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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

## DRAFT REPORT

prepared by the Office of the Union

## INTRODUCTION

Opening of the Session

1. The sixth session of the Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to as "the Committee") was held in Geneva from September 20 to 23, 1977.
2. All member States, except Italy, were represented, as was the United States of America, which had been admitted to attend the entire session in an observer capacity. The list of participants appears in Annex II of this report.
3. The session was opened by Mr. H. Skov (Denmark), Chairman of the Committee, who welcomed the participants.
4. The Committee observed a minute's silence in tribute to the memory of the late J.J.N. Verissi (France) and K. Christensen (United States of America), who had both participated in former sessions of the Committee and had greatly contributed to its work.

Adoption of the Agenda

5. The Committee adopted the agenda as appearing in document IRC/VI/1.Rev., subject to the inclusion between items 5 and 6 of the following item: "Substantial documents to be presented to the Council and to be submitted to Governments." The Committee further decided that the report would not be adopted at the end of the session and that it should only reflect the decisions taken and any matter--for instance, declarations or reservations--whose inclusion in the report was expressly requested.

Adoption of the Reports on the Fifth Session

6. The Committee unanimously adopted, subject to the following substantial amendments corresponding to a written request by Dr. Leenders (FIS), the report appearing in document IRC/V/13 on the first part of its fifth session, which was held in the presence of Observer Delegations:

(i) The last sentence of paragraph 16 was amended to read as follows:

"It mentioned especially that no seed could legally pass from farmer to farmer if the variety had been protected as a variety to be commercialized as a class of certified seed (the majority of the varieties protected in the United States of America)."

(ii) The following sentence was added to paragraph 16:

"The Committee took note of the wish of the Delegation of FIS that the Committee's statement appearing in the last sentence of paragraph 32 of document IRC/V/2 be revised as in none of the member States nor in the United States of America farmer to farmer trade was unconditionally exempted from plant variety protection."

7. The Committee unanimously adopted, subject to the following amendments, the report appearing in document IRC/V/14 on the second part of its fifth session, which was held in private:

(i) The words "subject to reconsidering the question in connection with the budget" were added to paragraph 83.

(ii) The references in paragraph 94 to Article 6 and Article 7(1) were corrected to references to Article 7(1) and Article 12(2) respectively.

#### PART I

#### CONSIDERATION OF THE REVISED SUBSTANTIVE PROVISIONS OF THE UPOV CONVENTION

8. The Committee discussed the draft revised substantive provisions of the Convention on the basis of documents IRC/VI/2\* and IRC/VI/2.Corr\*\*, prepared and distributed by the Office of the Union before the session, and documents IRC/VI/9, IRC/VI/10, IRC/VI/11, IRC/VI/12 and IRC/VI/19, reflecting the first reading of the proposals during the session and discussed on the following day of the session. The Committee did not discuss the comments appearing in document IRC/VI/2.

9. The Committee adopted the new text of Articles 1 to 5 as appearing in document IRC/VI/10, subject to the modifications reflected in document IRC/VI/19 and to the following decisions:

(i) The Office of the Union was asked, when preparing the final draft of the revised Convention to be submitted to the Council, to examine that draft on consistency in the terminology used, especially, in the German text, with respect to the language used to refer to applications for protection.

(ii) The Office of the Union was also asked to study whether the expression "the breeder or his successor in title" could be replaced by "the breeder" in all Articles in which it appeared except the first.

(iii) In the new paragraph (3) of Article 2, the text should be clarified to show that protection was granted in respect of varieties rather than types of varieties. With regard to "types of varieties," the Committee agreed that they could be distinguished within a given species according to any kind of classification, such as a classification based on the way of production--for instance, clones, lines, hybrids, etc.--or on the intended use--for instance, forest varieties and ornamental varieties.

(iv) The word "headquarters" appearing in Articles 3 and 5 (and Article 4(4) in the present text) was provisionally maintained, but its eventual replacement by "seat" or "real and effective establishment," for example, should be further studied.

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\* In German: IRC/VI/2.Rev.

\*\* In English only.

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10. The majority of the delegations were against including the production and marketing of plantlets in the mandatory scope of protection of Article 5(1) of the Convention. They favored the adoption by the Diplomatic Conference of a recommendation advising member States to extend the scope of protection to plantlets pursuant to Article 5(4) of the Convention.
11. The Committee adopted the new text of Article 6 as appearing in documents IRC/VI/11 and IRC/VI/12, subject to the modifications reflected in document IRC/VI/19.
12. The Committee adopted the new text of Articles 7 to 12 and 14 as appearing in document IRC/VI/12, subject to the modifications reflected in document IRC/VI/19.
13. Concerning the statement on Article 7, the Delegation of the United States of America was reassured that each member State was competent to designate the place in which the applicant was to be required to deposit, simultaneously with his application, a sample of the propagating material representing the variety and that the growing tests could be carried out in the fields of the applicant himself.
14. The Delegation of the United States of America inquired whether, as a consequence of the deletion of the proposed subparagraph (ii) of Article 12(3), the authorities of that State would have to discontinue their practice of examining all applications immediately after their filing and would have to defer the examination, in the case of priority applications, for up to five years until the additional documents and material had been furnished by the applicant. The Chairman replied that it was the understanding of the Committee that such was not the case.
15. The discussions on the Articles pertaining to variety denominations (Articles 13, 36 and 36A) are reported upon in document VD/XI/2.
16. The Committee adopted the proposed new Article 34A as appearing in document IRC/VI/19.
17. The Committee adopted the proposed new text of Article 35 as appearing in document IRC/VI/19.

## PART II

### CONSIDERATION OF THE OTHER PROVISIONS OF THE UPOV CONVENTION

18. The Committee discussed the other draft revised provisions of the Convention on the basis of documents IRC/VI/3, IRC/VI/7 and IRC/VI/8, prepared and distributed by the Office of the Union before the session, and documents IRC/VI/12 to 20, reflecting the first reading of the proposals during the session and discussed on the following day of the session. The Delegation of the Federal Republic of Germany declared that time had not been sufficient for concluding the examination, in cooperation with the competent Ministries, of some of the questions contained in those documents and it had therefore to reserve its final position. Similar declarations were made by some of the other Delegations in the course of the discussion. The Chairman remarked that the Committee's task was only to make proposals to the Council, and that its decisions were not binding. The Committee did not discuss the comments appearing in document IRC/VI/3.
19. The President of the Council recalled that at the fifth session of the Committee a new wording was adopted for Article 25 which provided for the possibility of establishing administrative and technical cooperation with any international--intergovernmental as well as non-governmental--organization and not only with WIPO. He informed the Committee that he had had an exchange of views with the Secretary-General on that question in which the latter had expressed the opinion that, if UPOV was no longer bound to WIPO by an agreement on administrative and technical cooperation, supervision by the Swiss Government would seem to become unnecessary. In view of the importance of the matter, he had thought it to be his duty as President of the Council to seek the opinion of the Swiss Government, for which purpose he had paid a visit to the Federal Political Department in Berne. The representatives of that Department had informed him that Switzerland was prepared to renounce its depositary functions and, in general, all supervisory functions, but that, on the other hand, it was also prepared to maintain those functions should it be considered necessary. The President of the Council finally stressed that he had taken those steps on a personal and strictly informal basis.

20. The Delegation of Switzerland thanked the President of the Council for the information given to the Committee. It indicated that the Swiss Government fully agreed with the proposed revision of those Articles of the Convention which conferred a special role on the Swiss Government and with the draft comments on Article 15. It confirmed that the Swiss Government would be prepared to continue its role of external auditor of the UPOV accounts if it was asked to do so, on the same basis as in the case of the WIPO accounts, and, if cooperation between UPOV and WIPO continued, as long as the Swiss Government audited the WIPO accounts.

21. The Secretary-General thanked the Swiss Government for its prompt attention to the matter. He indicated that there was a reason independent of the one given by the President of the Council for the proposed discontinuation of the special role of the Swiss Government, namely that, according to contemporary practice, supervisory functions in relation to international organizations were no longer entrusted to one of the organization's member States but were exercised by the supreme organ of the organization. In the case of UPOV, that organ would be the Council.

22. As far as the deletion of the reference in Article 25 to BIRPI, or to its successor organization, WIPO, was concerned, the Secretary-General indicated that he was not present when that deletion had been decided by the previous session of the Committee of Experts and he expressed the view that, should that decision be maintained, it might be courteous to inform WIPO of the fact, as well as the reasons for it and the question whether the deletion denoted the intention to discontinue the present relations between WIPO and UPOV.

23. To the latter remark the President of the Council replied that he had already given the Director General of WIPO and Secretary-General of UPOV the assurance that it was of course intended to notify WIPO of the decisions taken and the intention to continue the cooperation which so far had proved to be very satisfactory. That would however be done on the Council's instructions by its President.

24. The Delegation of the Federal Republic of Germany inquired whether the Administrative and Financial Regulations of UPOV would have to be amended should the supervisory role of the Swiss Government be abandoned, and whether in that case Switzerland was still prepared to assist UPOV by making advance payments in the case of financial difficulties.

25. In reply to the first question, the Secretary-General said that the Administrative and Financial Regulations of UPOV would have to undergo merely formal changes. As to the second question, he indicated that the supervisory role of a member State did not imply an obligation to make advance payments. Under Article 11(9) of the WIPO Convention, Switzerland was however obliged to grant advances if required and under certain circumstances. In compensation, Switzerland had an ex officio seat in the WIPO Coordination Committee. That point was also linked with the question whether a headquarters agreement between UPOV and Switzerland should be concluded.

26. In this connection, the Delegation of the United Kingdom proposed that it be expressly provided that legal personality be given to UPOV if the reference to BIRPI or WIPO was deleted and the role of the Swiss Government was discontinued, especially since it was a delicate matter to entrust a body not possessing legal personality with the exercise of depositary functions.

27. The above proposal found expression in the proposed new Article 23A in document IRC/VI/15 and was adopted by the Committee.

28. The Delegation of France recalled that France was in principle opposed to the deposit of instruments of ratification or accession with an international officer and that it had refused to sign the Vienna Convention on the Law of Treaties because it contained a provision of that kind and had filed a protest with the Secretary-General of the United Nations. The Delegation of France also recalled that it had proposed that such instruments be deposited with the Secretary-General through the channel of the Swiss Government.

29. The Delegation of Switzerland declared that it was ready to abandon its role of depositary, but that it foresaw difficulties in serving as an intermediary between the depositing State and the Secretary-General.

30. In conclusion, the Committee adopted the proposed new text of Articles 15 to 20 and 22 as appearing in document IRC/VI/12, subject to the modifications reflected in document IRC/VI/19.

31. The Committee also adopted the proposed new texts of Articles 21, 23 to 25, 27 to 31, 32A, 32B, 33, 35 and 37 to 41 as appearing in document IRC/VI/19, subject to the following decisions:

(i) Article 21(g) was amended to read as follows:

[The tasks of the Council shall be to:]

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

(ii) In Article 24, the reference to Article 20(2) was changed to Article 20.

(iii) In Article 30(2), the expression "autorités compétentes" in the French text was replaced by "services compétents" and the words "Verträge" and "geschlossen" in the German text were replaced by "Vereinbarungen" and "getroffen," respectively.

(iv) In Article 33(1), the words "in its territory" were deleted.

32. With regard to Article 21(g), the Delegation of the Federal Republic of Germany referred to its general reservation mentioned under paragraph 18 above.

33. The Committee had a long discussion on the question of the amendment of Article 26, on the basis of proposals by the Delegations of the Federal Republic of Germany (document IRC/VI/16), the Netherlands (document IRC/VI/17) and the Office of the Union (document IRC/VI/18). In conclusion, it decided to adopt, as a working hypothesis, the proposal by the Office of the Union, as amended by the Delegation of Switzerland, to include a further class corresponding to 12.5 contribution units.

34. The Delegation of the United Kingdom expressed its preference for the deletion of Article 30(3) and Article 32B and reserved the right to come back to the question on further occasions.

35. The Committee adopted the proposed new text of Article 32 as appearing in document IRC/VI/20.

36. The Committee opposed the deletion, supported by the Secretary-General, of Article 34 (territories). It adopted the following draft:

"Article 34

"Territories

"(1) Any State may declare in its instrument of ratification or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

"(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

"(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Secretary-General.

"(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General."

37. The draft text of the revised Convention as adopted by the Committee is attached in Annex I of this report.

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### PART III

#### CONSIDERATION OF THE OTHER DOCUMENTS FOR THE DIPLOMATIC CONFERENCE

38. The Committee agreed to the Provisional Rules of Procedure of the Diplomatic Conference as appearing in document IRC/VI/4, subject to the following amendments:

(i) The Committee agreed to propose to the Council that the Conference be held from October 9 to 23, 1978, rather than from October 10 to 26, 1978, and Rule 1(1) was amended accordingly. The Secretary-General said that in his view the period was too short and that he would revert to the matter when it was discussed in the Council.

(ii) Rule 2(1)(ii) was amended to read as follows:

"(ii) delegations of States other than those referred to in (i) above, a list of which was established by the Council of UPOV at its eleventh ordinary session."

(iii) The word "international" was inserted in Rule 2(1)(iii) before the words "non-governmental organizations."

(iv) In Rules 3(2) and 23(3), the term "proposals" was deleted.

(v) In Rule 10, the word "discussions" was replaced by "deliberations" and the words "as provided in these Rules" were added in Rules 10 and 48.

(vi) In Rule 27, the word "seconding" was replaced by "supporting."

(vii) In Rule 36(1), the words "any procedural motion and" were deleted.

(viii) In Rule 36(2), the words "on any question" were added after "voting" and the words "seconded by another Member Delegation" were deleted.

(ix) In Rule 38, the words "seconded by another Delegation" were deleted.

39. The Committee agreed to the Provisional Agenda of the Diplomatic Conference as appearing in document IRC/VI/5, subject to the addition of a new item 1: "Welcome address by the President of the Council."

40. The Committee agreed to the draft Notes and letters of invitation to the Diplomatic Conference as appearing in document IRC/VI/6, subject to the modifications resulting from the amendment of the Provisional Rules of Procedure (see paragraph 38(i) and (ii) above).

41. With respect to the list of States to be invited to the Diplomatic Conference (document IRC/VI/6, Annex V), the Committee noted that the Republic of Djibouti would be added to the list since it had recently been admitted to the United Nations. As far as the list established in German was concerned, some amendments were announced by the Vice Secretary-General and the Delegation of the Federal Republic of Germany agreed to check the names of the States in German. The Committee agreed to the following changes in the list of international organizations to be invited to the Diplomatic Conference:

(i) The headings ("1. Intergovernmental Organizations" and "2. Non-Governmental Organizations") were deleted.

(ii) The Organisation for Economic Co-operation and Development (OECD) was included in the list.

(iii) The invitations to the European Economic Community (EEC) would not mention any special organ of that body.

(iv) The International Federation of Agricultural Producers (IFAP) and the Panamerican Seed Seminar (SPS) were also included in the list.

PART IV

DOCUMENTS TO BE PRESENTED TO THE COUNCIL AND  
SUBMITTED TO GOVERNMENTS

42. On a proposal by the Delegation of France, it was decided that the Chairman of the Committee would report to the Council, in its December 1977 session, on the work accomplished by the Committee.

43. The Delegation of France also expressed the wish that the document containing the draft revised Convention would be as short as possible and therefore not contain explanations on each Article but only a short commentary at the beginning. The Committee did not comply with those wishes since the said document was to be submitted not only to the Council but also to the government authorities of member States and numerous non-member States. The Office of the Union was entrusted with the task of adapting the explanations to the new draft text resulting from the decisions taken by the Committee.

PART V

PROGRAM FOR THE NEXT SESSION

44. The Committee took note of the Council's decision at its third extraordinary session that the Committee's next session would be held in September 1978 and would be devoted to a study of the comments and proposals made by the invited States on the documents which would be submitted to them and to a final exchange of views on the subject of the Diplomatic Conference. The Committee decided that the details of its future work should be settled on the occasion of the next Council session.

[Two Annexes follow]



Draft

INTERNATIONAL 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; Varieties;  
Types of Varieties

(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.

(3) In the case of a species including different types of varieties, each member State shall be free to decide which type or types of the said species are eligible for protection.

[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; Reciprocity

(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

- (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]

[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 is no provision in the Committee's 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 words "new plant" and "new".]

(2) [No change]

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

(4) [No change]

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

[Present Text]

Article 6

[Conditions Required for Protection]

(1) The breeder of a new variety or his successor in title shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the new variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication.

A new variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise description and recognition.

(b) The fact that a variety has been entered in trials, or has been submitted for registration or entered in an official register, shall not prejudice the breeder of such variety or his successor in title.

At the time of the application for protection in a member State of the Union, the new variety must not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of that State, or for longer than four years in the territory of another State.

(c) The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The new variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The new variety shall be given a denomination in accordance with the provisions of Article 13.

[Committee's Text]

Article 6

Conditions Required for Protection

(1) The breeder of a variety or his successor in title shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication. A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise recognition and description.

(b) At the time of the application for protection in a member State of the Union, the variety

(i) must not--or where the law of that State so provides, must not for longer than one year--have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of that State and

(ii) must not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right to protection.

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

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

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

0706

[Article 6, continued]

[Present Text]

(2) Provided that the breeder or his successor in title shall have complied with the formalities provided for by the national law of each country, including the payment of fees, the grant of protection in respect of a new variety may not be made subject to conditions other than those set forth above.

[Committee's Text]

(2) [No change, except omit the words "in respect of a new variety"]



[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 "of a new plant variety"]

[Present Text]

Article 8

[Period of Protection]

(1) The right conferred on the breeder of a new plant variety or his successor in title shall be granted for a limited period. This period may not be less than fifteen years. For plants such as vines, fruit trees and their rootstocks, forest trees and ornamental trees, the minimum period shall be eighteen years.

(2) The period of protection in a member State of the Union shall run from the date of the issue of the title of protection.

(3) Each member State of the Union may adopt longer periods than those indicated above and may fix different periods for some classes of plants, in order to take account, in particular, of the requirements of regulations concerning the production and marketing of seeds and propagating material.

[Committee's Text]

Article 8

Period of Protection

The right conferred on the breeder or his successor in title shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including their rootstocks, the minimum period shall be not less than eighteen years computed from the said date.

[Present Text]

Article 9

[Restrictions in the Exercise  
of Rights Protected]

The free exercise of the exclusive right accorded to the breeder or his successor in title may not be restricted otherwise than for reasons of public interest.

When any such restriction is made in order to ensure the widespread distribution of new varieties, the member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

[Committee's Text]

Article 9

Restrictions in the Exercise  
of Rights Protected

(1) [No change, except that the paragraph should receive a number, namely "(1)."]

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

0710

[Present Text]

Article 10

[Nullity and Forfeiture  
of the Rights Protected]

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in subparagraphs (a) and (b) of paragraph (1) of Article 6 were not effectively complied with at the time when the title of protection was issued.

(2) The breeder or his successor in title shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the new variety with its morphological and physiological characteristics as defined when the right was granted.

(3) The right of the breeder or his successor in title may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the new variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled and the right of the breeder or his successor in title may not become forfeit except on the grounds set out in this Article.

[Committee's Text]

Article 10

Nullity and Forfeiture  
of the Rights Protected

(1) [No change]

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

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

(4) [No change]

[Present Text]

Article 11

[Free Choice of the Member State in Which the  
First Application is Filed; Application in  
Other Member States; Independence of  
Protection in Different Member States]

- (1) The breeder or his successor in title may choose the member State of the Union in which he wishes to make his first application for protection of his right in respect of a new variety.
- (2) The breeder or his successor in title may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.
- (3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same new variety in other States whether or not such States are members of the Union.

[Committee's Text]

Article 11

Free Choice of the Member State in Which the  
First Application is Filed; Application in  
Other Member States; Independence of  
Protection in Different Member States

- (1) The breeder or his successor in title may choose the member State of the Union in which he wishes to make his first application for protection.
- (2) [No change]
- (3) [No change, except omit the word "new."]

0711

[Present Text]

Article 12

[Right of Priority]

(1) Any breeder or his successor in title who has duly filed an application for protection of a new 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 run from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection of the new variety, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

[Committee's Text]

Article 12

Right of Priority

(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.

(2) [No change, except omit the words "of the new variety"]

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished, within an adequate period, in the case where the application whose priority is claimed is rejected or withdrawn.

(4) [No change]

[Present Text]

Article 13

[Denomination of New Varieties of Plants]

- (1) A new variety shall be given a denomination.
- (2) Such denomination must enable the new variety to be identified; in particular, it may not consist solely of figures.

The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the new variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, existing varieties of the same or a closely related botanical species.

(3) The breeder or his successor in title may not submit as the denomination of a new variety either a designation in respect of which he enjoys the protection, in a member State of the Union, accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, unless he undertakes to renounce his right to the mark as from the registration of the denomination of the new variety.

If the breeder or his successor in title nevertheless submits such a denomination, he may not, as from the time when it is registered, continue to assert his right to the trade mark in respect of the above-mentioned products.

(4) The denomination of the new variety shall be submitted by the breeder or his successor in title to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraphs, the authority shall refuse to register it and shall require the breeder or his successor in title to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(5) A new variety must be submitted in member States of the Union under the same denomination. The competent authority for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder or his successor in title to submit a translation of the original denomination or another suitable denomination.

[Committee's Text]

Article 13

Denomination of Varieties of Plants

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

(2) Such denomination must enable the variety to be identified; in particular, it may not consist solely of figures. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same or a closely related botanical species.

(4) If the breeder or his successor in title submits as the denomination of the variety either a designation in respect of which he enjoys the protection accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, he may not, as from the time when it is registered, continue to assert his right to the trade mark, in respect of the above-mentioned products, in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs.

(3) [Same as paragraph (4) of the present text, except omit the word "new" and replace "paragraphs" by "paragraph."]

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

[Article 13, continued]

[Present Text]

[Committee's Text]

(6) When the denomination of a new variety is submitted to the competent authority of a member State of the Union, the latter shall communicate it to the Office of the Union referred to in Article 15, which shall notify it to the competent authorities of the other member States of the Union. Any member State of the Union may address its objections, if any, through the said Office, to the State which communicated the denomination.

The competent authority of each member State of the Union shall notify each registration of the denomination of a new variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union. Registrations shall also be communicated by the Office to the member States of the Paris Union for the Protection of Industrial Property.

(7) Any person in a member State of the Union who offers for sale or markets reproductive or vegetative propagating material of a new variety shall be obliged to use the denomination of that new variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (10), prior rights do not prevent such use.

(8) From the date of issue of a title of protection to a breeder or his successor in title in a member State of the Union:

(a) the denomination of the new variety may not be used, in any member State of the Union, as the denomination of another variety of the same or a closely related botanical species;

(b) the denomination of the new variety shall be regarded as the generic name for that variety. Consequently, subject to the provisions of paragraph (10), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law.

(6) [Same as the first subparagraph of paragraph (6) of the present text, except omit the word "new."]

(7) The competent authority of each member State of the Union shall notify each registration of the denomination of a variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union.

(8) [Same as paragraph (7) of the present text, except omit the word "new" in all cases in which it appears and change "(10)" to "(11)".]

(9) [Same as paragraph (8) of the present text, except omit the word "new" in all cases in which it appears.]



[Article 13, continued]

[Present Text]

(9) It shall be permitted, in respect of the same product, to add a trade mark to the denomination of the new variety.

(10) Prior rights of third parties in respect of signs used to distinguish their products or enterprises shall not be affected. If, by reason of a prior right, the use of the denomination of a new variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall, if need be, require the breeder or his successor in title to submit another denomination for the new variety.

[Committee's Text]

(10) [Same as paragraph (9) of the present text, except omit the word "new."]

(11) [Same as paragraph (10) of the present text, except omit (twice) the word "new," change "(7)" to "(8)" and delete "if need be."]

[Present Text]

Article 14

[Protection Independent of Measures Regulating  
Production, Certification and Marketing]

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

[Committee's Text]

Article 14

Protection Independent of Measures Regulating  
Production, Certification and Marketing

(1) [No change]

(2) [No change]

0715

[Present Text]

Article 15

[Organs of the Union]

The permanent organs of the Union shall be:

(a) the Council;

(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants. That Office shall be under the high authority of the Swiss Confederation.

[Committee's Text]

Article 15

Organs of the Union

The permanent organs of the Union shall be:

(a) the Council and

(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

0710

[Present Text]

Article 16

[Composition of the Council; Votes]

(1) The Council shall consist of representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.

(2) Representatives or alternates may be accompanied by assistants or advisers.

(3) Each member State of the Union shall have one vote in the Council.

[Committee's Text]

Article 16

Composition of the Council; Votes

(1) [No change, except include the word "the" before the word "representatives."]

(2) [No change]

(3) [No change]

0710

[Present Text]

Article 17

[Observers in Meetings of the Council]

(1) States which have signed but not yet ratified this Convention shall be invited as observers to meetings of the Council. Their representatives shall be entitled to speak in a consultative capacity.

(2) Other observers or experts may also be invited to such meetings.

[Committee's Text]

Article 17

Observers in Meetings of the Council

(1) States not members of the Union which have signed but not yet ratified this Act shall be invited as observers to meetings of the Council.

(2) [No change]

[Present Text]

Article 18

[Officers of the Council]

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

[Committee's Text]

Article 18

Officers of the Council

(1) [No change]

(2) [No change]

[Present Text]

Article 19

[Meetings of the Council]

- (1) Meetings of the Council shall be convened by its President.
- (2) A regular session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if a third of the member States of the Union so request.

[Committee's Text]

Article 19

Meetings of the Council

- (1) [No change]
- (2) [No change]

0725

[Present Text]

Article 20

[Rules of Procedure of the Council;  
Administrative and Financial Regu-  
lations of the Union]

- (1) The Council shall lay down its rules of procedure.
- (2) The Council shall adopt the administrative and financial regulations of the Union, after having consulted the Government of the Swiss Confederation. The Government of the Swiss Confederation shall be responsible for ensuring that the regulations are carried out.
- (3) A majority of three-quarters of the member States of the Union shall be required for the adoption of such rules and regulations and any amendments to them.

[Committee's Text]

Article 20

Rules of Procedure of the Council;  
Administrative and Financial Regu-  
lations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

[There is no provision in the Committee's text corresponding to paragraph (3) in the present text.]



[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

Tasks of the Council

The tasks 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; if it finds it necessary, appoint a Vice Secretary-General, after consultation with and the agreement of the Secretary-General; determine the terms of appointment of each;

(h) [No change]

[Present Text]

Article 22  
as amended by Article I of the  
Additional Act of 1972

[Majorities Required for Decisions  
of the Council]

Decisions of the Council shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, for the vote on the budget, for the fixing of the contributions of each member State of the Union, for the faculty provided for in paragraph (5) of Article 26 concerning payment of one-half of the contribution corresponding to Class V and for any decision regarding voting rights under paragraph (6) of Article 26. In these last four cases, the majority required shall be three-quarters of the members present.

[Committee's Text]

Article 22

Majorities Required for Decisions  
of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(d), 26(5), 27(1) and 28(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

[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]

[There is no Article 23A in the present text.]

[Committee's Text]

Article 23A\*

Legal Status

- (1) The Union shall have legal capacity.
- (2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Union's objectives and for the exercise of its functions.

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

[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. 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 are no provisions in the Committee's text corresponding to Article 25 of the present text.]

[Present Text]

Article 26  
as amended by Article II of the  
Additional Act of 1972

[Finances]

(1) The expenses of the Union shall be met from:

(a) annual contributions of member States of the Union;

(b) payments received for services rendered; and

(c) miscellaneous receipts.

(2) For the purpose of determining the amount of their annual contributions, the member States of the Union shall be divided into five classes:

Class I	.....	5 units
Class II	.....	4 units
Class III	.....	3 units
Class IV	.....	2 units
Class V	.....	1 unit

Each member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of member States of the Union by the total number of units.

(4) Each member State of the Union shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change of class is to take effect.

(5) At the request of a member State of the Union or of a State applying for accession to the Convention according to Article 32 and indicating the wish to be placed in Class V, the Council may, in order to take account of exceptional circumstances, decide to allow such State to pay only one-half of the contribution corresponding to Class V. Such decision will stand until the State concerned waives the faculty granted or declares that it wishes to be placed in another class or until the Council revokes its decision.

[New Text]

Article 26

Finances

(1) [No change]

(2) (a) For the purpose of determining the amount of their annual contributions, the member States of the Union shall be divided into the following classes:

Class A	.....	15 units
Class B	.....	12.5 units
Class C	.....	10 units
Class D	.....	7.5 units
Class I	.....	5 units
Class I bis	.....	4.5 units
Class II	.....	4 units
Class II bis	.....	3.5 units
Class III	.....	3 units
Class III bis	.....	2.5 units
Class IV	.....	2 units
Class IV bis	.....	1.5 units
Class V	.....	1 unit
Class V bis	.....	3/5 unit
Class V ter	.....	1/5 unit

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

(3) [No change]

(4)(a) Each State shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

(b) [Same as the (unnumbered) second subparagraph of paragraph (4) of the present text.]

(5) [There are no provisions in the Committee's text corresponding to paragraph (5) in the present text.]

[Article 26, continued]

[Present Text]

(6) A member State of the Union which is in arrears in the payment of its contributions may not exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years, but it shall not be relieved of its obligations under this Convention, nor shall it be deprived of any other rights thereunder. However, the Council may allow such State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

[Committee's Text]

(5) [Same as paragraph (6) of the present text.]



[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 Articles 32A and 32B of the Committee's text.]

[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.

0247

[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 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 Committee's text.]

(3) [See opposite Article 32A of the Committee's 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 Committee's text.]

[For the provision corresponding to paragraph (3) of the present text, see Article 32A of the Committee's 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 utilization 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

[... Ratifications ...]

- (1) [See opposite Article 31 of the Committee's text.]
- (2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the French Republic, which shall notify such deposit to the other signatory States.
- (3) [See opposite Article 32A of the Committee's text.]

Article 32

[Accession; Entry Into Force]

- (1) This Convention shall be open to accession by non-signatory States in accordance with the provisions of paragraphs (3) and (4) of this Article.

(2) Applications for accession shall be addressed to the Government of the Swiss Confederation, which shall notify them to the member States of the Union.

(3) Applications for accession shall be considered by the Council having particular regard to the provisions of Article 30.

Having regard to the nature of the decision to be taken and to the difference in the rule adopted for revision conferences, accession by a non-signatory State shall be accepted if a majority of four-fifths of the members present vote in favour of its application.

Three-quarters of the member States of the Union must be represented when the vote is taken.

(4) In the case of a favourable decision, the instrument of accession shall be deposited with the Government of the Swiss Confederation, which shall notify the member States of the Union of such deposit.

Accession shall take effect thirty days after the deposit of such instrument.

[Committee's Text]

Article 32

Ratification; Accession

- (1) Any State shall express its consent to be bound by this Act by the deposit of

(a) its instrument of ratification, if it has signed this Act, or

(b) its instrument of accession, if it has not signed this Act.

[See below]

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act.

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

[For the provision corresponding to the second subparagraph of the present text, see Article 32A of the Committee's text.]

[Article 32A follows]

[Present Text]

Article 31

[... Entry Into Force]

- (1) [See opposite Article 31 of the Committee's text.]
- (2) [See opposite Article 32 of the Committee's 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 Committee's 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) In respect of any State depositing its instrument of ratification or accession after the deposit of the fifth instrument of ratification or accession, this Act shall enter into force one month after the deposit of the instrument of the said State.

- (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]

[Present Text]

[Committee's Text]

Article 32B

Relations Between States  
Bound by Different Texts

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

(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]

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\* 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, 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.

[Present Text]

Article 34

[Territories]

(1) Every member State of the Union, either on signing or on ratifying or acceding to this Convention, shall declare whether the Convention applies to all or to a part of its territories or to one or more or to all of the States or territories for which it is responsible.

This declaration may be supplemented at any time thereafter by notification to the Government of the Swiss Confederation. Such notification shall take effect thirty days after it has been received by that Government.

(2) The Government which has received the declarations or notifications referred to in paragraph (1) of this Article shall communicate them to all member States of the Union.

[See Article 40(3) of the present text.]

[See the second sentence of second subparagraph of paragraph (1) above.]

[Committee's Text]

Article 34

Territories

(1) Any State may declare in its instrument of ratification or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

[See paragraph (5) of Article 41 of the Committee's text.]

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

[Present Text]

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

[Committee's Text]

Article 34A

Exceptional Rules for the Protection  
Under Two Forms

(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 of or 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.

[Present Text]

Article 36

[Transitional Rules Concerning the  
Relationship Between Variety  
Denominations and Trade Marks]

- (1) If, at the date of entry into force of this Convention in respect of a member State of the Union, the breeder of a new variety protected in that State, or his successor in title, enjoys in that State the protection of the denomination of that variety as a trade mark for identical or similar products within the meaning of trade mark law, he may either renounce the protection in respect of the trade mark or submit a new denomination. If a new denomination has not been submitted within a period of six months, the breeder or his successor in title may not continue to assert his right to the trade mark for the above-mentioned products.
- (2) If a new denomination is registered for the variety, the breeder or his successor in title may not prohibit the use of the previous denomination by persons obliged to use it before the entry into force of this Convention, until a period of one year has expired from the publication of the registration of the new denomination.

[Committee's Text]

Article 36

[Transitional Rules Concerning the  
Relationship Between Variety  
Denominations and Trade Marks]

- (1) [No change, except omit the word "new" in the term "a new variety."]
- (2) [No change]

[Present Text]

[Committee's Text]

Article 36A

Exceptional Rules for the Use of  
Denominations Consisting Solely of Figures

[There is no Article 36A in the present  
text]

(1) Notwithstanding the provisions of paragraph (2) of Article 13, any State which, at the date of opening for signature of this Act, has the established practice of admitting variety denominations consisting solely of figures, may continue such practice in respect of all or certain genera and species if, at the time of signing this Act or of depositing its instrument of ratification or accession to this Act, it notifies the Secretary-General of the Union of its intention to do so and, unless it intends to do so in respect of all genera or species, of the genera and species in respect of which it intends to continue the said practice.

(2) 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 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

Preservation of Existing Rights

[No change]

[Present Text]

[Committee's Text]

Article 38

Article 38

[Settlement of Disputes]

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.

(1) [No change]

(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.

(2) [No change]

(3) The tribunal shall consist of three arbitrators.

(3) [No change]

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.

(4) [No change]

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

(5) [No change]

(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.

(6) [No change]



[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 Committee's 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.
- [See Article 34(2) and (3)(b) of the Committee's text.]
- (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 32B, 34, 34A or 36A or of any declaration made under Article 34 or 39.

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[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.

[Annex II follows]

## LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

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IV. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

Dr. A. BOGSCH, Secretary-General

Dr. H. MAST, Vice Secretary-General

Dr. M.-H. THIELE-WITTIG, Administrative and Technical Officer

Mr. A. HEITZ, Administrative and Technical Officer

[End of Annex II and of document]