they would not be allowed to vote (either in the Conference or in any committee or working group); however, any amendment proposed by them would be put to the vote only if seconded by at least one delegation representing a State member of UPOV;

(iii) special observers would be allowed to sign the new Act, with the consequence that they would be allowed to become members of UPOV through ratification rather than the procedure for "admission" (that is, application-cum-accession), if that procedure is maintained in respect of all non-member countries.

16. Giving such special observer status to certain States would seem to have at least two advantages: first, it would continue (as during the preparatory work) to involve those States directly in the work of the Conference since they could speak up not only in the Conference but also in any of the committees and working groups of the Conference and their wishes could be expressed not only in a general way and orally but also in the most specific way possible, and even in writing, by proposing amendments; in this way there would be no risk that decisions might be made without a full opportunity for an exchange of views on possible solutions; second, it would create, for those governments which sign the new Act, at least a moral obligation to seek authority to ratify it and would exempt them from the somewhat embarrassing (see paragraph 27, below) procedure for "admission" (that is, application-cum-accession).

17. The proposed special observer status would involve no risk whatsoever for the member States or otherwise since they alone would have the right to vote in the Conference (including all the committees and working groups of the Conference) and, consequently, the contents of the new Act would be determined by the member States and by them alone.

18. As to the question which non-member States should be special observers, the preliminary draft of the Provisional Rules of Procedure provides that it will be the Council which will give the reply in its session to decide upon the invitations to the Conference. One of the possible criteria for such a decision could be attendance in one or more sessions of the Committee of Experts on the Interpretation and Revision of the Convention; on that basis, and as of today, seven States--Hungary, Ireland, Japan, New Zealand, Poland, Spain and the United States of America--would qualify. It is assumed throughout this document that by the time the Conference opens the two States--Italy and Switzerland--which have signed the Convention of 1961 but which have not yet ratified it will be members of UPOV. Should this assumption prove to be erroneous, it would seem to be desirable that Italy and Switzerland be added to the said seven States. South Africa is not mentioned since it is virtually certain that it will be a member of UPOV by the time the Diplomatic Conference opens. Should the criterion mentioned above be enlarged to include participation in the "Meeting of [UPOV] Member and Non-Member States" of 1974, the following six States would also be eligible to send special observers:

Austria, Canada, Czechoslovakia, Finland, Kenya, Norway<sup>1</sup>. Naturally, the Council need not adopt any criteria but may establish the list of such special observers, as it wishes, omitting from or adding to the lists mentioned above. For example<sup>2</sup>, it may wish to consider the possibility of adding the Soviet Union, with which contacts took place but outside the said UPOV meeting.

#### FINAL CLAUSES

19. This part of the present document contains a preliminary draft of the final clauses (Articles 31 to 41) of the proposed new Act or indicates the reasons for which no preliminary draft is included for some of them in this document. Each of the Articles is accompanied by explanations.

20. One of the proposals affects several of the Articles and, in order to avoid unnecessary repetition under each Article, it is mentioned here. It is proposed that the depositary tasks in connection with the new Act be entrusted to the Secretary-General of UPOV. These tasks are the following: keeping the signed copy of the new Act; receiving the instruments of ratification, accession and any denunciation; notifying the receipt of such instruments and their date of entry into force. The proposed solution would be a departure from the precedents set by the Convention of 1961 and the Additional Act of 1972, in connection with which the depositary tasks were entrusted to the French Government and the Swiss Government, respectively. The proposal is made because the solution corresponds to contemporary practice and because it is more practical.

21. According to contemporary practice, multilateral treaties concluded or revised in the framework of an intergovernmental organization are deposited with the executive head of that organization. This is the case, for example, with hundreds of treaties concluded under the aegis of the United Nations: for such treaties the depositary functions are exercised by the Secretary-General of the United Nations. In the case of treaties concluded or revised under the auspices of WIPO, it is the practice that, if the Diplomatic Conference adopting it took place at WIPO headquarters, the signed copy is deposited with the Director General of WIPO from the beginning, whereas, if the Conference was hosted by a Government, it is deposited with that Government for the period during which it is open for signature and with the Director General of WIPO thereafter, but in both cases all instruments are received and all notifications are made by the Director General of WIPO. Hundreds of such instruments have been received and hundreds of such notifications have been made by him.

22. The proposed solution is more practical for several reasons. The receiving of instruments and their notification are routine matters in an international secretariat. Advice to Governments intending to deposit instruments is readily available. Once the instrument is received, it is promptly notified (the instrument of ratification of the Federal Republic of Germany concerning the Additional Act of 1972 took four months and several reminders of the International Bureau for the Ministry of Foreign Affairs of the depositary State to notify it). Notifications are made not only in one but in various languages (in the case of UPOV, they would be in English, French and German). Inquiries are promptly answered and replies are based on the Secretariat's own knowledge rather than on information received from other sources.

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<sup>1</sup> Australia and Israel (in addition to the seven and six States mentioned in the text) were also invited to the fifth session of the Committee of Experts on the Interpretation and Revision of the Convention.

<sup>2</sup> The following States were invited to the 1976 session of the Council (in addition to those mentioned in the text): Algeria, Brazil, Gabon, Greece, Japan, Luxembourg, Romania, Senegal, Soviet Union, Turkey, Yugoslavia.

Article 31

[Signature]

23. It is proposed that this Article deal with signature and read as follows:

"(1) This Act may be signed by any State member of the Union and any other State which was invited by the Council of the Union as a special observer to the Diplomatic Conference adopting this Act.

"(2) This Act shall remain open for signature until April 30, 1979."

24. The records of the Council would show which States were invited as special observers. The Rules of Procedure of the Diplomatic Conference could repeat the list of such States. See also paragraph 18, above.

25. The period during which the new Act would remain open for signature could be roughly six months. The proposed text assumes that the new Act would be adopted in October 1978. Naturally, the actual date of the Diplomatic Conference will have to be taken into account. The period could be longer than six months; anything up to one year would be consistent with practice.

Article 32

[Ratification; Accession]

26. It is proposed that this Article deal with ratification and accession and read as follows:

"(1) Any State which has signed this Act may ratify it.

"(2) Any State which has not signed this Act may accede to it.

"(3) Instruments of ratification or accession shall be deposited with the Secretary-General."

27. This proposal replaces the one made in document IRC/V/3, paragraph 15, although, in essence, it is based on the same consideration, namely, that the procedure for "admission" (that is, application-cum-accession) should be abandoned. The arguments for abandoning that system are set out in document IRC/V/3, paragraph 13.

28. Should it be desired to maintain the "admission" system for non-member States, it could still be done at least in two ways: one would be to exempt from the "admission" system those non-member States of UPOV which, having been invited to the Diplomatic Conference as special observers, sign the new Act; the other would be to apply the "admission" system to all non-member States of UPOV.

29. If the first solution is adopted, the Article could read as follows:

"(1) Any State which has signed this Act may ratify it.

"(2) Any member State of the Union which has not signed this Act may accede to it.

"(3) Any State not member of the Union may accede to this Act if its application for accession is accepted by the Council in accordance with paragraph (4).

"(4) Any application under paragraph (3) shall be addressed to the Secretary-General, who shall promptly communicate it to the member States of the Union. The application shall be considered by the Council with particular regard to the provisions of Article 30. Acceptance of the application shall require that at least four-fifths of the member

States of the Union present and voting on the matter vote in favor of the acceptance; at least three-quarters of the member States of the Union shall be present when the vote is taken; abstentions shall not be considered votes.

"(5) Instruments of ratification or accession shall be deposited with the Secretary-General."

30. If the second solution is adopted, paragraph (1) of the foregoing text would have to read as follows: "(1) Any member State of the Union which has signed this Act may ratify it." In the latter case, it would be logical (although not indispensable) not to provide for special observer status for certain non-member States and to allow only the member States to sign the new Act, thus entailing the omission of the following words in Article 31(1), as proposed in paragraph 23, above: "and any other State which was invited by the Council of the Union as a special observer to the Diplomatic Conference adopting this Act."

#### Article 32A

##### [Entry Into Force; Closing of Earlier Texts]

31. It is proposed that this Article deal with the entry into force of the new Act and with the "closing" of the earlier texts (that is, the Convention of 1961 and the Additional Act of 1972) and that it read as follows:

"(1) This Act shall enter into force one month after the deposit of the fifth instrument of ratification or accession.

"(2) With respect to any State which deposits its instrument of ratification or accession to this Act after the date of its entry into force, this Act shall enter into force one month after the deposit of such instrument.

"(3) Once this Act enters into force according to paragraph (1), no State may ratify or accede to the Convention of 1961 or the Additional Act of 1972."

32. Article 27(4) of the Convention of 1961 contains provisions on the entry into force of revised texts. It provides as follows: "The revised text shall enter into force, in respect of member States of the Union which have ratified it, when it has been ratified by five-sixths of the member States of the Union. It shall enter into force thirty days after the deposit of the last of the instruments of ratification. If, however, a majority of five-sixths of the member States of the Union represented at the [revision] conference considers that the revised text includes amendments of such a kind as to preclude, for member States of the Union which do not ratify the revised text, the possibility of continuing to be bound by the former text in respect of the other member States of the Union, the revised text shall enter into force two years after the deposit of the last of the instruments of ratification. In such case, the former text shall, from the date of such entry into force, cease to bind the States which have ratified the revised text."

33. It is proposed that this provision be replaced by Article 32A (above) and Article 32B (below). Article 27(4) of the present text tries to limit the freedom of future revision conferences in respect of the matters regulated therein; this is unusual. The membership of the Union may be quite different at a revision conference from what it was in previous conferences, and even States which participate in all conferences may change their views from one conference to another: if they did not, there would be no need for revision conferences.

34. Furthermore, Article 27(4) makes the entry into force of the revised text very difficult. At least, it delays the entry into force for an inordinately long time. The Additional Act of 1972 is an example in point. Almost five years have elapsed since its adoption but only five of the nine signatories had ratified it at the beginning of 1977. In a Union with more than seven or nine members, the five-sixths

requirements would cause even longer delays.

35. Article 27(4) is also unclear. What is meant by the expression "member States" in the first sentence? The States which were members of the Union at the time of the revision conference or the States which are members at the time the revised text comes into force? Without an answer to this question, and if the number of the States is different at the said two points in time, it is impossible to determine the number of States constituting the required five-sixths.

36. The second and the third sentences of Article 27(4) make the period between the last required ratification and the entry into force different--30 days or two years--according to an opinion on the nature of the amendments. Where the two-year period applies, the entry into force of the revised text would become even longer than the basic period, which is already too long (because of the requirement that five-sixths of the States must ratify the revised text). Finally, as far as the last sentence of Article 27(4) is concerned, the provision contained therein is unusual in treaty law because it liberates, in certain cases, States from their treaty obligations without the need to denounce the treaty since it provides, in effect, that States which have ratified the new text will no longer be bound to apply the old text vis-à-vis States which have not ratified the new text. It is unclear whether they would be bound to apply the new text vis-à-vis member States which have not ratified the new text, and whether member States which have not ratified the new text would have to apply the old text vis-à-vis States which have ratified the new text.

37. Paragraph (1) of the proposed Article 32A would make the entry into force of the new Act dependent on the deposit of five instruments of ratification or accession. The number could be lower, considering that at the time of the Conference UPOV will probably still have less than a dozen members. It could be required that at the time the States deposit their instruments, at least one or two of those States must be member States and/or at least one or two of those States must be non-member States, if it is desired that both kinds of States be among those which bring the new Act into force or that without States hitherto not members of the Union the new Act should not enter into force.

38. Paragraph (2) of the proposed Article 32A is almost identical in its effect with Article 31(3), last sentence, and Article 32(4), last sentence, of the Convention of 1961, the main difference being that the proposed text speaks about one month rather than 30 days.

39. Paragraph (3) of the proposed Article 32A would "close" the Convention of 1961 and the Additional Act of 1972 once the new Act enters into force. This provision seems to be desirable in order not to perpetuate the possibility that different texts may be applied among member States or that, once the new Act applies among all States, the old texts may be revived through accession to them by States which formerly were not members of UPOV.

#### Article 32B

##### [Relations Between States Bound by Different Texts]

40. It is proposed that this Article deal with the question of relations between States bound by different texts and that it read as follows:

"(1) Any member State of the Union which, on the day on which the present Act enters into force with respect to that State, is bound by the Convention of 1961 or by the Convention of 1961 and the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention or the said Convention and the said Additional Act, as the case may be.



"(2) Any member State of the Union not bound by this Act but bound by the Convention of 1961 or by the Convention of 1961 and the Additional Act of 1972 ("the former State") may declare, in a notification addressed to the Secretary-General, that it shall apply the said Convention or the said Convention and the said Additional Act, as the case may be, in its relations with any State bound by this Act which becomes a member of the Union through ratification of or accession to this Act ("the latter State"); as from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 or the Convention of 1961 and the Additional Act of 1972, as the case may be, in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State."

41. The proposed Article 32B would take the place of the last sentence of Article 27 of the Convention of 1961.

42. The proposed Article 32B would achieve two things: first, it would regulate the relations among States which became members of the Union by ratifying or acceding to the Convention of 1961 ("old members") where some of them are already bound by the new Act but the others are not yet bound by the new Act; second, it would regulate the relations between old members not yet bound by the new Act and States which become members of UPOV by ratifying or acceding to the new Act (and the new Act only) ("new members").

43. As to the first point, the solution is proposed in paragraph (1). Simply stated, it means that, as between any old member already bound by the new Act and any old member not (yet) bound by the new Act, the former texts (Convention of 1961 or Convention of 1961 and Additional Act of 1972) continue to apply. It is presumed that the old members will wish to replace, as soon as possible, the former texts in their mutual relations by the new Act; if this presumption is wrong, and old members wish to continue to be bound to each other by the former texts ad infinitum, even where all of them have ratified or acceded to the new Act, the new Act would have to say so. There would be no legal obstacle to such solution, which, however, would have as a result that--although there would still be one Union, one Council, one Secretariat and one budget--there would, in fact, be two treaties: one (the 1961 Convention and the 1972 Additional Act) applicable among the old members, and the other (the new Act) applicable in relations between any old member having ratified it and any new member, as well as in relations among new members.

44. As to the second point--relations between old members not yet bound by the new Act and new members--it has to be recognized that there is no legal basis for an automatic relationship since they are bound by different texts. Paragraph (2), however, would offer the possibility of creating a relationship. The initiative would lie with the old members. If an old member declares that it wishes to create such a relationship, such a relationship would come into existence and it would entail (i) the grant by the old member not yet bound by the new Act of protection to any new member as provided for in the former texts (1961 and 1972), and (ii) the grant by the new members of protection to any such old members as provided for in the new Act. Thus, there would be protection in both directions, although their contents would (slightly) differ from each other. The proposed solution would have the great advantage that protection among all the members of UPOV could start much earlier than if it was necessary to wait until all the old members became bound by the new Act (if ever they did!).

#### Article 33

[Communications Indicating the Genera  
and the Species Eligible for Protection]

45. It would seem to be premature to propose a revised text for this Article --and none is proposed in this document--as long as some tentative decisions are not made in respect of Article 4. (Questions concerning the possible revision

of that Article are dealt with in documents IRC/V/2, paragraphs 20 to 27, and IRC/V/4, paragraphs 5 to 9.) Tentative decisions on the questions raised in connection with Article 32 (see paragraphs 26 to 30, above) and as to the depository functions (see paragraphs 20 to 22, above) will also have a bearing on this Article.

Article 34

[Territories]

46. It is proposed that this Article be omitted.

47. It would be difficult to maintain it for obvious political reasons.

Article 35

[Transitional Limitation of the Requirement of Novelty]

Article 36

[Transitional Rules Concerning the Relationship  
Between Variety Denominations and Trademarks]

48. Proposals concerning the possible revision of these two Articles are contained in document IRC/V/3, paragraphs 21 to 24.

Article 37

[Preservation of Existing Rights]

49. No change is proposed in this Article. It reads as follows: "This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States."

Article 38

[Settlement of Disputes]

50. No change is proposed in this Article although its acceptance may cause difficulties for some States presently not members of UPOV, namely, those which rarely if ever accept arbitration clauses in international multilateral treaties. However, it may be preferable to wait and see whether any such States manifest themselves and propose changes in this Article or its deletion.

Article 39

[Reservations]

51. No change is proposed in this Article. It reads as follows: "Signature and ratification of and accession to this Convention shall not be subject to any reservation."

Article 40

[Duration and Denunciation of the Convention]

52. It is proposed that this Article be revised to read as follows:

"(1) This Convention shall be of unlimited duration.

- "(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of the notification of denunciation.
- "(3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General but shall not affect any rights acquired by a plant breeder or his successor in title by virtue of this Convention [prior to the end of the said calendar year]."
53. Paragraph (1) would remain as it is in the existing text.
54. Paragraph (2) would take into account two changes proposed elsewhere: that Article 27(4) be omitted and that the depositary functions be entrusted to the Secretary-General.
55. Paragraph (3) would maintain the essence of paragraphs (3) and (4) of the existing text. It would, however, take into account the two changes proposed elsewhere: that Article 34 be omitted and that the depositary functions be entrusted to the Secretary-General. Furthermore, it would make any denunciation effective always at the end of a calendar year; such a solution would be practical since the obligation to pay contributions--which are fixed from one calendar year to the next calendar year--would then always expire at the end of a financial year of UPOV.

#### Article 41

##### [Copies: Languages; Notifications]

56. It is proposed that this Article be revised to read as follows:
- "(1) This Act shall be signed in a single original in the French [, English and German] language[s] [the three texts being equally authentic]. That copy shall be deposited with the Secretary-General.
- "(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which have signed it and, on request, to the Governments of any other State.
- "(3) The Secretary-General shall, after consultation with the Governments of the interested signatory States, establish official texts in the Dutch, [English, German,] Italian and Spanish languages and such other languages as the Council may designate.
- "(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.
- "(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, have signed this Act of the signatures of this Act, the deposit of instruments of ratification, accession and any denunciation, and [here will follow a reference to any other communication which the revised Act will provide for as one requiring to be made by a State to the Secretary-General under the new Act]."
57. The words "English" and "German" would have to be deleted in paragraph (1) and placed in paragraph (2) if the original copy were to be established and signed in French only.
58. If the original is to be signed in three languages, it is proposed that each of them be equally authentic, according to contemporary practice. Another solution would be to declare that the French text prevails in case of differences between the three texts.
59. The other proposed provisions are based on the assumption that the Secretary-General will be entrusted with the performance of the depositary tasks. They follow established practice.

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PROVISIONAL RULES OF PROCEDURE

CHAPTER I: OBJECTIVE, COMPOSITION, SECRETARIAT

Rule 1: Objective

(1) The objective of the Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants meeting in Geneva from October 3 to 26, 1978 (hereinafter referred to as "the Conference") is to revise, on the basis of the draft contained in document UPOV/78DC/.. and in accordance with Article 27, paragraphs (1) and (3), of the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (hereinafter referred to as "the Convention"), the Convention and the Additional Act of November 10, 1972, amending the Convention (hereinafter referred to as "the Additional Act").

(2) In these Rules of Procedure (hereinafter referred to as "these Rules"), the text of the Convention to be adopted by the Conference is referred to as "the new Act."

(3) The Conference may also:

(i) adopt any recommendation or resolution whose subject matter is germane to the new Act;

(ii) adopt any final act of the Conference;

(iii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of

(i) delegations of the member States of the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "the Union" or "UPOV"),

(ii) delegations of States which without being members of the Union have actively participated in the preparation of the Conference and a list of which was established by the Council of UPOV in its ..th session,

(iii) delegations of States other than those referred to in (i) and (ii), above, and a list of which was established by the Council of UPOV in its ..th session,

(iv) representatives of intergovernmental and non-governmental organizations, a list of which was established by the Council of UPOV in its ..th session.

(2) Hereinafter, delegations referred to in paragraph (1)(i) are called "Member Delegations," delegations referred to in paragraph (1)(ii) are called "Special Observer Delegations," delegations referred to in paragraph (1)(iii) are called "Observer Delegations," and representatives of organizations referred to in paragraph (1)(iv) are called "Observer Organizations." The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations, Special Observer Delegations and Observer Delegations, whereas the term "Observers," as hereinafter used, shall, unless otherwise expressly indicated, include Special Observer Delegations, Observer Delegations and Observer Organizations.

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Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the Office of UPOV.

(2) The Secretary-General of UPOV, the Vice Secretary-General of UPOV and any other official of the Office of UPOV designated by the Secretary-General of UPOV may participate in the discussions of the Conference as well as in any committee or working group thereof and may submit in writing statements, suggestions and observations to the Conference and any committee or working group thereof.

CHAPTER II: REPRESENTATION

Rule 4: Representation of Governments

(1) Each Delegation shall consist of one or more delegates and may include alternates and advisors. Each Delegation shall have a Head of Delegation.

(2) Each alternate or advisor may act as delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

Each Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Member Delegation and each Special Observer Delegation shall present credentials.

(2) Full powers shall be required for signing the new Act. Such powers may be included in the credentials.

(3) Credentials and full powers shall be signed by the Head of State or the Head of Government or the Minister responsible for external affairs.

Rule 7: Letters of Appointment

(1) Each Observer Delegation shall present a letter or other document appointing the delegate or delegates as well as any alternate and any advisor. Such letter or document shall be signed as provided in Rule 6(3) or by the Ambassador accredited to the Government of the Swiss Confederation or the Head of Mission accredited to WIPO or to the Office of the United Nations at Geneva.

(2) The representatives of Observer Organizations shall present a letter or other document appointing them. It shall be signed by the Head (Director General, Secretary-General, or President) of the Organization.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 should be presented to the Secretary-General of the Conference (see Rule 18(1)) not later than at the time of the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7 and shall report to the Conference.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference. Such decision shall be made as soon as possible and in any case before the vote on the adoption of the new Act.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate in the discussions of the Conference provisionally.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of five members elected by the Conference from among the Member Delegations.
- (3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of seven members elected by the Conference; five of them shall be Member Delegations and two of them shall be Special Observer Delegations.
- (3) The officers of the Drafting Committee shall be elected by, and from among, those of its members representing the Member Delegations.
- (4) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference. It shall review the drafting of all texts provisionally adopted by the Conference and shall submit the texts so reviewed for final adoption by the Conference.

Rule 13: Working Groups, Other Committees

- (1) The Conference may establish such working groups or committees (other than the Credentials Committee and Drafting Committee) as it deems useful.
- (2) The number of the members of any working group or committee (other than the Credentials Committee and Drafting Committee) shall be decided by the Conference, which shall elect them from among the Member Delegations and Special Observer Delegations.
- (3) The officers of any working group or committee shall be elected by, and from among, those of its members representing the Member Delegations.

CHAPTER IV. OFFICERS

Rule 14: Officers

- (1) The Conference shall, in a meeting presided over by the Secretary-General of UPOV, elect its President, and, in a meeting presided over by its President, elect two Vice-Presidents.
- (2) The Credentials Committee and the Drafting Committee shall each have a Chairman and one or more Vice-Chairmen.
- (3) Precedence among the Vice-Presidents and between Vice-Chairmen shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order.
- (4) All officers must be delegates of Member Delegations.



Rule 15: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of a body (Conference, committee or working group), such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

(2) If both the President and the Vice-Presidents or both the Chairman and the Vice-Chairmen are absent from any meeting of a body (Conference, committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 16: Replacement of President or Chairman

If the President or any Chairman is, for the rest of the duration of the Conference, unable to perform his functions, a new President or Chairman shall be elected by the body concerned (Conference, committee or working group).

Rule 17: Presiding Officer Not Entitled To Vote

No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall vote. Another member of his Delegation may vote in the name of his State.

## CHAPTER V: SECRETARIAT

Rule 18: Secretariat

(1) The Secretary-General of UPOV shall, from among the staff of UPOV, designate the Secretary-General of the Conference, and, from among the staff of UPOV or of the International Bureau of the World Intellectual Property Organization (WIPO), the Secretary of the Credentials Committee, the Secretary of the Drafting Committee and a Secretary for each working group.

(2) The Secretary-General of the Conference shall direct the staff required by the Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(4) The Secretary-General of UPOV shall be responsible for the custody and preservation in the archives of UPOV of all documents of the Conference; the publication of the summary minutes (see Rule 42) of the Conference after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

## CHAPTER VI: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the meetings of the Conference. It shall be as provided in Article 27(3), first sentence, of the Convention.

(2) A quorum shall not be required in the meetings of committees and working groups.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose the limiting of time to be allowed to speakers, the limiting of the number of times each Delegation may speak on any question, the closing of the list of speakers, or the closing of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected by the majority of the Member Delegations present and voting.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 22: Precedence

(1) Any person asking for the floor may be given precedence over another person asking for the floor, if they represent different categories of participants, according to the order in which such categories are listed in Rule 2(1).

(2) The Chairman of a committee or working group may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee or working group.

(3) The Secretary-General of UPOV or his representative may be accorded precedence for making observations or proposals relevant to the subject under discussion.

Rule 23: Points of Order

During the discussion of any matter, any participant may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless overruled by a majority of the Member Delegations present and voting. Any participant rising to a point of order may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, the Member Delegations may decide to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

In any meeting, the Member Delegations may decide to close the list of speakers on the discussion of any given question. The Presiding Officer may nevertheless accord the right of reply to any Delegation if a speech delivered after the closing of the list of speakers makes it desirable.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. Permission to speak on the motion shall be accorded to one Member Delegation seconding and two Member Delegations opposing it, after which the motion shall immediately be put to the vote.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions

Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

Rule 29: Basic Proposal and Proposals for Amendments

(1) Document UPOV/78 DC/.. shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Member Delegation and any Special Observer Delegation may propose amendments.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (Conference, committee or working group). The Secretariat shall distribute copies to the Delegations and Observer Delegations represented in the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than three hours before it is called up for discussion. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available less than three hours before it is called up for discussion.

Rule 30: Withdrawal of Procedural Motions and Proposals for Amendments

Any procedural motion and any proposal for amendment may be withdrawn by the Delegation which has made it, at any time before voting on it has commenced provided that no amendment to that motion or proposal has been proposed by another Delegation. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Delegation.

Rule 31: Reconsideration of Matters Decided

When any matter has been decided by a body (Conference, committee or working group), it may not be reconsidered by that body, unless so decided by a two-thirds majority of the Member Delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

CHAPTER VII: VOTING

Rule 32: Voting Rights

Each Member Delegation shall have the right to vote in the Conference and in each committee or working group of which it is a member. A Member Delegation shall have one vote and shall represent and vote in the name of its own Government only.

Rule 33: Required Majorities

(1) Final adoption of the new Act shall require the majority prescribed in Article 27(3), second sentence, of the Convention.

(2) Subject to Rules 31 and 47(2), any other decisions of the Conference and all decisions in any committee or working group shall require a simple majority of the Member Delegations present and voting.

(3) For the purpose of these Rules, references to Member Delegations "present and voting" shall be construed as references to Member Delegations present and casting an affirmative or negative vote. Express abstention, non-voting or absence during the vote shall not be considered as votes cast.

Rule 34: Requirement of Seconding; Method of Voting

(1) Any procedural motion made by a Member Delegation shall be put to a vote only if it is seconded by at least one other Member Delegation.

(2) Any proposal for amendment made by a Member Delegation or by a Special Observer Delegation shall be put to a vote only if it is seconded by at least one (other) Member Delegation.

(3) Voting shall be by show of hands unless any Member Delegation, seconded by another Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the Member Delegation whose name is drawn by lot by the Presiding Officer.

Rule 35: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit Member Delegations to explain their votes, either before or after the voting.

Rule 36: Division of Proposals

Any Member Delegation, seconded by another Member Delegation, may move that parts of the basic proposal or of proposals for amendments be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole.

Rule 37: Voting on Proposals for Amendments

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendments relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such proposal or text shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to or delete from a text shall be considered a proposal for amendment.

Rule 38: Voting on Proposals on the Same Question

Subject to Rule 37, where two or more proposals relate to the same question, the body (Conference, committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 39: Elections on the Basis of Proposals Made by the President of the Conference

The President of the Conference may propose a list of candidates for any position which is to be filled and is not yet filled through election by the Conference.

Rule 40: Equally Divided Votes

(1) If a vote is equally divided on matters other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated if the nomination is maintained until either that nomination is adopted or rejected or another person is elected for the position in question.

## CHAPTER VIII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Oral interventions made in the Conference shall be in English, French or German, and interpretation shall be provided by the Secretariat into the other two languages. Any Delegation may make oral interventions in another language provided its own interpreter simultaneously interprets the intervention into English, French or German.

(2) Any Committee or working group may, if none of its members object, decide to waive interpretation or to limit it to fewer than the languages referred to in paragraph (1).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the meetings of the Conference shall be drawn up by the Office of UPOV and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the making available of such minutes, inform the Office of the Union of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the Secretariat of UPOV.

Rule 43: Languages of Documents and Minutes

(1) Any written proposal shall be presented to the Secretariat in English, French or German.

(2) Subject to paragraph (3), all documents distributed during or after the Conference shall be made available in English, French or German.

(3) (a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English, French or German; if the speaker has used another language, his intervention shall be rendered in English, French or German as may be decided by the Secretariat of UPOV.

(b) The final minutes shall be made available in English, French and German.

CHAPTER IX: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference

The meetings of the Conference shall be open to the public unless the Conference decides otherwise.

Rule 45: Meetings of Committees and of Working Groups

The meetings of any committee or working group shall be open only to the members of that committee or working group and the Secretariat.

CHAPTER X: OBSERVERS

Rule 46: Observers

(1) Special Observer Delegations and Observer Delegations may participate in the deliberations of the Conference.

(2) Special Observer Delegations may participate in the deliberations of the committees or working groups of which they are members.

(3) Representatives of any Observer Organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference.

(4) Observers shall not have the right to vote.

CHAPTER XI: ADOPTION OF AND AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Adoption of and Amendments to the Rules of Procedure

(1) The Rules of Procedure, based on Provisional Rules of Procedure, prepared by the Council of UPOV, shall be adopted by the Conference. Adoption shall require a simple majority of the votes cast by the Member Delegations present and voting.

(2) The Conference may amend these Rules. The adoption of any amendment shall require a majority of two-thirds of the votes cast by the Member Delegations present and voting.

CHAPTER XII: FINAL ACT

Rule 48: Final Act

If a final act is adopted, it shall be open for signature by any Delegation.