ings (for simple articles), or basic schemes of the components of the conception of the design (for complex articles).

14. — The photographs shall be clear and distinct and shall measure 18 × 24 cm. As many different photographs of the various views of the design shall be submitted as are necessary to show clearly its distinguishing features, but not less than four copies of each view.

One photograph shall show a general view of the design. Where necessary, the design may be presented in the form of a colored photograph, but at the time of registration publication shall be in black and white, with an indication of the color combinations.

15. — The first copy of the technical drawing or basic scheme of the components of the conception of the design shall be made in Indian ink or black ink on smooth white paper of good quality.

The other copies may be presented in the form of photocopies or tracings.

The size of the sheets of paper shall not exceed 18 × 24 cm. Figures shall be presented in such a way that they can be read when the sheets are held vertically.

16. — In the case of the filing of an application concerning decorative materials, a pattern of the design (motif) executed in the materials concerned shall be appended (on the same scale as the design).

17. — Models and samples of the article may be required in order to permit examination of the design. In such cases, each model and sample of the article must be supplied with a wooden label indicating the application to which it refers.

Models and samples of the article shall not be returned to the applicant and shall not be kept, except in the case of models and samples in respect of which certificates have been issued. Such models and samples shall be kept for a period of one year in the appropriate exhibition hall of the VNIITE [1] [All-Union Scientific Research Institute for Technical Aesthetics].

18. — Photographs, technical drawings, and schemes of industrial designs, shall be submitted unfolded and shall be so packed for dispatch as to avoid any possibility of damage.

19. — Additional materials altering the substance of an earlier application shall be considered as forming a separate application.

[1] ВНИИТЭ (Всесоюзный научно-исследовательский институт технической эстетики).

NEW PLANT VARIETIES

International Convention for the Protection of New Varieties of Plants

Ratification

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Government of the United Kingdom of Great Britain and Northern Ireland has ratified the International Convention for the Protection of New Varieties of Plants, signed in Paris on December 2, 1961 [1]. The instrument of ratification was deposited with the French Government and the United Kingdom ratification has effect from September 17, 1965.

It will be noted that the United Kingdom of Great Britain and Northern Ireland is the first country to ratify this Convention, which will come into force, in respect of those States which have ratified it, thirty days after the deposit of the third instrument of ratification [Article 31 (3)].

[1] See *Industrial Property*, 1962, pp. 6 *et seq.*

International Convention for the Protection of New Varieties of Plants

and Some Comments on Plant Breeders' Rights Legislation in the United Kingdom

By Mr. Leslie J. SMITH
Controller of the U. K. Plant Variety Rights Office and Head, Seeds Division, U. K. Ministry of Agriculture, Fisheries and Food, London

A new, specialist Convention

1. In its origin, and to some extent in its form and content, the International Convention for the Protection of New Varieties of Plants owes much to the ideas which inspired the Industrial Property Convention. Yet it is, quite strikingly, a specialist Convention catering in its own characteristic fashion for a distinct sector of original, creative activity. In a recent article [1] Mr. Laclavière has given a most interesting account of the genesis of the Plant Convention: the present article is more concerned with the practical working of the Convention and draws attention to some of the problems which will arise.

2. The Convention is a complex, detailed agreement between (so far) eight signatory States [2] in a part of the intellectual property field where no agreement had previously existed or been seriously attempted. The Convention is not yet in force and its provisions have not, therefore, been tested

[1] See *Industrial Property*, 1965, p. 224.
[2] These are: Belgium, Denmark, France, German Federal Republic, Holland, Italy, Switzerland and the United Kingdom.

by experience. Where national systems of plant breeders' rights already exist, modifications will usually be required to comply with the Convention. Moreover, although the Convention deals only with matters of protection and is quite self-contained, the significance of some of its Articles is best appreciated against the background of the controls, often very extensive, exercised by signatory States over the production and commercialisation of plant material. In the following analysis of certain Articles of the Convention, references to the United Kingdom law on plant breeders' rights may help to show how one of the signatory States [3]) has sought to give effect to the Convention.

The Convention and the U. K. law: development in parallel

3. The Plant Convention and the U. K. system of plant breeders' rights were developed side by side. In 1957, when the Committee of Experts set up by an International Conference held in Paris in May of that year was beginning to grapple with the task of preparing a draft Convention, the United Kingdom Government, acting on a decision taken immediately after the OEEC Stockholm Conference of 1954, commissioned a representative group to begin a detailed study of the nature and effects of plant breeders' rights in other countries and the possibility of introducing a legal system of protection in the United Kingdom. Four years of international discussion led to the completion and signature of the International Convention towards the end of 1961. The U. K. group were equally successful in producing, by 1960, a detailed blueprint for a plant breeders' rights system in the United Kingdom. *Published in that year, the group's report* [4]) *subsequently formed the basis for new legislation — Part I of the Plant Varieties and Seeds Act, 1964 — which passed into law in March 1964. Other Parts of the same Act brought the country's seed control system up to date* *).

4. This development in parallel of the international and British systems encouraged cross-fertilisation of ideas. Meeting in London, the U. K. group were kept informed of progress in the international talks taking place in Paris and elsewhere. At the same time, the United Kingdom delegate was able to advise the Committee of Experts on the attitude which might be taken in his country on the many problems of common interest. This exchange had some important consequences. First, the United Kingdom law as it finally emerged from Parliament complied in all respects with the requirements of the International Convention. Second, and flowing from this, the United Kingdom, as soon as it was in a position to do so, had no difficulty in signing the International Convention (on November 28, 1962). Third, as a signatory country the United Kingdom in due course found itself in a position to ratify the Convention on the basis of the 1964 Act and without further reference to Parliament. This stage was reached in the present year, when the Government, having made protection available to breeders in five species or genera of plants (the minimum required by the Convention), promptly set in train arrangements for the necessary instrument of ratification to the prepared and forwarded to the depository power.

5. The early completion of all the necessary stages in the elaboration of a completely new legal system of proprietary rights in the United Kingdom, together with the assumption of international obligations under the Convention, indicate the importance attached by the United Kingdom to the encouragement of plant breeding as a means of improving agricultural productivity. Equally, it demonstrates the desire of the United Kingdom that its growers should have ready access to the products of foreign breeders and likewise that British plant breeders should have the benefit of protection when their products are used in other countries.

Layout of the Convention

6. The 41 Articles of the International Convention fall into two more or less distinct groups. Articles 2 to 14, and two or three of the later Articles, contain the obligations of member States with regard to the protection of the rights of the plant breeder. *Each of these has its counterpart in the 15 sections and 4 schedules of Part I of the U. K. Plant Varieties and Seeds Act, 1964. They deal with such matters as the nature of the breeder's rights and their duration, the necessity for prior examination and the criteria to be applied, national treatment, priority rights, and the naming of varieties.* The remaining Articles of the Convention are mainly concerned with regulating the relations between member States, including the establishment of a Union, Council and Secretariat, financial contributions and budgetary provisions, official languages, provisions for ratification, accession, denunciation and amendment, arbitration and related matters. For the most part these Articles have no counterpart in the U. K. law, and the present study is not therefore concerned with them.

Agreement on common principles

7. Before referring in detail to Articles 2-15, some brief remarks on the overall character and significance of the Convention may be of interest. Perhaps its most remarkable feature is the extent to which it will determine the shape and content of the domestic plant breeders' rights legislation and practice of each member State. Unlike the much older Industrial Property Convention, which allows States party to that Convention considerable latitude in such matters as the form, extent and duration of patent protection, the Plant Convention lays down a detailed code to which all member States must conform, not only in their dealings with other member States, but in their domestic arrangements. To quote the Preamble to the Convention, the contracting States considered it highly desirable that the special problems connected with plant breeders' rights "should be resolved by each of them in accordance with uniform and clearly defined principles". This has important practical implications for prospective member States in connection with ratification and accession, particularly where already existing domestic legislation relating to plant breeders' rights has developed on different lines.

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[3]) The United Kingdom ratified the Convention on September 17, 1965, and was the first country to do so.

[4]) Report on Plant Breeders' Rights by the Committee on Transactions in Seeds published in London in July 1960 as Command 1092.

*) Texts printed in italics refer to British legislation.

Changes to conform with the Convention would in such cases be required as a condition of membership. It is sometimes more difficult to introduce such changes than to legislate for the first time. Some delay in ratification on the part of the States concerned is therefore to be expected while the problems are resolved.

8. The strong emphasis on uniform principles gives real substance to the Convention and should prove of undeniable value to the plant breeder. National treatment, guaranteed under Article 3, becomes more meaningful where the protection afforded in the territory of each member State is granted according to uniform principles. As to the future, the acceptance of such principles not only encourages the adoption of uniform practices in the operation of the various national Offices, implying the need for an advanced degree of co-operation between them, but would also facilitate the introduction of an international right if that should later be found desirable.

9. Among the basic principles of the Plant Convention are exclusivity of rights and national treatment for foreign breeders. These are familiar concepts which have long been accepted on a nearly world wide basis under the Industrial Property Convention. There are however other principles, more or less basic, which give rise to obligations affecting both legislative and administrative practice at the national level. For example, every new variety for which rights are claimed is required to be subjected to certain tests before rights may be granted. Each member State must, therefore, either introduce an organised system of growing trials or make joint trial arrangements with other States. Again, the Convention lays down a minimum programme, which must be completed by each member State within a specified period of years, for extending protection to certain plant species and genera listed in an appendix to the Convention. Neither of these requirements, nor others to be found in the Convention and mentioned later, need however cause serious difficulty in any country which recognises the importance of variety in the choice of crop and other plants. In such countries arrangements will already exist, or can be developed, for ascertaining and assessing the characteristics of different varieties under local conditions. All these matters do of course require careful thought and planning prior to ratification or accession.

Convention Article 2. Form of the breeder's rights. U. K. Act, S. 1

10. This Article defines "variety" and permits member States to recognise breeder's rights in a new variety either by the grant of a special title of protection or of a patent. These are not mutually exclusive forms of protection, except that only one form may be used by a member State for any particular plant species or genus. No choice is left to the individual applicant for protection. Whichever form of right is granted, its content and mode of exercise must be as defined in the Convention. Thus a patent granted for a plant variety under a system which did not conform with the Plant Convention would not be an acceptable form of protection under the Convention.

While member States have discretion to grant patents for plants if they so desire, and a minority may adopt this course, the Convention is best regarded as creating a new, special title of protection better adapted than the traditional patent to the characteristics of plants considered as living material. A full discussion of this issue would go to the roots of the Convention and space does not permit, but some reference has been made to it in the recent article by Mr. Laclavière referred to above. The great majority of countries which took part in drafting the Convention favoured a new, distinct breeder's right and there is little doubt that this special right will be chosen as the normal form of protection in preference to the patent. The grant of such special rights would not appear to give rise to obligations under the Paris Convention on Industrial Property. It is interesting in this connection to note that recent proposals for a European patent expressly exclude plant varieties, while under the arrangements for harmonisation of patent laws, participating States are not bound to provide patents for plant varieties.

11. No specific provision is made in the Convention for a grant of rights by means of certificates of authorship of inventions (inventors' certificates) such as are issued in the USSR and other countries as a discretionary alternative to patents. These also, if considered at some future date as a form of rights to which the Convention might apply, would like plant patents require to be issued in conformity with the provisions of the Convention.

12. *Section 1 of the U. K. law provides for the grant of plant breeders' rights and no reference is made to patents. Read in conjunction with the U. K. patent law, under which patents have not in practice been granted for new varieties of plants, it is clear that the U. K. has chosen to create a special title of protection for plants which is quite distinct from a patent.*

Articles 3 and 4: National treatment and Reciprocity and Article 30 (1) (a). U. K. Act, S. 1 and 2

13. Entitlement to national treatment in all member States of the Plant Union, that is to say the same treatment as the laws of a member State accord to its own nationals, is required to be granted under Article 3 to:

(a) nationals of all other member States;

(b) persons and corporate bodies who, though not nationals of a member State, are domiciled or have a registered office in a member State.

To qualify for national treatment, plant breeders in both categories *(a)* and *(b)* must conform with national conditions and formalities. In the case of those nationals in category *(a)* who are without domicile or establishment in a member State, the Article expressly reserves to member States the right to impose conditions enabling the breeder's new plant varieties to be examined and controlled. This is important for the purposes of Article 10 of the Convention, which provides for forfeiture of rights in the event of failure to maintain a protected variety true to type or to give facilities for inspection. Seed control measures, though outside the scope of the Convention, are also facilitated by this provision.

14. To give reality to the grant of national treatment, each member State is required by Article 30 (1) *(a)* of the Convention to assure the provision of appropriate legal remedies for the effective defence of rights.

15. The above provisions relating to national treatment are based on the principle of reciprocity, in the sense that each member State agrees to grant national treatment on condition that all the other member States do likewise. Thus far, the Plant Convention and the Industrial Property Convention (Articles 2 and 3) are on similar lines. The obligation under Article 3 of the Plant Convention is, however, fully binding on member States only in respect of varieties of certain plants, that is to say, of the thirteen genera and species named in the Annex to the Convention. As explained below, Article 4 (4) of the Plant Convention enables member States who protect other genera and species to limit the application of national treatment in certain circumstances.

16. Article 4 defines the scope of the Convention, which in principle applies to all botanical genera and species. It lays down as a condition of membership that varieties of at least five of the thirteen named species and genera should be protected, prescribes a timetable for extending protection to the remaining eight, and declares the intention of member States to apply the Convention progressively to as many other genera and species as possible. Thus Article 4, while not prepared to leave member States with unlimited discretion each to decide its own rate of progress, recognises that different countries may be at different stages of development, and have different facilities and different needs. It is accepted that member States will wish to study the technical and financial implications before extending protection to additional plant species. While fully endorsing the general principle of protection of new plant varieties, the Convention does not therefore seek to apply the principle indiscriminately and at one step to the whole of the plant world. It seems likely that the general practice of member States will be to extend protection, in time, only to some hundreds at most of the cultivated plant species where differentiation into distinct varieties has taken place or may occur later. The protected species may, however, be expected to include most of those of commercial importance in the industries of agriculture, horticulture and forestry.

17. Although a common pattern and minimum rate of development is laid down by Article 4 (3) for the thirteen genera and species listed in the Convention, in practice there are bound to be differences within that pattern in the rate of progress of different member States. Nevertheless, by virtue of Article 3, national treatment, as earlier explained, applies without qualification to the whole of this group. Thus a national of member State A who breeds a new variety of maize (one of the listed species), is entitled, in all other member States which protect maize, to the same treatment as the nationals of those States, whether or not maize is at the time a protected species in State A. But in respect of any genus or species which is not listed in the Annex, Article 4 (4) in effect allows the other member States to refuse protection to nationals of State A unless State A also protects the same genus or species. That is to say, for a non-listed genus any member State may if it wishes insist on a reciprocal offer of facilities for obtaining protection. If a member State does not wish to insist on reciprocity, the option is offered under Article 4 (4) of extending the benefit of protection in non-listed genera to the nationals of any State which is a member of the Plant Convention or of the Industrial Property Convention. In view of Article 33 (1), it is not entirely clear whether the option could be exercised separately for each non-listed genus. Alternatively, a member State may apply Articles 2 and 3 of the Industrial Property Convention which relate to national treatment. This would be of importance particularly to those countries which protect plants by means of patents.

18. In requiring protection for not less than five of the listed genera as a condition of entry into membership, and laying down a common programme after entry, the Plant Convention allows member States less freedom than does the Industrial Property Convention. On the other hand, the optional limitation of national treatment under Article 4 (4), though permitted for the reasons explained, is in a sense less liberal than the practice adopted under Articles 2 and 3 of the older Convention.

19. *The U. K. Act does not in itself protect any species or genus of plant. It is an enabling measure brought into operation by the responsible Ministers under delegated powers. S. 1 of the Act accordingly provides for Orders to be made from time to time extending protection to any species or genus named in the Order. No timetable is laid down in the Act and the rate of progress is at the discretion of Ministers subject, on the U. K. assuming the responsibilities of a member State of the Convention, to the minimum requirements of Article 4. Orders have been made and are in operation for five of the listed species (wheat, barley, oats, potatoes and roses) under which applications for rights conforming with the Convention's requirements are now being examined. Some 30 applications have so far been received for cereal varieties, 7 are for potato varieties, and 120 are roses. More than half of these are of foreign origin. Arrangements are being made for protection to be available in other genera as soon as possible.*

20. *In respect of national treatment, S. 2 of the U. K. Act makes no distinction between its own nationals and the nationals of any other country, whether members of the Plant Convention, or of the Industrial Property Convention, or of neither Convention. All foreign breeders are without exception entitled to apply for and receive protection for their new varieties in the United Kingdom, on the same terms and subject to the same conditions as U. K. nationals, and irrespective of the opportunities, or lack of them, for U. K. nationals to obtain protection in other countries. The U. K. has not, therefore, in its instrument of ratification, availed itself of the right to reciprocity as permitted by Article 4 (4) of the Convention. Only in respect of priority does the U. K. Act (in Part I of Schedule 2) enable a distinction to be made between one country and another. This is explained below in connection with Article 12 of the Convention.*

Article 5. Definition of breeder's rights. U. K. Act, S. 4

21. Article 5 defines the rights of the plant breeder. These fall into two parts: the basic rights under paragraph (1), to grant which is mandatory on member States, and additional rights which may be granted, at the option of each member State, under paragraph (4). National treatment under Article 3 applies to the basic rights, but in respect of the additional rights, reciprocity may be claimed, as under Article 4 (4), as a condition of extending the benefit of such rights to the nationals of other States.

22. The broad effect of the basic rights of the breeder in a new variety is that the variety may not be reproduced or propagated for the sale of seed, or of plants and parts of plants used as propagating material, without the breeder's prior consent. Nor may seed or propagating material of the variety be sold without such consent. Only commercial activities are involved, and the holder of rights acquires no control over the reproduction or propagation of his variety where this is undertaken for pleasure e. g. by private gardeners. A more important limitation is that the basic rights do not cover plant material produced or sold other than as reproductive or propagating material. Thus although the production of wheat seed for sale, and the sale of wheat seed for sowing are, for example, within the protection afforded to the breeder, the production and sale of grain for flour making, animal feeding, beer making and similar purposes are outside his control so far as his basic rights are concerned. Although the breeder's control may be extended into this field by the grant of additional rights under paragraph (4) of the Article, it is clear that the Convention is primarily concerned with giving the breeder rights in the reproductiveness of his variety. The basic rights therefore cover only a relatively small part of the total field of commercial production, trade and manufacture involving the use of plant material of a protected variety. This may be contrasted with the much wider powers normally vested in patent holders, e. g. in the U. K., the sole right to make use and vend the patented invention.

23. In the special case of ornamental plants, Article 5 (1) of the Convention makes it clear that the basic rights of the breeder cover the commercial use of plant material for propagation in the production of plants or cut flowers. This would appear to bring within the breeder's control such activities as the multiplication of a stock of e. g. rose trees for the sale of cut blooms.

24. The additional rights envisaged in Article 5 (4), which may be provided under the domestic law of a member State or through bilateral or multilateral arrangements under Article 29, and may be granted for some genera but withheld from others, are not carefully defined. Such rights could extend to the commercialised product e. g. to the sale of cut flowers, fruit, and presumably even grain for processing or vegetables for consumption. Such control may be thought necessary in certain circumstances, for example where the basic rights of the breeder are, in the opinion of a member State, insufficient to provide him with adequate remuneration.

25. An important limitation is placed on the rights of the breeder by Article 5 (3). This enables a protected variety to be used by any other persons for breeding purposes e. g. as a parent in a hybridisation programme, without the necessity for obtaining the prior consent of the holder of the rights. Nor is his consent required for the commercialisation of any new variety arising from such a breeding programme. In the special case of F. 1hybrids, however, one of whose parents is a protected variety, the breeder's consent to its use as a parent is required.

26. By making certain commercial activities involving the use of a protected variety subject to the breeder's prior authorisation (para. (1) of Article 5), the Convention provides for the creation of rights which are exclusive to the holder. Monopoly is not excluded. Paragraph (2) of the Article, however, enables the holder of rights to authorise the use of his protected variety subject to conditions e. g. the payment of a royalty. The Convention clearly envisages, therefore, a system of licensing. Further, Article 9 enables member States in the public interest to place restrictions on the exercise of his rights by the breeder and thus to legislate against, *inter alia*, monopolistic practices (see below).

27. *S. 4 of the U. K. Act, which defines the rights of the breeder in the United Kingdom, adheres closely to Article 5 of the Convention. The basic rights of the breeder (over the sale and reproduction for sale of a protected variety) are mainly set out in subsections 1 (a) and (b). These rights are in principle available to all breeders, without distinction of nationality, residence or place of business and irrespective of the plant species to which the protected variety belongs. The term reproductive material, as defined in S. 15 of the Act, is used to denote both seed and vegetative propagating material.*

28. *The additional rights which member States have discretion to provide in accordance with Article 5 (4) are defined in subsection 1 (c) and Schedule 3 to the Act. Schedule 3 also deals with the special case of rights in ornamental plants arising under Article 5 (1). Rights may cover the reproduction of a protected variety for the purpose of selling fruit, flowers and so on, or may be further extended so as to comprise the sale of such products. The Agricultural Ministers, when making orders extending the Act to further species or genera, have discretion to include either the first stage, or the first and second stages, of these additional and special rights in the arrangements for any particular species or genus. The guiding principle in reaching a decision is that such rights must be necessary, in the Ministers' opinion, to enable breeders in the species or genus concerned to receive adequate remuneration. Among the species so far covered by orders in the United Kingdom, only in the case of roses do the breeders' rights extend to the reproduction of their varieties for the sale of cut blooms. This is an extension of some importance to the breeders of forcing varieties. The sale of cut blooms is not subject to licensing.*

29. *While Article 5 (4) of the Convention, as described above, enables member States to insist on reciprocity before granting to foreign breeders the additional rights described above, this is not demanded under the U. K. Act. The prin-*

ciple of national treatment covers these rights as well as the basic rights of the breeder.

30. *Under the U. K. Act, the holder of rights is solely responsible for their enforcement. (Provisions as to compulsory licensing in Section 7 of the Act are described below.) S. 4 (1) provides means of enforcement through the ordinary courts of law, including the award of damages and injunctions for infringements as in the case of other proprietory rights. No special enforcement machinery is provided by the Act and in particular no direct Governmental action in defence of the breeder's rights is contemplated. Indirectly, however, the U. K. seed control legislation assists the breeder, by making it an offence to sell seed under the wrong varietal name. Section 4 (4) of the Act makes it clear that holders of rights may issue licences for the reproduction or sale of their varieties subject to conditions. These may include, for example, the payment of a royalty or requirements relating to the quality of the reproductive material which may be produced or sold. The breeder may assign his rights to any other person.*

Articles 6 and 7. Conditions for the grant of rights. U. K. Act, S. 2 and Schedule 2

31. Article 6 establishes certain conditions which a variety is required to satisfy before the breeder may be granted rights in accordance with the Convention. These conditions relate to the distinctness, stability and uniformity of the variety, and to its prior commercialisation. In addition, the variety must be given a name. Article 7 goes on to require member States to make arrangements for examining each variety submitted for a grant of rights to ensure that it conforms with the conditions set out in Article 6. Thus the first point to notice is that prior examination is a requirement of the Convention, and that no variety may be protected unless it is found to satisfy certain criteria.

32. The application of the criteria of distinctness, stability and uniformity give rise to technical problems which can only be resolved by growing the variety submitted for rights, comparing it with other varieties grown as controls, and making laboratory or other tests designed to ascertain the characteristics of the variety. Under Article 7 (2) breeders may accordingly be required to provide plant material for trial. These provisions are made necessary by the particular nature of living plant material and the inadequacy of even the most detailed written description or specification of a plant variety as a means of distinguishing that variety from other similar varieties. Such matters as the extent and layout of the trials, their duration, the selection of control varieties, and the characteristics (morphological or physiological) which should be recorded and taken into account, are left to the discretion of member States. The Convention in Article 7 (1) directs, however, that the trials are to be adapted to the mode of reproduction of the species concerned.

33. While the Convention goes far to indicate what should be looked for in a new variety submitted for a grant of rights, there is still much room for differences of interpretation of the criteria laid down in Article 6, and many practical difficulties are bound to arise in applying them. The criterion for distinctness, for example, requires that 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 ". This is a world wide, not a national, test, and its proper application pre-supposes at the least a knowledge in each national administration of the characteristics of all other existing varieties, whether commercialised, in trial or reference collection, or only described in a publication, similar to the variety under examination. The extent to which it will in practice prove possible to apply this test in any member State will depend on the state of development of the technical services, which may be uneven in respect of different species, differences in climatic conditions as between different countries, and, for the future, on the degree of collaboration between member States. This is one of the fields in which it would be hoped to see important developments under the Convention on a bilateral or multilateral basis. Specific reference is made to this in Article 30 of the Convention, which authorises the conclusion of special arrangements between member States for joint trials of new varieties, and joint reference collections and libraries. Moreover, although not part of the Convention, there is attached to it a recommendation to member States to undertake as soon as possible studies for organising the examination of new varieties on an international basis. Such studies have already begun on an *ad hoc* basis pending the establishment of formal administrative machinery under Article 15.

34. These studies have particular reference to the criteria by which new varieties should be judged. It is in this field where differences of interpretation may legitimately arise. For example, the quotation from Article 6 in the preceding paragraph refers to " important characteristics " and to a variety being " clearly distinguishable " from other varieties. The question must be asked: important for what purpose? For purposes of identification, perhaps suggesting morphological rather than physiological characteristics? Or important judged by economic or agronomic significance? Or perhaps both standards might be used, so that characteristics which either serve to identify a variety or help to distinguish it from other similar varieties, or differences which are of significant merit (or demerit), may be regarded as important for the purposes of the Convention?

35. There are arguments for each of these solutions. The interpretation of " important " for any particular variety may indeed vary according to the group of plants to which the variety belongs. One thing seems certain. The makers of the Convention did not intend member States to base their decisions on an assessment of value as such, for example on higher yield or improved resistance to disease. Although the introduction of a merit criterion was considered at one stage in the preparation of the Convention, it was rejected and Article 6 (2) expressly excludes the use of any criterion other than distinctness, stability and uniformity. A further indication is provided by Article 14, which makes it clear that plant breeders' rights are independent of seed control measures taken by member States. The latter often include restrictions on the use of inferior varieties judged by their economic

or agronomic value, and this is the proper place for a value test. An interpretation of Article 6 which permitted the refusal of a grant of plant breeders' rights to a variety solely on grounds of lack of merit would clearly be inadmissible.

36. Nevertheless, for those officials who are charged with the function of clearly distinguishing between one variety and another, as well as the authorities, farmers and seed merchants who may well be concerned at the proliferation of new varieties showing minimal differences, there may be a strong temptation in some member States to concentrate attention on characteristics which are in some way related to the merit of the variety. This could hardly avoid approaching more or less closely the imposition of a merit criterion. In their anxiety to avoid the use of a merit criterion, Article 6 might be interpreted in other member States so as to attach no real significance to the word " important ". In an extreme case, rights might be granted in any variety which exhibited any degree of difference in any character, no matter how small or insignificant, provided the variety was clearly distinguishable. This also, however, would seem to be at variance with the Convention and possibly inimical to the breeders' interests and the common interest alike. It seems unlikely that a Convention devoted to plant breeders' rights would adopt criteria which gave the breeder of a new variety no real measure of protection against the production and development of other closely similar or almost identical varieties.

37. As regards the other technical criteria laid down in Article 6 — uniformity and stability — the scope for differences of interpretation particularly in respect of sexually reproduced plants is perhaps even greater than in the case of distinctness. It is probably common ground that " uniformity " and " stability " should be interpreted in such a way as to ensure that a variety granted rights is capable of remaining true to description and therefore identifiable throughout the period for which rights are granted. The studies referred to above which are now going on may show wide differences in the present practices of signatory States which, if not harmonised, may confuse breeders, limit the usefulness of the Convention and restrict trade. While perfect uniformity in living material is a chimera which it is useless to pursue, it seems probable that the introduction of the Convention criteria into national law and practice will in some cases result in a tightening-up of the standards hitherto found acceptable.

38. In addition to novelty in the sense of distinctness from other varieties, a variety must possess novelty in the sense that it must not have been commercialised by the breeder in a member State before an application is made for protection in that State. Up to four years' prior commercialisation in any other country is however permitted. This enables the breeder to test the market for his new variety in a selected country (which under Article 11 (1) need not be his own) without imperilling possible later applications elsewhere. The priority provisions of Article 12 further assist the breeder in this respect.

39. In principle, therefore, the Convention is intended to apply only to new varieties and there are no binding provisions with retrospective effect. The Convention does not, for example, apply to varieties already protected or under consideration for protection in accordance with existing national laws. Rights already granted under national laws are preserved by Article 37. Article 35, however, enables member States to relax the rule in Article 6 concerning prior commercialisation in respect of recently bred varieties. This would make it possible to grant protection for varieties already on the market when the Convention comes into force, although in other respects the provisions of the Convention e. g. prior examination, would apply. Under Article 29 special arrangements may be made between member States for protecting such varieties.

40. *The provisions of the U. K. Act (S. 2 and Part II of the Second Schedule) follow very closely those of Article 6 and little further explanation is required. The legislation clarifies the Convention by providing (paragraph 2 (1) of Part II of the Second Schedule) that rights may not be granted in any variety which has already been commercialised in the United Kingdom or in any other country before the date the species concerned was first made eligible for protection in the United Kingdom. A concession is however included with limited retrospective effect in favour of varieties, whether British or foreign, first commercialised not earlier than November 12, 1963 (when the draft law was first submitted to Parliament), provided the breeder applies for protection before May 11, 1965. In practice, only a limited number of varieties of wheat, barley, oats, potatoes and roses have been able to benefit from this concession.*

41. The examination of new varieties for distinctness, stability and uniformity is in process of being developed in the United Kingdom and only a brief reference is possible at the present stage. The requirements and the method vary from species to species, according to means of reproduction, the trial facilities which can be made available, and the cost. A growing trial is required in every case and observations are made, generally speaking, over a minimum of two growing seasons. If this period is not sufficient, whether for climatic reasons or because the observations made are inconclusive, further trials may be required. Small plots and (in the case of cereals) ear rows are sown in successive years, and in the case of potatoes the breeder is also required to plant a one half acre plot on his own trial ground for observation. The cereals and potatoes trials are conducted at either two or three centres (at Cambridge and in Scotland and Northern Ireland): one centre is considered sufficient for roses.

42. The plant breeders' rights trials for agricultural and horticultural varieties are conducted by a special technical unit — the U. K. Variety Classification Unit — set up with headquarters at Cambridge for this and other similar work under the 1964 Act. The Unit is financed from Government funds and consists of officers qualified by training and experience in the classification and identification of plant varieties. The Unit reports on the trials and makes recommendations to the Controller of the Plant Variety Rights Office who is charged with the sole responsibility, subject to a right of appeal to an independent Tribunal, for making

decisions on the grant or refusal of rights. The Office is a semi-autonomous department of Government with administrative and judicial functions established specially for the protection of new plant varieties, as foreshadowed in Article 30 (1) (b) of the Convention. In accordance with Article 30 (1) (c), decisions on the grant of rights, together with much other information concerning applications and their progress, is regularly published by the Office in the *Plant Variety and Seeds Gazette.*

43. In the case of roses, the trials are at present conducted in collaboration with the Royal National Rose Society at the Society's trial grounds, and are assessed and reported on by an advisory panel of independent experts appointed by the Controller of Plant Variety Rights. It is probable that a similar system will be introduced for other decorative plants.

Article 7 (3). Provisional protection. U. K. Act, S. 1 and Schedule 1

44. Another provision of interest in Article 7 (para. [3]), enables member States to grant the breeder of a new variety protection against the unauthorised use of his variety while it is undergoing examination for a grant of rights. Since possession of even a small sample of authentic seed or propagating material may enable other persons to make effective use of a new variety during the trial period, when the breeder would normally be unprotected, this provision should prove of value to breeders. In giving effect to it in national legislation, there are however two obvious difficulties. The first is that the characteristics of the variety and the question of its novelty cannot be finally determined until after the examination required by Article 6. To what, therefore, is the right of provisional protection to be attached? Secondly, a grant of provisional protection may be capable of premature exploitation by the breeder as though he had already received a grant of rights under Article 5, unless its use for this purpose by the breeder is restricted.

45. *Schedule 1 of the U. K. Act authorises the Controller to issue a " protective direction " i. e. provisional protection, while a variety is under examination. No doubt for the reason that in some cases a doubt may exist, until trials are completed, concerning the characteristics and distinctness of the variety, the grant of provisional protection is at the discretion of the Controller. No grant may be made if there is any doubt whether the applicant is the true breeder of the variety concerned. While provisional protection is in force, the breeder is entitled to prevent other persons infringing his rights, by applying to the ordinary courts for an injunction. At the same time, in order to meet the objection that provisional protection might be exploited by the breeder as though he had already received a grant of rights, the breeder is required to give the Controller an undertaking that he will not himself commercialise the variety during the period of provisional protection.*

Article 8. Period of Protection. U. K. Act, S. 3

46. The Convention prescribes a period of protection for varieties of each species which member States are required to grant, as a minimum, under their national laws. For vines and trees which mature slowly the minimum period is 18 years, and for all other species and genera 15 years, in each case dating from the grant of rights in the variety concerned and excluding, therefore, the period for trial under Article 6. These protection periods do not differ greatly from the duration of patents in most countries. Subject to the above minima, member States may adjust the period of protection to different classes of plants, but grants of unlimited duration are not permitted. It seems probable that the general intention is to protect the breeder for so long as that is necessary to provide him with an equitable reward from the variety concerned.

47. *Section 3 of the U. K. Act adopts as minima the periods of 15 years and 18 years prescribed by the Convention, and in addition lays down a maximum period of 25 years. It is considered that in no case would a longer period be required to secure a fair reward for the breeder. Under the detailed arrangements made for wheat, barley, oats and roses, breeders' rights will subsist for 15 years, and for 20 years in the case of potatoes. The Act permits extension of the period of rights in any variety, within the maximum of 25 years, if the Controller is satisfied that the breeder has not, for reasons beyond his own control, already received adequate remuneration from it. Not more than one such extension may be granted for each variety.*

48. Experience will show whether the minimum periods of protection laid down in the Convention are appropriate. It seems probable that relatively few varieties will remain in commerce for the whole of the period, and that for some species, particularly decoratives, a shorter period of protection would be sufficient to secure an optimum reward for the breeder. However, the obligation to pay renewal fees for keeping the rights in force, as referred to under Article 10, seems likely to encourage the early withdrawal of obsolescent varieties.

Article 9. Restrictions on the exercise of rights. U. K. Act, S. 7

49. This Article is short enough to be reproduced in full:

" 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 States of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration. "

This is a key provision of the Convention if only for the reason that the laws of some signatory States, drawn up before the signing of the Convention, include provisions which may be in conflict with Article 9 and may require to be amended in harmony with it. Seed control legislation as well as pre-Convention systems of plant breeders' rights in some cases involve controls over plant breeders, growers and seed merchants which, as the authorities concerned recognise, are difficult to reconcile with the Convention concept of exclusive

rights to be freely exercised by the breeder. Article 14 of the Convention expressly states that plant breeders' rights are independent of national seed control measures, and that the latter should, so far as possible, not be allowed to hinder the application of the Convention.

50. It seems clear that under Article 9 a member State is competent to restrict breeders in the exercise of their rights, for example by compulsory licensing, provided that reasons of public interest may be advanced. The Convention clearly accepts that one such reason may be the need to secure the widespread distribution of a variety, but does not exclude other possible reasons e. g. that the licence conditions imposed by the breeder are unreasonable. The Convention gives member States little guidance as to the extent of their powers to restrict the exercise of exclusive rights in the public interest. Nor does the Plant Convention, unlike Article 5 A (2) of the Industrial Property Convention, mention the permitted methods of restriction, although no doubt compulsory licensing is one of them. No reference is made to licences of right. Exclusive compulsory licences are not prohibited, and may presumably be granted if considered to be in the public interest. There is much here for debate and study by member States, with each of whom lies the responsibility, under Article 9, for determining the nature and extent of any desired restrictions on the use of rights in its own territory and the occasions for imposing them.

51. *S. 7 of the U. K. Act introduces a system of compulsory licensing which may be called into use as a result of any complaint of abuse of his rights by the breeder. An application for a compulsory licence may be lodged if a breeder refuses to grant a licence or to issue a licence on reasonable terms. The Controller of the Plant Variety Rights Office, to whom application is to be made, is required to grant a compulsory licence unless there seems good reason for refusing it. The applicant must, however, be financially sound and show that he intends to use the licence in a competent and businesslike manner. In reaching his decisions, the Controller is given four guide lines — to secure reasonable prices for the public, wide distribution of the variety, maintenance of quality, and a fair reward for the breeder.*

52. *It is clear, therefore, that the U. K. legislation is intended to encourage the widespread distribution of protected varieties on reasonable terms, and provides adequate means for enforcing the application of this principle. While the issue by the breeder of licences to reproduce or sell a newly-introduced variety may of necessity be limited at first by the available supplies of authentic plant material, it is a reasonable interpretation of the Act to say that the breeder is expected to earn his reward primarily through meeting the demand for licences. He may be required to issue seed or other plant material to the holder of a compulsory licence, and penalties are provided for failure to do so.*

53. *In principle, the compulsory licensing provisions apply to all protected varieties irrespective of the species and genus to which they belong. It may be inferred, therefore, that the public interest (Article 9) may be invoked in connection with the distribution and licensing of a variety of decorative plant, for example, as well as a food-producing plant. In the event of complaint, each case would require consideration on its merits. Under S. 7 (2), however, the application of compulsory licensing to varieties of any species or genus may be temporarily deferred for a period, thus permitting exclusive licensing or other arrangements favoured by the breeder. In this way some species may be treated differently from others, according to the degree to which the public interest is involved and other factors.*

Article 10. Revocation of rights. U. K. Act, S. 3

54. This Article prescribes the circumstances in which member States may, or are required to, annul or withdraw rights already granted. Under paragraph (1) it is mandatory to annul rights which were granted under the mistaken impression that the variety was distinct from other known varieties or had not been previously commercialised. Cases of fraud by the applicant as well as grants requiring review in the light of fresh information would seem to be covered by this provision. Annulment is, however, to take place in accordance with the provisions of the national law. Rights are forfeit if the breeder fails to provide the competent authority with reproductive or propagating material of the variety as originally protected i. e. to maintain the variety true to type. They are also subject to forfeiture, at the discretion of each member State, if the breeder does not cooperate in measures for checking the variety and its trueness to type, and for non-payment of fees. No other grounds for annulment or forfeiture are permitted.

55. Perhaps the most interesting features of this Article are the careful statement of grounds on which alone rights may be annulled or forfeited, and the provisions concerning maintenance of the variety after rights have been granted. The latter are essential in relation to the living material comprising a plant variety, since after protection has been granted a variety may through segregation, natural selection, crossing or mutation markedly change its characteristics in a relatively short time. Whether a breeder seeks protection under the Convention or not, his work is not completed when a variety has been fixed, but must continue throughout the commercial life of the variety in order to ensure a supply of seed or propagating material having the same characteristics as the material examined for a grant of rights. There is a close link at this point with seed control and certification measures, which are designed to authenticate breeders' material and the commercial material sold to growers.

56. *Under S. 3 (7) of the U. K. law, rights are to be terminated if the applicant supplies incorrect information or new facts concerning the distinctness or prior commercialisation of the variety are discovered after the grant has been made. In S. 6 of the Act there are provisions concerning the maintenance of varieties true to type by the breeder or on his behalf, including a requirement to terminate rights if acceptable plant material cannot be provided to the Plant Variety Rights Office for examination.*

Article 11. Miscellaneous provisions

57. This short Article gives the breeder of a new variety the right to decide in which member State to make his first application for protection, and to apply for protection in other States while the first application is still under consideration. Paragraph (3) makes it clear that protection is considered and granted on a national basis: no provision is made for an international right.

Article 12. Priority rights. U. K. Act, S. 2 and Schedule 2

58. Under paragraphs (1), (2) and (4) of this Article, the breeder of a new variety is entitled under certain conditions, for a 12 month period dating from his first application for protection in a member State, to a right of priority in other member States. In effect, the Convention requires that the date of the first application (the priority date) should be accepted as the national application date by every other member State e. g. for purposes of priority over other applications. To benefit from this concession in any particular member State, the breeder must submit an application in that State for the same variety within a year of the priority date and claim priority. He is also required to provide supporting documents within a limited time.

59. So far, Article 12 is directed to the same problem as Article 4 of the Industrial Property Convention, and follows broadly the same lines. Commercialisation of the variety and applications by other breeders during the priority period would not affect the novelty of the variety, nor could they give rise to third party rights or rights of personal possession. In practice, the priority provisions of the Plant Convention, so far as forestalling other applications is concerned, seem likely to be of less significance than those of the Industrial Property Convention. Except in the case of identical natural mutations (sports) in certain species, which not infrequently occur more or less simultaneously in different places, the breeding of identical varieties is exceedingly rare. However, much may depend on the degree of difference between varieties required by member States under Article 6 as a condition of the grant of rights.

60. In addition, Article 12 (3) allows the breeder who claims priority in a member State a further 4 years after the expiry of the priority period to supply plant material for examination. This provision is intended to allow a breeder ample time in which to decide whether to proceed with his second and subsequent applications. No doubt this will be decided in the light of the decision on his first application and on the commercial acceptability or otherwise of his variety. Meanwhile, examination fees would not normally be incurred. It is interesting to note that commercialisation may proceed during the 4 years in question without affecting the novelty of the variety. This may give rise to serious practical problems both for the breeder when he eventually acquires the right to issue licences, and for the industry which has become accustomed to using the variety without payment of royalty.

61. Part I of Schedule 2 to the U. K. Act gives effect to the priority requirements of the Convention, but in addition the right is reserved to extend the benefit of priority to non-member countries. The opportunity is also taken to state the cardinal principle of priority, which underlies Article 12 of the Convention but is not formally expressed there, that the first breeder to apply for rights in a variety is entitled to the grant.

Article 13. Varietal denominations. U. K. Act, S. 5

62. Read in conjunction with Article 36, Article 13 requires protected varieties to be named or otherwise identified, prescribes rules for the selection and registration of names, and places restrictions on the use of registered names. These provisions are of the greatest importance to plant breeders, to the national authorities of member States, and to the users of new varieties. In most countries the correct naming of reproductive and propagating material of different varieties in commerce is one of the major aims of seed and plant legislation. It is generally enforced by strict control measures. Article 13 recognises and builds on this by accepting the varietal name as a key factor in the protection afforded to new varieties under the Convention.

63. Thus, under Article 13 (7), reproductive and propagating material of a protected variety must be offered and sold under the registered name of the variety. Further, paragraph 8 (a) of Article 13 requires that the registered name of a protected variety may not be used for another variety of the same or a closely related species. That is to say, a registered name must be used in commercial dealings with a protected variety, and may not be misused to designate some other variety. The holder of rights in the variety could expect to be provided, under national legislation based on the undertaking in Article 30 (1) (a), with remedies in the civil courts for misuse of the registered name. Moreover, the requirements of the Convention will often be buttressed in member States by similar requirements under seed control legislation enforceable in the criminal courts by the competent national authorities.

64. While the practical effect of the Convention is to protect from infringement not only the variety itself but also its registered name, a varietal name is not like a trade mark or trade name but is generic. This is made clear by Article 13 (8) (b). Whereas a trade mark designates the goods of a particular commercial undertaking, and may not be used without the owner's permission, a registered varietal name designates plant material of the variety irrespective of who produces or sells it. The holder of the rights in a variety has no power under Article 13 to refuse to allow other persons to use the registered name, provided it is correctly used, and they in turn are under an obligation to use the registered name. This obligation continues even after the breeder's rights in the variety have expired.

65. The distinction drawn between varietal designations on the one hand, and trade marks and trade names on the other, is underlined by Article 13 (3). This discourages the submission and registration of varietal names for protected varieties which are identical to or may be confused with names for similar products, if such names are already pro-

tected in a member State under trade mark or trade name legislation for the benefit of tbe breeder concerned. If such a varietal name is nevertheless registered for a protected variety, tbe breeder must either renounce or cease to exercise his rights in the trade mark or trade name in question. Article 36 carries this distinction between varietal names and trade marks even furtber by giving it retrospective effect. Named varieties in which plant breeders' rights have already been granted in a member State may not continue to enjoy trade mark or trade mark protection in that State after the Convention comes into force in that State. The breeder must either renounce the trade mark or name, or change the varietal name. If he fails to suggest a new varietal name within 6 months, he may no longer exercise his rights in the trade mark or name.

66. Acceptance by signatory States of the generic nature of varietal names and the inappropriateness of trade marks recognises the special problems of protection as applied to plants. For some States this will involve the abandonment of present practices and the substitution, in place of trade mark protection, of the more comprehensive protection afforded by plant breeders' rights. Unlike trade mark protection, however, rights under the Convention are tenable for a limited period only.

67. Rules for the selection and registration of varietal denominations are laid down in paragraphs (2) to (6) of Article 13. Names may be used, or combinations of names and figures, but not figures alone. In addition to provisions concerning misleading and confusing denominations, a variety must have a different name from all other varieties (of the same or a closely related species) in any member State. The breeder is required to submit the same name in each member State where he deposits an application for protection. Registration of the name submitted by a breeder may be refused by the competent national authority, and a substitute required. Broadly speaking, the aim is for each protected variety to bave only one name throughout the area to which the Convention applies (though it is recognised that national linguistic and other differences may not always permit this), and for this name to be unique to the variety within the species or genus concerned. No provision is made, however, for an international denomination as such and in the last resort each member State retains the right to accept any proposed name or to reject it as unsuitable.

68. No express reference is made in the Convention to the International Code for Nomenclature of Cultivated Plants. This is a set of detailed rules and recommendations for the naming of cultivated varieties (cultivars) which are observed in a number of countries, including signatory States of the Convention. Article 13 of the Convention was drawn up with knowledge of the requirements of the Code and is not in conflict with it. The Code seems likely in most cases to provide a working basis for the administrative practices of member States under Article 13.

69. The remaining provisions of Article 13 (paragraph [6]) deal with arrangements for the exchange of information between member States concerning the proposed names of new varieties submitted by breeders to the national authorities. The Bureau of the Plant Union will handle such exchanges, including objections by member States to the acceptance of breeders' proposals, centrally in Geneva. Although the services to be provided by the central Bureau in accordance with Article 13 appear to be little more than those of a post office, they would be capable of development, for example by agreement between member States under Article 29, so as to assist national authorities in the discharge of their obligations under Article 13.

70. *Turning to the United Kingdom Act, Section 5 deals with the procedures for naming protected varieties and provides for drawing up nomenclature rules to be observed by breeders when selecting names for their varieties. Rules have been promulgated by the Plant Variety Rights Office which observe the requirements of Article 13 of the Convention and adhere as closely as possible to the International Code for Nomenclature. It is the practice of the Rights Office under these rules to consult in appropriate cases the national seed authorities of signatory States, and Registration Authorities under the Code, when names are submitted by breeders. As regards trade marks, it is not the practice in the United Kingdom to grant these in respect of plant varieties as such. Consultation with the U. K. Registrar of Trade Marks is therefore concerned with marks granted for seed plants, plant products and the like, principally in Class 46 and (now) Class 31 of the U. K. Register.*

71. *Under Section 5 (6) of the U. K. Act, the breeder is given protection against the wrongful use of the registered name of his variety, as required by paragraph (8) of Article 13. The obligation under paragraph (7) of the Article to use the registered name in commercial dealings with a protected variety is however considered to be more appropriate to seed control legislation. The required provision is therefore made in Part II (S. 16) of the U. K. Act.*

Article 14. Protection in relation to national seed controls

72. References have been made above, under Articles 6 and 9, to particular aspects of the distinction drawn by Article 14 between plant breeders' rights on the one hand, and seed and plant control measures on the other. Since it is customary in many countries to regulate the production and marketing of plant material in the national interest, often in a stringent manner considered appropriate to the importance of such material in food production, problems of reconciling the protection and control systems will inevitably arise. Article 14 makes it clear that the rights of the plant breeder are independent of control measures. It would appear, therefore, that the breeder is entitled to be granted the rights for which the Convention provides, irrespective of any control measures taken by the member State concerned. Article 4^{quater} of the Industrial Property Convention deals with this point in respect of patents. At the same time, member States are not expressly inhibited by the Plant Convention from adopting control systems which might affect, adversely or otherwise, the breeders' exercise of those rights in the member State concerned. In devising their controls, member States

are, however, enjoined by paragraph (2) of Article 14 to avoid hindering the application of the Convention so far as possible.

73. Seed and plant control measures may in some cases restrict the production and marketing of a protected variety or forbid its use entirely on grounds of insufficient value in the country concerned. Though entitled to a grant of rights, the breeder may therefore be unable to make any, or any effective, use of his rights within the territory of a particular member State. Nevertheless, such limitations on production and commercialisation taken in the national interest are not generally regarded as conflicting in principle with the requirements of the Convention, although they may in practice operate as an obstacle to the application of the Convention. It becomes doubly important, therefore, in conformity with the principle set out in Article 14 (2), to operate any such limitations in a way which conforms so far as possible with the basic provisions of the Convention. It would seem reasonable, for example, that any value criterion applied to new varieties under seed control legislation should be administered in such a way as not to undermine the national treatment provisions of Article 5.

74. In confining this brief study of the Convention to its first 15 Articles only, it should not be thought that the second group of Articles, which regulate the relations between member States, are not also of great importance for the operation and future development of the Convention. It is not going too far to say that the future of the Plant Union as an essay in international co-operation will largely depend on the active and enlightened use by the Council of member States and the Secretariat of the powers conferred on them under these Articles. Preliminary consideration is now being given by the signatory States to organisational matters in order that the Convention may operate without delay as soon as it comes into force. In addition to that of the United Kingdom, two further ratifications are required for this purpose, and on present information it seems possible that these will be secured some time during the course of 1966.

GENERAL STUDIES

175th Anniversary of the U.S. Patent System

The United States adopted its first patent law in 1790.

Commemoration of this event culminated in a three-day international assembly held in Washington from October 18 to 20, 1965. There were nearly two thousand participants from more than thirty countries.

BIRPI was represented by its Director, Professor G. H. C. Bodenhausen, and by Dr. Arpad Bogsch, Deputy Director.

The program was remarkable in every respect. It started with a demonstration, on the lawn around the Washington Monument, of the " flying man ". A jet equipment harnessed on his back allowed him to take off and land on his feet, and to move in the air with great speed and perfect ease as to changing directions and altitude.

The International Assembly was opened by Mr. John T. Connor, U. S. Secretary of Commerce, and Mr. Edward J. Brenner, Commissioner of Patents. A reception was given at the Department of State by Mr. Dean Rusk, U. S. Secretary of State. The festivities ended with a banquet at which Dr. Harry Huntt Ransom, Chairman of the [U. S.] President's Commission on the Patent System, was the principal speaker.

The third and last day of the Assembly, called " International Day ", and organized principally by the staff of the U. S. Patent Office directly in charge of international affairs (Messrs. Gerald D. O'Brien, David B. Allen, John H. Merchant, and Rene D. Tegtmeyer), as well as by Mr. Harvey J. Winter of the Department of State, consisted of lectures dealing with the following three topics: " Patents as an instrument of Government policy in economic development ", " The importance of patents to business decisions on international trade and investment ", and " A critical appraisal of the patent systems of the world ".

Among the speakers on the last subject, there were heads of five Patent Offices: Germany, Dr. Kurt Haertel; Netherlands, Dr. C. J. De Haan; Sweden, Dr. A. C. von Zweigbergk; U. S. A., Mr. Edward J. Brenner; USSR, Mr. Y. E. Maksarev.

Mr. Brenner's remarks will be of special interest to the readers of this review since they dealt with the question of how the problems facing the world's patent systems could be solved *through international cooperation.*

The main passages of Mr. Brenner's address are reproduced below:

" . . . There are several propositions that most people who have studied the international patent situation closely appear to agree on. First, I believe that it is felt that the world will some day have a truly international patent system, administered by an international patent organization. Secondly, there is no doubt that patent applicants and patent offices of the world today face many serious problems as a result of the significant changes which have come about in the inter-