

ACT OF 1961/1972

INTERNATIONAL CONVENTION FOR THE PROTECTION

OF NEW VARIETIES OF PLANTS

adopted by the Diplomatic Conference

on [December 1, 1961](#)

and

ADDITIONAL ACT OF NOVEMBER 10, 1972,

AMENDING THE INTERNATIONAL CONVENTION

FOR THE PROTECTION OF NEW

VARIETIES OF PLANTS

adopted by the Diplomatic Conference

on [November 10, 1972](#)

**INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS
adopted by the Diplomatic Conference
on December 1, 1961**

International Convention
for the
Protection of New Varieties of Plants*

of December 2, 1961

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* Official English translation.

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It does not appear in the original (French) text of the Convention.

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THE CONTRACTING STATES,

Convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,

Conscious of the special problems arising from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,

Deeming it highly desirable that these problems to which very many States rightly attach importance should be resolved by each of them in accordance with uniform and clearly defined principles,

Anxious to reach an agreement on these principles to which other States having the same interests may be able to adhere,

Have agreed as follows:

Article 1

[Purpose of the Convention; Constitution of a Union; Seat of the Union] 1

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety, or to his successor in title, a right the content and the conditions of exercise of which are defined hereinafter.

(2) The States parties to this Convention, hereinafter referred to as member States of the Union, constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2

[Forms of Protection; Meaning of “Variety”]

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) For the purposes of this Convention, the word “variety” applies to any cultivar, clone, line, stock or hybrid which is capable of cultivation and which satisfies the provisions of subparagraphs (1)(c) and (d) of Article 6.

1 Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

Article 3
[National Treatment]

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their headquarters in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their headquarters in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the new varieties which they have bred to be examined and the multiplication of such varieties to be controlled.

Article 4
[Botanical Genera and Species Which Must or May Be Protected;
Reciprocity; Possibility of Declaring that Articles 2 and 3 of the Paris Convention for the
Protection of Industrial Property Are Applicable]

(1) This Convention may be applied to all botanical genera and species.

(2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.

(3) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of the Convention to at least five of the genera named in the list annexed to the Convention.

Each member State further undertakes to apply the said provisions to the other genera in the list, within the following periods from the date of the entry into force of the Convention in its territory:

- (a) within three years, to at least two genera;
- (b) within six years, to at least four genera;
- (c) within eight years, to all the genera named in the list.

(4) Any member State of the Union protecting a genus or species not included in the list shall be entitled either to limit the benefit of such protection to the nationals of member States of the Union protecting the same genus or species and to natural and legal persons resident or having their headquarters in any of those States, or to extend the benefit of such protection to the nationals of other member States of the Union or of the member States of the Paris Union for the Protection of Industrial Property and to natural and legal persons resident or having their headquarters in any of those States.

(5) Any member State of the Union may, on signing this Convention or on depositing its instrument of ratification or accession, declare that, with regard to the protection of new

varieties of plants, it will apply Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property.

Article 5

[Rights Protected; Scope of Protection]

(1) The effect of the right granted to the breeder of a new plant variety or his successor in title is that his prior authorization shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the new variety, and for the offering for sale or marketing of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorization given by the breeder or his successor in title may be made subject to such conditions as he may specify.

(3) Authorization by the breeder or his successor in title shall not be required either for the utilization of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties. Such authorization shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1) of this Article, extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their headquarters in any of those States.

Article 6

[Conditions Required for Protection]

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

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

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

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

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

- (c) The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
- (d) The new variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.
- (e) The new variety shall be given a denomination in accordance with the provisions of Article 13.

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

Article 7

[Official Examination of New Varieties; Provisional Protection]

(1) Protection shall be granted only after examination of the new plant variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.

(2) For the purposes of such examination, the competent authorities of each country may require the breeder or his successor in title to furnish all the necessary information, documents, propagating material or seeds.

(3) During the period between the filing of the application for protection of a new plant variety and the decision thereon, any member State of the Union may take measures to protect the breeder or his successor in title against wrongful acts by third parties.

Article 8
[Period of Protection]

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

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

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

Article 9
[Restrictions in the Exercise of Rights Protected]

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

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

Article 10
[Nullity and Forfeiture of the Rights Protected]

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

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

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

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

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

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

Article 11

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

(1) The breeder or his successor in title may choose the member State of the Union in which he wishes to make his first application for protection of his right in respect of a new variety.

(2) The breeder or his successor in title may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same new variety in other States whether or not such States are members of the Union.

Article 12

[Right of Priority]

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

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

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

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing

conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13
[Denomination of New Varieties of Plants]

(1) A new variety shall be given a denomination.

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

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

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

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

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

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

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

The competent authority of each member State of the Union shall notify each registration of the denomination of a new variety and each refusal of registration to the Office

of the Union, which shall inform the competent authorities of the other member States of the Union. Registrations shall also be communicated by the Office to the member States of the Paris Union for the Protection of Industrial Property.

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

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

- (a) the denomination of the new variety may not be used, in any member State of the Union, as the denomination of another variety of the same or a closely related botanical species;
- (b) the denomination of the new variety shall be regarded as the generic name for that variety. Consequently, subject to the provisions of paragraph (10), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law.

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

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

Article 14

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

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

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

Article 15

[Organs of the Union]

The permanent organs of the Union shall be:

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

Article 16

[Composition of the Council; Votes]

- (1) The Council shall consist of representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.
- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

Article 17

[Observers in Meetings of the Council]

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

Article 18

[Officers of the Council]

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

Article 19

[Meetings of the Council]

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

Article 20
[Rules of Procedure of the Council; Administrative and Financial
Regulations of the Union]

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

Article 21
[Duties of the Council]

The duties of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (c) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national authorities;
- (d) examine and approve the budget of the Union and fix the contribution of each member State in accordance with the provisions of Article 26;
- (e) examine and approve the accounts presented by the Secretary-General;
- (f) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) make proposals to the Government of the Swiss Confederation concerning the appointment of the Secretary-General and senior officials; and
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Article 22
[Majorities Required for Decisions of the Council]

The Council's decisions shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, and for the vote on the budget and the fixing of the contributions of each member State. In these last two cases, the majority required shall be three quarters of the members present.

Article 23

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

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

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

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

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

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

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

Article 24

[Supervisory Function of the Swiss Government]

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

Article 25

[Cooperation with the Unions Administered by BIRPI]

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

Article 26

[Finances]

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

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

(b) payments received for services rendered; and

(c) miscellaneous receipts.

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

First class	five units
Second class	three units
Third class	one unit

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

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

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

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

Article 27

[Revision of the Convention]

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

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

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

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

(4) The revised text shall enter into force, in respect of member States of the Union which have ratified it, when it has been ratified by five-sixths of the member States of the Union. It shall enter into force thirty days after the deposit of the last of the instruments of ratification. If, however, a majority of five-sixths of the member States of the Union represented at the conference considers that the revised text includes amendments of such a kind as to preclude, for member States of the Union which do not ratify the revised text, the possibility of continuing to be bound by the former text in respect of the other member States of the Union, the revised text shall enter into force two years after the deposit of the last of the

instruments of ratification. In such case, the former text shall, from the date of such entry into force, cease to bind the States which have ratified the revised text.

Article 28

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

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

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

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

Article 29

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

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

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

Article 30

[Implementation of the Convention on the Domestic Level; Special Agreements on the Joint Utilization of Examination Services]

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

In particular, each member State shall undertake to:

- (a) ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of the rights provided for in this Convention,
- (b) set up a special authority for the protection of new varieties of plants or to entrust their protection to an existing authority; and
- (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Special agreements may also be concluded between member States of the Union, with a view to the joint utilization of the services of the authorities entrusted with the

examination of new varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

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

Article 31

[Signature and Ratification; Entry Into Force]

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

(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the French Republic, which shall notify such deposit to the other signatory States.

(3) When the Convention has been ratified by at least three States, it shall enter into force in respect of those States thirty days after the deposit of the third instrument of ratification. It shall enter into force, in respect of each State which ratifies thereafter, thirty days after the deposit of its instrument of ratification

Article 32

[Accession; Entry Into Force]

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

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

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

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

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

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

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

Article 33
[Communications Indicating the Genera and Species Eligible
for Protection]

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

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

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

Article 34
[Territories]

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

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

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

Article 35
[Transitional Limitation of the Requirement of Novelty]

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

Article 36
[Transitional Rules Concerning the Relationship Between
Variety Denominations and Trade Marks)

(1) If, at the date of entry into force of this Convention in respect of a member State of the Union, the breeder of a new variety protected in that State, or his successor in title, enjoys in that State the protection of the denomination of that variety as a trade mark for identical or similar products within the meaning of trade mark law, he may either renounce the protection in respect of the trade mark or submit a new denomination for the variety in the place of the previous denomination. If a new denomination has not been submitted within a period of six months, the breeder or his successor in title may not continue to assert his right to the trade mark for the above-mentioned products.

(2) If a new denomination is registered for the variety, the breeder or his successor in title may not prohibit the use of the previous denomination by persons obliged to use it before the entry into force of this Convention, until a period of one year has expired from the publication of the registration of the new denomination.

Article 37
[Preservation of Existing Rights]

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

Article 38
[Settlement of Disputes]

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

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

(3) The tribunal shall consist of three arbitrators.

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

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

If the States concerned have not appointed the arbitrators within a period of two months from the date on which the request for convening the tribunal was notified to them by the

Office of the Union, any of the member States concerned may request the President of the International Court of Justice to make the necessary appointments.

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

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

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

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

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

Article 39 [Reservations]

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

Article 40 (Duration and Denunciation of the Convention; Discontinuation of the Application of the Convention to Territories]

(1) This Convention shall be of unlimited duration.

(2) Subject to the provisions of paragraph (4) of Article 27, if a member State of the Union denounces this Convention, such denunciation shall take effect one year after the date on which notification of denunciation is made by the Government of the Swiss Confederation to the other member States of the Union.

(3) Any member State may at any time declare that the Convention shall cease to apply to certain of its territories or to States or territories in respect of which it has made a declaration in accordance with the provisions of Article 34. Such declaration shall take effect one year after the date on which notification thereof is made by the Government of the Swiss Confederation to the other member States of the Union.

(4) Such denunciations and declarations shall not affect rights acquired by reason of this Convention prior to the expiration of the time limit laid down in paragraphs (2) and (3) of this Article.

Article 41
[Copies of the Convention;
Language and Official Translations of the Convention]

(1) This Convention is drawn up in a single copy in the French language. That copy is deposited in the archives of the Government of the French Republic.

(2) A certified true copy shall be forwarded by that Government to the Governments of all signatory States.

(3) Official translations of this Convention shall be made in the Dutch, English, German, Italian and Spanish languages.

ANNEX

List referred to in Article 4, paragraph (3)

Species to be protected in each genus

- | | | |
|-----|----------------------|---|
| 1. | Wheat | <i>Triticum aestivum</i> L. ssp. <i>vulgare</i>
(VILL., HOST) MAC KAY
<i>Triticum durum</i> DESF. |
| 2. | Barley | <i>Hordeum vulgare</i> L. s. lat. |
| 3. | Oats | <i>Avena sativa</i> L.
<i>Avena byzantina</i> C. KOCH |
| | <u>or</u> Rice | <i>Oryza sativa</i> L. |
| 4. | Maize | <i>Zea mays</i> L. |
| 5. | Potato | <i>Solanum tuberosum</i> L. |
| 6. | Peas | <i>Pisum sativum</i> L. |
| 7. | Beans | <i>Phaseolus vulgaris</i> L.
<i>Phaseolus coccineus</i> L. |
| 8. | Lucerne | <i>Medicago sativa</i> L.
<i>Medicago varia</i> MARTYN |
| 9. | Red Clover | <i>Trifolium pratense</i> L. |
| 10. | Ryegrass | <i>Lolium</i> sp. |
| 11. | Lettuce | <i>Lactuca sativa</i> L. |
| 12. | Apples | <i>Malus domestica</i> BORKH. |
| 13. | Roses | <i>Rosa hort.</i> |
| | <u>or</u> Carnations | <i>Dianthus caryophyllus</i> L. |

If two optional genera are chosen - numbers 3 or 13 above - they shall be counted as one genus only.

**ADDITIONAL ACT OF NOVEMBER 10, 1972,
AMENDING THE INTERNATIONAL CONVENTION
FOR THE PROTECTION OF NEW
VARIETIES OF PLANTS
adopted by the Diplomatic Conference
on November 10, 1972**

Additional Act
of November 10, 1972,
Amending the International Convention
for the Protection of New Varieties of Plants*

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* Official English translation.

** This Table of Contents is added for the convenience of the reader.
It does not appear in the original (French) text of the Additional Act.

THE CONTRACTING STATES,

Considering that in the light of the experience gained since the entry into force of the International Convention for the Protection of New Varieties of Plants, of December 2, 1961, the system of contributions of member States of the Union provided for by that Convention does not allow for sufficient differentiation among the member States of the Union as to the share in the total of the contributions that should be allotted to each of them,

Considering further that it is desirable to amend the provisions of that Convention on the contributions of member States of the Union and, in the event of arrears in the payment of such contributions, on the right to vote,

Having regard to the provisions of Article 27 of the said Convention.

Have agreed as follows:

Article I

[Amended Version of Article 22 of the Convention (Majorities Required for Decisions of the Council)]¹

Article 22 of the International Convention for the Protection of New Varieties of Plants, of December 2, 1961 (hereinafter referred to as the Convention), shall be replaced by the following text:

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

Article II

[Amended Version of Article 26 of the Convention (Finances)]

Article 26 of the Convention shall be replaced by the following text:

- “(1) The expenses of the Union shall be met from:
- (a) annual contributions of member States of the Union;
 - (b) payments received for services rendered;
 - (c) miscellaneous receipts.

¹ Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

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

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

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

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

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

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

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

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

Article III

[Applicability of Paragraph (6) of the Amended Version
of Article 26 of the Convention]

The provisions of paragraph (6) of Article 26 shall apply only if all member States of the Union have ratified or acceded to this Additional Act.

Article IV
[Contribution Classes of Member States]

Member States of the Union shall be placed in the class under this Additional Act which contains the same number of units as the class they have chosen under the Convention, unless, at the moment of depositing their instrument of ratification or accession, they express the wish to be placed in another class under this Additional Act.

Article V
[Signature; Ratification; Accession]

(1) This Additional Act shall be open for signature until April 1, 1973, by member States of the Union and by signatory States of the Convention.

(2) This Additional Act shall be subject to ratification.

(3) This Additional Act shall be open to accession by non-signatory States in accordance with the provisions of paragraphs (2) and (3) of Article 32 of the Convention.

(4) After the entry into force of this Additional Act, a State may accede to the Convention only if it accedes to this Additional Act at the same time.

(5) Instruments of ratification of or accession to this Additional Act by States which have ratified the Convention or which ratify it at the same time as they ratify or accede to this Additional Act shall be deposited with the Government of the French Republic. Instruments of ratification of or accession to this Additional Act by States which have acceded to the Convention or which accede to it at the same time as they ratify or accede to this Additional Act shall be deposited with the Government of the Swiss Confederation.

Article VI
[Entry Into Force]

(1) This Additional Act shall enter into force in accordance with the first and second sentences of paragraph (4) of Article 27 of the Convention.

(2) With respect to any State which deposits its instrument of ratification of or accession to this Additional Act after the date of its entry into force, this Additional Act shall enter into force thirty days after the deposit of such instrument.

Article VII
[Reservations]

No reservations to this Additional Act are permitted.

Article VIII

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

(1) This Additional Act shall be signed in a single original in the French language, which shall be deposited in the archives of the Government of the French Republic.

(2) Official translations of this Additional Act shall be established by the Secretary-General of the Union, after consultation with the interested Governments, in Dutch, English, German, Italian and Spanish, and in such other languages as the Council of the Union may designate. In the latter event, the Secretary-General of the Union shall also establish an official translation of the Convention in the language so designated.

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

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

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

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