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World Intellectual Property Organization

WIPO Convention

Accession

YEMEN

The Government of the Yemen Arab Republic deposited on December 29, 1978, its instrument of accession to the Convention Establishing the World

Intellectual Property Organization (WIPO), signed at Stockholm on July 14, 1967.

Yemen will belong to Class C for the purpose of establishing its contribution towards the budget of the WIPO Conference.

The WIPO Convention will enter into force with respect to Yemen on March 29, 1979.

WIPO Notification No. 104, of January 5, 1979.

International Unions

Patent Cooperation Treaty (PCT)

Ratification

AUSTRIA

The Government of Austria deposited on January 23, 1979, its instrument of ratification of the

Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970.

The said Treaty will enter into force with respect to Austria on April 23, 1979.

PCT Notification No. 24, of January 24, 1979.

Plant Varieties

Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants

(Geneva, October 9 to 23, 1978)

NOTE*

Historical Background

December 2, 1961, marks the inception of the International Convention for the Protection of New

Varieties of Plants. The Convention entered into force on August 10, 1968, and was amended for the first time, with respect to its administrative provisions only, on November 10, 1972. At present it is binding, in its original version or as amended by the Additional Act, on the following ten States, which together form the International Union for the Protection of New Varieties of Plants (UPOV): Belgium, Denmark, France, Germany (Federal Republic of), Italy, Netherlands, South Africa, Sweden, Switzerland, United Kingdom.

As its preamble indicates, the Convention is an instrument whose purpose is to propagate the idea of

* This Note has been prepared by the Office of UPOV.

the protection of the rights of the creators of new varieties, and to ensure that such protection is established according to uniform and clearly defined principles. It therefore constitutes a sort of skeleton law, sufficiently flexible to allow each State to introduce legislation in conformity with its Constitution and yet sufficiently rigid to bring about a high degree of uniformity of national legislation on the subject.

However, experience has shown in recent years that certain States, although very interested in acceding to UPOV, are encountering difficulty in conforming to certain of the principles set forth in the 1961 Convention. One such case is the United States of America, which has had a Plant Patent Act since 1930, incorporated in the Patent Act and applicable to asexually reproduced plants, and since 1970 a Plant Variety Protection Law applicable to sexually reproduced plants. Clearly such a system can hardly be subjected to fundamental revision, especially since the proportion of plant patents to the total number of patents is broadly speaking about 0.2 percent.

UPOV therefore decided to make such States' accession to the Union easier by agreeing on a more flexible interpretation of the Convention, and if necessary revising some of its provisions. To this objective were added those of modernizing the operation of the Union and of improving the wording of the Convention in the light of experience gained. The task of preparing the Diplomatic Conference on the revision was entrusted to the Office of the Union and to a Committee of Experts for the Interpretation and Revision of the Convention, which met six times between February 1975 and September 1977. Generally on the basis of precise studies and suggestions made by the Office of the Union, the Committee established drafts of the basic documents for the Conference and, in particular, a Draft Revised Convention, which was adopted for distribution by the Council at its eleventh ordinary session in December 1977. Finally, an Ad Hoc Committee on the Revision of the Convention met in September 1978 to consider the progress of the preparatory work and take last-minute decisions to ensure the satisfactory running of the Conference.

The Diplomatic Conference was held from October 9 to 23, 1978. All the States members of UPOV were represented at it. All States not members of UPOV but members of the United Nations or any other specialized agency of the United Nations system had been invited to the Conference, and the following 27 States were represented: Argentina, Australia, Bangladesh, Brazil, Bulgaria, Canada, Finland, Hungary, Iran, Iraq, Ireland, Ivory Coast, Japan, Libyan Arab Jamahiriya, Luxembourg, Mexico, Morocco, New Zealand, Norway, Panama, Peru, Saudi Arabia, Senegal, Spain, Thailand, United States of America, Yugoslavia. In view of the objectives of

the revision of the Convention, the Rules of Procedure of the Conference gave these States the right of full participation, but not the right to vote, in the plenary meetings of the Conference, as well as eligibility for membership in the Drafting Committee and Working Groups and the right to sign the revised text of the Convention.

A number of international governmental and non-governmental organizations had been invited as observers, and the following nine organizations were represented: United Nations Food and Agriculture Organization (FAO), European Economic Community (EEC), International Seed Testing Association (ISTA), International Association of Horticultural Producers (AIPH), International Association for the Protection of Industrial Property (IAPIP), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), International Federation of the Seed Trade (FIS), International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences.

The Secretariat of the Conference was provided by the Office of UPOV, assisted by members of the staff of WIPO. Dr. Arpad Bogsch, Secretary-General of UPOV, opened the Conference. Dr. Bogsch and Mr. H. Mast, Vice Secretary-General of UPOV, took part in all the discussions. A list of participants follows this Note.

The Conference unanimously elected Mr. H. Skov (Denmark) as its President and Mr. D. Böringer (Federal Republic of Germany) and Mr. P.W. Murphy (United Kingdom) as Vice-Presidents. The Secretary-General designated Mr. H. Mast (UPOV) as Secretary of the Conference. The Credentials Committee was presided over by Dr. H. Graeve (Federal Republic of Germany) and the Drafting Committee by Mr. B. Laclavière (France).

The Conference set up two Working Groups. The first was entrusted with the consideration of the revision of Article 13 (Variety Denomination). It consisted of all the member States and of interested non-member States. Experts from the observer organizations attended the meetings of this Working Group. Its work was presided over by Mr. W. Gfeller (Switzerland). The second was given the task of considering Article 5 (Scope of Protection). It consisted of the member States and the non-member States. Experts from the observer organizations attended the meetings of this Working Group also. It elected Mr. R. Duyvendak (Netherlands) as its Chairman.

On October 23, 1978, the Conference adopted a revised text of the International Convention for the Protection of New Varieties of Plants, which was signed immediately after its adoption by all the

member States of UPOV—except Sweden, which signed it on December 6, 1978—and by the United States of America. The Conference also adopted two Recommendations.

The International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and October 23, 1978, and the two Recommendations appear in this month's selection of *Industrial Property Laws and Treaties*.

Summary of the Main Amendments to the Convention

General

There is no need to revert to the 1961 Paris Convention or to the 1972 Additional Act of Geneva, which have been published in this review¹ and have been the subject of a number of articles explaining their provisions.² The instrument adopted by the Conference on October 23, 1978, was entitled "International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978." This instrument will be referred to below as "the Geneva Act," and the original version of the Convention as "the Paris Act."

From the point of view of form, the Geneva Act embodies two innovations: it is established in three languages (English, French and German), the French text prevailing in the case of any discrepancy between the three, whereas the Paris Act and the Additional Act were established in French only; and it has official titles for each article and a table of contents, which the Paris Act does not.

Substantive Provisions

Article 1. The word "breeder" is defined in paragraph (1) as being the breeder of a new plant variety or his successor in title. This definition obviates references to the successor in title in the remainder of the text.

Article 2. Paragraph (1), which provides that the right of the breeder may be recognized by the grant either of a special title of protection or of a patent, and

that both forms of protection may not coexist for one and the same botanical genus or species, has not undergone any change. There is a derogation from it, however, which appears in Article 37(1), which provides that any State which has introduced protection in the forms mentioned above for one and the same genus or species prior to October 31, 1979 (date of expiration of the period during which the Geneva Act is open for signature), may retain that system of protection subject to notification of the fact. This enables the United States of America to retain the system outlined earlier. When Japan adopted the revised Law on Seeds and Plants,³ it was not able formally to exclude plant varieties from the benefits of the Patent Law, even though the application of the Patent Law to varieties seems to be presenting a number of awkward problems. Thus Japan's accession to the Union should also be facilitated by the derogation.

In the Paris Act, paragraph (2) gives certain indications as to the meaning of the "variety" concept. The concept is a very complex one, and it had taken no less than three years by the time of the Paris Conference to specify what it covered.⁴ Now, the progress made in genetics and plant improvement, on the one hand, and in legislation on seeds, seedlings and the protection of new plant varieties, on the other, have had the effect of demarcating the variety concept very precisely. In the course of the preparatory work on the Geneva Conference, paragraph (2) gave rise to impassioned discussions on a number of points, and no proposed new version won unanimous acceptance. The Conference found it preferable to remove the provision: it considered that by doing so it facilitated the adaptation of the meaning of the word "variety" to scientific and technological progress, especially in the area of plant improvement, and thereby also the adaptation of the system of protection of new plant varieties as a whole.

At the same time a new provision was inserted in Article 2, specifying that each State of the Union might apply the Convention to part of a genus or species according to the manner of reproduction or multiplication or the ultimate use of the varieties. All this does is ratify a well-established custom within the Union. For instance, with respect to fruit species (apple, pear, cherry, plum, etc.), many States of the Union protect only fruit-bearing species and rootstocks, and not ornamental varieties. The provision concerned also expressly allows the exclusion of certain types of varieties from protection, for instance hybrid varieties as in the United States of America or

¹ See *Industrial Property*, 1962, p. 6, and 1972, p. 351.

² See, in particular, B. Laclavière, "The Convention of Paris of December 2, 1961, for the Protection of New Varieties of Plants and the International Union for the Protection of New Varieties of Plants," *Industrial Property*, 1965, p. 224; L.J. Smith, "International Convention for the Protection of New Varieties of Plants and Some Comments on Plant Breeders' Rights Legislation in the United Kingdom," *ibid.*, 1965, p. 275; B. Laclavière, "A New Intellectual Property Union is Born: The International Union for the Protection of New Plant Varieties," *ibid.*, 1969, p. 162; L.J. Smith, "Diplomatic Conference for the Amendment of the International Convention for the Protection of New Varieties of Plants: Report," *ibid.*, 1972, p. 348.

³ At the time of drafting this Note, this Law was expected to be put into effect in December 1978; it is for this reason that the date of expiration of the period during which the Geneva Act is open for signature was preferred to the date of opening for signature, originally adopted for the purposes of this derogation.

⁴ B. Laclavière, *Industrial Property*, 1965, p. 226.

synthetic varieties, which are not yet protected as such in the States of the Union.

Article 3. This Article has undergone no change apart from the transfer to it of the provision on reciprocity, which is in Article 4(4) in the Paris Act.

Article 4. In the Paris Act, paragraph (3) provides that the Convention has, at least, to be applied within the prescribed periods to cultivated species listed in an Annex. The Annex has been removed as the list of species, which was drawn up at the time of the Paris Conference in relation to the prevailing situation in the States participating in the Conference, does not have universal validity and could be an obstacle to certain States' accession to the Union, particularly those located outside the temperate zone. On the other hand, the principle of a progressive minimum application has been retained and, in view of the fact that the removal of the Annex results in freedom in the choice of categories of plants for protection, the number of those categories was increased from 13 to a total of 24, the prescribed periods remaining the same.

The increase was nevertheless accompanied by a number of precautions. For want of a better expression, the Conference adopted "genus or species," which is not very precise but respects botanical complexities and can be translated into the various languages. What the experts intended was that each State should protect at least a certain number of categories of cultivated plants which are often well defined by a common name (for instance wheat, sugar cane, cauliflower, rose) and which, from the point of view of botanical classification, may constitute a genus, species, subspecies, etc. In accordance with a recommendation adopted by the Conference, these genera or species should be "important." Moreover, subparagraph (c) of paragraph (3) specifies that the part of a genus or species defined according to Article 2(2) counts as a genus or species. Finally, paragraphs (4) and (5) allow the Council to grant derogations to certain States and under certain circumstances.

Paragraph (4) of the Paris Act provides for the possibility of applying the reciprocity rule in the case of genera and species not listed in the Annex to that Act. Owing to the removal of the Annex, the possibility was extended to all genera and species and, as there was no longer any link with Article 4, the provision was transferred to Article 3. It was also simplified: it is no longer specified that a State may extend the benefit of the protection of a genus or species to nationals of States of the Union that do not protect that genus or species, and to nationals of States of the Paris Union for the Protection of Industrial Property, or that it may apply Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property. These possibilities are obvious as the UPOV

Convention does no more than lay down minimum obligations in the area concerned.

It is perhaps not inappropriate to point out that the reciprocity rule concerns only the grant of the benefits of protection to certain persons. If they are granted those benefits, they are entitled to the same treatment as nationals, in accordance with the provisions of Article 3(1) and (2).

Article 5. This Article was not amended with respect to substance, although a number of amendments were proposed with a view to the extension of the minimum protection provided for in paragraph (1). The Conference was fully aware of the problems that arise when only minimum protection is granted at the national level, for instance, to mention only two, in the case of asexually reproduced plants in general and fruit trees in particular, and in the case of the production and sale of seedlings of sexually reproduced annual species. It was unable to decide on the amendment of Article 5(1) owing to the risk that ratification, acceptance or approval of the Geneva Act, or accession to it, might be prevented or delayed, and also owing to the difficulty of amending a text which, with remarkable conciseness, does justice to the diversity of the subject matter to which the protection applies. It therefore confined itself to adopting a Recommendation on Article 5, inviting member States to take adequate measures in accordance with paragraph (4) where desirable in order to safeguard the legitimate interests of breeders.

The Conference nevertheless adopted an amendment of a purely formal nature in the first sentence of paragraph (1) in order to avoid errors of interpretation and to state unequivocally that each of the following acts, and any combination thereof, carried out with reproductive or vegetative propagating material as such, requires the prior authorization of the breeder: production for purposes of commercial marketing; offering for sale; and marketing.

Article 6. Article 6(1) lists the conditions that have to be met by a variety for its breeder to enjoy protection. They are the following: the variety has to have distinctive characteristics (subparagraph (a)); be "new," in other words not have been offered for sale or marketed under certain conditions (subparagraph (b)); be homogeneous (subparagraph (c)); be stable (subparagraph (d)); and be given a denomination (subparagraph (e)).

From a drafting point of view, it should be noted that subparagraph (a) has been simplified, as it no longer specifies that the characteristics of a variety have to be "morphological or physiological." This has become self-evident.

Subparagraph (b) was completely reworded, on the one hand, and amended with respect to substance, on the other. In the Paris Act it lists the facts that do not

prejudice the grant of the title of protection and then sets forth the conditions of novelty that the variety has to meet in order to be protected. The order is reversed in the Geneva Act, apart from which the conditions are numbered in such a way that there can be no doubting the fact that they are cumulative.

The conditions are the following: at the time of the filing of the application for protection, the variety must not have been offered for sale or marketed with the agreement of the breeder (actually the applicant or his predecessor in title) or, if the legislation of that State so provides, for longer than a year; also, it must not have been offered for sale or marketed in any other State for longer than six years in the case of vines and trees, including their rootstocks, or for longer than four years in the case of other plants. The innovations are, on the one hand, the introduction of the possibility of giving breeders a period of one year for acts of marketing in the State of application—which is already customarily called the “period of grace”—and, on the other hand, the extension from four to six years of the period during which the variety may have been the subject of acts of marketing abroad, in the case of vines and trees. The first of these allows countries like the United States of America to retain the period of grace, which is a well-established tradition there, especially in the patent field; it also allows other countries to introduce such a period if they see fit. It should be noted that this period may be provided for in respect of all the species protected or only some of them. The second substantive innovation is intended to allow for the sometimes long periods that are necessary for the multiplication of the trees and vines from the original sample of the variety.

The interpretation of the various terms, particularly the expression “offering for sale or marketing,” in relation to “the variety,” is left to the discretion of each State, which will establish it according to its domestic legislation. Under the present circumstances it would seem that differences of opinion could only arise in borderline cases—for instance the sale of products of the plants of the variety—and even then the courts would have to accumulate a case law on the subject.

With regard to the facts that do not prejudice the grant of the title of protection, it was considered advisable, because of its importance, to state a principle applicable to a specific case, namely trials of the variety, along with the general principle according to which the fact of the variety being common knowledge does not prejudice protection except where it is the result of the offering for sale or marketing of the variety.

There is a fundamental difference in the novelty concept between the protection of industrial inventions and the protection of new plant varieties under the Convention, arising out of the actual nature of the subject matter protected: the fact of an invention

being common knowledge may be sufficient for it to be produced by third parties, whereas this is not true of a variety for which reproductive or propagation material is necessary. Such material may only be lawfully obtained if it is offered for sale and marketed (either as such or, in certain cases, in the form of a product of the variety).

This does not alter the fact that certain States that already protect varieties according to their patent legislation, in particular the United States of America, apply the novelty criteria of that legislation to varieties. In order to allow for the difficulties encountered by such States in the amendment of their patent legislation, the derogation appearing in *Article 37(2)* was adopted, which allows States having provided for the protection of varieties in the form of patents and special titles of protection prior to October 31, 1979, to the exclusion of any other State, to apply the patentability criteria—and the term of protection—of their patent legislation also to such varieties as are protected according to that legislation.

Finally, *Article 35* of the Paris Act provides for the possibility for a State to limit the requirement of novelty with regard to varieties of recent creation existing at the date of entry into force of the Convention in respect of that State. This Article has become *Article 38* of the Geneva Act, and it extends the possibility to varieties of a species existing at the date on which the Convention is applied, whether before or after its entry into force, for the first time to that species.

Article 7. This Article underwent no change of substance. In the present member States protection is granted only if there has previously been a growing test of the variety, carried out by an official body. The Conference did, however, note the interpretation given to this Article by the UPOV Council in the course of the preparatory work, according to which a growing test carried out by the applicant (or under his responsibility) is regarded as being in conformity with the provisions of *Article 7* if it is carried out in accordance with guidelines established by the official services and continued until a decision is taken on the application, provided that the applicant deposits in a designated place, at the time of filing the application, a sample of the reproductive or vegetative propagating material of the variety, and allows access to the growing tests to persons duly authorized by the official services.

Article 8. This Article has been simplified and is subject to a derogation appearing in *Article 37(2)*, which has already been mentioned in connection with *Article 6*.

Articles 9, 10 and 11. These Articles have not been amended in substance. However, as in the case of

other provisions, drafting amendments have been made in order to ensure perfect matching of the three texts.

Article 12. Under paragraph (3), the breeder is allowed a period of four years after the expiration of the period of priority in which to furnish additional documents and material to the State with which he has filed an application for protection with a claim of priority. In order to enable the State in question to ensure that priority has not been wrongfully claimed, paragraph (3) has been completed with a provision allowing that State to demand the documents and material mentioned within an adequate period if the application whose priority is claimed is rejected or withdrawn.

Article 13. This Article, which has to do with variety denominations, has forever been the cause of animated discussion, and the Diplomatic Conference did not escape this. Its origins are due to various factors, some of which are now of secondary or even negligible importance. Moreover, it had been felt that the Article should be used as the basis for a common approach for all member States to the problems associated with the designation of varieties. As it happens, the harmonization of legislation was not achieved to the extent anticipated, particularly with respect to the relationship between variety denominations and trademarks. Finally, certain States wishing to accede to the Union were having some difficulty with the text of Article 13 in its Paris Act form. These circumstances led the Diplomatic Conference to reconsider Article 13 in its entirety.

In the Paris Act, a large part of the provisions of Article 13 propose to avert or resolve the conflicts between variety denominations, which should be available to anyone in relation to the variety, and trademarks, the use of which is an exclusive right. Other rights may also come into conflict with the variety denomination, however. The Diplomatic Conference took this fact into account when it specified, already in paragraph (1), that, on the one hand, the denomination was destined to be the generic designation of the variety and that, on the other hand, each State had to ensure that no rights in the designation registered as the denomination of the variety should hamper its free use in connection with the variety, even after the expiration of protection. It is therefore up to each State to determine, in absolute terms, what rights are liable to hamper the free use of the denomination—on the understanding that the trademark is one such right—under what circumstances those rights are liable to hamper, or actually do hamper, the free use of the denomination and, finally, what measures should be taken to ensure the free use of the denomination. In the Geneva Act, therefore, paragraph (1) contains provisions corresponding to those appearing in paragraphs (1), (3)

and (8)(b) of the Paris Act. Paragraph (10) of the Paris Act has become paragraph (4) after adaptation to the new provisions of paragraph (1). Finally, paragraph (8) has been amended as follows: in addition to the trademark, it refers also to trade names or other "similar" indications; it provides that the association of such indications with the variety denomination is permitted when the variety is offered for sale or marketed—which rules out such association in a register of varieties, for instance; finally, it specifies that the denomination has to remain easily recognizable after such an association. In this connection it should be noted that *Article 36* (Transitional Rules Concerning the Relationship Between Variety Denominations and Trademarks) has been deleted in view of the amendment of Article 13.

As far as the other provisions of Article 13 are concerned, the following amendments should be mentioned: in paragraph (2), the prohibition on purely numerical denominations has been removed under certain circumstances and each State may accept such denominations where their use constitutes an established practice for the designation of varieties, on the understanding that it is for the State concerned to specify the conditions determining an established practice, and that the acceptance of numerical denominations by one member State does not imply any obligation on other member States; the procedure provided for in paragraph (6) of the Paris Act for the exchange of information on variety denominations, which involved the agency of the Office of UPOV, has been eliminated, although the obligation to ensure the communication to other plant variety protection services remains; finally, the obligation to use the variety denomination when reproductive or vegetative propagation material of the variety is offered for sale or marketed has been expressly confined to the State of the Union in which that variety is or has been protected.

Administrative Provisions

Owing to the fact that the establishment of administrative and technical cooperation was planned between UPOV and the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (BIRPI)—to which WIPO succeeded—the Paris Conference was intent on aligning the administrative provisions of the UPOV Convention with those that, at the time, governed BIRPI. In particular, the Swiss Government was entrusted with the functions of High Supervisory Authority.

In view of the fact that this function of the Swiss Government no longer exists following the substitution of WIPO for BIRPI, the Diplomatic Conference decided, in agreement with the Swiss Government, to eliminate the function of High Supervisory Authority, and placed UPOV under the *collective supervision* of

its member States. The reference to the Swiss Government as Supervisory Authority was therefore removed from Articles 15, 20, 21, 23, 24 (of the Paris Act; 25 of the Geneva Act) and 25 (of the Paris Act; deleted in the Geneva Act). The UPOV Council will thus take over the responsibilities that were assigned to the Swiss Government by the Paris Act, although the auditing of the accounts will nevertheless be carried out by a State of the Union designated by the Council.

With regard to Article 25 of the Paris Act, which provides that the procedures for cooperation between UPOV and BIRPI (or its successor WIPO) are governed by rules established by the Swiss Government, it was decided that it should be deleted and replaced by an article (Article 24) expressly according UPOV *legal personality* within the meaning of public international law, and also the *legal capacity* necessary for the attainment of its objectives and the exercise of its functions on the territory of each member State of the Union. The new Article 24 provides also for the conclusion of a *headquarters agreement* with the Swiss Confederation.

Finally, this amendment brought about an amendment with regard to staff matters: the Secretary-General, and the Vice Secretary-General, if a post of Vice Secretary-General is considered necessary, are appointed by the Council (Article 21(b)).

An interesting innovation has been incorporated in Article 26, concerning the *finances* of the Union. It will be recalled that the Paris Act and the Additional Act provide for a system of classes, which is also found in many other treaties, in which each State of the Union has to choose a place. The main drawback of such a system is its rigidity, and experience has shown this within UPOV, where a certain number of States have had to use additional units or half-units, paid on a voluntary basis, in order to achieve a level of contributions corresponding best to their possibilities. This system of classes has been removed, and each State now contributes to the budget of the Union on the basis of a number of units chosen by itself. Only a lower limit has been set, namely one-fifth of one unit.

The last noteworthy amendment to the administrative provisions concerns the *revision* of the Convention. Paragraph (4) of Article 26 of the Paris Act has been deleted, as it is imprecise in a number of respects and also unusual in international conventions, as the conditions for the entry into force of texts are generally fixed by the conferences that revise them, and their composition and the wishes of the member States can very well vary from one conference to the next.

Treaty-Law Provisions

It should be mentioned at the outset that these provisions are independent of their counterparts in the Paris Act and the Additional Act.

In accordance with the main purpose of the Diplomatic Conference, the drafting of these provisions has been placed in the context of opening up the Convention to other States. Consequently, the possibility of expressing consent to be bound by the Geneva Act by *signature followed by ratification, acceptance or approval* has been made available to any State of the Union—which is the rule—and also to any other State that was represented at the Diplomatic Conference (Articles 31 and 32). This possibility is the result of the grant of special status, extending beyond the traditional status of observer, for the purposes of the Diplomatic Conference.

Moreover, States that are not party to the Paris Act may contribute to the *entry into force* of the Geneva Act, as the conditions for entry into force are the following: the number of instruments of ratification, acceptance or approval deposited has to be at least five, and at least three of those instruments have to be deposited by States party to the Paris Act. After the entry into force of the Geneva Act, there is no further possibility of acceding to the Paris Act as amended by the Additional Act.

While they may be bound by different texts, the States party to the Convention all belong to one and the same Convention system, which justifies the maintenance of a single Union, with a single Council and a single Office. The *relations between States bound by different texts*, from the point of view of substantive law, are set forth in Article 34. States party both to the Paris Act and to the Geneva Act (the Additional Act may be disregarded, as it has no substantive implications) continue to apply only the Paris Act in their relations with States party to that Act only (paragraph (1)). As for the relations between a State party to the Geneva Act only and one party to the Paris Act only, paragraph (2) provides for the following system: the State party to the Paris Act only may declare, in a notification addressed to the Secretary-General, that it will apply the Paris Act (as amended by the Additional Act) in its relations with any State bound by the Geneva Act only. On expiration of a period of one month following the date of the notification, each State applies, in its relations with the other, the Act to which it is party until such time as the State party to the Paris Act is bound also by the Geneva Act.

Article 35 (Article 33 of the Paris Act) has been broadened in scope: it no longer requires only that member States be informed, via the depositary, of the list of genera and species protected, but also the *publication of the information* supplied by the member State concerned on all the provisions of its legislation in respect of which the Convention gives it a choice.

Unlike the Paris Act, the Geneva Act does not contain any provision on the *settlement of disputes*, in view of the unlikelihood of a dispute requiring settlement by an arbitration tribunal, and the difficulty of

establishing an arbitral procedure satisfactory to all member States.

Finally, with regard to Article 42 (*Languages; Depositary Functions*), it has already been mentioned that the Geneva Act has been established in English, French and German, the French text prevailing in the case of any discrepancy between the three. Official texts will be established in Arabic, Dutch, Italian, Japanese and Spanish, and in other languages on a decision by the Council, whereas the Paris Act (established in French only) provided for the establishment of official translations only in Dutch, English, German, Italian and Spanish. Depositary functions are exercised by the Secretary-General of the Union, according to a practice that is becoming more and more widespread, whereas the Paris Act and the Additional Act provide for a system involving the agency of the French and Swiss Governments.

Conclusion

The adoption of the Geneva Act is a milestone in the history of UPOV and the protection of new plant varieties in general. Its signature by the present member States and the United States of America in itself affords interesting future prospects and promises a leap forward in the protection of new plant varieties. Moreover, the representatives of other States, including Canada, Ireland, Japan, New Zealand and Spain, announced at the Diplomatic Conference or at the twelfth ordinary session of the Council, held from December 6 to 8, 1978, that recommendations would be made to their Governments with a view to the signature of the Geneva Act.

LIST OF PARTICIPANTS

I. Member States

BELGIUM

Head of Delegation

P. Noterdaeme, Ambassador, Permanent Mission, Geneva

Alternate

R. Derveaux, Inspecteur général au Ministère de l'Agriculture, Bruxelles

Delegate

R. D'Hoogh, Ingénieur agronome principal, Chef de service au Ministère de l'Agriculture, Bruxelles

DENMARK

Head of Delegation

H. Skov, Chief of Administration, Secretariat of the Danish Research Service for Soil and Plant Sciences, Lyngby

Deputy Head of Delegation

A. Sunesen, Head of Section, Ministry of Agriculture, Copenhagen

Delegates

R. Carlsen, Registrar, Patent and Trademark Office, Copenhagen
F. Espenhain, Scientific Assistant, New Plant Varieties Board, Skaelskør

FRANCE

Head of Delegation

B. Laclavière, Administrateur civil, Ministère de l'Agriculture, Secrétaire général du Comité de la protection des obtentions végétales, Paris

Delegates

P. Chabrand, Président de Chambre à la Cour d'Appel de Paris, Président du Comité de la protection des obtentions végétales, Paris
J. Bustarret, Président du Comité technique permanent de la sélection des plantes cultivées, Versailles
Y.-D. Laugier, Chef de la Division des Marques, Institut national de la propriété industrielle, Paris
D. Avram, Conseiller juridique, Ministère des Affaires étrangères, Paris
D. Martineau, Chargé de mission à la Direction de la Production et des Marchés, Ministère de l'Agriculture, Paris

Advisers

M. Argot, Bureau de l'examen des marques françaises et internationales, Institut national de la propriété industrielle, Paris
A. Némó, Counsellor, Permanent Mission, Geneva

GERMANY (FEDERAL REPUBLIC OF)

Head of Delegation

P. Fischer, Ambassador, Permanent Representative, Geneva

Deputy Head of Delegation

D. Böringer, Präsident, Bundessortenamt, Hannover

Delegates

Count D. zu Rantzau, Minister, Permanent Mission, Geneva
H. Graeve, Vortragender Legationsrat, Auswärtiges Amt, Bonn
W. Burr, Regierungsdirektor, Bundesministerium für Ernährung, Landwirtschaft und Forsten, Bonn
W. Tilmann, Regierungsdirektor, Bundesministerium der Justiz, Bonn
H. Kunhardt, Leitender Regierungsdirektor, Bundessortenamt, Hannover
A. Mühlen, First Secretary, Permanent Mission, Geneva

ITALY

Head of Delegation

I. Papini, Ministre plénipotentiaire, Délégué aux accords pour la propriété intellectuelle, Ministère des Affaires étrangères, Rome

Delegates

A. Sinagra, Conseiller juridique, Bureau du Délégué aux accords pour la propriété intellectuelle, Ministère des Affaires étrangères, Rome
G. Armento, Directeur adjoint de division, Ministère du Trésor, Rome
G. Curotti, Directeur, Division de la production végétale, Institut agronomique pour l'outremer, Florence
F. Pini, First Secretary, Permanent Mission, Geneva

NETHERLANDS

Head of Delegation

W. van Soest, Director, Ministry of Agriculture and Fisheries, The Hague

Deputy Head of Delegation

K.A. Fikkert, Legal Adviser, Ministry of Agriculture and Fisheries, The Hague

Delegates

R. Duyvendak, Head, Botanical Research Agricultural Crops, RIVRO, Wageningen

A.W.A.M. van der Meeren, Secretary, Board for Plant Breeders' Rights, Wageningen

F. Schneider, Head, Botanical Research Horticultural Crops, RIVRO, Wageningen

SOUTH AFRICA*Head of Delegation*

J.F. van Wyk, Director, Division of Plant and Seed Control, Pretoria

Delegate

J.U. Rietmann, Agricultural Attaché, South African Embassy, Paris

Adviser

J. Marx, First Secretary, Permanent Mission, Geneva

SWEDEN*Head of Delegation*

S. Mejegård, President, Division of the Court of Appeal, Chairman of the National Plant Variety Board, Stockholm

Delegates

C. Uggla, President, Court of Patent Appeals, Stockholm

E. Åberg, Department of Plant Husbandry, Swedish University of Agricultural Services, Uppsala

M. Jacobsson, Legal Adviser, Ministry of Justice, Stockholm

SWITZERLAND*Head of Delegation*

W. Gfeller, Chef du Bureau de la protection des variétés, Division de l'agriculture, Berne

Alternate

R. Guy, Chef du Service chargé de l'examen, Station de recherches agronomiques de Changins, Nyon

Delegates

M. Jeanrenaud, Counsellor, Permanent Mission, Geneva

R. Kämpf, Chef de section, Bureau fédéral de la propriété intellectuelle, Berne

UNITED KINGDOM*Head of Delegation*

P.W. Murphy, Controller of Plant Variety Rights, Cambridge

Delegates

E.V. Thornton, Deputy Controller of Plant Variety Rights, Cambridge

A.F. Kelly, Deputy Director, National Institute of Agricultural Botany, Cambridge

A. Parry, Legal Adviser, Foreign and Commonwealth Office, London

D. Cecil, First Secretary, Permanent Mission, Geneva

Adviser

K.R. Haines, Principal, Department of Trade, London

II. Other States**ARGENTINA***Head of Delegation*

C.A. Passalacqua, First Secretary, Permanent Mission, Geneva

AUSTRALIA*Head of Delegation*

R.M. Moore, Minister (Scientific), Australian High Commission, Australian Scientific Liaison Office, London

BANGLADESH*Head of Delegation*

M.M. Hossain, First Secretary, Chargé d'affaires a.i., Permanent Mission, Geneva

BRAZIL*Head of Delegation*

F. Popinigis, Production Manager, Basic Seed Production Service, Empresa Brasileira de Pesquisa Agropecuária (EMBRAPA), Ministry of Agriculture, Brasília

BULGARIA*Head of Delegation*

G. Nastev, Counsellor, Permanent Mission, Geneva

CANADA*Head of Delegation*

W.T. Bradnock, Chief, Seed Section, Department of Agriculture, Ottawa

Alternates

W.A.J. Lenhardt, Legal Counsel, Legal Services (Agriculture), Department of Justice, Ottawa

M.R. Leir, Third Secretary, Permanent Mission, Geneva

FINLAND*Head of Delegation*

R.K. Manner, Director, Institute of Plant Breeding, Jokionen

Alternate

O. Rekola, Inspector General, Ministry of Agriculture and Forestry, Helsinki

HUNGARY*Head of Delegation*

Z. Szilvássy, Vice President, National Office of Inventions, Budapest

Delegates

G. Pusztai, Head of Department, National Office of Inventions, Budapest

G. Szénási, Third Secretary, Permanent Mission, Geneva

L. Kovács, Head of Section, Ministry of Agriculture and Food, Budapest

IRAN*Head of Delegation*

B. Sadri, Wheat Breeder, Seed and Plant Improvement Institute, Karaj

IRAQ*Head of Delegation*

S. Omar, Botany Director, Botany Directorate, Abu-Ghrib

IRELAND*Head of Delegation*

D.M. Hickey, Assistant Principal Officer, Department of Agriculture, Dublin

Deputy Head of Delegation

A. Anderson, First Secretary, Permanent Mission, Geneva

Delegate

D. Feeley, Agricultural Inspector, Department of Agriculture, Dublin

IVORY COAST*Head of Delegation*

G. Doh, First Counsellor, Permanent Mission, Geneva

Alternate

C. Bouah, Counsellor, Permanent Mission, Geneva

JAPAN*Head of Delegation*

H. Akaboya, Counsellor of Minister's Secretariat, Ministry of Agriculture, Forestry and Fisheries, Tokyo

Alternate

H. Shirai, First Secretary, Permanent Mission, Geneva

Advisers

K. Kitazawa, Third Secretary, Permanent Mission, Geneva
K. Hatakawa, Officer, Japan Trade Center, Dusseldorf

LIBYAN ARAB JAMAHIRIYA*Head of Delegation*

A. Ben Saad, Director General, Agricultural Research Centre, Tripoli

Delegates

A. El-Buni, Chairman, Department of Botany, University of Alfaateh, Tripoli
A. Shaklawoon, Third Secretary, Secretariat of Foreign Affairs, Tripoli
H.A. Zlitni, Third Secretary, Secretariat of Foreign Affairs, Tripoli

LUXEMBOURG*Head of Delegation*

J. Frisch, Ingénieur Inspecteur, Chef de service, Service de la Production végétale, Luxembourg

MEXICO*Head of Delegation*

O. Reyes-Retana, Minister Counsellor, Permanent Mission, Geneva

Delegate

S. Aguilar Yopez, Head, Seed Certification Service, Ministry of Agriculture and Water Resources, Mexico

MOROCCO*Heads of Delegation*

A. Skalli, Ambassador, Permanent Representative, Permanent Mission, Geneva
M. Tourkmani, Chef du Service de la multiplication et du contrôle des semences et plantes, Direction de la Recherche agronomique, Rabat

Adviser

M. Maoulainine, Second Secretary, Permanent Mission, Geneva

NEW ZEALAND*Head of Delegation*

D.K. Crump, First Secretary (Agriculture), New Zealand High Commission, London

Delegate

T.E. Norris, Registrar of Plant Varieties, Office of Plant Varieties, Ministry of Agriculture and Fisheries, Wellington

Adviser

J.A. Lancashire, Scientist, Grasslands Division, D.S.I.R., Palmerston North

NORWAY*Head of Delegation*

L.R. Hansen, Head of Office, The National Seed Council, Ås

PANAMA*Head of Delegation*

D. Chevalier de Villamonte, First Secretary, Permanent Mission, Geneva

PERU*Head of Delegation*

R.E. Silva y Silva, First Secretary, Permanent Mission, Geneva

Delegate

A. Galvez de Rivero, Second Secretary, Permanent Mission, Geneva

SAUDI ARABIA*Head of Delegation*

F.H. Al-Buraidi, Plant Protection Division, Department of Agriculture and Research Development, Ministry of Agriculture and Water, Riyadh

Delegate

H.M. Al-Hamran, Agricultural Production Section, Ministry of Agriculture and Water, Riyadh

SENEGAL*Head of Delegation*

M. Lam, Chef du Service semencier, Direction générale de la protection agricole, Dakar

SPAIN*Head of Delegation*

M.F. Benito, Ambassador, Permanent Mission, Geneva

Delegates

R. Lopez de Haro, Sous-directeur technique, Ministère de l'Agriculture, Madrid
J.M. Elena, Chef du Registre des variétés commerciales, Ministère de l'Agriculture, Madrid
J. Barreiro, Conseiller agricole, Mission permanente, Geneva

THAILAND*Head of Delegation*

P. Laowhaphan, Agricultural Counsellor, Royal Thai Embassy, Rome

UNITED STATES OF AMERICA*Head of Delegation*

H.J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State, Washington, D.C.

Alternates

- B.M. Leese, Jr., Commissioner, Plant Variety Protection Office, Agricultural Marketing Service, Department of Agriculture, Beltsville
 S.D. Schlosser, Attorney, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.

Advisers

- L. Donahue, Administrator, National Association of Plant Patent Owners, Washington, D.C.
 P. Keller, First Secretary, Permanent Mission, Geneva
 H.D. Loden, Executive Vice President, American Seed Trade Association, Washington, D.C.

YUGOSLAVIA**Head of Delegation**

- J. Spanring, Associate Professor, University of Ljubljana, Ljubljana

Delegates

- D. Jelić, Diplomagraringenieur, Bundeskomitee für Landwirtschaft, Belgrade
 M. Adanja, Attaché, Permanent Mission, Geneva

III. International Organizations**United Nations Food and Agriculture Organization (FAO)**

- W.P. Feistritzer, Senior Officer, Crop and Grassland Production Service, Plant Production and Protection Division (AGP), Rome

European Economic Community (EEC)

- P. Fischer, Ambassador, Permanent Representative, Permanent Mission, Geneva
 R.E.L. Graeber, Chef de la Division "Harmonisation des législations, produits végétaux," Commission des Communautés européennes, Bruxelles
 D. Böringer, Präsident des Bundessortenamtes, Hannover
 D.M.R. Obst, Administrateur principal, Division "Harmonisation des législations, produits végétaux," Commission des Communautés européennes, Bruxelles
 L. Cisnetti, Administrateur, Direction générale B, Direction "Harmonisation des législations," Secrétariat général du Conseil des Communautés européennes, Bruxelles

International Seed Testing Association (ISTA)

- F. Popinigis, Accredited Member of Brazil to ISTA, Production Manager, Basic Seed Production Service, Empresa Brasileira de Pesquisa Agropecuaria (EMBRAPA), Ministry of Agriculture, Brasilia

International Association of Horticultural Producers (AIPH)

- R. Troost, Chairman, Committee for the Protection of Plant Breeders' Rights, The Hague
 M.O. Slocock, Vice-Chairman, Committee for the Protection of Plant Breeders' Rights, Surrey

International Association for the Protection of Industrial Property (IAPIP)

- E. Freiherr von Pechmann, Président de la Commission de l'AIPPI, Munich
 G. Gaultier, Assistant du Rapporteur général, Paris

International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL)

- C.E. Büchting, President, Einbeck
 E. Grundler, Steinach
 H.H. Leenders, Amsterdam

- W. Marx, Syndikus, Kleinwanzlebener Saatzucht AG, Einbeck
 R. Petit, Directeur, Caisse de gestion des licences végétales, Paris
 R.W. Skidmore, Chairman, Pioneer Hi-Bred International Inc., Des Moines, Iowa
 J.E. Veldhuyzen van Zanten, Sluis en Groot Seed Co., Enkhuizen
 J. Winter, Bonn

International Community of Breeders of Asexually Reproduced Ornamentals (CIOFORA)

- R. Kordes, President, Sparrieshoop b/Elmshorn
 R. Royon, Secretary-General, Mougins
 J. van Aniel, President of CIOFORA, Dutch Section, Aalsmeer
 P. Favre, Administrative Secretary, Geneva

International Federation of the Seed Trade (FIS)

- V. Desprez, President, Cappelle en Pévele
 H.H. Leenders, Secretary-General, Amsterdam
 R. Petit, Paris

International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences

- F. Schneider, Head, Botanical Research Horticultural Crops, RIVRO, Wageningen

IV. Officers and Committees**Conference**

- President: H. Skov (Denmark)
 Vice-Presidents: D. Böringer (Germany (Federal Republic of))
 P.W. Murphy (United Kingdom)
 Secretary-General: H. Mast (UPOV)

Credentials Committee

- Chairman: H. Graeve (Germany (Federal Republic of))
 Vice-Chairmen: D. Avram (France)
 A. Parry (United Kingdom)
 G. Ledakis (WIPO)

Drafting Committee

- Chairman: B. Laclavière (France)
 Vice-Chairmen: H. Kunhardt (Germany (Federal Republic of))
 E.V. Thornton (United Kingdom)
 Secretary: A. Heitz (UPOV)

Working Group on Article 13

- Chairman: W. Gfeller (Switzerland)
 Vice-Chairmen: F. Schneider (Netherlands)
 J.U. Rietmann (South Africa)
 Secretary: M.-H. Thiele-Wittig (UPOV)

Working Group on Article 5

- Chairman: R. Duyvendak (Netherlands)
 Vice-Chairmen: R. Derveaux (Belgium)
 G. Curotti (Italy)
 Secretary: M.-H. Thiele-Wittig (UPOV)

V. Office of UPOV

- A. Bogsch, Secretary-General
 H. Mast, Vice Secretary-General
 M.-H. Thiele-Wittig, Senior Technical Officer
 A. Wheeler, Legal Officer
 A. Heitz, Administrative and Technical Officer

VI. International Bureau of WIPO

- G. Ledakis, Legal Counsel

General Studies

The Development of Inventive Activity in the German Democratic Republic

J. HEMMERLING*

News Items

FINLAND

*Director General of the National Board
of Patents and Registration*

We have been informed that Mr. Timo Kivi-Koskinen has been appointed Director General of the National Board of Patents and Registration.

SOVIET UNION

*Chairman of the USSR State Committee for Inventions
and Discoveries*

We have been informed that Mr. I. S. Nayashkov has been appointed Chairman of the USSR State Committee for Inventions and Discoveries.

Calendar

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change)

1979

- February 26 to March 2 (Geneva) — Trademark Registration Treaty (TRT) — Interim Committee
- March 5 to 9 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning
- March 5 to 9 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- March 12 to 16 (Dakar) — Permanent Committee for Development Cooperation Related to Industrial Property
- March 12 to 16 (Dakar) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
- March 20 to 30 (Geneva) — Revision of the Paris Convention — Provisional Steering Committee
- April 2 to 6 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries
- April 25 to May 1 (Geneva) — Patent Cooperation Treaty (PCT) — Assembly
- April 30 to May 3 (Geneva) — Budapest Union (Microorganisms) — Interim Committee
- May 1 to 4 (Geneva) — WIPO Budget Committee
- May 28 to June 1 (Geneva) — Berne Union — Working Group on Problems Arising from the Use of Electronic Computers (convened jointly with Unesco)
- June 11 to 15 (Paris) — Satellites Convention — Committee of Experts on Model Provisions for the Implementation of the Convention (convened jointly with Unesco)
- June 11 to 15 (Geneva) — Nice Union — Preparatory Working Group
- June 18 to 29 (Geneva) — Revision of the Paris Convention — Working Group on Conflict Between an Appellation of Origin and a Trademark
- June 25 to 29 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information, and ICIREPAT — Technical Committee for Standardization (TCST)
- July 2 to 6 (Paris) — Berne Union and Universal Copyright Convention — Working Group on the overall problems posed for developing countries concerning access to works protected under copyright conventions (convened jointly with Unesco)
- July 2 to 6 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information
- July 9 to 12 (Geneva) — Paris Union — Meeting of Experts on Industrial Property Aspects of Consumer Protection
- September 10 to 14 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning
- September 24 to October 2 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice, and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- October 15 to 26 (Geneva) — Nice Union — Committee of Experts
- October 18 and 19 (Geneva) — ICIREPAT — Plenary Committee
- October 22 to 26 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- October 22 to 24 and 30 (Paris) — Berne Union — Executive Committee (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
- October 25, 26 and 31 (Paris) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- November 26 to December 13(?) (Madrid?) — Diplomatic Conference on Double Taxation of Copyright Royalties (convened jointly with Unesco)
- November 27 to 30 (Geneva) — Paris Union — Group of Experts on Computer Software
- December 10 to 14 (Geneva) — International Patent Classification (IPC) — Committee of Experts

1980

- February 4 to March 4 (Geneva) — Revision of the Paris Convention — Diplomatic Conference

UPOV Meetings

1979

March 26 to 28 (Geneva) — Technical Committee
April 24 and 25 (Geneva) — Administrative and Legal Committee
April 26 and 27 (Geneva) — Consultative Committee
May 21 to 23 (La Minière, France) — Technical Working Party for Agricultural Crops
June 5 to 7 (Avignon) — Technical Working Party for Vegetables
July 17 to 19 (Hanover) — Technical Working Party for Ornamental Plants
September 18 and 19 (Geneva) — Administrative and Legal Committee
September 25 to 27 (Wageningen) — Technical Working Party for Forest Trees
October 16 and 19 (Geneva) — Consultative Committee
October 17 to 19 (Geneva) — Council
November 12 to 14 (Geneva) — Technical Committee
November 15 and 16 (Geneva) — Administrative and Legal Committee

Meetings of Other International Organizations Concerned with Industrial Property

1979

European Patent Organisation: May 16 to 18, September 12 to 14, November 27 to 29 (Munich) — Administrative Council

European Communities:

Working Group of the Commission of the European Communities for the Community Trade Mark:

March 12 to 14 (second hearing of interested circles), April 23 to 26, July 2 to 5, September 17 to 20, December 10 to 13 (Brussels)

Interim Committee for the Community Patent: March 19 to 21 (Brussels) — Working Party III

Inter-American Industrial Property Association: September 10 to 14 (Bogota) — Sixth Congress

International Association for the Protection of Industrial Property: September 23 to 28 (Toronto) — Executive Committee

