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*1st Session*

SENATE

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CONVENTION FOR THE PROTECTION OF PLANTS

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF  
NEW VARIETIES OF PLANTS OF DECEMBER 2, 1961, AS REVISED  
AT GENEVA ON NOVEMBER 10, 1972, ON OCTOBER 23, 1978, AND  
ON MARCH 19, 1991, AND SIGNED BY THE UNITED STATES ON  
OCTOBER 25, 1991.



SEPTEMBER 5, 1995.—Treaty was read the first time and, together with  
the accompanying papers, referred to the Committee on Foreign Rela-  
tions and ordered to be printed for the use of the Senate.

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WASHINGTON : 1995



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *September 5, 1995.*

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, and signed by the United States on October 25, 1991 (hereinafter "the 1991 Act of the UPOV Convention"). I transmit for the information of the Senate, the report of the Department of State with respect to the Convention.

Ratification of the Convention is in the best interests of the United States. It demonstrates a domestic commitment to effective protection for intellectual property in the important field of plant breeding. It is also consistent with United States foreign policy of encouraging other countries to provide adequate and effective intellectual property protection, including that for plant varieties.

I recommend, therefore, that the Senate give early and favorable consideration to the 1991 Act of the UPOV Convention and give its advice and consent to ratification subject to a reservation under Article 35(2), which allows parties to the existing Convention (the 1978 Act) to retain their present patent systems for certain varieties of plants.

WILLIAM J. CLINTON.



## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, May 10, 1995.*

The PRESIDENT,  
*The White House.*

I have the honor to submit to you the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991, and signed by the United States on October 25, 1991 (hereinafter "the 1991 Act of the UPOV Convention"). I recommend that the 1991 Act of the UPOV Convention be transmitted to the Senate for its advice and consent to ratification, subject to a reservation under Article 35(2) of the 1991 Act, which allows states party to the 1978 Act to retain their present patent systems for certain varieties of plants.

The United States is a party to the 1978 Act of the International Convention for the Protection of New Varieties of Plants (33 UST 2703; TIAS 10199), which was concluded on October 23, 1978, and entered into force on November 8, 1981. That Act was the second revision of the original Act, which was done on December 2, 1961 and amended on November 10, 1972, and which established the International Union for the Protection of New Varieties of Plants.

Member States of the Convention constitute the International Union for the Protection of New Varieties of Plants (the UPOV Union), whose objective is to promote the protection of the rights of plant breeders in new plant varieties. At present, the UPOV Union is composed of 27 member States. Apart from two States (Belgium and Spain) that have adhered only to the 1961 Act, as revised in 1972, all other member States are presently bound by the 1978 Act of the UPOV Convention. The 1991 Act is not yet in force.

Several considerations prompted the member States to revise the Convention at a Diplomatic Conference held in Geneva, Switzerland in March of 1991. Those considerations were: 1) recognition that the protection offered to breeders under previous Acts of the Convention was not adequate; 2) the need for the Convention to reflect technological changes in the breeding of new plant varieties; and 3) the need to clarify certain provisions of the 1978 Act.

Ten member States of UPOV signed the 1991 Act at the conclusion of the Conference. The 1991 Act remained open for signature by UPOV member States until March 31, 1991, by which time 16 States, including the United States, had signed the Convention.

Article 37 of the 1991 Act provides that it will enter into force one month after five States have deposited their instruments of adherence, provided that at least three of them are present member States of UPOV. After entry into force of the 1991 Act, the 1978

Act of the Convention will be closed to further accessions, except that developing countries may accede to the 1978 Act until December 31, 1995. To date, no State has deposited its instrument of adherence to the 1991 Act, although many UPOV member States are actively involved in revising their plant variety protection laws to bring them into conformance with the 1991 Act, thus permitting their adherence to that Act. In the United States, implementing legislation was enacted as Public Law 103-349, on October 6, 1994.

The main aim of the Convention is to promote the protection of the rights of the breeder in new plant varieties. In that regard, the Convention not only requires member States to provide protection for new varieties of plants, but also contains explicit and detailed rules on the conditions and arrangements for granting protection. Further, it prescribes the scope of protection, including possible restrictions and exceptions thereto, establishes, with some limitations, the principle of national treatment for plant breeders from other member States, and provides for a right of priority.

The Convention, as revised by the 1991 Act, would afford additional protection to plant breeders, as follows:

First, the 1991 Act requires Contracting Parties, after certain transitional periods, to protect varieties of all genera and species of the plant kingdom.

Second, the 1991 Act redefines a breeder's right to cover, among other things, the production of a variety's propagating material by others for any purpose. The 1991 Act also expressly permits member States to exclude from the reach of the breeder's right, the practice of farmers to save seed.

Third, the 1991 Act extends breeders' rights to include harvested material of the protected variety.

Fourth, the 1991 Act puts an end to the common practice, permitted by the present Convention, of using protected varieties to derive and freely commercialize other varieties that, although differing to some degree, maintain the essential characteristics of the initial variety.

Finally, the 1991 Act is silent regarding the title of protection under which a breeder's right may be granted. This would afford member States the freedom to provide protection for plant varieties through patents and *sui generis* breeders' rights, thus affording them greater flexibility in determining how to protect new plant varieties most effectively.

These and other features of the 1991 Act would enhance the protection afforded to breeders of new plant varieties not only in the United States, but also in those future member States where patent protection for plant varieties is not now obtainable, and in present member States where protection of plant breeders' rights is either weak or unavailable for a significant number of plant species and genera. An analysis is enclosed, explaining the various Articles of the 1991 Act of the UPOV Convention, including their differences from those of the 1978 Act.

Prompt ratification of the 1991 Act of the UPOV Convention will demonstrate the United States commitment to effective protection for intellectual property in the area of new plant variety development. Ratification of this Convention is consistent, therefore, with United States foreign policy of encouraging other countries to pro-

vide adequate and effective protection for intellectual property generally, and for new plant varieties in particular.

I recommend, therefore, that the 1991 Act of the UPOV Convention be transmitted to the Senate as soon as possible for its advice and consent to ratification, subject to a reservation under Article 35(2), which allows parties to the 1978 Act to retain their present plant patent systems for certain varieties of plants.

Respectfully submitted,

PETER TARNOFF.

Enclosure: As stated.

# ANALYSIS OF THE 1991 ACT OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

## CHAPTER I: DEFINITIONS

This chapter has only one article, containing definitions that establish a number of key legal concepts.

*Article 1* has no counterpart in the 1978 Act of the Convention. Of the eleven definitions contained in Article 1, the most important are those explaining the meaning of who may be considered a “breeder”, and what is a “variety.” For purposes of the Convention, a breeder may be any one of several persons. It may be the person who has bred the variety, or discovered and developed it, unless the variety was established by that person while in the employ of another, or under commission. In that case, it is left to national law to determine the circumstances under which an employer will be entitled to be recognized as the breeder. Further, the successor in title of the actual breeder, or his employer, is also recognized, for purposes of the Convention, as the breeder of the variety.

A definition of great significance in the 1991 Act is that of “variety.” In framing that definition, a clear distinction was established between what constitutes a variety as such and a variety that meets the technical criteria for protection under the Convention. In that respect, a variety, under the definition, is a plant grouping that is distinct from other varieties whose component individuals display certain common characteristics and that retains its identity from generation to generation, regardless of whether the precise conditions for obtaining a breeder’s right are met. This narrow difference between the definition of “variety” and what is considered to be a “protectable variety” ensures that the former is taken into account when assessing distinctness of a variety for which protection is sought. Other definitions in Article 1 explain the meaning of a breeder’s right, and terms such as “Contracting Party,” “territory,” “authority,” “Union,” and the various Acts of the Convention.

## CHAPTER II: GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES

This Chapter contains Articles 2, 3 and 4 and deals with the Contracting Parties’ basic obligations under the Convention, including treatment of each others’ nationals and to what genera and species of the plant kingdom the protection is to be extended.

*Article 2* simply states that each Contracting Party “shall grant and protect breeders’ rights”. In that respect, the 1991 Act is silent on the form of breeders’ rights to be provided and no longer contains the provision of Article 2 of the 1978 Act prohibiting a mem-

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ber State from providing protection by way of patents, as well as in the form of *sui generis* breeders' rights, for the same botanical genus or species. This improvement gives Contracting Parties the freedom to provide either, or both, types of protection for plant varieties.

*Article 3* corresponds to Article 4 of the 1978 Act and establishes the parameters of protection within the plant kingdom that member States are required to provide. Earlier Acts of the UPOV Convention recognized, but did not require, that the system be applied to all botanical genera and species. This general obligation led most member States to establish plant variety protection only for crop genera that they considered to be of economic importance to them. By contrast, Article 3 of the 1991 Act requires that existing member States protect all plant genera and species five years after adhering to the 1991 Act and permits newly adhering States ten years to achieve this result. Thus, it is intended that over time a worldwide UPOV system of plant protection will emerge that requires all member States to protect the whole of the plant kingdom.

This change has important consequences, for example, in relation to varieties of certain tropical plant species that are not presently protected in temperate member States but whose harvested materials are imported from other countries. Thus, for example, if Iceland joined the 1991 Act of the UPOV Convention, a U.S. breeder of a particular new variety of oranges could eventually obtain protection there and could take action against unauthorized imports of that orange variety into Iceland from a country in which the U.S. breeder could not or did not obtain plant variety protection.

*Article 4* addresses the treatment that must be afforded by a Contracting Party to nationals and residents from another Contracting Party. In that respect, the 1991 Act departs from the 1978 Act, which permits a UPOV member State to discriminate against foreign breeders by limiting their rights of protection in the member State to those afforded in their own country. Under the 1991 Act, a Contracting Party must treat nationals and residents of another Contracting Party no less favorably, for purposes of granting and protecting breeders' rights, than its laws accord its own nations.

### CHAPTER III: CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

This Chapter contains Articles 5 to 9, and details the criteria that must be met by a plant variety to be eligible to be the subject of a breeder's right.

*Article 5* states that a breeder's right shall be granted when a plant variety meets the criteria of novelty, distinctness, uniformity and stability. In that regard, Article 5 presents the conditions for protectability in a clearer fashion than the wording of comparable Article 6 of the 1978 Act of the Convention. The Article also provides that a Contracting Party may not subject the grant of a breeder's right, as defined by the Convention, to any further or different conditions, other than the requirement that the plant variety be designated by a denomination.

*Article 6* defines that novelty under this Convention refers to the prior commercialization of the variety, rather than novelty in the



sense of patent law. In that respect, to lose the recognition of novelty, a breeder must sell or dispose of propagating or harvested material of the variety for the purposes of exploiting the variety for more than one year in the territory of the Contracting Party in which the application for protection has been filed, or for more than four years if the application was filed in another Contracting Party. The latter time period is extended to six years in the case of trees and vines.

The mandatory one-year grace period provided by Article 6 of the 1991 Act was only optional under Article 6 of the 1978 Act. The periods of foreign commercialization permitted without loss of novelty have remained the same in the 1978 and 1991 Acts of the Convention. Further, Article 6(3) of the 1991 Act permits Contracting Parties that are members of the same intergovernmental organization (for example, the European Communities), to assimilate acts done on the territory of one member State to acts done on the territories of all member States of that organization. This option appears for the first time in the 1991 Act, as previous Acts of the convention did not permit adherence by intergovernmental organizations.

*Article 7* deals with the requirement of a variety's distinctness and simply requires that a variety be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time the application for the plant breeder's right was filed. Thus, the requirement of the 1978 Act, that distinction lie in the presence of "one or more important characteristics" has been dropped due to the ambiguity of that requirement as to whether "importance" was equivalent to economic merit. In addition to this, Article 7 provides a non-exhaustive list of examples that would be considered "common knowledge."

*Article 8 and 9* address the criteria of a variety's uniformity and stability. Although reworded from the corresponding provisions in paragraph (c) and paragraph (d) of Article 6 of the 1978 Act, no change in substance was intended.

#### CHAPTER IV: APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

This Chapter contains Articles 10 to 13, and provides details regarding an application's filing, examination and effect.

*Article 10* decrees that an adherent to the Convention may not restrict the choice of the breeder in which particular Contracting Party to file the first application for a breeder's right. This provision, as well as the ones relating to the independence of applications in different Contracting Parties, are substantively unchanged from the requirements in article 11 of the 1978 Act.

*Article 11* regulates the right of priority that may be claimed in an application filed in one Contracting Party on the basis of an earlier application filed in another Contracting Party. The provisions of Article 11 differ from those of Article 12 of the 1978 Act, in that the 1991 Act is more specific in permitting the claim of priority only to be made in an application for a breeder's right, although the basis for such claim may be an application for the protection of a variety, including a patent application.

The 1991 Act also permits authorities with whom the subsequent application was filed, to require the submission of samples or other

evidence proving that the variety claimed by the earlier and the subsequent applications is the same. This requirement is in addition to that contained in article 12(2) of the 1978 Act, requiring the furnishing of certified copies of the earlier application to substantiate the claim of priority.

*Article 12* deals with the examination of the application for a breeder's right and corresponds substantially to provisions in Article 7 of the 1978 Act. It does, however, emphasize the options that are open to an examining authority, including that of accepting test results already established by others, which implicitly includes the breeder.

*Article 13* obligates Contracting Parties to provide provisional protection for plant varieties during the period between the filing or publication of an application and the grant of the breeder's right. Although provisional protection is also provided in Article 7(3) of the 1978 Act, it is only optional in nature there. The 1991 Act, however, permits Contracting Parties to provide provisional protection only in instances where alleged infringers were notified by the breeder that an application on the variety in question has been filed.

#### CHAPTER V: THE RIGHTS OF THE BREEDER

This Chapter contains Articles 14 to 19, dealing with the substantive rights that a breeder derives from a grant of protection and the instances in which a breeder's right is either restricted or exhausted altogether. In this respect, the 1991 Act materially enhances the rights of a breeder when compared to those provided by the 1978 Act of the Convention.

*Article 14* enumerates in paragraph (1) seven specific acts that, in respect of the propagating material of the protected variety, require authorization from the breeder. They are: (1) production or reproduction, (2) conditioning for the purpose of propagation, (3) offering for sale, (4) selling or other marketing, (5) exporting, (6) importing, and (7) stocking for any of the previously mentioned acts. The 1978 Act, in Article 5, only provides protection against the unauthorized production of a variety's propagating material for purposes of commercial marketing, as well as its being offered for sale or being marketed without authorization by the breeder.

In addition, paragraphs (2) and (3) of Article 14 extend protection also to a variety's harvested material and to products made directly from the harvested material. However, harvested material is covered only if the breeder did not have a reasonable opportunity to exercise his rights of exclusion in relation to the propagating material of the protected variety, and products are only encompassed if the breeder could not exert his rights in the harvested material. Further, the provisions of Article 14(3), relating to the exercise of a breeder's right with respect to products made from the harvested material of the protected variety, are not mandatory and may be instituted by a Contracting Party on an optional basis. A similar provision contained in Article 5(4) of the 1978 Act permits member States to extend protection to the marketed product of a protected variety on a reciprocal basis.

Another optional addition to the breeder's right, similar to Article 5(4) of the 1978 Act, is provided in Article 14(4), which permits

Contracting Parties to provide that acts, in addition to those referred to in Article 14(1), shall require the breeder's authorization. This paragraph introduces a certain amount of flexibility by permitting the expansion of protection beyond the list of acts enumerated in Article 14(1) without, however, the option of requiring reciprocity.

Article 14(5) clarifies that the scope of protection of the breeder's right extends also to varieties (1) that are not clearly distinguishable from the patented variety, (2) to varieties whose production requires the repeated use of the protected variety, and, most importantly, (3) to varieties that were essentially derived from the protected variety.

Forbidding unauthorized, repeated use of a protected variety to achieve another variety is already part of the 1978 Act. The other two provisions, however, are new features of the 1991 Act. Although it may have been taken for granted that varieties not clearly distinguishable from the protected variety should be folded into the breeder's right, member States of UPOV tended to differ in their application of that concept and, hence, the clarification in the 1991 Act is useful.

Extending protection to cover essentially derived varieties covers rival breeding practices in which a breeder typically induces minor changes in a protected variety resulting in another variety that, while distinct, retains the essential characteristics of the initial variety. Although functionally equivalent, this variety was heretofore recognized as independent and no reward was due the breeder of the initial variety whose efforts resulted in all the beneficial characteristics of the essentially derived variety. By including essentially derived varieties within the metes and bounds of the breeder's right concerning the initial variety, the 1991 Act considerably enhances this right by controlling "cosmetic breeding" that borders on piracy.

Article 15 details exceptions to the breeder's right by adding acts done privately and for non-commercial purposes, as well as those done for the purpose of experimentation, to the exception already contained in Article 5(3) of the 1978 Act, namely that the breeder's right does not reach acts done for the purpose of breeding other varieties. Article 15 narrows, however, the breeding exception contained in the 1978 Act by eliminating the provision that varieties obtained from other varieties may freely be marketed without the authorization of the breeder of the initial variety. In that sense, the exceptions in Article 15(1) to the breeder's right were adapted to balance the extension of the breeder's right by Article 14(5), discussed above.

Article 15 also provides for another exception to the breeder's right, albeit in optional form. Contracting Parties may restrict the breeder's right to permit farmers to save seed obtained from the use of a protected variety on their holdings for further propagation purposes on their own holdings. It does not, however, permit farmers to sell or market such saved seed for purposes of propagation. The "saved seed" exemption is an explicit expression of the implicit creation of this exemption by the wording of Article 5(1) of the 1978 Act, which provides that the breeder's authorization is only required for the production of propagating material "for purposes of

commercial marketing.” Thus, if saved propagating material is not sold as such but is only replanted, that act falls outside the scope of protection offered by the 1978 Act. By explicitly stating this exception to the breeder’s right, the 1991 Act clarifies this principle, while also narrowing the exception, given its optional nature.

*Article 16* specifies under what circumstances a breeder’s right becomes exhausted. Basically, an authorized vendor of material of the protected variety may not control by means of the breeder’s right what the buyer does with that bought material, or with any crop or harvest derived from such material. However, certain actions by a buyer that would be inconsistent with the purpose for which the plant variety material was sold in the first place, are not included in the exhaustion of rights and would represent an infringement. These involve acts of further propagation of the variety or the export of propagating material of the variety to a country that does not protect plant varieties of the genus or species to which it belongs. It is permitted, however, to export plant variety material to such a country for final consumption purposes. The provisions of Article 16 are not reflected in any earlier Acts of the UPOV Convention.

*Article 17* provides a further optional restriction by Contracting Parties on the breeder’s right. In accordance with this Article, a Contracting Party may, in addition to other restrictions provided for in the Convention, limit a breeder’s exclusionary rights, for reasons of public interest. However, where such restriction assumes the form of a compulsory license in favor of a third party, the Contracting Party is obliged to ensure that the breeder receives equitable remuneration. The concept expressed by Article 17 is already contained in Article 9 of the 1978 Act.

*Article 18* provides that a breeder’s right is independent of any measures taken by a Contracting Party to regulate the production, certification and marketing of material of a variety. This concept is already expressed in Article 14 of the 1978 Act.

*Article 19* revises the minimum periods of protection for varieties provided for under Article 8 of the 1978 Act (18 years for trees and vines, and 15 years for all other species) to periods of 25 years for trees and vines, and 20 years for all other species.

#### CHAPTER VI: VARIETY DENOMINATION

This chapter, consisting only of Article 20, is similar to Article 13 of the 1978 Act. It provides that a variety must be designated by a denomination that will be its generic name. Article 20 also provides certain guidelines for the submission of variety denominations to examining authorities and for their use and effect.

#### CHAPTER VII: NULLITY AND CANCELLATION OF THE BREEDER’S RIGHT

This chapter consists of two articles and addresses the specific and only grounds on which a breeder’s right may be revoked or canceled.

*Article 21* provides for three situations where a breeder’s right must be declared null and void *ab initio*. These are where 1) the protected variety is shown not to have been novel or distinct at the date of grant, 2) the protected variety was granted a breeder’s right on the basis of incorrect information by the breeder with respect

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to uniformity or stability, or 3) the breeder's right was granted to a person not entitled to it. The obligation to revoke a breeder's right on the basis of lack of novelty or distinctness was already established in Article 10 of the 1978 Act.

*Article 22* permits the cancellation of a breeder's right if a variety proves to be no longer uniform or stable. A Contracting Party may also cancel a breeder's right on the basis of a breeder's (1) refusal to submit information necessary to verify the maintenance of the variety, (2) failure to pay fees to keep the breeders's right in force, or (3) failure to comply with certain requirements concerning the furnishing of a suitable variety denomination. The option to cancel a breeder's right on the basis of a refusal to submit information regarding the variety's maintenance or failure to pay appropriate fees was also already provided for in Article 10(3) of the 1978 Act. However, the mandatory cancellation of the breeder's right under Article 10(2) of the 1978 Act, on the basis of a breeder's inability to provide propagating material capable to produce the variety with its original characteristics, was not maintained in the 1991 Act of the Convention.

### CHAPTER VIII: THE UNION

This Chapter comprises Articles 23 to 29, defining the status of Contracting Parties, the legal status and seat of the International Union for the Protection of New Varieties of Plants, the Union's organs and their tasks, and the Union's finances, as well as its official languages. For the most part, these provisions are substantively the same as those contained in the 1978 Act of the Convention. There are, however, some important changes.

*Article 23* states that Contracting Parties shall be members of the Union, and essentially repeats the provision of Article 1(2) of the 1978 Act.

*Article 24* defines the status of the Union, repeating the provisions of Articles 1(3) and 24 of the 1978 Act.

*Article 25* restates Article 15 of the 1978 Act, concerning the Union's organs, namely the Council and the Office of the Union.

*Article 26* details the composition and functions of the Council, by consolidating provisions in that respect contained in Articles 16 to 22 of the 1978 Act of the Convention. Two additional tasks for the Council have been added, namely the establishment of its rules of procedure and the establishment of the Union's administrative and financial regulations.

A further change was made in the voting procedure of members of the Union in view of the change in Article 34, permitting intergovernmental organizations to become parties to the 1991 Act of the Convention. In that regard, Article 26(6) provides that each member State of the Union has one vote in the Council and that any Contracting Party that is an intergovernmental organization may, in matters within its competence, cast the votes of all its member States, unless they exercise their own rights to vote. As a consequence, an intergovernmental organization may cast only the votes of its member States if no member State casts a vote. This arrangement preserves the integrity of the voting procedure and avoids the grant of a separate vote to an intergovernmental or-

ganization in addition to the votes of its member States on whose territory the intergovernmental organization operates.

*Article 27* states the tasks of the Office of the Union, provides for its staffing, and details the duties of the Secretary-General of the Union, virtually in identical manner as contained in Article 23 of the 1978 Act.

*Article 28* adds Spanish as an official language of the Union, in addition to English, French, and German, already provided for by Article 28 of the 1978 Act.

*Article 29* details the financial arrangements of the Union, which are substantially the same as those provided in Articles 25 and 26 of the 1978 Act, except for two instances. Article 29 reduces the number of years from two to one in which a member State may be in arrears in the payment of its assessed contributions, before losing its right to vote in the Council. Further, in view of the fact that an intergovernmental organization as a Contracting Party has no vote in its own right, it is not obliged to pay contributions, although it is not discouraged from doing so.

#### CHAPTER IX: IMPLEMENTATION OF THE CONVENTION

This Chapter contains Articles 30 to 32, and addresses the means by which each Contracting Party is obliged to implement the Convention, as well as how member States bound by different Acts of the Convention relate to each other in the application of such Acts.

*Article 30* addresses the implementation of the Convention and is substantively the same as Article 30 of the 1978 Act, except for the deletion of a reference to the possibility of concluding cooperative examining contracts between member States, which was deemed to be superfluous.

*Article 31* regulates the relations between Contracting Parties and States bound by earlier Acts of the UPOV Convention and is substantively the same as Article 34 of the 1978 Act, which regulates such relations between adherents to the Acts of 1961 and 1978, respectively.

*Article 32* repeats the possibility of special agreements to be concluded among members of the Union regarding the protection of plant varieties, as already contained in Article 29 of the 1978 Act of the Convention.

#### CHAPTER X: FINAL PROVISIONS

This Chapter contains Article 33 to 42, and addresses miscellaneous aspect of Convention procedures.

*Article 33* provides for signature of the Convention until March 31, 1992, by States that are already members of the Union. The United States signed the Convention on October 25, 1991.

*Article 34* details the means of becoming party to the Convention and permits the accession of intergovernmental organizations, under certain circumstances, in addition to States.

*Article 35* provides for the possibility of a reservation to the 1991 Act of the Convention only by a State that is a party to the Act of 1978 and that provides protection for asexually reproduced varieties by means other than a breeder's right. Upon notifying the Secretary-General at the time of depositing its instrument of ratifi-

cation, such State is permitted to continue protection of asexually reproduced varieties without applying the obligations and requirements of the 1991 Act to these varieties. This reservation is specifically intended to permit the United States to continue its present system of providing protection for asexually reproduced varieties by way of plant patents under sections 161 *et seq.* of title 35, United States Code, rather than plant breeders' certificates under section 2321 *et seq.* of title 7, United States Code. A similar, but less comprehensive reservation is already contained in Article 37 of the 1978 Act of the Convention.

*Article 36* provides for the communication among Contracting Parties regarding each others' legislation concerning breeders' rights, the genera and species initially protected upon becoming party to the 1991 Act and the dissemination of such information. These provisions are substantively the same as those contained in Article 35 of the 1978 Act.

*Article 37* details the circumstances under which the 1991 Act of the Convention comes into force. It requires the deposit of the appropriate instruments of five States, of which at least three must already be members of the Union. One month after such deposit, the 1991 Act of the Convention comes into force and any State or intergovernmental organization that subsequently adheres to this Convention will be bound one month after depositing its instrument. Article 37 also provides that accession to the 1978 Act of the Convention will no longer be possible after entry into force of the 1991 Act, except for developing countries that may accede to the 1978 Act until December 31, 1995, even if the 1991 Act were to come into force before then.

*Article 38* provides the procedures for revising the Convention and is identical with Article 27 of the 1978 Act, except for the majority required to adopt a revision. The 1978 Act requires a majority of five-sixths of the member States to revise the Convention, while the present Article reduces this majority to three quarters.

*Article 39* repeats the procedures regarding the denunciation of the Convention, already contained in Article 41 of the 1978 Act, and adds the provision that denunciation of the 1991 Act of the Convention has the effect of also denouncing any earlier Acts by which the Contracting Party is bound.

*Article 40*, like Article 39 of the 1978 Act, provides for the preservation of existing breeders' rights if a party adheres to the Convention. However, unlike the 1978 Act, which provides that existing rights not be affected, the 1991 Act provides that they not be limited, thus permitting an extension of existing rights, if so desired by a Contracting Party.

*Articles 41 and 42* provide information on original and official texts of the Convention, their establishment in other languages and the depositary functions of the Secretary-General. In substance these Articles are the same as Article 42 of the 1978 Act of the Convention.

**INTERNATIONAL CONVENTION  
FOR THE PROTECTION OF  
NEW VARIETIES OF PLANTS**

**of December 2, 1961,  
as Revised at Geneva on November 10, 1972,  
on October 23, 1978, and on March 19, 1991**



**International Union for the Protection of New Varieties of Plants  
GENEVA 1991**



**International Convention for the Protection  
of New Varieties of Plants of December 2, 1961,  
as Revised at Geneva on November 10, 1972, on October 23, 1978,  
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## CHAPTER I DEFINITIONS

### Article 1

#### Definitions

For the purposes of this Act:

(i) "this Convention" means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;

(ii) "Act of 1961/1972" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;

(iii) "Act of 1978" means the Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants;

(iv) "breeder" means

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be;

(v) "breeder's right" means the right of the breeder provided for in this Convention;

(vi) "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

(vii) "Contracting Party" means a State or an intergovernmental organization party to this Convention;

(viii) "territory," in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State

and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

(ix) "authority" means the authority referred to in Article 30(1)(ii);

(x) "Union" means the Union for the Protection of New Varieties of Plants founded by the Act of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in this Convention;

(xi) "member of the Union" means a State party to the Act of 1961/1972 or the Act of 1978, or a Contracting Party.

## CHAPTER II

### GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES

#### Article 2

##### Basic Obligation of the Contracting Parties

Each Contracting Party shall grant and protect breeders' rights.

#### Article 3

##### Genera and Species to be Protected

(1) [ *States already members of the Union* ] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

(2) [ *New members of the Union* ] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

- (i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,
- (ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

#### Article 4

##### National Treatment

(1) [ *Treatment* ] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

(2) [ "*Nationals*" ] For the purposes of the preceding paragraph, "nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

### CHAPTER III

#### CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

##### Article 5

##### Conditions of Protection

(1) [ *Criteria to be satisfied* ] The breeder's right shall be granted where the variety is

- (i) new,
- (ii) distinct,
- (iii) uniform and
- (iv) stable.

(2) [ *Other conditions* ] The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

## Article 6

### Novelty

(1) [ *Criteria* ] The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

(i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date and

(ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) [ *Varieties of recent creation* ] Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.

(3) [ *"Territory" in certain cases* ] For the purposes of paragraph (1), all the Contracting Parties which are member States

of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

#### **Article 7**

##### **Distinctness**

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

#### **Article 8**

##### **Uniformity**

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

#### **Article 9**

##### **Stability**

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

**CHAPTER IV**  
**APPLICATION FOR THE GRANT**  
**OF THE BREEDER'S RIGHT**

**Article 10**

**Filing of Applications**

(1) [ *Place of first application* ] The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.

(2) [ *Time of subsequent applications* ] The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.

(3) [ *Independence of protection* ] No Contracting Party shall refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

**Article 11**

**Right of Priority**

(1) [ *The right; its period* ] Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the "subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) [ *Claiming the right* ] In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim



the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) [ *Documents and material* ] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.

(4) [ *Events occurring during the period* ] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

## Article 12

### Examination of the Application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

**Article 13****Provisional Protection**

Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14. A Contracting Party may provide that the said measures shall only take effect in relation to persons whom the breeder has notified of the filing of the application.

**CHAPTER V****THE RIGHTS OF THE BREEDER****Article 14****Scope of the Breeder's Right**

(1) [ *Acts in respect of the propagating material* ] (a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

(b) The breeder may make his authorization subject to conditions and limitations.

(2) [ *Acts in respect of the harvested material* ] Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of para-

graph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(3) [ *Acts in respect of certain products* ] Each Contracting Party may provide that, subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(4) [ *Possible additional acts* ] Each Contracting Party may provide that, subject to Articles 15 and 16, acts other than those referred to in items (i) to (vii) of paragraph (1)(a) shall also require the authorization of the breeder.

(5) [ *Essentially derived and certain other varieties* ] (a) The provisions of paragraphs (1) to (4) shall also apply in relation to

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and

(iii) varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

(ii) it is clearly distinguishable from the initial variety and

(iii) except for the differences which result from the act of

derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

## Article 15

### Exceptions to the Breeder's Right

(1) [ *Compulsory exceptions* ] The breeder's right shall not extend to

- (i) acts done privately and for non-commercial purposes,
- (ii) acts done for experimental purposes and
- (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.

(2) [ *Optional exception* ] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).

## Article 16

### Exhaustion of the Breeder's Right

(1) [ *Exhaustion of right* ] The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has

been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts

- (i) involve further propagation of the variety in question or
- (ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) [ *Meaning of "material"* ] For the purposes of paragraph (1), "material" means, in relation to a variety,

- (i) propagating material of any kind,
- (ii) harvested material, including entire plants and parts of plants, and
- (iii) any product made directly from the harvested material.

(3) [ *"Territory" in certain cases* ] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

## Article 17

### Restrictions on the Exercise of the Breeder's Right

(1) [ *Public interest* ] Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest.

(2) [ *Equitable remuneration* ] When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

**Article 18****Measures Regulating Commerce**

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

**Article 19****Duration of the Breeder's Right**

(1) [ *Period of protection* ] The breeder's right shall be granted for a fixed period.

(2) [ *Minimum period* ] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

**CHAPTER VI****VARIETY DENOMINATION****Article 20****Variety Denomination**

(1) [ *Designation of varieties by denominations; use of the denomination* ] (a) The variety shall be designated by a denomination which will be its generic designation.

(b) Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(2) [ *Characteristics of the denomination* ] The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.

(3) [ *Registration of the denomination* ] The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

(4) [ *Prior rights of third persons* ] Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

(5) [ *Same denomination in all Contracting Parties* ] A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

(6) [ *Information among the authorities of Contracting Parties* ] The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) [ *Obligation to use the denomination* ] Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) [ *Indications used in association with denominations* ] When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

## CHAPTER VII

### NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

#### Article 21

##### Nullity of the Breeder's Right

(1) [ *Reasons of nullity* ] Each Contracting Party shall declare a breeder's right granted by it null and void when it is established

(i) that the conditions laid down in Articles 6 or 7 were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) [ *Exclusion of other reasons* ] No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).



## Article 22

### Cancellation of the Breeder's Right

(1) [ *Reasons for cancellation* ] (a) Each Contracting Party may cancel a breeder's right granted by it if it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled.

(b) Furthermore, each Contracting Party may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period,

(i) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) [ *Exclusion of other reasons* ] No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

## CHAPTER VIII

### THE UNION

#### Article 23

##### Members

The Contracting Parties shall be members of the Union.

#### Article 24

##### Legal Status and Seat

(1) [ *Legal personality* ] The Union has legal personality.

(2) [ *Legal capacity* ] The Union enjoys on the territory of each Contracting Party, in conformity with the laws applicable in the

said territory, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.

(3) [ *Seat* ] The seat of the Union and its permanent organs are at Geneva.

(4) [ *Headquarters agreement* ] The Union has a headquarters agreement with the Swiss Confederation.

## Article 25

### Organs

The permanent organs of the Union are the Council and the Office of the Union.

## Article 26

### The Council

(1) [ *Composition* ] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.

(2) [ *Officers* ] The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate. The President shall hold office for three years.

(3) [ *Sessions* ] The Council shall meet upon convocation by its President. An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the members of the Union so request.

(4) [ *Observers* ] States not members of the Union may be invited as observers to meetings of the Council. Other observers, as well as experts, may also be invited to such meetings.

(5) [ *Tasks* ] The tasks of the Council shall be to:

- (i) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (ii) establish its rules of procedure;
- (iii) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;
- (iv) examine an annual report on the activities of the Union and lay down the program for its future work;
- (v) give to the Secretary-General all necessary directions for the accomplishment of the tasks of the Union;
- (vi) establish the administrative and financial regulations of the Union;
- (vii) examine and approve the budget of the Union and fix the contribution of each member of the Union;
- (viii) examine and approve the accounts presented by the Secretary-General;
- (ix) fix the date and place of the conferences referred to in Article 38 and take the measures necessary for their preparation; and
- (x) in general, take all necessary decisions to ensure the efficient functioning of the Union.

(6) [ *Votes* ] (a) Each member of the Union that is a State shall have one vote in the Council.

(b) Any Contracting Party that is an intergovernmental organization may, in matters within its competence, exercise the rights to vote of its member States that are members of the Union. Such an intergovernmental organization shall not exercise the rights to vote of its member States if its member States exercise their right to vote, and vice versa.

(7) [ *Majorities* ] Any decision of the Council shall require a simple majority of the votes cast, provided that any decision of the Council under paragraphs (5)(ii), (vi) and (vii) and under Articles 28(3), 29(5)(b) and 38(1) shall require three fourths of the votes cast. Abstentions shall not be considered as votes.

## Article 27

### The Office of the Union

(1) [ *Tasks and direction of the Office* ] The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) [ *Duties of the Secretary-General* ] The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.

(3) [ *Staff* ] Subject to the provisions of Article 26(5)(iii), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations.

## Article 28

### Languages

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

(2) [ *Languages in certain meetings* ] Meetings of the Council and of revision conferences shall be held in the four languages.

(3) [ *Further languages* ] The Council may decide that further languages shall be used.

## Article 29

### Finances

(1) [ *Income* ] The expenses of the Union shall be met from  
(i) the annual contributions of the States members of the Union,

- (ii) payments received for services rendered,
- (iii) miscellaneous receipts.

(2) [ *Contributions: units* ] (a) The share of each State member of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the States members of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one-fifth.

(3) [ *Contributions: share of each member* ] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.

(b) Any other State member of the Union shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any State member of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise, it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

(4) [ *Contributions: computation of shares* ] (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the States members of the Union by the total number of units applicable to those States members of the Union.

(b) The amount of the contribution of each State member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State member of the Union.

(5) [ *Arrears in contributions* ] (a) A State member of the Union which is in arrears in the payment of its contributions may not, subject to subparagraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding full year. The suspension of the right to vote shall not relieve such State member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder.

(b) The Council may allow the said State member of the Union to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(6) [ *Auditing of the accounts* ] The auditing of the accounts of the Union shall be effected by a State member of the Union as provided in the administrative and financial regulations. Such State member of the Union shall be designated, with its agreement, by the Council.

(7) [ *Contributions of intergovernmental organizations* ] Any Contracting Party which is an intergovernmental organization shall not be obliged to pay contributions. If, nevertheless, it chooses to pay contributions, the provisions of paragraphs (1) to (4) shall be applied accordingly.

## CHAPTER IX

### IMPLEMENTATION OF THE CONVENTION; OTHER AGREEMENTS

#### Article 30

##### Implementation of the Convention

(1) [ *Measures of implementation* ] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;

(ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;

(iii) ensure that the public is informed through the regular publication of information concerning

- applications for and grants of breeders' rights, and
- proposed and approved denominations.

(2) [ *Conformity of laws* ] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.

#### Article 31

##### **Relations Between Contracting Parties and States Bound by Earlier Acts**

(1) [ *Relations between States bound by this Convention* ] Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.

(2) [ *Possible relations with States not bound by this Convention* ] Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary-General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

Article 32  
Special Agreements

Members of the Union reserve the right to conclude among themselves special agreements for the protection of varieties, insofar as such agreements do not contravene the provisions of this Convention.

CHAPTER X  
FINAL PROVISIONS

Article 33  
Signature

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature until March 31, 1992.

Article 34  
Ratification, Acceptance or Approval; Accession

(1) [ *States and certain intergovernmental organizations* ] (a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it

(i) has competence in respect of matters governed by this Convention,

(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and

(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention.

(2) [ *Instrument of adherence* ] Any State which has signed this Convention shall become party to this Convention by depositing



an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) [ *Advice of the Council* ] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

## Article 35

### Reservations

(1) [ *Principle* ] Subject to paragraph (2), no reservations to this Convention are permitted.

(2) [ *Possible exception* ] (a) Notwithstanding the provisions of Article 3(1), any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties.

(b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

### Article 36

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

(1) [ *Initial notification* ] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of

- (i) its legislation governing breeders' rights and
- (ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.

(2) [ *Notification of changes* ] Each Contracting Party shall promptly notify the Secretary-General of

- (i) any changes in its legislation governing breeders' rights and
- (ii) any extension of the application of this Convention to additional plant genera and species.

(3) [ *Publication of the information* ] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

- (i) the legislation governing breeders' rights and any changes in that legislation, and
- (ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

### Article 37

#### Entry into Force; Closing of Earlier Acts

(1) [ *Initial entry into force* ] This Convention shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

(2) [ *Subsequent entry into force* ] Any State not covered by paragraph (1) or any intergovernmental organization shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.

(3) [ *Closing of the 1978 Act* ] No instrument of accession to the Act of 1978 may be deposited after the entry into force of this Convention according to paragraph (1), except that any State that, in conformity with the established practice of the General Assembly of the United Nations, is regarded as a developing country may deposit such an instrument until December 31, 1995, and that any other State may deposit such an instrument until December 31, 1993, even if this Convention enters into force before that date.

## Article 38

### Revision of the Convention

(1) [ *Conference* ] This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.

(2) [ *Quorum and majority* ] The proceedings of a conference shall be effective only if at least half of the States members of the Union are represented at it. A majority of three quarters of the States members of the Union present and voting at the conference shall be required for the adoption of any revision.

## Article 39

### Denunciation

(1) [ *Notifications* ] Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.

(2) [ *Earlier Acts* ] Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.

(3) [ *Effective date* ] The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) [ *Acquired rights* ] The denunciation shall not affect any rights acquired in a variety by reason of this Convention or any earlier Act prior to the date on which the denunciation becomes effective.

#### Article 40

##### Preservation of Existing Rights

This Convention shall not limit existing breeders' rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other than this Convention concluded between members of the Union.

#### Article 41

##### Original and Official Texts of the Convention

(1) [ *Original* ] This Convention shall be signed in a single original in the English, French and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) [ *Official texts* ] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

## Article 42

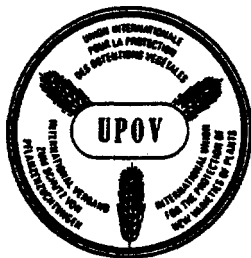
## Depositary Functions

(1) [ *Transmittal of copies* ] The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organization.

(2) [ *Registration* ] The Secretary-General shall register this Convention with the Secretariat of the United Nations.

— . —

I hereby certify that the foregoing text is a true copy of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, adopted at the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants held at Geneva from March 4 to 19, 1991, and opened for signature at Geneva on March 19, 1991.



*a. Bogsch*

Arpad Bogsch

Secretary-General  
International Union for the  
Protection of New Varieties  
of Plants  
July 1, 1991