

No. 31696

MULTILATERAL

**International Convention for the Protection of New Varieties
of Plants of 2 December 1961, as revised at Geneva on
10 November 1972 and on 23 October 1978. Concluded
at Geneva on 23 October 1978**

Authentic texts: English, French and German.

*Registered by the Secretary-General of the International Union for the
Protection of New Varieties of Plants, acting on behalf of the Parties,
on 17 March 1995.*

MULTILATÉRAL

**Convention internationale pour la protection des obtentions
végétales du 2 décembre 1961, révisée à Genève le
10 novembre 1972 et le 23 octobre 1978. Conclue à
Genève le 23 octobre 1978**

Textes authentiques : anglais, français et allemand.

*Enregistrée par le Secrétaire général de l'Union internationale pour la
protection des obtentions végétales, agissant au nom des Parties, le
17 mars 1995.*

INTERNATIONAL CONVENTION¹ FOR THE PROTECTION OF NEW VARIETIES OF PLANTS OF DECEMBER 2, 1961,² AS RE- VISED AT GENEVA ON NOVEMBER 10, 1972,³ AND ON OCTO- BER 23, 1978

TABLE OF CONTENTS

Preamble

Article 1: Purpose of the Convention; Constitution of a Union; Seat of the Union

Article 2: Forms of Protection

Article 3: National Treatment; Reciprocity

Article 4: Botanical Genera and Species Which Must or May be Protected

Article 5: Rights Protected; Scope of Protection

Article 6: Conditions Required for Protection

¹ Came into force on 8 November 1981, i.e., one month after the date by which five States of which at least three were States Parties to the Convention of 1961 had deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the International Union for the Protection of New Varieties of Plants, in accordance with article 33 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or acceptance (A)</i>
Denmark.....	8 October 1981
Ireland.....	19 May 1981
New Zealand.....	3 November 1980

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or acceptance (A)</i>
South Africa.....	21 July 1981
Switzerland.....	17 June 1981
United States of America*.....	12 November 1980 A

Subsequently, the Convention came into force for the following States one month after the deposit of their instrument of ratification, accession or acceptance with the Secretary-General of the International Union for the Protection of New Varieties of Plants, in accordance with article 33 (2):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification accession (a) or acceptance (A)</i>
Japan*.....	3 August 1982 A
(With effect from 3 September 1982.)	
Sweden.....	1 December 1982
(With effect from 1 January 1983.)	
France*.....	17 February 1983
(With effect from 17 March 1983.)	
Hungary.....	16 March 1983 a
(With effect from 16 April 1983.)	
United Kingdom of Great Britain and Northern Ireland.....	24 August 1983
(With effect from 24 September 1983.)	
Israel.....	12 April 1984 a
(With effect from 12 May 1984.)	
Netherlands*.....	2 August 1984 A
(For the Kingdom in Europe. With effect from 2 September 1984.)	
Federal Republic of Germany.....	12 March 1986
(With effect from 12 April 1986. With a declaration of application to Berlin (West).)	

<i>Participant</i>	<i>Date of deposit of the instrument of ratification accession (a) or acceptance (A)</i>
Italy.....	28 April 1986
(With effect from 28 May 1986.)	
Australia.....	1 February 1989 a
(With effect from 1 March 1989.)	
Poland.....	11 October 1989 a
(With effect from 11 November 1989.)	
Canada.....	4 February 1991
(With effect from 4 March 1991.)	
Czechoslovakia.....	4 November 1991 a
(With effect from 4 December 1991.)	
Finland.....	16 March 1993 a
(With effect from 16 April 1993.)	
Norway.....	13 August 1993 a
(With effect from 13 September 1993.)	
Austria.....	14 June 1994 a
(With effect from 14 July 1994.)	
Uruguay.....	13 October 1994 a
(With effect from 13 November 1994.)	
Argentina.....	25 November 1994 a
(With effect from 25 December 1994.)	

(Continued on page 283)

- Article 7: Official Examination of Varieties; Provisional Protection
- Article 8: Period of Protection
- Article 9: Restriction in the Exercise of Rights Protected
- Article 10: Nullity and Forfeiture of the Rights Protected
- 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
- Article 12: Right of Priority
- Article 13: Variety Denomination
- Article 14: Protection Independent of Measures Regulating Production, Certification and Marketing
- Article 15: Organs of the Union
- Article 16: Composition of the Council; Votes
- Article 17: Observers in Meetings of the Council
- Article 18: President and Vice-Presidents of the Council
- Article 19: Sessions of the Council
- Article 20: Rules of Procedure of the Council; Administrative and Financial Regulations of the Union
- Article 21: Tasks of the Council
- Article 22: Majorities Required for Decisions of the Council
- Article 23: Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff
- Article 24: Legal Status
- Article 25: Auditing of the Accounts
- Article 26: Finances
- Article 27: Revision of the Convention
- Article 28: Languages Used by the Office and in Meetings of the Council
- Article 29: Special Agreements for the Protection of New Varieties of Plants
- Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services
- Article 31: Signature
- Article 32: Ratification, Acceptance or Approval; Accession

(Footnote 1 continued from page 282)

In addition, the following notifications of succession have been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the dates indicated hereinafter:

12 January 1993

Slovakia

(With effect from 1 January 1993, the date of the succession of State.)

12 January 1993

Czech Republic

(With effect from 1 January 1993, the date of the succession of State.)

Furthermore, the following notification of territorial application has been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the date indicated hereinafter:

8 August 1986

Netherlands

(In respect of Aruba. With effect from 8 November 1986.)

Moreover, the following notifications under article 34 (2) have been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the dates indicated hereinafter:

6 November 1981

France

(With effect from 6 December 1981. In its relations with Ireland, New Zealand and the United States of America.)

19 November 1981

Belgium

(With effect from 19 December 1981.)

* See p. 332 of this volume for the texts of the notifications and declarations made upon ratification and acceptance

² United Nations, *Treaty Series*, vol. 815, p. 89.

³ See p. 460 du présent volume.

- Article 33: Entry Into Force ; Closing of Earlier Texts
- Article 34: Relations Between States Bound by Different Texts
- Article 35: Communications Concerning the Genera and Species Protected;
Information to be Published
- Article 36: Territories
- Article 37: Exceptional Rules for Protection Under Two Forms
- Article 38: Transitional Limitation of the Requirement of Novelty
- Article 39: Preservation of Existing Rights
- Article 40: Reservations
- Article 41: Duration and Denunciation of the Convention
- Article 42: Languages ; Depositary Functions

THE CONTRACTING PARTIES.

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders,

Reaffirming the principles contained in the Preamble to the Convention to the effect that:

(a) they are 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,

(b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,

(c) they deem 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,

Considering that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention,

Considering that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,

Considering that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

Considering that these objectives may be best achieved by a new revision of the Convention,

Have agreed as follows:

Article 1

Purpose of the Convention; Constitution of a Union; Seat of the Union

(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 (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined.

(2) The States parties to this Convention (hereinafter referred to as "the 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

(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) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

Article 3

National Treatment; Reciprocity

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder 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 registered office 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 varieties which they have bred to be examined and the multiplication of such varieties to be checked.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

Article 4

Botanical Genera and Species Which Must or May be Protected

(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) (a) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.

(b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:

- (i) within three years, to at least ten genera or species in all;
- (ii) within six years, to at least eighteen genera or species in all;
- (iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of Article 2(2), that genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b), be considered as one genus or species.

(4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under paragraph (3)(b), decide, for the purposes of that State, to extend the periods referred to in paragraph (3)(b).

Article 5

Rights Protected; Scope of Protection

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder 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 authorisation given by the breeder shall not be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the 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), 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 registered office in any of those States.

Article 6

Conditions Required for Protection

(1) The breeder 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 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