



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

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

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

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

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

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

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

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

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON
THE INTERPRETATION AND REVISION OF THE CONVENTION

Sixth Session

Geneva, September 20 to 23, 1977

DRAFT REVISED CONVENTION

Memorandum prepared by the Office of the Union

PART I*

It is the understanding of the Office of the Union that the Committee has agreed on the following further amendments to the text of the Articles modified by it on September 20 and 21, 1977 and reproduced in the documents IRC/VI/10, IRC/VI/11 and IRC/VI/12 (see under the heading "Committee's Text").

(1) [French text only].

(2) Article 2 (IRC/VI/10, page 3)

The last sentence becomes paragraph (3).

(3) [German text only].

(4) Article 6(1)(a) (IRC/VI/12, page 2)

The last sentence will read as follows: "In all cases, such characteristics must be capable of precise recognition and description."

(5) Article 6(1)(b) (IRC/VI/11)

In the last but 3rd line the word "mere" will be deleted.

(6) Article 8 (IRC/VI/12, page 5)

A comma will be inserted before the word "including."

*For the changes in the German and French text see the corresponding versions of this document.

0621

- (7) Article 11(1) (IRC/VI/12, page 8)

The words "of his right in respect of a new variety" will be deleted.

- (8) Article 12(1) (IRC/VI/12, page 9)

The paragraph will read:

"(1) Any breeder or his successor in title who has duly filed an application for protection of a variety in one of the member States of the Union shall, for the purposes of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period."

- (9) Article 12(3) (IRC/VI/12, page 9)

A comma will be inserted in the last but 2nd line after the word "period."

- (10) Article 16(1) (IRC/VI/12, page 12)

The word "the" will be inserted in the first line before the word "representatives."

- (11) Article 20 (IRC/VI/12, page 16)

The word "adopt" will be replaced by "establish."

- (12) Article 22 (IRC/VI/12, page 17)

The references to the articles mentioned have to be checked.

Part II

It is the understanding of the Office of the Union that with respect to Articles 21, 23 to 25, 27 to 31, 32A, 32B, 33, 34A, 35 and 37 to 41 the changes decided by the Committee are the following:

[Present Text]

Article 21

[Duties of the Council]

The duties of the Council shall be to:

(a) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(b) examine the annual report on the activities of the Union and lay down the programme for its future work;

(c) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national authorities;

(d) examine and approve the budget of the Union and fix the contribution of each member State in accordance with the provisions of Article 26;

(e) examine and approve the accounts presented by the Secretary-General;

(f) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;

(g) make proposals to the Government of the Swiss Confederation concerning the appointment of the Secretary-General and senior officials; and

(h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

[Committee's Text]

Article 21

Duties of the Council

The duties of the Council shall be to:

(a) [No change]

(b) [No change]

(c) [No change]

(d) [No change]

(e) [No change]

(f) [No change]

(g) appoint the Secretary-General and determine the terms of his appointment; and, after consultation and the agreement of the Secretary-General, appoint, if it finds it necessary, a Vice Secretary-General, and determine the terms of his appointment;

(h) [No change]

[Present Text]

Article 23

[Tasks of the Office of the Union;
Responsibilities of the Secretary-
General; Appointment of Staff]

(1) The Office of the Union shall have the task of carrying out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) The Secretary-General and the senior officials shall be appointed, on the proposal of the Council, by the Government of the Swiss Confederation, which shall determine the terms of their appointment.

The terms of service and the remuneration of other grades in the Office of the Union shall be determined by the administrative and financial regulations.

[Committee's Text]

Article 23

Tasks of the Office of the Union;
Responsibilities of the Secretary-
General; Appointment of Staff

(1) [No change]

(2) [No change]

(3) Subject to the provisions of Article 21(g), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the Administrative and Financial Regulations referred to in Article 20.

[Present Text]

Article 24

[Supervisory Function of the
Swiss Government]

The Government of the Swiss Confederation shall supervise the expenditure and accounts of the Office of the International Union for the Protection of New Varieties of Plants. It shall submit an annual report on its supervisory function to the Council.

[Committee's Text]

Article 24

Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union or by external auditors as provided in the administrative and financial regulations referred to in Article 20(2). Such State or auditors shall be designated, with its or their agreement, by the Council.

[Present Text][Committee's Text]

Article 25

[Cooperation with the Unions
Administered by BIRPI]

The procedures for technical and administrative cooperation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property shall be governed by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned.

[There would be no provisions in the new text corresponding to Article 25 of the present text.]

[Article 26 still to be discussed]

[Present Text]

Article 27

[Revision of the Convention]

(1) This Convention shall be reviewed periodically with a view to the introduction of amendments designed to improve the working of the Union.

(2) For this purpose, conferences shall be held every five years, unless the Council, by a majority of five-sixths of the members present, considers that the convening of such a conference should be brought forward or postponed.

(3) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it.

A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

(4) 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 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.

[Committee's Text]

Article 27

Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) [Same as paragraph (3) of the present text, except that the two subparagraphs in the present text will constitute a single paragraph.]

[See Article 32 B]

[Present Text]

Article 28

[Languages To Be Used by the Office
and in the Council]

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

(2) Meetings of the Council and of revision conferences shall be held in the three languages.

(3) If the need arises, the Council may decide, by a majority of three-quarters of the members present, that further languages shall be used.

[Committee's Text]

Article 28

Languages To Be Used by the Office
and in the Council

(1) [No change]

(2) [No change]

(3) If the need arises, the Council may decide that further languages shall be used.

[Present Text]

Article 29

[Special Agreements for the Protection
of New Varieties of Plants]

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Member States of the Union which have not taken part in making such agreements shall be allowed to accede to them at their request.

[Committee's Text]

Article 29

Special Agreements for the Protection
of New Varieties of Plants

(1) [Same as the (unnumbered) first paragraph of the present text.]

(2) [Same as the (unnumbered) second paragraph of the present text.]

[Present Text]

Article 30

Implementation of the Convention
on the Domestic Level; Special
Agreements on the Joint Utilisa-
tion of Examination Services]

(1) Each member State of the Union shall undertake to adopt all measures necessary for the application of this Convention.

In particular, each member State shall undertake to:

(a) ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of the rights provided for in this Convention;

(b) set up a special authority for the protection of new varieties of plants or to entrust their protection to an existing authority; and

(c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Special agreements may also be concluded between member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of new varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification or accession, each member State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

[Committee's Text]

Article 30

Implementation of the Convention
on the Domestic Level; Contracts
on the Joint Utilisation of Exami-
nation Services

(1) [No change, except that the two subparagraphs in the present text will constitute a single paragraph.]

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) [No change, except omit the word "member" in the English text.]

[Present Text]

Article 31

[Signature and Ratification;
Entry Into Force]

(1) This Convention shall be open for signature until December 2, 1962, by States represented at the Paris Conference for the Protection of New Varieties of Plants.

(2) [See opposite Article 32 of the proposed new text.]

(3) [See opposite Article 32A of the proposed new text.]

[Committee's Text]

Article 31

Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

[For the provision corresponding to paragraph (2) of the present text, see Article 32 of the proposed new text.]

[For the provision corresponding to paragraph (3) of the present text, see Article 32A of the proposed new text.]

[Article 32 has still to be discussed]

[Present Text]

Article 31

[... Entry Into Force]

- (1) [See opposite Article 31 of the proposed new text.]
- (2) [See opposite Article 32 of the proposed new text.]
- (3) When the Convention has been ratified by at least three States, it shall enter into force in respect of those States thirty days after the deposit of the third instrument of ratification. It shall enter into force, in respect of each State which ratifies thereafter, thirty days after the deposit of its instrument of ratification.

Article 32

[... Entry Into Force]

- (1), (2) and (3), first subparagraph [See opposite Article 32 of the proposed new text.]
- [(3), second subparagraph] Accession shall take effect thirty days after the deposit of such instrument [of accession].

[Committee's Text]

Article 32A*

Entry Into Force; Closing of Earlier Texts

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

- (2) Following the deposit of the fifth instrument of ratification or accession, this Act shall, with respect to any State depositing its instrument of ratification or accession thereafter, 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 accede to the International Convention for the Protection of New Varieties of Plants in its original version of 1961 or as amended by the Additional Act of 1972.

[Article 32B follows]

* This and the following Articles will have to be renumbered in the final text which will be adopted by the Diplomatic Conference.

[Present Text]

[There is no provision in the present text which would correspond to this Article.]

[Committee's Text]

Article 32B

Relations Between States
Bound by Different Texts

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 [or that Convention]* as amended by 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]* as amended by the 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 that Convention]* as amended by 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] as amended by the said Additional Act [, as the case may be,]* in its relation 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 that Convention]* as amended by 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.

[Article 33 follows]

* Only one State, the United Kingdom, is not yet bound by the Additional Act of 1972. Should, by the time of the Diplomatic Conference, the United Kingdom also be bound by that Act, the words in square brackets will become superfluous and should be deleted.

[Present Text]

Article 33

[Communications Indicating the Genera and Species Eligible for Protection]

(1) When ratifying this Convention, in the case of a signatory State, or when submitting an application for accession, in the case of any other State, each State shall give, in the first case to the Government of the French Republic and in the second case to the Government of the Swiss Confederation, the list of genera or species in respect of which it undertakes to apply the provisions of the Convention in accordance with the requirements of Article 4. In addition, it shall specify, in the case of genera or species referred to in paragraph (4) of that Article, whether it intends to avail itself of the option of limitation available under that provision.

(2) Each member State of the Union which subsequently decides to apply the provisions of this Convention to other genera or species shall communicate the same information as is required under paragraph (1) of this Article to the Government of the Swiss Confederation and to the Office of the Union, at least thirty days before its decision takes effect.

(3) The Government of the French Republic or the Government of the Swiss Confederation, as the case may be, shall immediately communicate to all the member States of the Union the information referred to in paragraphs (1) and (2) of this Article.

[Committee's Text]

Article 33

Communications Concerning the Genera and Species Protected; Information to be Published

(1) When depositing its instrument of ratification or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of the genera and species to which, on the entry into force of this Convention in its territory, it will apply the provisions of this Convention.

(2) The Secretary-General shall, on the basis of communications received from each member State concerned, publish information

(i) on the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act in respect of that State,

(ii) on any use of the faculty provided for in Article 3(3),

(iii) on the use of any faculty granted by the Council pursuant to Article 4(4) and 4(5),

(iv) on any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply,

(v) on any use of the faculty provided for in Article 5(4), second sentence,

(vi) on the fact that the law of the said State contains a provision allowed by Article 6(1)(b)(i), and the length of the period allowed by such provision,

(vii) on the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

[Article 34 has still to be discussed]

0676

[Present Text]

[Committee's Text]

Article 34A

Exceptional Rules for the Protection
Under Two Forms

[There is no Article 34A in the present text.]

(1) Notwithstanding the provisions of paragraph (1) of Article 2, any State which, at the date of opening for signature of this Act, provides for protection under different forms for sexually reproduced and for vegetatively propagated varieties of one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification or of accession to this Act, it notifies the Secretary-General of the Union of this fact.

(2) Where in a member State of the Union to which the preceding paragraph applies, protection is sought under patent legislation, the said State may apply the novelty criteria of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Article 6..

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has made under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

[Present Text]

Article 35

[Transitional Limitation of the
Requirement of Novelty]

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date of entry into force of this Convention in respect of such State.

[Committee's Text]

Article 35

Transitional Limitation of the
Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date at which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

[Article 36 and 36A still to be discussed]

[Present Text]

Article 37

[Preservation of Existing Rights]

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

[Committee's Text]

Article 37

~~P~~reservation of Existing Rights

[No change]

[Present Text]

Article 38

[Settlement of Disputes]

(1) Any dispute between two or more member States of the Union concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of the States concerned, be submitted to the Council, which shall endeavour to bring about agreement between the member States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of one of the parties concerned.

(3) The tribunal shall consist of three arbitrators.

Where two member States are parties to a dispute, each of those States shall appoint an arbitrator.

Where more than two member States are parties to a dispute, two of the arbitrators shall be appointed by agreement among the States concerned.

If the States concerned have not appointed the arbitrators within a period of two months from the date on which the request for convening the tribunal was notified to them by the Office of the Union, any of the member States concerned may request the President of the International Court of Justice to make the necessary appointments.

In all cases, the third arbitrator shall be appointed by the President of the International Court of Justice.

If the President is a national of one of the member States parties to the dispute, the Vice-President shall make the appointments referred to above, unless he is himself also a national of one of the member States parties to the dispute. In this last case, the appointments shall be made by the member of the Court who is not a national of one of the member States parties to the dispute and who has been selected by the President to make the appointments.

(4) The award of the tribunal shall be final and binding on the member States concerned.

(5) The tribunal shall determine its own procedure, unless the member States concerned agree otherwise.

(6) Each of the member States parties to the dispute shall bear the costs of its representation before the arbitration tribunal; other costs shall be borne in equal parts by each of the States.

[Committee's Text]

Article 38

Settlement of Disputes

(1) [No change]

(2) [No change]

(3) [No change]

(4) [No change]

(5) [No change]

(6) [No change]

0629

[Present Text]

Article 39

[Reservations]

Signature and ratification of and accession to this Convention shall not be subject to any reservation.

[There is no provision in the present text which corresponds to the proposed paragraph (2) in the new text.]

[Committee's Text]

Article 39

Reservations

(1) Subject to paragraph (2), signature and ratification of and accession to this Act shall not be subject to any reservation.

(2) Any State may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of Article 38. Any State having made the said declaration may, at any time, withdraw it by notification addressed to the Secretary-General.

[Present Text]

Article 40

[Duration and Denunciation
of the Convention;
Discontinuation of the
Application of the
Convention to Territories]

- (1) This Convention shall be of unlimited duration.
- (2) Subject to the provisions of paragraph (4) of Article 27, if a member State of the Union denounces this Convention, such denunciation shall take effect one year after the date on which notification of denunciation is made by the Government of the Swiss Confederation to the other member States of the Union.
- (3) Any member State may at any time declare that the Convention shall cease to apply to certain of its territories or to States or territories in respect of which it has made a declaration in accordance with the provisions of Article 34. Such declaration shall take effect one year after the date on which notification thereof is made by the Government of the Swiss Confederation to the other member States of the Union.
- (4) Such denunciations and declarations shall not affect rights acquired by reason of this Convention prior to the expiration of the time limit laid down in paragraphs (2) and (3) of this Article.

[Committee's Text]

Article 40

Duration and Denunciation
of the Convention

- (1) [No change]
- (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.

[The provisions corresponding to the provisions of paragraph (3) of the present text have still to be discussed]
- (4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

[Present Text]

Article 41

[Copies of the Convention;
Language and Official Translations
of the Convention]

- (1) This Convention is drawn up in a single copy in the French language. That copy is deposited in the archives of the Government of the French Republic.
- (2) A certified true copy shall be forwarded by that Government to the Governments of all signatory States.
- (3) Official translations of this Convention shall be made in the Dutch, English, German, Italian and Spanish languages.

Article VIII of the
Additional Act of 1972

[Original Copy of the Additional Act;
Language and Official Translations
of the Additional Act; Notifications;
Registration of the Additional Act]

- (1) This Additional Act shall be signed in a single original in the French language, which shall be deposited in the archives of the Government of the French Republic.
- (2) Official translations of this Additional Act shall be established by the Secretary-General of the Union, after consultations with the interested Governments, in Dutch, English, German, Italian and Spanish, and in such other languages as the Council of the Union may designate. In the latter event, the Secretary-General of the Union shall also establish an official translation of the Convention in the language so designated.

[Committee's Text]

Article 41

Copies; Languages; Notifications

- (1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original 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 been represented in the Diplomatic Conference that has adopted it and, on request, to the Government of any other State.
- (3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official texts in the Dutch, 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 been represented in that Diplomatic Conference that has adopted it, of the signature of this Act, the deposit of instruments of ratification, accession and any denunciation, as well as of any notification received under Article 34A or Article 36A or of any declaration made under Article 39(2).

[Article VIII of the
Additional Act of 1972, continued]

(3) The Secretary-General of the Union shall transmit two copies, certified by the Government of the French Republic, of the signed text of this Additional Act to the Governments of the States referred to in paragraph (1) of Article V, and on request to the Government of any other State.

(4) The Secretary-General of the Union shall register this Additional Act with the Secretariat of the United Nations.

(5) The Government of the French Republic shall notify the Secretary-General of the Union of the signatures of this Additional Act and of the deposit with that Government of instruments of ratification or accession. The Government of the Swiss Confederation shall notify the Secretary-General of the Union of the deposit with that Government of instruments of ratification or accession.

(6) The Secretary-General of the Union shall inform the member States of the Union and the signatory States of the Convention of the notifications received pursuant to the preceding paragraph and of the entry into force of this Additional Act.

[End of document]