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UPOV

C(Extr.)/11/6

ORIGINAL : English

DATE : April 22, 1994

## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COUNCIL

## Eleventh Extraordinary Session

Geneva, April 22, 1994

## REPORT

adopted by the CouncilOpening of the Session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its eleventh extraordinary session in Geneva on April 22, 1994.
2. The list of participants is given in the Annex to this report.
3. The session was opened by Mr. Ricardo López de Haro y Wood (Spain), who welcomed the participants.

Adoption of the Agenda

4. The Council adopted the agenda as appearing in document C(Extr.)/11/1, after having noted that it would also examine, under item 4, the conformity of the legislation of the following States with the UPOV Convention (in the chronological order of the requests made to the Council): Russian Federation, Portugal and Colombia.

Examination of the Conformity of the Legislation of Ukraine with the UPOV Convention

5. Discussions were based on document C(Extr.)/11/2.

6. The Council noted that the Law of Ukraine on the Protection of Plant Variety Rights conformed to the 1978 Act of the UPOV Convention in its main features, and that any departure from that Act--including that referred to in paragraph 24 of document C(Extr.)/11/2--would be remedied by its Article 31, under which international treaties binding upon Ukraine would prevail over national legislation.

7. Several delegations expressed the wish that the Secretary-General should specify to the Government of Ukraine the provisions which, in the absence of Article 31, would conflict with the 1978 Act, so that the Government of Ukraine might correct its legislation, through an amendment of the Law or appropriate provisions in the Regulations, at the earliest possible opportunity, and so that the relevant administrative services might be able to apply the legislation without having to resort to Article 31. This wish was endorsed by the Council as a whole.

8. Pursuant to Article 32(3) of the 1978 Act of the Convention and subject to the action described in the preceding paragraph, the Council unanimously decided to take a positive decision in respect of the conformity of the Law of Ukraine on the Protection of Plant Variety Rights with the provisions of the said Act.

9. The Council asked the Secretary-General to advise the Government of Ukraine in accordance with the preceding paragraph.

**Examination of the Conformity of the Legislation of the Russian Federation with the UPOV Convention**

10. Discussions were based on document C(Extr.)/11/3.

11. It was highlighted in the course of the discussion that the Russian Federation was the first State to ask for advice on the conformity of its legislation with the 1991 Act and that it might be the first to become bound by it.

12. Questions were raised about the independence of protection from the measures regulating commerce; it was underlined in this respect that Article 29(1)(g)--which makes the sale of seeds without the required certificate [of certification] an infringement of the rights of the patent owner--would in effect improve the position of patent owners.

13. Some reservations were expressed by the Delegation of Japan about the explanations given in paragraph 4 of document C(Extr.)/11/3, but the spirit of the proposed procedure was accepted. The last sentence of the said paragraph was to be understood in the sense that two instruments of accession could be deposited simultaneously, but that the accession to the 1978 Act would become effective one month later and the accession to the 1991 Act sometime thereafter, one month after the condition specified in its Article 37(1) was met.

14. On the basis of the conclusion drawn by the Office of the Union in paragraph 37 of document C(Extr.)/11/3, the Council unanimously decided to take a positive decision in respect of the conformity of the Law of the Russian Federation on the Protection of Selection Achievements with the provisions of the 1978 Act, in accordance with Article 32(3) of that Act, and with the provisions of the 1991 Act, in accordance with Article 34(3) of that Act.

15. The Council asked the Secretary-General to inform the Government of the Russian Federation of the decision recorded in the preceding paragraph.

Examination of the Conformity of the Legislation of Portugal with the UPOV Convention

16. Discussions were based on document C(Extr.)/11/4.

17. At the request of several delegations, the Delegation of Portugal confirmed that the Civil Code and the Code of Administrative Procedure provided, respectively, for appropriate legal remedies for the effective defense of the rights conferred by the breeder's right and for procedures to appeal decisions by the competent authority.

18. Pursuant to Article 32(3) of the 1978 Act of the Convention and on the basis of the conclusion drawn by the Office of the Union in paragraph 36 of document C(Extr.)/11/4, the Council unanimously decided to take a positive decision in respect of the conformity of the legislation of Portugal on the protection of new varieties of plants with the provisions of the said Act.

19. The Council asked the Secretary-General to inform the Government of Portugal of the decision recorded in the preceding paragraph.

Examination of the Conformity of the Legislation of Colombia with the UPOV Convention

20. Discussions were based on document C(Extr.)/11/5.

21. It was stated that the third paragraph of Article 13 of Decree No. 533 of March 8, 1994, was a significant departure from both the 1978 and the 1991 Acts.

22. It was also noted that, subject to the departure referred to in the preceding paragraph and to an increase in the duration of protection--and although the request for advice had been made in relation to the 1978 Act--Colombian legislation would conform to the 1991 Act.

23. Following a short discussion, the Council decided, subject to the Office of the Union receiving from the Government of Colombia a confirmation of the effect of the accession procedure described in paragraph 15 of document C(Extr.)/11/5,

(i) to advise the Government of Colombia that upon the incorporation into its domestic laws of the text of the 1978 Act pursuant to its accession procedure, its laws would conform to the said Act so as to permit the deposit of an instrument of accession;

(ii) to ask the Secretary-General to inform the Government of Colombia of the decision recorded in the preceding subparagraph and of the necessity of deleting or amending in due course the third paragraph of Article 13 of Decree No. 533.

24. This report was unanimously adopted by the Council at the close of its session.

[Annex follows]

## ANNEXE/ANNEX/ANLAGE

LISTE DES PARTICIPANTS/  
LIST OF PARTICIPANTS/  
TEILNEHMERLISTE

(dans l'ordre alphabétique des noms français des Etats/  
in the alphabetical order of the names in French of the States/  
in alphabetischer Reihenfolge der französischen Namen der Staaten)

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André HEITZ, Director-Counsellor  
Makoto TABATA, Senior Program Officer

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