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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-fifth Ordinary Session Geneva, October 24 and 25, 1991

DETAILED REPORT

adopted by the Council

Opening of the Session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-fifth ordinary session in Geneva on October 24 and 25, 1991.
2. The session was presided over by the President of the Council, Mr. W.F.S. Duffhues (Netherlands).
3. The list of participants is given in Annex I to this report.
4. The indented paragraphs are taken over from the report on the decisions of the Council, which the latter adopted at its meeting of October 25, 1991 (document C/25/12).

Appointment of the Secretary-General

5. The President informed the Council that, at the twenty-second series of meetings of the Governing Bodies of WIPO and the Unions Administered by WIPO, which took place from September 23 to October 2, 1991, the WIPO General Assembly appointed Dr. Arpad Bogsch, unanimously and by acclamation, as the Director General of WIPO for a further period of four years (expiring on December 1, 1995). He further recalled that, according to Article 4(4) of the WIPO/UPOV Agreement of November 26, 1982, the term of office of Dr. Bogsch as the Secretary-General of UPOV would be extended for the same period. In the absence of Dr. Bogsch, he asked the Office of the Union to convey to him the congratulations of the Council on his reelection.

Adoption of the Agenda

6. The Council adopted the agenda as appearing in document C/25/1 Rev.

Extension of the Appointment of the Vice Secretary-General

7. On the basis of a recommendation made by the Consultative Committee, which had met the previous day, and following a proposal of the Secretary-General, the Council decided, unanimously and by acclamation, to extend the appointment of Mr. Barry Greengrass as the Vice Secretary-General of UPOV until December 1, 1995, in line with the term of office of the Secretary-General.
8. Mr. Greengrass thanked the Council for its confidence. He paid tribute to the staff of the Office of the Union, which was of a very high caliber, for their contribution to the working of the Union, to the Secretary-General for his support and to the staff of WIPO for the efficiency of their services rendered to UPOV.

Examination of the Conformity of the Laws of Uruguay with the UPOV Convention

9. Discussions were based on document C/25/9.
10. Pursuant to Article 32(3) of the 1978 Act of the Convention, the Council unanimously decided to advise the Government of Uruguay that, upon the incorporation into its domestic laws of the text of the 1978 Act of the Convention pursuant to its accession procedure, its laws would conform with the said Act so as to permit the deposit of an instrument of accession.
11. The Council further asked the Secretary-General to inform the Government of Uruguay of the decision recorded in the preceding paragraph.

Examination of the Conformity of the Laws of Argentina with the UPOV Convention

12. Discussions were based on document C/25/11.
13. Pursuant to Article 32(3) of the 1978 Act of the Convention, the Council unanimously decided to advise the Government of Argentina that, upon the incorporation into its domestic laws of the text of the 1978 Act of the Convention pursuant to its accession procedure, its laws would conform with the said Act so as to permit the deposit of an instrument of accession.
14. The Council further asked the Secretary-General to inform the Government of Argentina of the decision recorded in the preceding paragraph.

Situation in the Legislative, Administrative and Technical Fields**a. Statements by Representatives of States (Member States and Observer States) and International Organizations**

15. The Council noted the declarations made under this agenda item.

The main information given under this agenda item is recorded below.

1. Statements by Representatives of Member States

16. South Africa - At present, the Government was working actively with a view to amending the Plant Breeders' Rights Act in order to bring it into conformity with the 1991 Act of the Convention. A species of Panicum pasture grass (*Panicum maximum* Jacq.) had been added to the list of taxa for which plant breeders' rights could be obtained, bringing the total number of such taxa to 156.

17. During the report period from October 1, 1990, to September 30, 1991, 97 plant breeders' rights had been granted (8% increase over preceding period) and 146 applications had been filed (27% increase over preceding period). Interest in obtaining plant breeders' rights was still very high in South Africa, even though fees had been substantially increased.

18. Electrophoretic investigations were being continued. The purpose of the research was to identify genetic groups within a species in order to reduce the number of reference varieties that had to be planted for comparison with new varieties. There were still problems, however, in the repeatability of tests over years.

19. A variety list for strawberry was being finalized and would come into operation before the end of 1991. The variety lists for Citrus and subtropical fruits had been circulated for final comments and would come into operation early in 1992.

20. Germany - A Bill to amend the Plant Variety Protection Law was before Parliament. It included three main provisions which would be introduced independently of the 1991 Act of the Convention:

(i) Plant variety protection would be extended to cover the whole plant kingdom (this had already been achieved de facto).

(ii) The so-called "farmer's privilege" would be abolished for vegetatively propagated plant species with the exception of potato and grape vine. This provision would be effective first and foremost with respect to ornamental plants and fruit species.

(iii) In the area of the former German Democratic Republic, where there had been de facto no "farmer's privilege" in the past, production of farm-saved seed currently required the payment of a licence fee to the owner of plant variety protection. This provision applied, however, only to the following species: field bean, garden bean, pea, cereal species, potato, lupin and rape. The amount of the licence fee, which was levied per hectare sown, was based upon the licence fee for the quantity of seed calculated to be necessary for one hectare. Parliament would have to decide whether this regulation should be retained or repealed. Any future regulation, which would be applicable on the whole territory of Germany, would depend on the solution adopted by the European Communities.

21. The number of breeders' rights granted in the last year exceeded 1,400. The increase from 1,000 to 1,400 was attributable above all to breeding activities in the five new Länder. It was also to be noted that, particularly in the area of ornamental plants, there were more and more applications filed in respect of "rare species," for example species originating in the southern hemisphere. This trend would certainly become a topic for discussion within UPOV since the current form of bilateral cooperation could not effectively handle the problems associated with the testing of the varieties concerned.

22. Cooperation with some East and South European countries would be a further item of discussion. Germany had started, together with Austria, Czechoslovakia, Hungary and Poland, to establish a collective DUS testing scheme for three plant species. Its target was the harmonization of the tests and of the interpretation of the data which were jointly established.

23. Australia - Cost recovery from fees at the end of the last financial year was some 60%. Now virtually all costs, including developmental costs, infrastructure in part, running costs and salaries, were covered by fees. The Office was expected to reach full cost recovery--and, in fact, it was required to do so--by the 1993/94 financial year.

24. In the first three years of operation of the Australian Plant Variety Rights Scheme, which was a self-financed scheme, it was found that the total of applications had risen exponentially, reaching 400 in 1991. During the past year the number of applications showed a levelling of demand which could be attributed to the following three interacting economic factors: resistance by potential applicants to the 1990 price rise, the prevailing economic recession, and the exhaustion of the initial accumulated demand for protection. This might be useful information for those member States which might in future attempt to achieve full cost recovery by increasing fees. Plant variety rights appeared to be price sensitive and therefore some caution was necessary when setting fees. Australia would therefore focus in future on increasing operational efficiency and reducing running costs rather than increasing fees.

25. There was a study under way by a researcher of the University of London on the legal protection of plants in Australia under patent and plant variety rights legislation. According to that study it was recommended that the unique double patent and plant breeders' rights protection system for plant varieties be retained. That matter was now under public discussion.

26. Whilst Australia was redrafting its Act to conform with the 1991 Act of the UPOV Convention, it would appropriately rename it the "Breeders' Rights Act" and would widen the scope of genera and species eligible for protection to those not recognized as phylogenetically related to plants, namely micro-fungi, bacteria and some animal species.

27. Currently a Cabinet directed review of the Plant Variety Rights Office was under way. The outcome would probably be that the current Office would become a de facto semi-privatized government business enterprise.

28. Belgium - As regards legislative developments, the Royal Decree of March 12, 1991, Fixing the Plant Species for Which a New Plant Variety Certificate may be Issued and Fixing the Duration of Protection for Those Species was published in the "Moniteur belge" on June 21, 1991. This Decree had extended protection to varieties of further 120 taxa. The total number of protected taxa was currently 290.

29. From the entry into force of the system for the protection of new plant varieties to August 31, 1991, 1,290 applications for protection had been filed and 740 certificates issued, of which 373 were still in force. Certificates had been issued for only 47 of the total of 290 protected taxa. Since the extension of the list of protected taxa, a certain enthusiasm for the protection of ornamental varieties had been noted. Ornamental varieties represented 55% of the total number of the varieties currently protected, and rose varieties 22%.

30. Draft agreements for cooperation in examination with Denmark, France, Germany and the United Kingdom had been elaborated. Discussions with the Netherlands and Sweden had been concluded and the agreements would be signed shortly. An agreement had been concluded with Israel at the beginning of 1991.

31. Canada - Since Canada's Plant Breeders' Rights Law was passed by Parliament in 1990, the Plant Breeders' Rights Office had been actively working with its legal counsel in drafting regulations. The regulations had now been finalized and they would be gazetted in the first week of November. Canada would thereafter be in a position to receive applications for protection of varieties of any of the first six taxa covered by its regulations, which were canola/rapeseed, chrysanthemum, potato, rose, soybean and wheat.

32. In the case of these taxa certain transitional arrangements concerning novelty had been made. For any variety bred or developed in Canada, the breeder would still be able to apply, if no sale had taken place in Canada prior to August 1, 1990, provided that he files the application within one year of the regulations coming into effect. In the case of potato varieties sold outside Canada after August 1, 1970, or of the other five taxa sold after August 1, 1986, breeders would still be able to apply for protection within the same period.

33. It was intended to extend the list of protected taxa within approximately one year to include additional agricultural, horticultural and ornamental crops. At present, the Plant Breeders' Rights Office was still receiving input on this subject from members of the Plant Breeders' Rights Advisory Committee.

34. In keeping with its Government's fiscal policy, the Plant Breeders' Rights Office would be required to operate on a full cost-recovery basis within 10 years. All applicants would be charged the same fees. The filing, examination and grant of rights would cost approximately 1,500 Canadian dollars, with an annual fee of 300 dollars to retain the right. Fees would be reviewed every two or three years.

35. The Delegation of Canada summarized by saying that Canada was pleased to finally have its plant breeders' rights legislation in place and to be able to afford protection, albeit on a gradual basis, to breeders within as well as outside Canada. It also looked forward to working with colleagues in other member States and hoped that it could make a useful contribution to the overall operations of UPOV.

36. Replying to a question on the use of the term "canola" put by the Delegation of Germany, the Delegation of Canada explained that the regulations would apply to all rape varieties belonging to the species *Brassica napus* and *Brassica campestris*, without regard to their oil characteristics.

37. Denmark - As regards legislative developments it was expected to extend protection, before December this year, to the following seven genera or species of ornamental plants and to one agricultural crop: *Crassula schmidtii* Regel, *Camelina sativa* L., *Hebe Comm. ex Juss.*, *Hedera* L., *Hydrangea* L., *Osteospermum* L., *Radermachera sinica*, *Scaevola aemula*.

38. The following table summarized the use of the plant variety protection system:

	1990	1991*
Number of applications for protection, including: - agricultural crops	231	187
- fruit crops	73	
- vegetables	8	
- ornamentals	4	
	146	
Number of certificates issued, including: - agricultural crops	220	180
- fruit crops	78	
- vegetables	2	
- ornamentals	4	
	136	

* up to October 3

39. At earlier Council sessions a pilot project concerning the testing of varieties at the breeders' premises had been reported. The purpose of the project had been to evaluate the possibility of the Plant Novelty Board taking decisions on the granting of plant breeders' rights on the basis of examination reports produced by breeders. The pilot project had been pursued over three years, and a conclusion had recently been reached. The result was in general positive, and the Board intended to accept examination reports from breeders for selected species.

40. Spain - Spain had abandoned the idea of acceding to the 1978 Act of the Convention, and would concentrate its efforts instead on the ratification of the 1991 Act. Since the last session of the Council there had been no significant developments. No meeting of the Plant Variety Protection Board had taken place during the past year. At its next meeting, on November 7, 1991, it was planned to consider the possibility of extending protection to grape vine, Prunus rootstocks and tomato.

41. The fees had been increased by some 5% with effect from January 1991.

42. Concerning statistics, about 300 applications had been filed, 150 of which were for agricultural species and the others for ornamental plants, fruits and vegetables.

43. As explained at the last session of the Council, Spain was interested in establishing bilateral cooperation in examination. It intended to conclude its first agreement with Germany as soon as possible. It was also studying cooperation with Portugal, which was not yet a UPOV member State. In that instance Spain would be the offering country.

44. United States of America - As regards fees, the US Congress had mandated that the Patent and Trademark Office should achieve substantially full cost recovery. The fees, including for plant patents for asexually reproduced varieties, had been increased by 69% as of November 5, 1990. There had not

been, however, any loss in the number of applications filed. It was foreseeable that, given rising costs, there might be another increase sometime in the very near future. It was worth noting, however, that, unlike other patents, plant patents were not subject to the payment of maintenance fees.

45. In relation to plant variety protection certificates for sexually reproduced varieties there was also at this time a proposal for the increase of application and processing fees by 200 dollars from the present 2,400 dollars to 2,600 dollars. The proposal had been made in September 1991 but was subject to public comment. It was expected that the proposal might come into force by the beginning of next year.

46. France - France had frozen after the Diplomatic Conference all activities in the legislative field, with the exception of the list of protected plant species, which was to be extended to the whole plant kingdom in the next months. That decision was linked to the negotiations on the problem of the "farmers' privilege" currently taking place at regional and Community levels.

47. Hungary - There had been no legislative amendments in the course of the last year. The most important development was that, in the framework of the Compensation Law, the privatisation of land had commenced, affording the possibility of building a modern market-oriented agriculture on the basis of independent enterprises and cooperative associations. It should also be mentioned that the privatization of breeding institutions was in preparation.

48. In the course of the last year 74 applications had been filed and 61 protection titles granted. The Institute for Agricultural Qualification had carried out DUS tests on 138 varieties belonging to seven species, namely barley, durum wheat, linseed, maize, sorghum, sunflower and wheat.

49. With regard to cooperation in examination, field trials were being organized with Austria, Czechoslovakia, Germany and Poland on barley, pea and wheat to promote the standardization of variety descriptions. The Technical Working Party for Vegetables had held its twenty-fourth session in Hungary in June 1991.

50. Ireland - The list of species eligible for protection had been extended by four taxa during the past year and there were two more under consideration. During the last year, there had been 26 applications filed and 24 titles granted. In relation to the question of fees, the costs of the office were borne by the Department of Agriculture budget, fees had not been increased in the past year, and there had been no suggestion that they should be increased.

51. Israel - Israel was preparing an extension of protection to the whole plant kingdom following the provisions of the 1991 Act of the Convention. During the past year, 210 new rights had been granted. The fees had been increased by 10% to cover all expenses. A new biotechnological system using RFLP's had been introduced as a pilot model for defining the minimum distances of problematic varieties of strawberry, rose and some other species. There currently existed bilateral agreements with Belgium and Denmark.

52. Replying to a question put by the Delegation of Germany concerning the usefulness of the application of RFLP's to strawberry and rose varieties, for which distinctness could be established relatively easily by traditional

characteristics, the Delegation of Israel explained that the pilot system was still under study and had not yet been used for practical testing.

53. Italy - By virtue of Ministerial Decree No. 281 of April 21, 1990, published in the Official Gazette No. 233 of October 5, 1990, protection had been extended to 18 further genera and species. The complete list had been published in "Plant Variety Protection" No. 61 of February 1991. The total number of titles granted up to May 14, 1991, was 816. It might be of interest for the Union to know that the Official Gazette No. 209 of September 6, 1991, contained the Ministerial Decree No. 289 of July 2, 1991, which established a voluntary certification system for virus-free propagating material.

54. Japan - There were 430 protected genera and species. The annual application number had increased from 385 in 1985 to 623 in 1990. From January to the end of September 1991, 515 applications had been received. The aggregate number of applications was now 4,979. Among those applications 52% were for annual flowers, followed by ornamental arboreal plants (14%) and vegetables (11%). A large number of applications from abroad had been received, representing 20% of the aggregate number of applications.

55. A UPOV regional Seminar on plant variety protection would be held in Tsukuba Science City near Tokyo from November 12 to 15, 1991.

56. New Zealand - As a result of the recent increase in applications, it had been decided to replace the current system of official examination of fruit varieties on the applicant's property by a system of testing at a central site, a newly established national cultivar center for pip and stone fruit. In future all applications for apple, peach, pear and plum would be examined at that center, in accordance with directions and guidelines from the Plant Variety Rights Office.

57. Netherlands - The duration of the breeder's right had been extended last August by Royal Decree to 25 years for most crops and to 30 years for some crops, e.g. potato. This represents a small step towards fulfilling the requirements of the 1991 Act of the Convention. The fees would be increased in order to make the system self-supporting.

58. Last month the 10,000th variety, a gerbera variety named 'Ajax', had been entered into the Plant Breeders' Rights Register. The annual number of plant breeders' rights had increased. In 1990, 1,454 applications had been filed, which represented an increase of 16% over the number in 1989.

59. The reorganization of the national testing institute had been completed. The new name of the institute was: the Center for Plant Breeding and Reproduction Research (CBRO). The sections of this Institute which were responsible for the examination of applications for plant breeders' rights, had special, independent status to ensure impartiality.

60. The Delegation of the Netherlands, currently holding the Presidency of the European Community, informed, on the latter's behalf, the Council of developments in respect of the proposed Regulation on Community Plant Variety Rights. Since the end of the Diplomatic Conference work had started at the level of the Council of Ministers on the draft Regulation, one of the main

goals being to ensure that it would be compatible with the 1991 Act of the Convention. The first reading would hopefully be completed in November 1991. By that time the "advice" of the European Parliament could be available as well. The second reading would start before the end of the year. The adoption of the Regulation was scheduled for 1992.

61. Poland - As regards legislative developments, work on the revision of the Seed Industry Law had been started to adapt the Law to the provisions of the 1991 Act of the Convention.

62. In the course of 1990, 188 applications for protection had been filed and 18 titles of protection were issued. In 1991, up to October 10, 209 applications had been filed and 62 certificates were issued.

63. Last year the authorities for variety testing had published the first issue of a gazette containing all information on the protection of new plant varieties as well as information on the national register of varieties. From 1991 onwards the gazette would be published twice a year.

64. Poland was interested in international cooperation in examination. Its authorities could undertake the examination of linseed, lupin and triticale.

65. United Kingdom - The United Kingdom had moved to 100% coverage of costs by fees in April 1990. The effect on the figures for the following 12 months had been a very small reduction in the number of applications received (505 applications received = decrease of 1.5%; 298 grants issued = decrease of 5%) and a very large reduction in the surrender of rights (232 grants terminated = decrease of 18%). The other consequence was that the testing authority was forced to look very closely at its costs. As response to this very reasonable demand from the industry it had reduced its costs by 18% as from April 12, 1991.

66. Work had been started on the changes in the law necessary to accede to the 1991 Act of the Convention. In the meantime, under the existing law, protection had been extended on January 17, 1991, to *Osteospermum L.* Consideration was now being given to extending protection in spring 1992 to the following eight taxa: *Agapanthus*, *Astrantia*, *Hibiscus*, *Lavatera*, quince rootstocks, quinoa, *Ruscus aculeatus* and tomato. Additional taxa under consideration were *Cheiranthus*, *Erysimum* and *Galtonia*.

67. Discussions were going on with four member States of UPOV with a view to establishing bilateral agreements on cooperation in examination. In two of the cases the discussions had just started, in two others they were very near to completion.

68. Sweden - Since the last session of the Council, Parliament had approved a small extension of the list of protected taxa which entered into force on July 1, 1991. During 1991 the extension of agreements on cooperation in examination had been completed with a number of European UPOV member States. The policy of the national Plant Variety Board was to reduce the number of examinations taking place in Sweden by reaching agreements with other UPOV member States. The total number of valid plant breeders' rights registrations on October 1, 1991, was 313.

69. Switzerland - There had been no change in legislation since the last session of the Council. A first draft to make the national law compatible with the 1991 Act of the Convention had been prepared and was still being examined at governmental level. It was foreseen that the draft would be sent for comments to interested circles in the coming spring.

2. Statements by Representatives of Non-member States

70. Argentina - A Decree which would create a National Seed Institute by reorganizing the existing National Seed Service was to be signed soon by the President of the Republic. This Institute would be self-financing and have its own budget. It would have a Board of Directors with four members from the Government and four members from the private sector representing farmers, traders, breeders and seed multipliers.

71. A new Patent Law was at present before Parliament. The new Law also included utility models and allowed patenting of products that had not been included in Law No. 111 of 1964, such as pharmaceutical products. Its Article 7 would exclude from patenting living matter such as plant varieties and animal breeds, but include biotechnological innovations.

72. Experts from the national seed laboratories had been trained a few months earlier in the German and Spanish Offices in the context of electrophoresis tests under a cooperation program with the EEC.

73. A UPOV Seminar, which would be the first in Latin America, would be held in Buenos Aires on November 26 and 27. It was financed by UPOV, but the Government of Spain had made a special financial contribution to enable all Latin American countries to attend. The representative of Argentina thanked the UPOV Office and the Government of Spain for their collaboration in organizing the Seminar.

74. Colombia - The Government of Colombia had been supporting seed production and seed certification programs for 20 years. Private enterprises had developed strong quality production capacity, and good cultivars had been bred through research by private companies and the Government. The public and private sectors were now both interested in drawing up a law for the protection of new plant varieties. The Ministry of Agriculture had established a multi-disciplinary working group with the main purpose of elaborating the technical and legal provisions of the law. At this stage it was hoped that Colombia would receive technical assistance in order to adjust the law to the requirements of the Convention. Then, as a further step, the Government of Colombia would decide if the country should accede to the Convention.

75. Côte d'Ivoire - The country possessed a series of agronomical research institutes: the Institute for the Savannah (IDESSA), located in the center of the country, and the Institute for Forestry (IDEFOR), currently under restructuration and comprising five institutes: the Research Institute for Oil and Oil Crops, the Research Institute for Fruit and Citrus, the Research Institute for Coffee and Cacao, the Research Institute for Rubber and the Research Institute on Forestry. These Institutes had developed several varieties but Côte d'Ivoire had as yet no legislation for their protection. The representative of Côte d'Ivoire mentioned that the aim of his presence was to collect all useful information with a view to drafting a law in conformity with the Convention.

76. Egypt - The Delegation of Egypt thanked UPOV for inviting its Government to attend this session and reported that at the moment there was an active dialogue between Egyptian authorities and the Office of the Union with a view to paving the way for Egypt to accede to the Convention.

77. Finland - A draft Bill on Plant Breeders' Rights based on the 1978 Act of the Convention had been worked out last winter. Discussions on the draft were still going on between the Ministry of Agriculture and the Ministry of Industry, and it would take a few more months to finalize the Bill.

78. Morocco - A draft national law on the protection of plant varieties had been prepared and sent to the Office of the Union for preliminary examination. The Government of Morocco had requested the Office of the Union to send an expert mission and looked forward to welcoming it shortly.

79. Norway - The committee in charge of drafting a law on plant breeders' rights was expected to finish its work by the end of the year. It was further expected that the Government of Norway would submit the Bill to Parliament in spring next year. The Bill would be based on the 1978 Act of the Convention.

80. Romania - A new Patent Law (No. 64/1991) would come into force on January 24, 1992. It contained specific provisions on the protection by means of patents of plant varieties and animal breeds, which were in compliance with the 1991 Act of the Convention. Regulations concerning the protection of new plant varieties and animal breeds would be drawn up jointly by the Ministry of Agriculture and the State Office of Inventions and Trademarks before the entry into force of the Law. Romania would thereafter take the necessary steps for accession to the Convention.

81. In relation to the declaration that plant variety protection conforming to the Convention would be introduced in Romania in the form of patents, the Delegation of Germany mentioned that, if more countries were to do the same, it would be necessary to discuss how to better organize international cooperation in exchanging examination results with those countries.

82. Czechoslovakia - The Permanent Representative of Czechoslovakia in Geneva visited the Secretary-General on October 8, 1991, and deposited an instrument of accession to the Convention. Two additional pieces of information which were formally necessary for the acceptance of that deposit (the statement of the financial contribution and a list of protected species) would be sent to the Secretary-General shortly*. Czechoslovakia would pay a half unit as its financial contribution.

83. The Law on the Legal Protection of New Varieties of Plants and Breeds of Animals was now in force. The extension of the list of protected genera and species by further 17 taxa was envisaged. A tariff of fees had been established, under which the application fee was fixed at 500 Crowns (about 25 Swiss francs). Other fees were also set below the level of the fees paid in most UPOV member States. Applications should be sent to the Federal Ministry of Economy. Application forms were also available in English.

* Received by the Secretary-General on November 4, 1991.

84. In the field of plant varieties, there was another relevant law in Czechoslovakia. According to Law No. 61 of 1964 on the Development of Plant Production, only seed of those plant varieties that were admitted under the said Law could be commercialized. The conditions for admittance included the agronomic value of the variety, namely yield, quality, resistance to diseases, etc. The Law also regulated all agricultural production inputs. Currently it was planned to revise it and to establish a new, separate law on seeds and other planting material. Its preparation had just started, but the present legislation would certainly remain in force for one or two further years. The Federal Government required that the new standards currently under preparation should be in conformity with EC norms.

85. As of October 21, 1991, 274 applications for Czechoslovak varieties and one application for a foreign variety had been filed. Further applications for foreign varieties would be accepted, once the payment of the fee had been confirmed by the Ministry of Finance. Examinations were carried out in 1991 for the varieties for which applications had been filed in good time prior to the planting season by the Central Control and Examination Institute for Agriculture in Prague and the corresponding Institute with the same name in Bratislava. The representative of Czechoslovakia thanked all UPOV member States for their cooperation with his country.

86. Ukraine - For three years Ukraine had been preparing a law on plant variety protection. It would be in conformity with the 1991 Act of the Convention. The law would probably be adopted by Parliament in the coming year. The representative of Ukraine mentioned that his country expected some help from the member States of UPOV and relied very much on the help from the Office of the Union.

87. Uruguay - The representative of Uruguay restricted himself to supplementing document C/25/9, which already gave comprehensive information on the situation in his country. On October 2, 1991, the Grain Directorate had extended protection to *Lotus corniculatus* L. and *Trifolium repens* L. Protection had been provided for a period of 15 years. Preparations were under way to protect two additional species, namely *Medicago sativa* L. and *Oryza sativa* L.

3. Statements by Representatives of Intergovernmental Organizations

88. International Board for Plant Genetic Resources (IBPGR) - A policy statement on intellectual property rights was now under discussion within the Consultative Group on International Agricultural Research in Washington.

89. Organisation for Economic Co-operation and Development (OECD) - Currently the OECD Schemes were applied by 24 OECD member countries and 14 non-member countries. Zimbabwe and Costa Rica were seeking admission to the Schemes. A joint mission had been sent to Zimbabwe by OECD and the EC Commission last January with a view to admitting that country to the Schemes and to maintaining equivalence in the European Communities. These countries were not yet in a position to apply for the Schemes, and the Secretariat of OECD had asked them to draw up a programme for establishing the infrastructure necessary to implement the Schemes.

90. New Zealand, which was a member country of OECD, had decided one month earlier to apply the OECD Scheme for maize.

91. It would be of interest to UPOV to know that Ukraine intended to join the OECD Schemes as soon as possible. It seemed that behind this candidature stood an increasing interest from the private sector. Moldavia had also shown an interest, but the OECD regulations provided that only countries which were members of the United Nations were able to participate in the OECD Schemes. Thus it would be possible for Ukraine to participate, but this would be difficult for other Republics under present circumstances. Contacts had been established with China and Albania with a view to their joining the OECD Schemes.

92. This year the annual contribution payable by non-member countries had increased to 4,000 US dollars.

93. Discussions were under way on the varietal characteristics to be used for post-control examination. OECD had taken advantage of the experience acquired by UPOV in this field. For the comparative examination, OECD benefited from the assistance of the EC. It was currently planned, in consultation with ISTA and FIS, to increase the lot size for grasses and legumes. In another section of OECD discussions were under way concerning the release of genetically modified organisms into the environment.

94. Commission of the European Communities (CEC) - One of the major developments under way in the European Community was the proposal which the EC Commission had made to the Council of the European Communities on September 6, 1990, for a Regulation on Community Plant Variety Rights. This proposal would form an integral part of the Community program for completing its internal market by the end of 1992. It sought to create a system of Community plant variety rights in parallel with the national systems of member States, under which breeders would be able to benefit on the basis of a single application from uniform protection throughout the Community.

95. The proposal had been examined actively throughout most of the last year by the Council of Ministers and in the light of the results of the UPOV Diplomatic Conference held in March of this year. Parallel to these deliberations, there had also been an examination of the proposal by the European Parliament, without whose opinion the Council of Ministers could not adopt the Regulation. The Legal and Citizens' Rights Committee of the European Parliament, which was the leading committee on this matter, was expected to complete its report next week, and the Parliament's opinion should be voted formally in plenary session, probably in November, clearing the way for a rapid adoption of the Regulation by the Council. It was worth noting that the Parliament had been considering this proposal jointly, and virtually simultaneously, with the Commission's proposal on the legal protection of biotechnological inventions, which sought to establish a common action by the member States on certain aspects of the European Patent Convention in order to promote the development of biotechnology in the Community.

96. Alongside these legislative activities of the Council and the Parliament, the Commission, in cooperation with the member States, had been organizing a dialogue with the relevant Community professional bodies on possible conditions for the exercise of the "farmer's privilege" within the framework of the proposed Regulation, in order to seek an equitable balance between the economic interests involved. These conditions were expected to be the subject of a subsequent proposal by the Commission.

4. Statements by Representatives of International Non-Governmental Organizations

97. Association of Plant Breeders of the European Economic Community (COMASSO) - As the representative of plant breeders of the European Economic Community, COMASSO had followed very carefully the work of the Committees of the European Parliament concerning the EC Commission's proposals on the legal protection of biotechnological inventions and on Community plant variety rights.

98. Some Committees of the European Parliament had demanded the inclusion of a "farmer's privilege" into the proposal on the legal protection of biotechnological inventions. COMASSO had already in the past pointed out the possible negative effects of the provisions of the UPOV Convention. The EC Commission's dialogue with the seed trade associations had reached a stage where one could state that the breeders' position and interests were surely among those which were least respected. The representative of COMASSO emphasized that in the negotiations taking place at the EC level the fundamental idea of the legal protection of new plant varieties should not be left as an empty shell.

99. International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) - CIOPORA was studying the possible practical consequences of the 1991 Act of the Convention, and was taking a close interest in developments in the countries which might become members of UPOV.

100. CIOPORA organized once every five years an international colloquium on the protection of new plant varieties. The next one would be held on September 17 and 18, 1992, in Munich.

101. International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) - ASSINSEL had started work on the examination of the consequences of the new provisions introduced in the 1991 Act of the Convention. Its Intellectual Property Working Group had established a working paper on essentially derived varieties which had been distributed at the twenty-ninth session of the Administrative and Legal Committee. ASSINSEL was aware that it would not be possible to find a solution to questions on dependency on a purely theoretical basis and understood that much work should be done at the level of the species concerned. For this purpose, ASSINSEL had established, in each section, working groups which would study separately the consequences of the introduction of dependency for the particular species. At the time of the 1992 Congress in Toronto, ASSINSEL would deal almost exclusively with the question of dependency and its application. Furthermore, a motion concerning forage crop species and their examination was under preparation and would be presented to UPOV shortly.

102. ASSINSEL thought that the new Convention would necessitate a much closer cooperation between UPOV, national authorities and industry. This would be a fundamental necessity, for it was very difficult nowadays to join the two ends and arrive at a mutual understanding without such cooperation.

103. International Federation of the Seed Trade (FIS) - The introduction of the notion of farm-saved seed was a preoccupation to FIS, and some sections, meeting in one month's time, would examine the situation and the possible consequences resulting from the inclusion in the Convention of this notion.

b. Data Assembled by the Union on the State of Protection in Member States and Cooperation between them

104. The Council also noted, with appreciation, the contents of documents C/25/5, C/25/6 and C/25/7.

Report by the President on the Work of the Forty-third and Forty-fourth Sessions of the Consultative Committee

105. The Council noted the report on the work of the forty-third session of the Consultative Committee as given in paragraph 8 of document C/25/3 and also the oral report by the President on the work of the forty-fourth session. That session took place on October 23 and had been mainly devoted to the preparation of the current session of the Council, to a discussion on the policy of UPOV in its relations with developing countries and to a consideration of the activities resulting from the 1991 Diplomatic Conference.
106. The Council, on the basis of a recommendation of the Consultative Committee and pursuant to Article 41(2) of the 1991 Act of the Convention, decided that official texts of the 1991 Act of the Convention would be established in the Portuguese and Russian languages.

Report by the Secretary-General on the Activities of the Union in 1990 and in the First Nine Months of 1991

107. The Council unanimously approved the report by the Secretary-General on the activities of the Union in 1990 and in the first nine months of 1991 as contained in document C/25/2 and document C/25/3.

Progress of the Work of the Administrative and Legal Committee

108. The Council unanimously approved the oral report on the twenty-ninth session of the Administrative and Legal Committee, which had taken place on October 21 and 22, 1991, given by Mr. J.-F. Prevel (France), its Chairman.
109. Following a brief exchange of views, the Council decided that the Administrative and Legal Committee should discuss the question of fees in relation to cooperation in examination, in particular the present relevance of the Recommendation on Fees in Relation to Cooperation in Examination which was last amended on October 17, 1980, and the implications on cooperation in examination of the disparities between the various national fee tariffs, including the question whether it was appropriate for UPOV to make recommendations on these matters.

Progress of the Work of the Technical Committee and of the Technical Working Parties

110. The Council unanimously approved the reports on the progress of the work of the Technical Committee and of the Technical Working Parties as contained in document C/25/10 and its supplement (document C/25/10 Add.).

111. As far as the specific questions set out in paragraph 17 of document C/25/10 Add. are concerned, the Council decided:

(i) that the Administrative and Legal Committee should review the conditions to be met in the case of breeders/applicants conducting growing tests and establishing test reports, as laid down in a statement which had been noted with approval by the Council at its tenth ordinary session, in October 1976;

(ii) that a feasibility study on the setting up of a central computerized data base should be undertaken in the 1992-93 biennium;

(iii) to recommend to member States to make mutually available their plant variety protection gazettes in machine-readable (electronic) form.

Examination and Approval of the Program and Budget of the Union for the 1992-93 Biennium

112. Discussions were based on document C/25/4.

113. The Council unanimously adopted the program and budget of the Union for the 1992-93 biennium as proposed in document C/25/4, subject to the following amendments:

(i) the number of meeting days would be reduced as follows:

(a) there would be four meeting days for the Council, including a symposium in one year and a meeting with international organizations in the other year, so that the budgetary provision for conferences under item UV.01 would be 33,000 francs and the budgetary provision under item UV.07 would be deleted;

(b) there would be three meeting days for the Consultative Committee, so that the budgetary provision for conferences under item UV.02 would be 20,000 francs; and

(c) there would be eight meeting days for the Administrative and Legal Committee, so that the budgetary provision for conferences under item UV.05 would be 35,000 francs.

(ii) the amount of expenditure to be covered from the reserve fund would be 317,000 francs, it being understood that a lesser amount would be required to be drawn from the reserve fund if there were more than the budgeted number of 43.5 contribution units during the biennium, whether resulting from any member State increasing its number of contribution units or from any State not yet a member joining UPOV.

114. The revised "Chapter I - Summary of Budget and Comparisons" as approved by the Council is reproduced in Annex II of this document.

115. The scale of the contributions payable by member States in the month of January of each of the years 1992 and 1993 as approved by the Council is reproduced in Annex III of this document.

Calendar of Meetings in 1992

116. Discussions were based on document C/25/8.

117. The Council unanimously adopted the calendar of meetings as appearing in Annex IV to this document.

Election of the New President of the Council

118. The Council unanimously elected Mr. Ricardo López de Haro y Wood (Spain) as President of the Council for a term of office of three years, expiring at the end of the twenty-eighth ordinary session of the Council, in 1994.

Election of the New Vice-President of the Council

119. The Council unanimously elected Mr. Frank W. Whitmore (New Zealand) as Vice-President of the Council for the same term.

120. This report has been adopted by correspondence.

[Annexes follow]

ANNEXE I/ANNEX I/ANLAGE I

LISTE DES PARTICIPANTS*/LIST OF PARTICIPANTS*/
TEILNEHMERLISTE*

I. ETATS MEMBRES/MEMBER STATES/VERBANDSSTAATEN

AFRIQUE DU SUD/SOUTH AFRICA/SUEDAFRIKA

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DANEMARK/DENMARK/DAENEMARK

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* Dans l'ordre alphabétique des noms français des Etats et des sigles des
organisations/In the alphabetical order of the names in French of the
States and the acronyms of the organizations/In alphabetischer Reihenfolge
der Namen der Staaten und der Akronyme der Organisationen in französisch

ESPAGNE/SPAIN/SPANIEN

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INTERGOVERNMENTAL ORGANIZATIONS/
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COMMISSION OF THE EUROPEAN COMMUNITIES (CEC)/
KOMMISSION DER EUROPAEISCHEN GEMEINSCHAFTEN (KEG)

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INTERNATIONALE NICHTSTAATLICHE ORGANISATIONEN

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INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (AIPPI)/
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INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF PLANT VARIETIES (ASSINSEL)/
INTERNATIONALER VERBAND DER PFLANZENZUECHTER FUER DEN SCHUTZ VON PFLANZENZUECHTUNGEN (ASSINSEL)

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INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED ORNAMENTAL AND FRUIT-TREE VARIETIES (CIOPORA)/
INTERNATIONALE GEMEINSCHAFT DER ZUECHTER VEGETATIV VERMEHRBARER ZIER- UND OBSTPFLANZEN (CIOPORA)

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INTERNATIONALE VEREINIGUNG DES SAATENHANDELS (FIS)

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V. BUREAU/OFFICERS/VORSITZ

Wilhelmus F.S. DUFFHUES, President
Ricardo LÓPEZ DE HARO Y WOOD, Vice-President

VI. BUREAU DE L'OMPI/OFFICE OF WIPO/BUERO DER WIPO

Thomas KEEFER, Controller and Director, Budget and Finance Division
Alan HARGREAVES, Head, Budget and Systems Section

VII. BUREAU DE L'UPOV/OFFICE OF UPOV/BUERO DER UPOV

Arpad BOGSCH, Secretary-General
Barry GREENGRASS, Vice Secretary-General
André HEITZ, Senior Counsellor
Max-Heinrich THIELE-WITTIG, Senior Counsellor
Makoto TABATA, Senior Program Officer

[L'annexe II suit/
Annex II follows/
Anlage II folgt]

C/25/13

ANNEX II

CHAPTER I - SUMMARY OF BUDGET AND COMPARISONS
(expressed in thousands of Swiss francs)

1988-89 Actual	1990-91 Budget		Approved 1992-93 Budget
		INCOME	
3,568	3,699	Contributions	4,001
		Other Income	
19	34	- Publications	25
118	96	- Miscellaneous	170
<u>3,705</u>	<u>3,829</u>		<u>4,196</u>
=====	=====		=====
		EXPENDITURE	
1,798	2,250	UV.10 <u>Staff Expenses</u>	2,591
		<u>Travel on Official Business</u>	
		- <u>Missions [Staff]</u>	
		UV.04 - Technical Working Parties	44
		UV.06 - UPOV Seminars	29
		UV.09 - Contacts with Governments and Organizations	81
128	129	- Sub-total	154
		- <u>Third Party Travel [non-staff]</u>	
		UV.01 - Council: Symposium speakers	14
6	25	UV.06 - UPOV Seminars	94
		- Sub-total	108
		<u>Contractual Services</u>	
		- <u>Conferences</u>	
		UV.01 - Council	33
		UV.02 - Consultative Committee	20
		UV.03 - Technical Committee	24
		UV.05 - Administrative and Legal Committee	35
		UV.06 - UPOV Seminars	27
135	242	UV.07 - Meeting with Int. Organizations	
		- Sub-total	139
83	107	UV.08 - <u>Printing: Information and Documentation</u>	118
		- <u>Other</u>	
		UV.08 - Information and Documentation	58
42	78	UV.11 - Program Support Expenses	7
		- Sub-total	65
89	93	UV.11 <u>General Operating Expenses: Rental of Premises</u>	114
2	6	UV.11 <u>Supplies and Materials</u>	7
2	12	UV.11 <u>Acquisition of Furniture and Equipment</u>	13
48	29	UV.11 <u>Other Expenses</u>	34
<u>2,333</u>	<u>2,971</u>	Sub-total: Expenses proper to UPOV	<u>3,343</u>
1,017	1,075	*UV.12 <u>Common Expenses</u>	1,170
<u>3,350</u>	<u>4,046</u>	Total Expenditure	<u>4,513</u>
=====	=====		=====
355	(217)	SURPLUS (DEFICIT) - transferred to (from) Reserve Fund	(317)

* Exclusive of UPOV's share in the WIPO common income which is included under "Other Income - Miscellaneous," above.

[Annex III follows]

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ANNEX III

CONTRIBUTIONS OF MEMBER STATES

(expressed in Swiss francs)

1990 Actual	1991 Actual	Member States	Number of Units	Approved 1992-93 Budget	
				Payable in January 1992	Payable in January 1993
43,512	43,512	Australia	1.0	45,989	45,989
65,270	65,270	Belgium	1.5	68,983	68,983
-	-	Canada	1.0	45,989	45,989
65,270	65,270	Denmark	1.5	68,983	68,983
217,560	217,560	France	5.0	229,945	229,945
217,560	217,560	Germany	5.0	229,945	229,945
21,756	21,756	Hungary	0.5	22,994	22,994
43,512	43,512	Ireland	1.0	45,989	45,989
21,756	21,756	Israel	0.5	22,994	22,994
87,024	87,024	Italy	2.0	91,978	91,978
217,560	217,560	Japan	5.0	229,945	229,945
130,536	130,536	Netherlands	3.0	137,967	137,967
43,512	43,512	New Zealand	1.0	45,989	45,989
21,756	21,756	Poland	0.5	22,994	22,994
43,512	43,512	South Africa	1.0	45,989	45,989
43,512	43,512	Spain	1.0	45,989	45,989
65,270	65,270	Sweden	1.5	68,983	68,983
65,270	65,270	Switzerland	1.5	68,983	68,983
217,560	217,560	United Kingdom	5.0	229,945	229,945
217,560	217,560	United States of America	5.0	229,945	229,945
<u>1,849,268</u>	<u>1,849,268</u>		<u>43.5</u>	<u>2,000,518</u>	<u>2,000,518</u>
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DATES OF MEETINGS IN 1992

presented in the order of the organsCouncil

October 29

Consultative Committee

October 28

Administrative and Legal Committee

April 8 and 9

October 26 and 27

Technical Committee

October 21 to 23

Technical Working Party for Agricultural Crops

June 16 to 19, Menstrup Kro, Denmark

Technical Working Party on Automation and Computer Programs

June 2 to 4, Wageningen, The Netherlands

Technical Working Party for Fruit Crops

August 24 to September 2, Nelspruit, South Africa

Technical Working Party for Ornamental Plants and Forest Trees

August 27 to September 7, Stellenbosch, South Africa

Technical Working Party for Vegetables

January 15 to 17, Paris, France

June 30 to July 3, Dachwig, Germany

Meeting with International Organizations

October 30

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