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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

MEETING OF MEMBER AND NON-MEMBER STATES**Geneva, October 21 to 23, 1974**

GENERAL INFORMATION ON UPOV

prepared by the Office of the Union

The Annex to this document contains some information on the aims and objectives of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, a short survey of its basic provisions and a description of the activities of the Union and of the advantages of membership in the Union.

[Annex (UPOV/INF/2) follows]

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

DRAFT

GENERAL INFORMATION

ON THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES
OF PLANTS (UPOV)

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization based on the International Convention for the Protection of New Varieties of Plants, which was signed in Paris on December 2, 1961. Its objective is the protection of plant breeders' rights.

This document outlines the reasons for protecting plant breeders' rights on the national and the international levels. It gives a short survey of the basic principles of the Convention of 1961, describes the structure of the Union and gives an account of its present activities. A final Chapter is devoted to the reasons for which States could benefit from becoming party to the Convention and member of the Union. A selected list of UPOV publications appears in the Annex.

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Annex

Publications of UPOV

I.

New Plant Varieties and the Protection
of the Rights of their Breeders

What is a "Plant"?

Science divides living (organic) things to be found on the earth into two "kingdoms": the "kingdom of animals" and the "kingdom of plants." Plants--trees, shrubs, herbs, vegetables and flowers--are generally distinguished from animals, which are a higher form of living things, by the characteristics of nutrition, structure and locomotion. Plants normally produce themselves organic compounds from anorganic material, taking the necessary energy from the sunlight (they are "Carbon-autotrophic"), while animals (and men) need for their nutrition organical compounds obtained from outside sources (they are "Carbon-heterotrophic"). Plants tend to develop a structure with large surfaces open to the surroundings, while animals tend to build up resorbing surfaces inside their bodies. Plants are normally bound to their growing place, while animals generally have the possibility of active movement and changes of place.

With the more recent development of knowledge on microorganisms, the distinction between plants and animals has become less clear. Fungi, which are considered plants despite their heterotrophic nutrition, bacteria and other single-celled living beings show that there is no clear and well-defined borderline between plants and animals. Consequently, the above criteria should be regarded as mainly valid for the more highly developed plants and animals and not also for at least part of the microorganisms. In legal terminology, microbiological substances are generally not treated as plants (but rather as chemical substances).

The ability to build up organic substance has made plants the basis of life for the higher type of beings. Plants are directly or indirectly the basis of the nutrition of animals and mankind, which both depend on heterotrophic feeding. In the early stages of his history, man--like animals--ate the plants he happened to find. However, he soon learned to grow the plants he needed; he learned to choose and prepare the soil, to choose the seed or other propagating material and to assist in the growth of the plant.

What is a "Plant Variety"?

The outward appearance--the phenotype--of a plant is determined by two factors: its genetic heritage (idio-type) and the environmental conditions under which the plant grows, such as soil, climate, length of day and sunshine, moisture of air, wind and watering. The possibilities of combinations of these differences in heritage and environment are so manifold that in reality one single plant is not exactly like any other. However, single plants generally have many characteristics in common with other single plants so that the totality of plants can be divided into bigger or smaller groups. On the basis of their idio-type, the science of botany classifies plants into certain groups, the most important of them being called in Latin divisio, classis, ordo, familia, genus, species, subspecies, varietas.

For the botanist, the species is the basis of his system. In common language, plants are usually referred to under the names of their genus or species.

The farmer or gardener cultivating his field makes a more precise differentiation. He does not just plant or sow potatoes or peas or wheat. He chooses a particular plant variety--a subdivision within the species--which promises, at harvest-time, a higher quality or quantity or other advantages inherent in the plants grown. Although plant varieties have been known for centuries and the term "variety" is constantly used, it has no commonly accepted precise definition. Several theories have been developed. One school of thought trying to find a definition has put the emphasis on the question whether, within a group of plants, a certain "type" can be recognized which can also be observed in the descendants of the plant in question; another does not appreciate this more subjective

approach and would rather rely on a high number of identical, or almost identical, characteristics which can be proved by statistics. It has also been claimed that the term "plant variety" has a close connection with the intended use of the plant and that characteristics which are important for the intended use are decisive for determining whether or not a group of plants forms a variety.

In nature, or in agricultural societies of a lower degree of development, plants grow in "populations" rather than in varieties, except under extreme environmental conditions. A population is an incidental or only roughly selected accumulation of plants of the same or several interbreeding species grown at the same place and possessing manifold characteristics. Mere populations of plants do not form the subject of legal protection.

What is a "New" Plant Variety?

The human activity to create a homogeneous group of plants able to transmit their most significant characteristics to the succeeding generations, known as "breeding," is always directed towards a practical aim. The breeder tries to develop a plant variety that is better adapted to human needs or wishes. The variety he strives for must have one or more characteristics or a combination of characteristics which cannot be found in existing varieties of that species of plants; it must be a "new" variety.

This notion of novelty, simple and understandable as it is in principle, needs to be defined if used as a basis for legal protection. Consequently, the Convention for the Protection of New Varieties of Plants and, in conformity with it, the national laws of the member States of UPOV specify that in order to be new a plant variety must be clearly distinguishable by one or more essential characteristics from any other variety, anywhere in the world, whose existence is a matter of common knowledge at the time when protection is applied for. The variety itself may already be known at that time but must not have been offered for sale in the territory of the State where the applicant seeks protection or, for longer than four years before that time, in the territory of any other State.

The Usefulness of New Plant Varieties

With the beginning of agriculture, man selected from among the different species, steadily and over long periods of time, those plants which seemed to promise a high yield or quality or other advantages. This rather primitive art of breeding by selection combined with the selective effect of environmental influences led to the development of what were already valuable varieties. The early breeding work was done according to experience, which was passed on from father to son. At the beginning of this century, following the rediscovery of Mendel's laws on heredity, systematic plant breeding began. Sophisticated methods have been developed to create new plant varieties showing certain characteristics which make them suitable to meet particular human needs. These methods can be roughly divided into four groups: breeding by selection, by combination, by hybridization, and by mutation. In breeding by selection, either certain plants with special characteristics are chosen as a basis for further propagation (positive selection) or plants with unwanted characteristics are eliminated from the stock intended for further propagation (negative selection). Combination breeding signifies the crossing of different genotypes of a species to create a broader scale of characteristics for further breeding activities. Hybridization means the constant crossing of parent inbred lines--lines developed by self-fertilization--to create a hybrid variety, also called F_1 hybrid; the F_1 hybrid cannot transmit its valuable characteristics to a sufficient extent to the next

generation, which means that the breeder constantly has to produce new propagating material for the market by again crossing the same parent inbred lines. In mutation breeding, the breeder causes changes in the genetic basis of a genotype through other means than crossing and uses these changes to achieve the breeding aim.

Breeding new plant varieties is of increasing importance to mankind.

* * *

The world lacks foodstuffs. With the alarming increase in world population which is not compensated by an adequate increase in agricultural land available, food will become scarcer every day. Even countries which at times still have a temporary surplus of food anticipate shortages for the coming decades. This situation is aggravated by society's need for land for roads, housing and industry. Valuable agricultural land is covered each year by buildings, factories and highways. It is reported from Great Britain that since 1945 1,000,000 acres of agricultural land have been used for other purposes and that estimates anticipate the industrial development of a further 1,500,000 acres by the end of the century. It has been calculated that these areas, if entirely planted with wheat, could produce 3,750,000 tons of grain, which is more than the current yearly total of bread wheat imports to Great Britain. Similar reports could be made by other countries. On the other hand, acquiring and reclaiming new land for agriculture is lagging behind.

Breeding of new varieties of plants in order to obtain higher yields, improved quality and greater security from the hazards of weather and disease could play an important role in meeting this challenge. Protection of breeders' rights which encourages plant breeding is therefore a means of overcoming the expected world food shortage.

* * *

The public is becoming increasingly aware of the dangers of pollution to mankind. Exaggerated and inconsiderate use of chemicals as insecticides or fertilizers adds to this menace. There seems to be a dilemma since a world in need of food cannot do without the help of chemistry to fight diseases and destructive insects.

This offers another task for breeders. New varieties of plants resistant to viruses, insects and other kinds of noxious influences might in future allow the use of chemical substances to be reduced to an extent that would no longer be dangerous to ecology.

* * *

A growing world population means growing cities. The accumulation of human beings in big cities creates special problems. There is a greater need for open spaces for recreation within the cities, for sports fields, parks and other green spots among the heaps of stone, glass and concrete. Plant breeders develop varieties for lawn grass and all kinds of ornamental plants which will grow under the unnatural conditions of big cities and which will survive the special environmental conditions prevailing there.

Promoting plant breeding by protecting breeders is therefore also a means, among others, of making up for the detrimental influences of modern life, which can be expected to become more and more serious in the coming decades.

* * *

The Need for Legal Protection of Breeders of New Plant Varieties

New plant varieties are the result of substantial investment of human skill and labor. Breeding costs money and time. Considerable quantities of fertile soil must be kept available, glasshouses have to be built and maintained, the growing plants need attention and care and in each of the various stages of the breeding process the crop must be collected and examined and the results evaluated. Breeders are ready to undertake such expensive and time-consuming work only if they receive adequate remuneration for their efforts. They cannot secure such remuneration simply by selling their propagating material because other breeders who have not made such substantial investments could easily use the breeders' propagating material for the production of further propagating material for commercial use. In order to protect breeders from the exploitation of their work and investments by others, breeders in some States--including all member States of the Union for the Protection of New Varieties of Plants--are granted a right under which, for a limited period of time, and for commercial purposes, the propagating material of their new plant varieties can only be produced by themselves, or by others with the breeders' prior authorization. Experience has shown that plant breeding can be encouraged only if the right of the breeder is protected for an adequate period of time against the unauthorized use by others of the results he has obtained.

But legal protection of breeders' rights is granted not only to encourage breeding in the public interest. Its purpose is also to do justice to the breeder. He must receive a well-deserved remuneration for his labors and investments. His interests are protected from the unlawful use of the results of his work by competitors who have not expended the same efforts in breeding and who in any case--and here again public interest comes into play--might produce propagating material of an inferior quality. Plant breeders' rights are therefore also granted to achieve justice in society.

Protection on the National Level

More and more States have adopted legislation to protect breeders. In the beginning, breeders in all States tried to obtain patent protection for their new varieties, and in some States this is still the way in which protection is secured. Certain difficulties had to be overcome since the system of protection of technical inventions created and still creates special problems when applied to living substances. In order to meet these difficulties, some countries decided to introduce a new type of protection especially adapted to the needs of the protection of plant varieties, while in other countries legislation or jurisprudence adapted the patent system to those particular needs. We therefore find two types of protection of plant breeders' rights, sometimes even side by side in the same country: patents and plant variety rights (special titles of protection).

The protection of plant breeders' rights under the national law differs greatly from country to country, but there are certain patterns which the different legal systems have in common. Like a patent, a plant breeder's right is granted for a limited period of time. The breeder receives an exclusive right over a number of years, after the expiration of which the variety falls into the public domain and propagating material may be produced by anyone. The common pattern consists also in the fact that the breeder can prevent other persons from producing propagating material for commercial purposes and, in some laws and under certain conditions, from producing whole plants grown from his propagating material without his consent. In general, plant breeders' rights are granted only if the new variety fulfills certain conditions, such as distinctness from existing varieties and homogeneity and stability of the new variety during several generations. In some countries, the fulfillment of these conditions is examined by a government authority before breeders' rights are granted, the examination comprising field tests usually carried out in special testing stations. All present UPOV member States belong to this group. In other countries, plant breeders' rights are granted without prior examination or at least without regular field tests, and it is up to the breeder to prove that a variety fulfills the conditions for protection if the right to protection is contested.

Protection on the International Level

Rights granted under national laws are limited to the territory of the granting State. At a time when trading in seeds and propagating material is not restricted to domestic markets, this means duplication of effort on the part of breeders and government authorities. Breeders desiring protection in more than one State have to file applications in each State under a different law, usually in a different language and against payment of fees in every State. Government authorities examining plant varieties do to a great extent the same work for the same variety as comparable authorities in the neighboring countries. This is a waste of qualified manpower which is the more regrettable since most countries do not have the manpower to include all plant species in their system of protection. Trade is also hampered if, in view of the different systems, varieties are protected in different ways in each State.

The protection of plant breeders' rights merely by national laws would cause further disadvantages. Unless such rights are granted in the form of patents, States would not be obliged, and to a large extent would not be ready, to permit foreign breeders to file applications for protection. They would restrict this right to their own nationals or residents. Similarly, no obligation and not even agreed rules would exist for the grant to applicants who have previously applied for protection for the same plant variety in another State of the benefit to claim under certain conditions the date of a prior application for a later application (right of priority).

The desire to overcome these difficulties as far as possible caused a number of European States, between 1957 and 1961, to prepare and to adopt the International Convention for the Protection of New Varieties of Plants. The main aim of this Convention, signed at Paris on December 2, 1961, is to promote the protection of breeders' rights according to the same basic rules. As will be shown in the next Chapter, the Convention not only obliges the member States to protect new varieties of plants, but it also contains explicit and detailed rules governing the conditions under which and the way in which such protection is to be granted. It furthermore contains rules on the scope, the possible restrictions and the forfeiture of that protection. It establishes, subject to certain limitations, the principle of national treatment of applications from other member States; that means that nationals or residents of member States must enjoy, when applying for plant variety protection in another member State, the same treatment as nationals or residents of that State. Finally, it introduces a right of priority.

On the other hand, the Convention does not provide for international protection of plant breeders' rights in the true sense of the word. It does not solve all the problems of breeders seeking protection for new plant varieties abroad. But it has created the basis for overcoming the remaining difficulties. The member States have constituted an International Union for the Protection of New Varieties of Plants which will serve as an instrument to promote the advancement of the protection of plant breeders' rights. Furthermore, the Convention envisages in Article 30(2) the conclusion of special agreements with a view to the joint utilization of services entrusted with the examination of new plant varieties and with assembling the necessary reference collections and documents (see page 16). On the day the Convention was opened for signature, the International Conference which prepared the Convention recommended the States represented at the Conference to undertake the necessary study for organizing examination on an international basis and for making the above-mentioned special agreements. Chapter IV will describe the action taken by the Union to follow that recommendation.

II.

Protection Under the International Convention

Preliminary Observations

This Chapter is a brief summary of the main provisions of the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (hereinafter referred to as "the Convention"), in so far as they concern such protection.

It should be emphasized that this summary does not cover all the details of the Convention and that a complete and accurate picture of its contents can be gained only from the text of the Convention itself.

Those provisions of the Convention which deal with matters other than the protection proper of new plant varieties are summarized in the Chapter entitled "The International Union for the Protection of New Varieties of Plants (UPOV) According to the International Convention," starting on page 11.

Exclusive Right of Authorization

The basic right of any breeder of a new plant variety which States party to the Convention must recognize is that his authorization is required for:

- (i) the production, for purposes of commercial marketing, of the propagating material of the new plant variety,
- (ii) the offering for sale of such material,
- (iii) the marketing of such material,
- (iv) the repeated use of the new plant variety for the commercial production of another variety. (Article 5(1) and (3)), and
- (v) the commercial use of ornamental plants or parts thereof as propagating material in the production of ornamental plants or cut flowers.

It follows from the above--and the Convention expressly states the fact--that except in the case mentioned under (iv) above the use of the new variety is free (that is, it does not require its breeder's authorization) for using the variety as the initial source of variation for creating other new varieties and marketing them (Article 5(3)).

A "variety" is any cultivar, clone, line, stock or hybrid which is capable of cultivation, which is sufficiently homogeneous and which is stable in its essential characteristics (Article 2(2)).

Member States are free to grant more extensive rights to breeders, especially to extend the protection also to the marketed product.

Right to National Treatment

A further right which States party to the Convention must recognize is the right to the so-called national treatment: each member State must, as far as the recognition and protection of plant breeders' rights are concerned, give to the residents and nationals of all the other member States the same treatment as its laws provide for its own nationals. Naturally, the conditions and formalities prescribed by the said laws must be complied with. Residence, in the case of legal entities, means that the headquarters of the legal entity are in the State in question. (Article 3(1)).

This right to national treatment applies in respect of the species listed in the Convention. Where the national laws of two or more member States protect certain additional species, the national treatment applies, as among such States, also to such species. A member State may, of course, go beyond these minimum requirements and grant national treatment also in respect of other species which its national law protects.

Right of Priority

A third right which States party to the Convention must recognize is the so-called right of priority. The conditions under which it comes into existence and its effects are as follows.

The breeder may file his first application for protection of a given plant variety in any of the member States. If he files an application for the same variety in any other member State within 12 months from the filing of the first application, this "later" application will benefit from the right of priority, which has two main effects: (i) an application for the same variety filed by another person before the filing of the later application of the breeder will have no effect on the said breeder's rights; (ii) any publication or any use of the plant variety occurring within the said 12 months will not affect the rights of the said breeder.

Right to the Protection of the Denomination

A fourth right which States party to the Convention must recognize is the breeder's right to the protection of the denomination of the new plant variety, a denomination which is registered at the same time as the title of protection is granted (see page 10).

Protection means essentially that the denomination of any given new plant variety registered in one of the member States may not be used, in any member State, as the denomination of another variety of the same or a closely related botanical species. This is so even in member States in which no title of protection was granted for the said variety. (Article 13(8)).

Genera to Which the Convention Applies

The Convention lists 13 genera to which each member State must apply the Convention: wheat, barley, oats, maize, potato, peas, beans, lucerne, red clover, ryegrass, lettuce, apples and roses. It is permitted to replace the protection of oats by that of rice, and the protection of roses by that of carnations. At the time a State becomes bound by the Convention, it is obliged to apply the Convention to at least five of the said 13 genera. It must then extend the application of the Convention, at the rate prescribed therein, to all 13 genera within eight years. The species to be protected in each genus are listed in an Annex to the Convention. (Article 4(3)).

These requirements constitute a minimum. The Convention expressly provides that the member States undertake to adopt all measures necessary for the progressive application of the Convention "to the largest possible number of botanical genera and species" (Article 4(2)) and that the Convention may be applied to all botanical genera and species (Article 4(1)).

Conditions of Protection; Examination; Duration

The Convention enumerates the conditions that each new variety for which protection is sought must fulfill (Article 6(1)). It does not permit the grant of protection to be made subject to other conditions except compliance with formalities and payment of fees (Article 6(2)). The said conditions are:

- (i) the new variety must be clearly distinguishable by one or more important morphological or physiological characteristics from any other variety whose existence is a matter of common knowledge,
- (ii) the new variety must not have been offered for sale or marketed with the consent of the breeder before the application for protection is filed in that State or for longer than four years in any other State,
- (iii) the new variety must be sufficiently homogeneous,
- (iv) the new variety must be stable in its essential characteristics,

(v) the new variety must be given a denomination which must enable it to be identified and which 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. (Article 6.(1)).

The Convention allows the grant of protection only after examination, by the competent authority of the member State in which protection is sought, of the question whether the plant variety for which protection is sought fulfills the said criteria. The examination must take into account the particularities of the normal manner of reproduction or multiplication of the species. (Article 7(1)).

The Convention requires that the term of protection, counted from the date of the issue of the title of protection, must be at least 18 years for vines and trees, and 15 years for all other plants. (Article 8(1)).

Independence of the Protection

No member State may make the protection it grants to a given plant variety dependent on protection of the same variety in any other State (Article 11(3)).

Similarly, no member State may refuse protection to any plant variety on the grounds that, in respect of that variety, the provisions of that State concerning the production, certification and marketing of seeds and propagating materials have not been complied with (Article 14(1)).

Forms of Protection

The Convention leaves each State party to the Convention free to grant protection to new varieties of plants through the grant of a "special title of protection"--that is, a title specially created for new plant varieties--or the grant of a patent. Both forms of protection cannot, however, be made available to one and the same botanical genus or species. (Article 2(1)).

Restrictions for Reasons of Public Interest

The Convention allows the restrictions in the free exercise of the exclusive rights provided for in the Convention only "for reasons of public interest" (Article 9(1)). When the public interest consists of ensuring the widespread distribution of the new variety, the State which is party to the Convention and which provides for the restriction must take all measures necessary to ensure that its breeder receives "equitable remuneration" (Article 9(2)).

Registration and Use of Denominations

Each State party to the Convention must register the denomination of a new plant variety at the same time as it issues the title of protection for the new variety (Article 13(4)).

The denomination is chosen by the breeder of the new variety but it must conform with certain criteria set out in some detail in the Convention. Among such criteria are the following: the denomination must enable the new variety to be identified; it must not be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the new variety or the identity of the breeder; it must be different from every denomination which designates, in any member State, existing varieties of the same or closely related botanical species; it must not be a trademark owned by the breeder. As a rule, the same denomination must be given to any new plant variety in the procedure before the national authorities of all the member States. (Article 13(2), (3) and (5)).

Before registering any proposed new denomination, the competent authority of the member State must examine the question whether it conforms with the prescribed requirements. If the denomination submitted by the breeder does not conform with such requirements, the competent authority will invite him to choose another denomination. In order to make the work of examination more efficient, the Convention prescribes that the competent authority must communicate any proposed denomination to the Office of the Union for the Protection of New Varieties of Plants in Geneva, Switzerland, and that that Office must then notify such

designation to the national authorities of all the other member States, which may address objections, through the said Office, to the said competent authority. Furthermore, and for the same purpose, the Convention prescribes that the national authorities must communicate to the said Office the denominations they register or refuse to register, and that Office notifies each registration or refusal to all States party to the Convention or to the Paris Convention for the Protection of Industrial Property. In actual fact, the provisions of the Convention concerning these communications and notifications are not yet applied. (Article 13(4) and (6)).

Each State party to the Convention must oblige persons who offer for sale or market, on its territory, propagating material of a new plant variety to use the denomination in connection with such offering for sale or marketing, and to do so even after the expiration of the protection of the said variety (Article 13(7)).

Implementation of the Convention

The Convention requires each State party to the Convention to adopt all measures necessary for the application of the Convention. In particular, each member State must ensure to nationals of the other member States appropriate legal remedies for the effective protection of the rights provided for in the Convention for the benefit of breeders of new varieties of plants. (Article 30(1) and (1)(a)).

Furthermore, each member State must set up a special authority for the protection of new plant varieties or must entrust such protection to an existing authority (Article 30(1)(b)).

Finally, each member State must ensure that the public is informed of matters concerning the protection of new plant varieties; such information must, as a minimum, consist of the periodical publication of the list of titles of protection (special titles or patents) granted (Article 30(1)(c)).

As far as the examination, by the competent authorities, of new plant varieties is concerned (see page 6), the Convention expressly provides that special agreements may be concluded, among States party to the Convention, for "the joint utilization of the services" of such authorities and for "assembling the necessary reference collections and documents" (Article 30(2); see also page 16).

III.

The International Union for the Protection of New Varieties of Plants (UPOV) According to the Convention

The Union; Becoming Member of the Union

The States party to the Convention constitute what is called the International Union for the Protection of New Varieties of Plants (Article 1(2)). It is usually referred to as "UPOV," the abbreviation derived from the French name of the Union, which is: Union pour la Protection des Obtentions Végétales.

States which have signed the Convention of 1961 become members of the Union by ratifying the Convention (Article 31(2)). States which have not signed the Convention of 1961 and wish to become members of the Union must apply for admission (called "accession"). Applications for accession are considered by the Council of the Union (see page 12). If four-fifths of the members present vote in favor of the application, the State applying for accession may deposit its instrument of accession and, if it does, it becomes a member of the Union. Applications are considered having particular regard to the question whether the State making the application is in a position, under its own domestic law, to give effect to the

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provisions of the Convention. (Article 32(1), and (3).) Instruments of ratification have to be deposited with the Government of France and instruments of accession have to be deposited with the Government of Switzerland (Articles 31(2) and 32(4)).

The Organs of the Union

The Union has two permanent organs: the Council and the Office (Article 15).

The Council consists of the representatives of the member States (Article 16(1)). Each member State has one vote in the Council (Article 16(3)). The Council elects from among its members a President and at least one Vice-President (Article 18(1)). The President holds office for three years (Article 18(2)).

The Council holds an ordinary session each year. It may be convened for extraordinary sessions. (Article 19(2)).

The main administrative tasks of the Council are the following:

- (i) to adopt and amend the administrative and financial regulations of the Union (Article 20(2) and (3)),
- (ii) to approve the budget of the Union, including the total amount of the annual contributions payable by each member State (Article 21(d)), and to give all necessary directions to the Secretary-General of the Union (Article 21(c)),
- (iii) to examine the annual reports on the activities of the Union (Article 21(b)), and to approve the accounts of the Union (Article 21(e)),
- (iv) in general, to take all necessary decisions to ensure the efficient functioning of the Union (Article 21(h)).

The main substantive tasks of the Council are the following:

- (i) to study appropriate measures to safeguard the interests and to encourage the development of the Union (Article 21(a)),
- (ii) to prepare the revisions of the Convention (Article 21(f)),
- (iii) in general, to take all necessary decisions to ensure the efficient functioning of the Union (Article 21(h)).

The "Office" of UPOV--also called its Secretariat General--is under the direction of the Secretary-General. The Secretary-General is the same person as the Director General of the World Intellectual Property Organization. The senior officials of the Office are appointed on the proposal of the Council. (Article 23(1) and (3)).

The task of the Office is to carry out the duties and tasks entrusted to it by the Council (Article 23(1)).

The Office of UPOV has its seat in Geneva and maintains close technical and administrative cooperation with the International Bureau of the World Intellectual Property Organization (WIPO) (Article 25).

The Finances of the Union

Each member State belongs to a "class" for the purposes of determining its share--expressed in terms of "units"--in the total amount of contributions (Article 26(2) and (3)). At the present time, France, Germany (Federal Republic of) and the United Kingdom pay their contributions on the basis of 5 units each, the Netherlands on the basis of 2 units and Denmark and Sweden on the basis of 1½ units each. In the budget for 1975, the value of each unit is Swiss francs.

The contributions serve to cover the expenses of the Union, mainly those connected with the meetings of the Council and other meetings and those of the Office of the Union.

The expenditure and the accounts of the Office are supervised by the Government of Switzerland (Article 24).

IV.

U P O V Today

Members

On October 1, 1974, UPOV comprised the following 6 member States:

Denmark, France, Germany (Federal Republic of), Netherlands, Sweden, United Kingdom. Belgium, Italy and Switzerland have signed the Convention but not ratified it yet.

Several countries are in the process of preparing their accession. It can therefore be expected that in the coming years the membership of UPOV will increase.

Technical Cooperation

According to the Convention, new plant varieties, in order to qualify for legal protection, must, inter alia, be distinct, homogeneous and stable; protection is granted only after examination of the new plant variety submitted, so as to "test" whether it possesses these three qualities. The examination is carried out in national institutions, which may be either a subordinate body of the office or board competent for the acceptance and grant of plant breeders' rights or a separate institution acting on behalf of that office or board. These institutions are sometimes referred to as "test stations" or "trial stations."

The aim of UPOV is to have the tests of new plant varieties conducted in all member States according to basically the same standards. This will make it easier for a breeder in any member State to obtain protection in the other member States. It also helps national authorities to evaluate the results of tests performed by authorities of other member States.

Mainly for these two reasons, five so-called "Technical Working Parties" composed of government experts from each member State elaborate Test Guidelines for the different plant species.

Those "Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability," as they are called in full, start with technical recommendations ("Techn. Notes") to national authorities, varying from species to species. The recommendations refer, for instance, to the kind and amount of propagating material to be delivered to the National Offices by the applicant, the methods to be used by the authorities in carrying out the tests and the duration of the tests. After the technical recommendations, the Test Guidelines go on to list, in English, French and German, a number of characteristics of the species in question which are helpful to experts in distinguishing different plant varieties of that species. For each characteristic, the Test Guidelines contain a scale of the possible expressions ("states") of such characteristics in agreed terms to be used in the descriptions of new varieties. In addition, a system has been established for each characteristic according to which each state of a characteristic receives a certain code number. This system will allow for the computerization of variety descriptions.

The work of the Technical Working Parties is carried out under the guidance of a "Technical Steering Committee," a body composed of the heads of the technical offices for plant variety protection. The Chairmen of the Technical Working Parties also participate. In order to enable the national authorities to apply the Test Guidelines more easily and more uniformly, the Technical Steering Committee adopted in March 1973 a General Introduction to the Guidelines for the Tests of Distinctness, Homogeneity and Stability.

The following chart shows which Test Guidelines have been adopted by each of the five Technical Working Parties and the Technical Steering Committee, as well as those that are in preparation or are planned as of October 1, 1974.

STAGES OF TEST GUIDELINES

(as of October 1, 1974)

Technical Working Party Stage	Agricultural Crops	Forest Trees	Fruit Crops	Ornamental Plants	Vegetables
adopted (19)	Lucerne Potatoes Maize Red clover Rice Ryegrass Wheat	-	Apples Pears	African violet Elatior begonias Euphorbia fulgens Roses	Broad beans French beans Garden peas Lettuce Runner beans
in prepa- ration (37)	Barley Bentgrass Cocksfoot Common vetch Meadow grass Oats Rape Timothy White clover	Poplar	Black currant Cherries Gooseberry Plums Raspberries Red and white currant Strawberry	Carnations Chrysanthemums Freesia Lilies Narcissi Pelargonium Peruvian lily Poinsettia Rhododendron	Black radish Brussel sprouts Cabbage Carrots Cauliflower Cucumber Radishes (radicula) Red beet Rhubarb Spinach Tomatoes
planned (21)	Fescue (bovinae) Fescue (ovinae) Linseed Lupin Opium poppy Radishes (olei- formis) Rye Sugar beets Tobacco	Picea	Apricots Peaches Vine	Strepto- carpus	Celeriac Celery Dill Garden beet Onions Parsley Turnip

The main professional international organizations are given an opportunity to comment on the drafts of the Test Guidelines before their final adoption.

Cooperation in the Exchange of Variety Denominations

The determination of the protected plant variety should, in principle, be the same in all member States of UPOV. To achieve this intention, Article 13(6) of the Convention, as stated above, provides that each denomination which is proposed to a national plant breeders' rights office in a member State shall be notified by the Secretariat of UPOV to the offices of the other member States. It is also provided that all denominations which are registered in a member State shall be notified by the Secretariat not only to the other member States of UPOV but also to all member States of the Paris Union for the Protection of Industrial Property.

Since the Office of UPOV lacks for the time being the necessary staff to carry out its tasks, the Council of UPOV has adopted provisional rules according to which the aims envisaged in Article 13(6) of the Convention are as far as possible achieved by the national offices of the member States. The "Provisional Rules of Procedure for the Exchange of Variety Denominations" provide that the national plant breeders' rights offices of member States publish any denomination proposed by an applicant as soon as possible but after a preliminary check in their Bulletins, which are drawn up according to agreed rules and of which copies are sent immediately on publication of each issue to the offices of the other member States. These offices are obliged to examine the proposed denominations and to forward within three months to the competent authority having published the denominations objections, if any, stating the reasons for their objections. A copy of any objection is at the same time sent to the offices of the other member States. The offices are furthermore obliged also to publish in their Bulletins all registrations of variety denominations and refusals or withdrawals of proposed denominations (see document UPOV/C/V/33 of October 15, 1971).

Article 13 of the Convention also contains, as stated above, explicit rules on the conditions which variety denominations must fulfill and on the admissibility of the simultaneous use of a variety denomination and a trademark. In order to ensure the uniform application of these rules amongst member States, the Council of UPOV, on October 12, 1973, adopted Guidelines for Variety Denominations containing additional principles which member States are recommended to follow when implementing Article 13 of the Convention.

The Council has established a Working Group for Variety Denominations composed of technical and legal representatives of member States to advise it on all problems connected with variety denominations and their relation to trademarks.

Administrative Cooperation

The main obstacle standing in the way of the extension and development of UPOV and the protection of plant breeders' rights is the cost of establishing technical and administrative facilities for the official examination of new varieties for distinctness, homogeneity and stability. In each member State, it is especially difficult to justify the investments required to extend protection to species within which only a small number of applications for protection can be expected to be filed since in these cases the expenses are out of proportion to the benefits. Consequently, even during the negotiations before the adoption of the UPOV Convention and ever since, plans have been discussed to reduce the burden of these expenses and efforts for the competent offices of member States by having them rely to some extent on testing facilities already existing or being created in other member States. The agreements envisaged for this purpose have been called "joint trial arrangements."

The burden of efforts and expenses caused by such examination is especially annoying where a breeder--as happens in an increasing number of cases--desires protection in more than one member State. The fact has already been mentioned (page 7) that in such cases, as a result of the territorial limitation of the protection granted for a new plant variety by the national laws, the breeder is forced to file a separate application in each of these member States, whereby an economically senseless and costly duplication of effort is caused both for breeders and for offices. It has also been pointed out that such duplication of effort requires the employment in the national Offices of qualified personnel whose time, if saved, could be used for extending protection to further genera and species. It must be added that the need to file separate applications is a considerable burden for the breeder since it means correspondence with several offices, mostly in a foreign language, as well as furnishing proof to, and sometimes hearings before, each of these Offices.

As far as joint trial arrangements are concerned, the Convention already provides for the conclusion of special agreements between member States of UPOV "with a view to the joint utilization of the services of the authorities entrusted with examination of new varieties... and with assembling the necessary reference collections and documents" (Article 30(2); see also page 7). This means that two or more member States might agree that for certain specified species technical tests of new plant varieties submitted for protection to the office of one of those States will be carried out by a single office only, and that the offices in question will use the results of these technical tests. The conclusion of "joint trial arrangements" of this kind will lead to considerable savings since not only will the number of technical tests be reduced but also the States will not have to build up and maintain testing facilities for certain species. Furthermore, the technical tests are that part of the examination which has been or will be to a great extent harmonized as a result of the UPOV Test Guidelines. This kind of cooperation between offices of member States is already practised for a few species and will increase in the future.

It is the desire of the Council of UPOV that the breeder should fully benefit from any economies made in cases where the office of one member State uses the results of the technical examination performed in another member State. The Council of UPOV therefore adopted on October 12, 1973, a "Resolution on Fee Questions" in which it recommends to member States that a national authority using the results of the technical examination performed by an authority in another member State shall refrain from making any claim on the breeder with respect to a fee for that technical examination, unless the breeder has not paid the comparable fee for the examination in that other member State.

Joint trial arrangements, however helpful they are, have nevertheless only limited value for reducing the duplication of effort in cases where the breeder applies for protection in more than one member State: they are concluded mainly on a bilateral basis and therefore might result in a deplorable lack of uniformity within the member States as a whole. In any case they are restricted to a single step of the whole procedure, namely the technical tests. Finally, it cannot be expected that they will ever cover all or even the majority of species eligible for protection in member States.

More far-reaching action is therefore planned within UPOV. The question will be examined whether member States can adopt a more advanced system of administrative cooperation, namely whether the joint utilization of testing stations can be organized on a multilateral and therefore more uniform basis and whether other stages of the procedure for the obtaining of plant variety protection can also be rationalized by intensified international cooperation. It is conceivable, for instance, to envisage the adoption of a system providing that a breeder desiring protection in more than one member State can achieve such protection by filing only one application, either with a central institution established for that purpose or with one of the national offices. Such office is competent for receiving the application and could perform the formal check of the application and then forward it to one or more testing stations for the technical examination. It can furthermore be imagined that member States of UPOV would generally agree that certain testing stations should be entrusted with the task of performing the technical tests for all applications concerning certain species instead of leaving such determination to a number of--different--bilateral agreements between member States. It is even possible that, in future, the granting procedure could be centralized in one office rather than in several offices if the breeder desires protection in more than one member State. Cooperation of this kind could be limited to a certain number of species only, if

in the case of other species--for instance species of paramount importance for the agriculture of a country--member States are not, or not yet, in the position to accept international solutions.

A committee composed of administrative, legal and technical experts of the Governments of member States is to be established within UPOV to study the question of the extent to which such cooperation can be realised in the field of the examination of new plant varieties.

Information and Other Activities

Collection of Laws

The Office of UPOV systematically collects national laws on plant breeders' rights and prepares translations of them. At the present time, all national laws on plant breeders' rights reported to the Office of UPOV are published in the Industrial Property, monthly periodical of the World Intellectual Property Organization (WIPO). For the future it is planned to publish a separate document containing reprints of those national laws and important regulations or translations thereof concerning plant breeders' rights which are available in the Office of UPOV, since such a collection of national laws is an indispensable tool for anyone who is interested in the national operations in this field and in obtaining plant variety protection in a certain country.

Spreading the Idea of Protection of Plant Breeders' Rights

The Office of UPOV keeps in touch with States interested in introducing a system of plant breeders' rights. It tries, within the limits of its possibilities, to help States in the preparation of laws on the protection of plant breeders' rights, in the implementation of these laws and in amending existing national laws to bring them into conformity with the Convention. In particular, it provides interested States, on request, with copies of laws and regulations of member States and informs them of the requirements for joining UPOV, of the procedure for acceding to the Convention, and of the advantages to be derived from membership in UPOV.

In cases of special interest, representatives of non-member States are permitted to participate in sessions of bodies of UPOV.

Extension of the Application of the Convention

It is in the interest of the breeder that the member States of UPOV apply the Convention to as many botanical species as possible, and the Convention contains an obligation for member States to take all measures necessary for that purpose. In order to promote closer cooperation between member States, it is also desirable that, preferably, the same species should be eligible for protection in all member States. In order to achieve these two aims, a document combining a list of species eligible for protection in all member States is distributed before each Council meeting and discussed in the Council.

Contacts with International Organizations

The Office of UPOV maintains close contacts with a number of international non-governmental organizations in the field of plant variety protection and related fields, such as the International Association for the Protection of Industrial Property (AIPPI), the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), the International Community of

Breeders of Asexually Reproduced Ornamental Plants (CIOPORA), the International Federation of Seed Trade (FIS) and the International Chamber of Commerce (ICC). It also cooperates with intergovernmental organizations, of which the most important are the Food and Agriculture Organization of the United Nations (FAO), the Organisation for Economic Cooperation and Development (OECD), and the International Seed Testing Association (ISTA). The Office of UPOV tries to coordinate its activities with those organizations and exchanges information and documents with some of them. International organizations are also invited to meetings within UPOV and for some projects the opinions of interested organizations are heard before a final decision is taken. For instance, the international non-governmental organizations have an opportunity to express their opinions on drafts of Test Guidelines to be issued (see page 13); they also had the occasion to present their views in a special hearing before the Guidelines for Variety Denomination were established.

V.

REASONS FOR BECOMING PARTY TO THE CONVENTION AND MEMBER OF UPOV

Advantages for States

In adhering to UPOV, States show their interest in the protection of plant breeders' rights. They thereby stimulate the development of new varieties at home and the flow of information about new varieties from other States. They will also contribute to the improvement of the development of their own agriculture and of their trade in agricultural and horticultural products, including fruit crops, in ornamental plants and in forestry products. They will ensure for their own experts participation in the further development of UPOV, with full voting rights. This is especially valuable if plans are realized for closer cooperation in the examination of applications for plant variety protection and if an international agreement on that subject is prepared. Such an agreement would fill the ranks of the growing group of other international agreements providing for close international cooperation in the field of intellectual property.

The accession of a State to the UPOV Convention is moreover a manifestation which will enhance the protection of plant breeders' rights on a worldwide scale and from which the nationals of the State in question will also profit.

Advantages for Breeders

For the breeders, the accession of a State to the UPOV Convention is of importance with regard to several aspects. The fact that a State has solemnly undertaken to accept the obligations deriving from the Convention gives the breeders the assurance that that State will, from then on, protect the results of their labors and investments and will contribute to the spread of the idea of the protection of plant breeders' rights on an international scale.

A breeder who is a national or a resident of any member State will enjoy for his application for protection the privilege of national treatment in other member States of UPOV, at least for varieties of plants belonging to the genera and species included in the list annexed to the Convention and for varieties protected in both member States concerned. He also benefits with regard to applications filed in other member States from the provisions of the Convention on priority rights. Furthermore, breeders can be sure that member States will make efforts to increase the number of species for which protection is granted and that they will share in the endeavors to reduce the cost of applications by closer cooperation in testing and examination activities, either within future systems of intensified international cooperation, or by virtue of the joint trials already practised between member States on the basis of the Convention.

ANNEX

Publications of UPOV

The following publications of UPOV are available for distribution:

273 (E) (F) (G)	International Convention for the Protection of New Varieties of Plants (English text including the Additional Act) [price: 3 Swiss francs per copy]	English, French or German
273 (F)a	Additional Act of November 10, 1972, Amending the International Convention for the Protection of New Varieties of Plants	French
UPOV/72DC/16	Additional Act of November 10, 1972, Amending the International Convention for the Protection of New Varieties of Plants (Unofficial translation)	German
UPOV/C/VI/14	Administrative Regulations under Article 20 of the Convention	English, French or German
UPOV/C/15	Financial Regulations under Article 20 of the Convention	English, French or German
UPOV/C/IV/6	Rules on the Procedure for Technical and Administrative Cooperation between UPOV and BIRPI	English, French or German
UPOV/C/VII/7	Amendments to Rules on the Procedure for Technical and Administrative Cooperation between UPOV and WIPO	English, French or German
UPOV/C/IV/10	Rules of Procedure of the Council	English, French or German
UPOV/C/V/32	Harmonization of Lists of Species Eligible for Protection in Member States	English, French or German
UPOV/C/VII/22	Guidelines for Variety Denominations	English, French or German
UPOV/C/VII/23	Resolution on Fee Questions	English, French or German
UPOV/C/VII/24	Joint Trial Arrangements	English
UPOV/TG/1/1	General Introduction to the Guidelines for the Examination of Distinctness, Homogeneity and Stability of New Varieties of Plants Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability:	English, French or German
UPOV/TG/2/1	- Maize	trilingual
UPOV/TG/3/1	- Wheat	trilingual
UPOV/TG/4/1	- Ryegrass	trilingual

UPOV/TG/II/4	- Red clover	trilingual
UPOV/TG/II/5	- Lucerne	trilingual
UPOV/TG/7/1	- Garden Peas	trilingual
UPOV/TG/III/2	- Broad Beans	trilingual
UPOV/TG/III/4	- Runner beans	trilingual
UPOV/TG/V/2	- Euphorbia fulgens	trilingual
UPOV/TG/11/1	- Roses	trilingual
UPOV/TG/12/1	- French beans	trilingual
UPOV/TG/13/1	- Lettuce	trilingual
UPOV/TG/14/1	- Apples	trilingual
UPOV/TG/15/1	- Pears	trilingual
UPOV/TG/16/1	- Rice	trilingual
UPOV/TG/17/1	- African violet	trilingual
UPOV/TG/18/1	- Elatior Begonias	trilingual
UPOV/TG/23/2	- Potatoes	trilingual

Actes des Conférences Internationales pour la
Protection des Obtentions Végétales 1957-1961,
1972 (Acts of Conferences) [price: 60 Swiss
francs per copy]

French

Unless otherwise indicated, copies are available on request at the price of 2 Swiss francs each, including surface mail, from the Office of UPOV, 32, chemin des Colombettes, 1211 Geneva 20, Switzerland

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and of document]