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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Third Extraordinary Session

Geneva, November 16 and 17, 1976

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The third extraordinary session of the Council of UPOV (hereinafter referred to as "the Council") was held in Geneva on November 16 and 17, 1976. The list of participants appears in Annex I of this document.
2. The session was opened by Mr. B. Laclavière (France), President of the Council, who welcomed the participants.

Adoption of the Agenda

3. The Council adopted the agenda as appearing in document C(Extr.)/III/1, after having agreed to deal first with items 5 and 6.

Adoption of the Report on the Fourteenth Session of the Consultative Committee and of the Report on the Tenth Ordinary Session of the Council

4. Discussions were based on documents CC/XIV/2 and C/X/11, respectively.
5. The Council unanimously adopted the reports after agreeing upon some changes. The corrected versions appear in documents CC/XIV/3 and C/X/12, respectively.

Examination of the Application for Accession to the UPOV Convention Submitted by the Republic of South Africa

6. Discussions were based on document C(Extr.)/III/2. In introducing this document, the Vice Secretary-General pointed out that the formalities of the application procedure provided for in Articles 32(2) and 33(1) of the Convention had been complied with and that the examination of the Plant Breeders' Rights Act, 1976, of the Republic of South Africa (hereinafter referred to as "South Africa") had convinced the Office of the Union that the provisions of that Act constituted sufficient basis for South Africa's accession to the UPOV Convention.

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7. The Delegation of the Netherlands asked for some details on the procedure for declaring a State to be a "Convention country" provided for in Section 1(vii) of the Plant Breeders' Rights Act, 1976, of South Africa. The Secretary-General replied, to the satisfaction of the Delegation of the Netherlands, that the section referred to was a typical provision in laws of States applying the dual system under which provisions of international treaties had to be transformed to provisions of the internal law in order to be applicable there and to be followed by the national courts. Consequently, as far as treaty obligations under a multilateral treaty were concerned, such States had to issue an order declaring, with respect to each of the other States party to that treaty, that both States were bound by the obligations under the treaty. The United Kingdom applied the same system as far as the UPOV Convention was concerned.

8. Referring to the fifth paragraph of the Note of October 6, 1976, from the Embassy of the Republic of South Africa to the Federal Political Department of the Swiss Confederation (document C(Extr.)/III/2, Annex II), in which the South African authorities had declared that the Convention would apply to the whole of the territory of the Republic of South Africa, the Delegation of the Netherlands asked whether "the whole of the territory" was deemed to include Namibia, sometimes referred to as South West Africa. The Representative of South Africa replied that such was not the case.

9. The Delegation of the Federal Republic of Germany stated that it wished to raise some minor points concerning the South African Plant Breeders' Rights Act, 1976, which, however, did not preclude the acceptance of the application of South Africa for accession to the UPOV Convention. The Council decided that those questions could be discussed, once South Africa was a member of UPOV, between the Office of the Union and the South African authorities.

10. After those remarks, the Council unanimously accepted the application of South Africa for accession to the UPOV Convention, it being understood that South Africa would not deposit its instrument of accession to the Convention before the Plant Breeders' Rights Act, 1976, had entered into force and the necessary number of species had become eligible for protection.

11. The President stated that, since the decision had been taken unanimously by the member States, the application was definitely accepted under paragraph IV of the Rules of Procedure of the Council (document UPOV/INF/4, Part II) and required no re-examination in a further session of the Council.

12. The Representatives of South Africa expressed their Government's warm thanks to the Delegations of the member States for the decision taken. They promised that any provisions in the South African legislation like Section 8(2) of the Plant Breeders' Rights Act, 1976, which might be found to hamper the full implementation of the UPOV Convention would be changed at the earliest possible opportunity. The President and the Secretary-General congratulated the Representatives of South Africa.

Request from the Plant Varieties Office of New Zealand to Examine the
Compatibility of the Legislation and Practice of that Country with the
UPOV Convention

13. Discussions were based on document C(Extr.)/III/3, in particular on the letter from the Plant Varieties Office of New Zealand to the Secretary-General of UPOV appearing in Annex I of that document.

14. The Council decided that it was the task of the Office of the Union to advise the authorities of New Zealand on the compatibility of that country's legislation with the UPOV Convention, and that the Council should not express its view on the matter for the time being. In replying to the request from the Plant Varieties Office of New Zealand, the Office should therefore amend paragraph 2 of the proposed answer appearing in Annex II of document C(Extr.)/III/3.

15. The Council invited the Office of the Union to defer the reply to the New Zealand authorities until the end of the year in order to allow the member States to study the legislation and practice of New Zealand with respect to plant breeders' rights and to transmit their comments, if any, to the Office of the Union.

Timetable for the Preparation of the UPOV Diplomatic Conference 1978

16. The Council agreed to the timetable for the preparation of the UPOV Diplomatic Conference 1978 which appears in Annex II of this document. It further decided, on the proposal of the Vice Secretary-General, that the fifth session of the Committee of Experts on the Interpretation and Revision of the Convention would be held from March 8 to 10, 1977 (and not, as agreed upon in its tenth ordinary session, from March 7 to 10), and that the first two days of that session would be held in the presence of the observer delegations of non-member States and international non-governmental organizations.

Contributions of the Member States

17. The Secretary-General informed the member States that the annual contribution of one of them, which was due in January 1976, was still outstanding and that difficulties had arisen in meeting current expenses. He urged the member States to pay their contributions for 1977 as punctually as possible in order to avoid serious financial problems at the beginning of that year. He added that the use of the Working Capital Fund entailed a reduction in the interest which had been budgeted as income for 1977.

ASSINSEL Meeting at Monterey

18. The President reported that he had proposed to the President of ASSINSEL the preparation of a brochure by that organization and UPOV to be presented to the participants of the ASSINSEL Meeting to be held in Monterey, California, in May 1977. The aim of the brochure, which might contain five to six pages, would be to make ASSINSEL and UPOV better known in the United States of America and to furnish to the American breeders arguments for advocating the accession of that country to the UPOV Convention. The brochure could contain two parts, one prepared by ASSINSEL and stating the interest of US breeders in the protection of new varieties of plants, the other prepared by UPOV and explaining the aims of UPOV as well as the advantages which the United States of America would obtain in joining UPOV. The President reported that the Executive Committee of ASSINSEL would decide on his proposal in a session to be held on December 9, 1976, in Denmark and that the President of ASSINSEL had proposed setting up a small joint drafting committee for the preparation of the brochure. He asked the Council to authorize the Vice Secretary-General to discuss the question with ASSINSEL and to represent the Union in the drafting committee, should it be set up. The Council agreed to the proposal.

19. When asked how UPOV would be represented at the ASSINSEL meeting in Monterey, the President reported that he had received an invitation which he would accept as representative of France. He would, however, speak in the capacity of President of the Council of UPOV. He expected that the Office of the Union would also receive an invitation.

CIOPORA Symposium in Budapest

20. The Vice Secretary-General informed the Council that CIOPORA planned to hold a symposium in Budapest on a date still to be fixed during the second half of April 1977. As reported by Mr. Royon, the Secretary-General of that organization, three main subjects were to be treated during that symposium: UPOV and its activities, the protection of plant breeders' rights in Socialist countries, and the aspects of plant breeders. On the first subject, CIOPORA would ask a representative of UPOV to read a paper. Mr. Royon would come to Geneva on Friday, November 19, 1976, to have a short discussion on the preparation of the symposium with representatives of the Office of the Union and, if possible, also with one or two representatives of UPOV member States. The Council took note of the foregoing information.

[Two Annexes follow]

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATENDENMARK/DANEMARK/DÄNEMARK

Mr. F. ESPENHAIN, Vid. ass., Plantenyhedsnaevnet, Tystofte, 4230 Skaelskør

Mr. F. RASMUSSEN, Director, Plantenyhedsnaevnet, Tystofte, 4230 Skaelskør

FRANCE/FRANKREICH

M. B. LACLAVIERE, Président du Conseil de l'UPOV, Secrétaire général du Comité de la protection des obtentions végétales, 11, rue Jean Nicot, 75007 Paris

M. C. HUTIN, Directeur de recherches, INRA, G.L.S.M., GEVES, La Minière, 78000 Versailles

GERMANY (FED. REP. OF)/ALLEMAGNE (REP. FED. D')/DEUTSCHLAND (BUNDESREPUBLIK)

Dr. D. BÖRINGER, Präsident, Bundessortenamt, Rathausplatz 1, 3 Hannover 72

Dr. G. SCHÜTZ, Ministerialrat, Ständige Vertretung der Bundesrepublik Deutschland in Genf, 28C, chemin du Petit-Saconnex, 1211 Genf 19

NETHERLANDS/PAYS-BAS/NIEDERLANDE

Mr. J.I.C. BUTLER, Chairman, Board for Plant Breeders' Rights, Postbus 104, 6140 Wageningen

Mr. K.A. FIKKERT, Lawyer, Ministerie van Landbouw en Visserij, Bezuidenhoutseweg 73, The Hague

SWEDEN/SUEDE/SCHWEDEN

Mr. S. MEJEGARD, Judge of the Court of Appeal, Svea Hovrätt, Fack, 10310 Stockholm

UNITED KINGDOM/ROYAUME-UNI/VEREINIGTES KÖNIGREICH

Mr. H.A.S. DOUGHTY, Controller, Plant Variety Rights Office, Whitehouse Lane, Huntingdon Road, Cambridge CB3 0LF

Mr. A.F. KELLY, Deputy Director, National Institute of Agricultural Botany, Huntingdon Road, Cambridge CB3 0LF

II. OFFICERS/BUREAU/VORSITZ

M. B. LACLAVIERE, Président

III. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

Dr. A. BOGSCH, Secretary-General

Dr. H. MAST, Vice Secretary-General

Dr. M.-H. THIELE-WITTIG, Administrative and Technical Officer

Mr. A. HEITZ, Administrative and Technical Officer

IV. PRESENT DURING THE HEARING
PRESENTS A LA SEANCE
ANWESEND WÄHREND DER ANHÖRUNG

- Mr. J.F. VAN WYK, Director, Division of Plant and Seed Control, Private Bag X 179,
Pretoria, South Africa
- Mr. J.U. RIETMANN, Attaché Agricole, South African Embassy, 59 Quai d'Orsay,
75007 Paris, France

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

C(Extr.)/III/4
ANNEX II

PROPOSED TIMETABLE FOR THE PREPARATION OF THE UPOV
DIPLOMATIC CONFERENCE 1978

1. Preliminary Remarks

(i) The Diplomatic Conference will elaborate and adopt a complete revised Act of the UPOV Convention, that is, a text comprising both those provisions of the Convention of 1961 and the Additional Act of 1972 which will be left unchanged and the amended provisions.

(ii) The decision on the States which should be invited to the Diplomatic Conference and those which should be authorized to vote will be taken at the latest in the eleventh ordinary session of the Council (October 26 to 28, 1977).

2. Preparatory Sessions

- (i) March 8 to 10, 1977: Fifth Session of the Committee of Experts on the Interpretation and Revision of the Convention; Tenth Session of the Working Group on Variety Denominations

The Committee will discuss with representatives of selected non-member States and professional organizations the proposals for amending the Convention, and will meet afterwards to adopt conclusions in the light of that discussion. It will make all the necessary recommendations as to the organization of the Diplomatic Conference.

The Office of the Union will be asked to prepare a draft of the preparatory document for the Diplomatic Conference containing the proposals for amendments and all the other documents required in connection with the Diplomatic Conference.

- (ii) March 11, 1977: Fifteenth Session of the Consultative Committee

The state of progress of the preparations will be examined by the Consultative Committee.

- (iii) September 20 to 23, 1977: Sixth Session of the Committee of Experts on the Interpretation and Revision of the Convention; Eleventh Session of the Working Group on Variety Denominations

The Committee, and possibly also the Working Group, will discuss the draft preparatory document containing the proposals for amendments and all the other documents required in connection with the Diplomatic Conference.

(iv) October 26 to 28, 1977: Eleventh Ordinary Session of the Council

After discussion in the Consultative Committee on October 25, 1977, the Council will take note of the documents and will authorize their distribution. (It does not seem appropriate that the Council should formally approve the revision proposals since any governmental commitment should be reserved for the Diplomatic Conference.)

The Council will approve the organizational arrangements, including the list of observers to be invited to the Diplomatic Conference.

(v) January 1978

The Secretary-General of UPOV will issue the invitations to the Diplomatic Conference and distribute the preparatory documents with the invitations. The invitations will ask the invited governments and international organizations to submit, in writing, their comments and suggestions, if any, before the end of June 1978.

(vi) September 1978: Seventh (final) Session of the Committee of Experts on the Interpretation and Revision of the Convention; Twelfth Session of the Working Group on Variety Denominations

The Committee, and possibly also the Working Group, will meet to discuss the comments and suggestions received from governments and international organizations.

3. Diplomatic Conference

The Diplomatic Conference will probably be held between October 3 and 26, 1978. Its duration remains to be fixed.

[End of document]

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21. This report was unanimously adopted by the Council at its meeting of November 17, 1976.

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Pretoria, South Africa

Mr. J.U. RIETMANN, Attaché Agricole, South African Embassy, 59 Quai d'Orsay,
75007 Paris, France

[Annex II follows]
[L'annexe II suit]
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C(Extr.)/III/5
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