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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Nineteenth Ordinary Session
Geneva, October 17 and 18, 1985

ANNUAL REPORT OF THE SECRETARY-GENERAL FOR 1984
(Sixteenth Year)

I. STATE OF THE UNION

1. In 1984, two States expressed their consent to be bound by the Revised Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the 1978 Act"), namely, Israel by the deposit, on April 12, 1984, of its instrument of accession and the Netherlands by the deposit on August 2, 1984, of its instrument of acceptance. Those two instruments brought the number of States bound by the 1978 Act at the end of 1984 to thirteen.

2. The Union currently comprises the following 17 member States: Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America.

3. The table appearing in the Annex to this report summarizes the position of the various States vis-à-vis the various Acts of the Convention, as at July 1, 1985.

II. SESSIONS

4. During 1984, the various bodies of UPOV met as described below. Unless otherwise specified, the sessions took place in Geneva.

5. The Council held its eighteenth ordinary session from October 17 to 19, 1984, under the chairmanship of Mr. J. Rigot (Belgium). The session was attended by representatives of member States and by observers from four interested non-member States, namely: Austria, Norway, Peru, Poland. The Food and Agriculture Organization of the United Nations (FAO) and the Commission of the European Communities (CEC) were also represented by observers.

6. The first day of the session was devoted, for the fifth year running, to a symposium. In addition to the representatives of member States, of non-member States (Austria, Chile, Egypt, Norway, Poland) and of the intergovernmental organizations (FAO, World Intellectual Property Organization (WIPO), CEC, European Patent Organization (EPO)), the Symposium was attended by almost 50 representatives of international non-governmental organizations (Association of Plant Breeders of the European Economic Community (COMASSO), International Association for the Protection of Industrial Property (AIPPI), International Association of Horticultural Producers (AIPH), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Chamber of Commerce (ICC), International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOFORA), International Federation of the Seed Trade (FIS)) and by more than 30 individual technical and legal experts.

7. The subject of the 1984 Symposium was "Industrial Patents and Plant Breeders' Rights - Their Proper Fields and Possibilities for Their Demarcation." The Symposium was opened by Mr. J. Rigot, President of the Council of UPOV. The Vice Secretary-General of UPOV then introduced participants to the subject matter of the Symposium, after which the following lectures were given:

(i) "The Nature of Patents of Invention and Their Application in the Case of Living Matter," by Professor François Savignon, Center for the International Study of Industrial Property (Centre d'études internationales de la propriété industrielle), Strasbourg, France;

(ii) "The Nature of Plant Breeders' Rights (Plant Variety Protection Law) and Their Demarcation from Patentable Inventions," by Dr. Peter Lange, Legal Adviser, KWS Kleinwanzlebener Saatzucht AG, Einbeck, Federal Republic of Germany;

(iii) "Developments in Biotechnology - Dream or Reality," by Sir Ralph Riley, DSc., FRS, Secretary to the Agricultural and Food Research Council, London, United Kingdom;

(iv) "The Legal Protection of Achievements of Biotechnology as seen by a Japanese Lawyer," by Professor Nobuo Monya, Seikei University, Tokyo, Japan.

The Symposium was concluded by a panel discussion and the proceedings were summed up by the Vice Secretary-General of UPOV. Records of the proceedings are reproduced in a special UPOV publication (No. 342), in English, French, German and Spanish.

8. The main decisions taken by the Council at its eighteenth ordinary session were:

(i) the report of the Secretary-General on the activities of the Union in 1983 and the first nine months of 1984, the report on his management and the financial situation of the Union in 1983, and the accounts of the Union for 1983, were approved;

(ii) the proposal that biennial budgets and medium term plans should be introduced with effect from 1986 was approved;

(iii) the program and budget for 1985 were established;

(iv) the reports on the progress made by the various committees and technical working parties, including their plans for future work, were approved;

(v) the proposal that the Administrative and Legal Committee should establish a Biotechnology Subgroup to examine the implications of developments in biotechnology for the production and legal protection of new varieties of plants was approved;

(vi) the following documents were adopted:

(a) Model Administrative Agreement for International Cooperation in the Testing of Varieties;

(b) Model Form for an Application for Plant Breeders' Rights;

(c) Model Form for an Application for a Variety Denomination;

(d) UPOV Recommendations on Variety Denominations;

(vii) the proposal that a second Meeting with International Organizations should be held in 1985 was approved;

(viii) the following officers were elected for a term of three years expiring at the end of the twenty-first ordinary session of the Council (1987):

(a) Mr. J. Guiard (France) was elected Chairman of the Technical Working Party for Agricultural Crops,

(b) Mr. F. Schneider (Netherlands) was elected Chairman of the Technical Working Party for Fruit Crops,

(c) Mr. B. Bar-Tel (Israel) was elected Chairman of the Technical Working Party for Ornamental Plants and Forest Trees,

(d) Dr. J. Habben (Federal Republic of Germany) was elected Chairman of the Technical Working Party for Vegetables.

9. The Consultative Committee held its twenty-ninth session on April 6, 1984, and its thirtieth session on October 16 and 19, 1984, both under the chairmanship of Mr. J. Rigot (Belgium). The twenty-ninth session was devoted mainly to:

(i) noting the adoption by the twenty-second session of the Conference of FAO, in November 1983, of an "International Undertaking on Plant Genetic Resources" and to discussing the implications of that Undertaking;

(ii) the final preparations for the 1984 Symposium on "Industrial Patents and Plant Breeders' Rights - Their Proper Fields and Possibilities for Their Demarcation" (see above);

(iii) adopting the arrangements made for the celebration in Paris, in 1986, of the 25th anniversary of the signing of the UPOV Convention.

The thirtieth session was devoted mainly to the preparation of the eighteenth ordinary session of the Council (see above).

10. The Administrative and Legal Committee held its thirteenth session on April 4 and 5, 1984, and its fourteenth session on November 8 and 9, 1984, both under the chairmanship of Mr. M. Heuver (Netherlands). Both sessions were attended by representatives from member States; in addition, an observer from the CEC attended both sessions and an observer from the European Free Trade Association (EFTA) attended the thirteenth session.

11. The sessions were devoted mainly to the following matters:

12. The Committee noted the latest developments regarding amendments to national plant variety protection legislation either introduced or planned by member States, particularly in relation to ratification of or accession to the 1978 Act of the UPOV Convention.

13. The Committee examined the results of the first Meeting with International Organizations, held in November 1983, at which a number of intergovernmental and international non-governmental organizations gave their views on three subjects:

- (i) minimum distances between varieties;
- (ii) international cooperation;
- (iii) UPOV recommendations on variety denominations.

14. The Committee concluded that, although it was evident from the discussions with the international organizations, and from the Technical Committee's evaluation of their outcome, that the question of minimum distances between varieties had given and would continue to give rise to certain difficulties, decisions regarding the extent of the difference that had to exist between a new variety and any other variety if the new variety was to qualify for a grant of plant variety protection could only be taken on a species-by-species basis.

15. As far as international cooperation in the examination of varieties was concerned, the Committee was of the opinion that the current practice of concluding bilateral agreements for such cooperation on the basis of a UPOV model agreement was the only realistic solution. It noted that the replacement of the network of bilateral agreements by a multilateral agreement would be difficult under the present circumstances. It felt, however, that the introduction of a system for the centralized filing of applications should be envisaged as soon as possible. It recommended certain amendments to the UPOV Model Form for an Application for Plant Breeders' Rights and a new UPOV Model Administrative Agreement for International Cooperation in the Testing of Varieties.

Those new models were subsequently adopted by the Council at its eighteenth ordinary session (see above). The Model Administrative Agreement is characterized by the fact that the authority of a Contracting State will in general take over the results of an examination performed by the authority of another Contracting State even if both authorities have suitable testing facilities for the species in question.

16. As far as the question of variety denominations was concerned, the Committee examined the request made by certain international organizations that the application of the 1973 Guidelines for Variety Denominations, which were in some respects outdated, should be discontinued, without their being replaced by an updated legal instrument of a similar character. The Committee could not share the view of those organizations and underlined once more the need for appropriate recommendations for the uniform interpretation and application of the provisions of Article 13 of the UPOV Convention which would be of assistance not only to the authorities of member States in their task of deciding on the suitability of variety denominations but also to breeders having to select and propose denominations for their varieties. It therefore recommended that the 1973 Guidelines for Variety Denominations should be replaced by recommendations (rather than guidelines) which should, however, take into account as far as possible the suggestions made by the international organizations. Subsequently, the Council, at its eighteenth ordinary session, adopted the UPOV Recommendations on Variety Denominations (see above). The Council also adopted at that session, on the recommendation of the Administrative and Legal Committee, a new Model Form for an Application for a Variety Denomination.

17. As foreseen in the report on the Union's activities in 1983 (document C/XVIII/2, paragraph 15), pilot projects for the centralized examination of proposed variety denominations have been started. The projects are being carried out by the Plant Varieties Office of the Federal Republic of Germany, in Hanover, for *Elatior Begonia* and by the Plant Variety Rights Office of the United Kingdom, in Cambridge, for *Chrysanthemum*. Once the projects are operational, each of those offices will make a complete examination for the other participating offices of the acceptability of variety denominations filed with those offices.

18. The Committee gave detailed consideration to the possibilities for harmonizing the lists of species of which varieties are eligible for protection in the various member States of the Union. It eventually decided to continue studying that question in 1985, with a view to developing a suitable recommendation for adoption by the Council.

19. Finally, the Committee decided on the composition of the Biotechnology Subgroup set up by the Council (see above). The Subgroup is to act under the chairmanship of Mr. S.D. Schlosser (United States of America) and will consist of experts from member States and of the Vice Secretary-General. The task of the Subgroup will be to make a comparative study of plant variety protection and patent systems in Europe, Japan and the United States of America. Once that study is completed, the Subgroup will consider the possibility of developing suitable recommendations regarding the most appropriate form of protection for the results of biotechnological developments relating to plant varieties. The Subgroup held its first session on November 9, 1984, and decided on the organization of its rather complex work.

20. The Technical Committee held its twentieth session on November 6 and 7, 1984, under the chairmanship of Dr. J.-M. Elena Rosselló (Spain).

21. The main business of the session was as follows:

22. The Committee adopted ten Test Guidelines, submitted:

(i) by the Technical Working Party for Agricultural Crops, for Broad Bean and Field Bean (TG/8/4), for Cocksfoot (TG/31/6), for Timothy (TG/34/6), for Meadow Fescue and Tall Fescue (TG/39/6) (all four being revisions of the existing Test Guidelines), and for Swede (TG/89/3);

(ii) by the Technical Working Party for Fruit Crops, for Strawberry (TG/22/6) (a revision of the existing Test Guidelines) and for Persimmon (TG/92/3);

(iii) by the Technical Working Party for Ornamental Plants and Forest Trees, for Freesia (TG/27/6) (a revision of the existing Test Guidelines) and for Crown of Thorns (TG/91/3);

(iv) by the Technical Working Party for Vegetables, for Curly Kale (TG/90/3).

23. As in previous years, the Committee examined a number of questions, brought to its attention by the five Technical Working Parties, that had arisen from the practical experience gained by the offices of member States when conducting tests for distinctness, homogeneity and uniformity in the framework of their examination of new varieties.

24. The question of minimum distances between varieties, which had been one of the major topics considered at the first Meeting with International Organizations (held in November 1983), was thoroughly discussed, as far as its technical aspects are concerned, by the Committee. It concluded that there was no need to modify the interpretation of the requirement in the UPOV Convention that a variety has to be "clearly distinguishable by one or more important characteristics," and that it would not be meaningful to indicate minimum distances in the Test Guidelines for each and every characteristic. It decided that, in principle, minimum distances could only be determined on a species by species basis. If existing characteristics did not enable a variety to be distinguished then, since the reduction of the minimum distances applied so far would be rather difficult, new distinguishing characteristics should be searched for. It further decided that minimum distances should not be enlarged for species where mutants occurred frequently, since it was not yet possible to prove that a mutant really was a mutant, and noted that, unless the UPOV Convention was changed, a variety owner could not be accorded a droit de suite in respect of a mutant from his variety. These conclusions were brought to the attention of the Administrative and Legal Committee which examined the same question in the framework of its terms of reference (see above).

25. Among the other questions that arose were: criteria for inclusion of characteristics in Test Guidelines; possible advantages of replacing the present UPOV criteria for the testing of distinctness in varieties of certain species by the over-years analysis method; harmonization of criteria used by member States to select control varieties for the testing of homogeneity; homogeneity requirements for species for which varieties can be produced

vegetatively or by seed; revision of the UPOV Model for a Report on Technical Examination to enable it to be used not only at the international level but also at the national level; harmonization of reference collections; testing of intergeneric, interspecific, synthetic and chemically induced varieties; comparison of several color charts; comparison of different electrophoretic methods; the phytosanitary status of material submitted for testing; compilation of a list of standard documents and books used in connection with variety testing; improvement of contacts with other bodies, both national and international, working on variety descriptions.

26. The Committee received reports on the progress of the work of the five Technical Working Parties, gave guidance on a number of questions raised by them and instructed them on the major aspects of their future work.

27. The Technical Working Party on Automation and Computer Programs held its second session in La Minière (France) from May 15 to 17, 1984, under the chairmanship of Mrs. V. Silvey (United Kingdom). The task assigned to the Working Party is that of studying the harmonization of automation and computer programs used by the authorities of the member States in carrying out the examination of new varieties and in generally administering their plant variety protection legislation. It continued its work on the preparation of an inventory of data bases and their structure and began studying the possibilities of linking computer centers to national data communication networks. It also discussed possibilities for the exchange of software. Other matters considered by the Working Party were: over-years analysis of examination results, harmonization of the criteria for selecting control varieties, standardization of the structure of information exchanged for the purpose of checking variety denominations and standardization of the layout of variety descriptions.

28. The Technical Working Party for Vegetables held its seventeenth session in Bet Dagan (Israel) from June 11 to June 15, 1984, under the chairmanship of Mr. F. Schneider (Netherlands). The Working Party completed its work on the Test Guidelines for Curly Kale and that document was subsequently adopted by the Technical Committee.

29. The Technical Working Party for Agricultural Crops held its thirteenth session in Lund (Sweden) from June 27 to 29, 1984, under the chairmanship of Dr. G. Fuchs (Federal Republic of Germany). In addition to its work on the five Test Guidelines for agricultural crops adopted by the Technical Committee, the Working Party completed the preparation of first drafts of the Test Guidelines for Cotton and Groundnut and of revisions of Test Guidelines for Red Clover, Rice and White Clover for submission to the professional organizations for comment.

30. The Technical Working Party for Ornamental Plants and Forest Trees held its seventeenth session in Hanover (Federal Republic of Germany) from August 7 to 9, 1984, under the chairmanship of Mrs. U. Löscher (Federal Republic of Germany). In addition to its work on the two Test Guidelines for ornamental plants adopted by the Technical Committee, the Working Party completed the preparation of first drafts of Test Guidelines for Elatior Begonia (revision), Heather, Lagerstroemia, Streptocarpus (revision) and Willow for submission to the professional organizations for comment.

31. The Technical Working Party for Fruit Crops held its fifteenth session in Valencia (Spain) from October 9 to 11, 1984, under the chairmanship of Dr. G.S. Bredell (South Africa). In addition to its work on the two Test Guidelines for fruit crops adopted by the Technical Committee, the Working Party completed the preparation of first drafts of Test Guidelines for Avocado, Kiwifruit, Olive and Quince for submission to the professional organizations for comment.

III. CONTACTS WITH STATES AND ORGANIZATIONS

32. As to the various contacts that the Office of the Union had during 1984, reference is made to the report on activities during the first nine months of 1984, which the Council has already approved at its eighteenth ordinary session (document C/XVIII/2 Add.; document C/XVIII/14, paragraph 78). In addition, the following items deserve special mention:

(i) in October, UPOV was represented at the thirty-sixth AIPH Congress, held in Chester (United Kingdom);

(ii) also in October, UPOV was represented at a meeting of government experts concerning biotechnology, convened by the Commission of the European Communities, held in Brussels;

(iii) in November, UPOV was represented at the first session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property, held in Geneva;

(iv) in December, UPOV was represented at a seminar on "Patent and/or Plant Variety Protection for Plant Varieties Developed by Genetic Engineering," organized by the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, held in Munich.

IV. PUBLICATIONS

33. In 1984, the Office of the Union published four issues of Plant Variety Protection - Gazette and Newsletter of the International Union for the Protection of New Varieties of Plants; the Records of the 1983 Symposium on "Nomenclature," in English, French, German and Spanish (UPOV publications 341 (E), (F), (G) and (S), respectively); ten Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability (for details, see the above report on the work of the Technical Committee); and regular supplements to the Collection of the Texts of the UPOV Convention and Other Important Documents Established by UPOV (UPOV publications 644 (E), (F) and (G), respectively), including, in particular, the following revised models: (i) Model Administrative Agreement for International Cooperation in the Testing of Varieties; (ii) UPOV Model Form for an Application for Plant Breeders' Rights; (iii) UPOV Model Form for an Application for a Variety Denomination; and the UPOV Recommendations on Variety Denominations (UPOV publication INF/10).

34. The Council is invited to approve this report.

[Annex follows]

ANNEX

MEMBERSHIP OF THE UNION (as at July 1, 1985)
(including signatory States that are not yet members)

State ⁴	CONVENTION OF 1961 (AND ADDITIONAL ACT OF 1972) ¹			ACT OF 1978		
	Date of Signature	Date of Deposit of Instrument ²	Date upon which State became bound	Date of Signature	Date of Deposit of Instrument ³	Date upon which State became bound
Belgium	December 2, 1961 (November 10, 1972)	November 5, 1976 (November 5, 1976)	December 5, 1976 (February 11, 1977)	October 23, 1978	-	-
<u>Canada</u>	-	-	-	October 31, 1979	-	-
Denmark	November 26, 1962 (November 10, 1972)	September 6, 1968 (February 8, 1974)	October 6, 1968 (February 11, 1977)	October 23, 1978	October 8, 1981	November 8, 1981
France	December 2, 1961 (November 10, 1972)	September 3, 1971 (January 22, 1975)	October 3, 1971 (February 11, 1977)	October 23, 1978	February 17, 1983	March 17, 1983
Germany (Federal Republic of)	December 2, 1961 (November 10, 1972)	July 11, 1968 (July 23, 1976)	August 10, 1968 (February 11, 1977)	October 23, 1978	-	-
Hungary	-	-	-	-	March 16, 1983	April 16, 1983
Ireland	-	-	-	September 27, 1979	May 19, 1981	November 8, 1981
Israel	-	November 12, 1979 (November 12, 1979)	December 12, 1979 (December 12, 1979)	-	April 12, 1984	May 12, 1984
Italy	December 2, 1961 (November 10, 1972)	June 1, 1977 (June 1, 1977)	July 1, 1977 (July 1, 1977)	October 23, 1978	-	-
Japan	-	-	-	October 17, 1979	August 3, 1982	September 3, 1982
<u>Mexico</u>	-	-	-	July 25, 1979	-	-
Netherlands	December 2, 1961 (November 10, 1972)	August 8, 1967 (January 12, 1977)	August 10, 1968 (February 11, 1977)	October 23, 1978	August 2, 1984	September 2, 1984
New Zealand	-	-	-	July 25, 1979	November 3, 1980	November 8, 1981
South Africa	-	October 7, 1977 (October 7, 1977)	November 6, 1977 (November 6, 1977)	October 23, 1978	July 21, 1981	November 8, 1981
Spain	-	April 18, 1980 (April 18, 1980)	May 18, 1980 (May 18, 1980)	-	-	-
Sweden	-	November 17, 1971 (January 11, 1973)	December 17, 1971 (February 11, 1977)	December 6, 1978	December 1, 1982	January 1, 1983
Switzerland	November 30, 1962 (November 10, 1972)	June 10, 1977 (June 10, 1977)	July 10, 1977 (July 10, 1977)	October 23, 1978	June 17, 1981	November 8, 1981
United Kingdom	November 26, 1962 (November 10, 1972)	September 17, 1965 (July 1, 1980)	August 10, 1968 (July 31, 1980)	October 23, 1978	August 24, 1983	September 24, 1983
United States of America	-	-	-	October 23, 1978	November 12, 1980	November 8, 1981

1 the figures in brackets refer to the Additional Act of 1972

2 of ratification if the State has signed the Convention or the Additional Act, as the case may be; of accession if it has not done so

3 of ratification, approval, acceptance or accession

4 signatory States that are not yet members underlined