

Session 1:

Technical and legal aspects of essentially derived varieties
and the possible impact on breeding and agriculture

- The Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants held from March 4 to 19, 1991, requested the Secretary-General of UPOV to start work immediately after the Conference on the establishment of draft standard guidelines, for the adoption by the Council, on essentially derived varieties.
- Key elements of the guidelines on EDV were considered at 1992 Meeting with International Organizations (IOM/6/2) – and provide a good starting point for future work.
- Currently, genetic distance measurements are not well correlated with phenotypic differences.
- Guidelines would need to consider the situation in different crops/species and methods of breeding, e.g. mutants.
- Two possible starting points:
 - predominant derivation (genetic conformity)
 - essential characteristics (phenotype)
- Need to consider impact on breeders, including farmer-breeders, farmers, growers and society as a whole.

Session 2:

Experience in relation to essentially derived varieties

- Australian PBR law provides a workable “bright line” on EDV
- Japan: certain examples which may be considered as EDVs are provided, but it is finally a matter for the courts to decide
- Court case experience in the Netherlands:
 - for a variety to be qualified an EDV the differences with the Initial Variety should not be more than one or very few inheritable characteristics (both in terms of genetics and phenotype)
- Court case experience in Israel:
 - if there exists a genetic or a morphological conformity between the two varieties, the assumption is that the defendant actually used the original variety to produce the EDV: this is only prima facie evidence, by which the burden of proof is shifted to the defendant, who now has to explain the suspicious conformity
- Breeders need clear guidance

Session 3:

Possible role of future UPOV guidance on essentially derived varieties

- “Soft law” may be an option, e.g. Guidelines.
- Guidelines that embrace a broad spectrum of stakeholders and interests may be more credible and persuasive for the Courts.
- The international standing of UPOV may help in the use of guidelines by Courts.
- Alternative Dispute Resolution (ADR) mechanisms - Mediation, Arbitration and/or Expert Determination - could be useful tools for EDV
- ISF and WIPO provide ADR options
- Publication of an anonymized summary of ADR outcomes could offer guidance and could lead to harmonization