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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

Sixth Session

Geneva, September 20 to 23, 1977

ARTICLES 1 TO 5 AND 7

Memorandum prepared by the Office of the Union

It is the understanding of the Office of the Union that with respect to Articles 1 to 5 and 7 the changes decided by the Committee are the following.

DraftINTERNATIONAL CONVENTION FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

of December 2, 1961,  
as revised at Geneva on November 10, 1972, and  
on October 7, 1978

[Present Text]

## Article 1

[Purpose of the Convention; Constitution  
of a Union; Seat of the Union]

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety, or to his successor in title, a right the content and the conditions of exercise of which are defined hereinafter.

(2) The States parties to this Convention, hereinafter referred to as member States of the Union, constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

[Committee's Text]

## Article 1

Purpose of the Convention; Constitution  
of a Union; Seat of the Union

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety, or to his successor in title, a right under the conditions hereinafter defined.

(2) [No change]

(3) [No change]

[Present Text]

## Article 2

[Forms of Protection; Meaning of "Variety"]

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) For the purposes of this Convention, the word "variety" applies to any cultivar, clone, line, stock or hybrid which is capable of cultivation and which satisfies the provisions of subparagraphs (1)(c) and (d) of Article 6.

[Committee's Text]

## Article 2

Forms of Protection; Assemblages of Plants

(1) [No change]

(2) For the purposes of this Convention, the word "variety" is applicable to any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (1)(c) and (d) of Article 6. Each member State shall be free to decide, in the case of species including different types of varieties, which type or types will be protected.

[Present Text]

## Article 3

[National Treatment]

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their headquarters in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their headquarters in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the new varieties which they have bred to be examined and the multiplication of such varieties to be controlled.

[See Article 4(4) of the present text]

[Committee's Text]

## Article 3\*

National Treatment

(1) [No change]

(2) [No change, except omit the word "new."]

(3) Notwithstanding paragraphs (1) and (2), any member State of the Union applying the Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply the Convention to the same genus or species and to natural and legal persons resident or having their headquarters in any of those States.

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\* Use of the term "headquarters" still to be discussed.

[Present Text]

Article 4

Botanical Genera and Species Which Must  
or May Be Protected; Reciprocity;  
Possibility of Declaring that  
Articles 2 and 3 of the Paris  
Convention for the Protection of  
Industrial Property Are Applicable]

- (1) This Convention may be applied to all botanical genera and species.
- (2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.
- (3) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of the Convention to at least five of the genera named in the list annexed to the Convention.

Each member State further undertakes to apply the said provisions to the other genera in the list, within the following periods from the date of the entry into force of the Convention in its territory:

- (a) within three years, to at least two genera;
- (b) within six years, to at least four genera;
- (c) within eight years, to all the genera named in the list.

(4) Any member State of the Union protecting a genus or species not included in the list shall be entitled either to limit the benefit of such protection to the nationals of member States of the Union protecting the same genus or species and to natural and legal persons resident or having their headquarters in any of those States, or to extend the benefit of such protection to the nationals of other member States of the Union or to member States of the Paris Union for the Protection of Industrial Property and to natural and legal persons resident or having their headquarters in any of those States.

[Committee's Text]

Article 4

Botanical Genera and Species Which Must  
or May Be Protected; Reciprocity

- (1) [No change]
- (2) [No change]
- (3)(a) Each member State of the Union shall, on the entry into force of the Convention in its territory, apply the provisions of the Convention to at least five genera or species.  
  
(b) Subsequently, each member State shall apply the said provisions to additional genera or species, within the following periods from the date of the entry into force of the Convention in its territory:
  - (i) within three years, to at least ten genera or species in all;
  - (ii) within six years, to at least eighteen genera or species in all;
  - (iii) within eight years, to at least twenty-four genera or species in all.
- (4) At the request of any State intending to ratify or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purposes of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.\*
- (5) At the request of any member State, the Council may, in order to take account of special difficulties encountered by such State in the fulfilment of the obligations under paragraph (3), decide, for the purposes of that State, to extend the periods referred to in paragraph (3).

[See Article 3(3) of the Committee's text]

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\* Article 33 will provide for the notification of any ratification or accession based on this paragraph.

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[Article 4, continued]

[Present Text]

(5) Any member State of the Union may, on signing this Convention or on depositing its instrument of ratification or accession, declare that, with regard to the protection of new varieties of plants, it will apply Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property.

[Committee's Text]

[There would be no provision in the new text corresponding to paragraph (5) in the present text.]

[Present Text]

## Article 5

[Rights Protected; Scope of Protection]

(1) The effect of the right granted to the breeder of a new plant variety or his successor in title is that his prior authorisation shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the new variety, and for the offering for sale or marketing of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder or his successor in title may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder or his successor in title shall not be required either for the utilisation of the new variety as initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1) of this Article, extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their headquarters in any of those States.

[Committee's Text]

## Article 5

Rights Protected; Scope of Protection

(1) [No change, except omit the word "new," in all cases in which it appears.]

(2) [No change]

(3) [No change, except omit the word "new," in all cases in which it appears.]

(4) [No change]

[Article 6 not yet discussed]  
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[Present Text]

## Article 7

[Official Examination of New Varieties;  
Provisional Protection]

(1) Protection shall be granted only after examination of the new plant variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.

(2) For the purposes of such examination, the competent authorities of each country may require the breeder or his successor in title to furnish all the necessary information, documents, propagating material or seeds.

(3) During the period between the filing of the application for protection of a new plant variety and the decision thereon, any member State of the Union may take measures to protect the breeder or his successor in title against wrongful acts by third parties.

[Committee's Text]

## Article 7

Official Examination of Varieties;  
Provisional Protection

(1) [No change, except omit the words "new plant."]

(2) [No change]

(3) [No change, except omit the words "new plant."]

[End of document]