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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-first Ordinary Session
Geneva, October 15 and 16, 1987

DETAILED 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 twenty-first ordinary session in Geneva on October 15 and 16, 1987.
2. The session was presided over by the President of the Council, Mr. S.D. Schlosser (United States of America).

The President welcomed the participants, especially the representatives of States not members of UPOV and those of intergovernmental organizations.

3. The list of participants is given in annex I to this report.
4. The indented paragraphs are taken from the report on the decisions of the Council, which the latter adopted at its meeting on October 16, 1987 (document C/XXI/12).

Adoption of the Agenda

5. The Council adopted the agenda as appearing in document C/XXI/1 Rev. 2.

Situation in the Legislative, Administrative and Technical Fields

6. The Council noted the declarations made under ~~this~~ agenda item.

The most significant information provided under this agenda item is recorded below.

a. Statements by the Representatives of Member States

7. South Africa.— With regard to legislation, protection was extended to 12 taxa (Agroticum, Savoy cabbage, tall fescue, curly kale, fodder kale, fodder radish, rape, rescue grass, Rhodesgrass, Smuts Digitaria, swede and teff) by Regulations dated November 14, 1986.

8. South Africa is in the process of negotiating bilateral agreements on cooperation in examination. On the subject of examination, it has been noted that certain characteristics mentioned in the test guidelines, and above all example varieties, are not really suited to local conditions; work is therefore being done on adjustments. In certain cases characteristics should be added; the Technical Working Parties will be informed in good time of those characteristics once they have been evaluated. It should moreover be noted that the experts from South Africa have taken a very active part in the development of test guidelines for tropical and subtropical fruit and ornamental species.

9. Between September 1986 and September 1987, 73 titles of protection were granted and 81 applications were filed, including 54 for local varieties. That is an indication of the growing interest in plant variety protection in South Africa.

10. Federal Republic of Germany.— In the course of the past year, the list of protected taxa has increased by four (sprouting broccoli, Exacum, white and yellow sweet clover) and completed with a clause according to which protection applies also to the hybrids of taxa mentioned in the list or of mentioned and unmentioned taxa. That is an important step towards the achievement of the objective written into Article 4(1) of the UPOV Convention. A further extension of protection is at present being considered with the professional organizations.

11. Negotiations with other member States on the subject of cooperation in examination have continued. A new agreement has been concluded with the United Kingdom; it provides that 27 taxa will be examined in the Federal Republic of Germany and 13 in the United Kingdom, and that examination reports will be exchanged in respect of 15 taxa. The agreements with Belgium, Denmark, Sweden and Switzerland have been extended to some other taxa.

12. In the course of the past year, 863 applications have been filed, including 423 for asexually reproduced ornamentals. As already mentioned at the previous session of the Council, the use of in vitro propagation methods is encountering more and more homogeneity problems, particularly with varieties of ornamentals for which protection is applied for. The effect of this is that homogeneity can only be properly examined by means of growing trials. For that purpose the Federal Office of Plant Varieties is asking for mother plants for certain species such as Pelargonium, African violet and Streptocarpus, and is carrying out propagation itself in order to produce the necessary plants.

13. Belgium.— There have been no new developments in connection with the draft Law approving the 1978 Revised Act of the Convention and amending the Law of May 20, 1975, on the Protection of New Plant Varieties. There has been no change in the implementing provisions.

14. The first-instance ruling of the Court of Nancy (France) of May 15, 1987 (see paragraph 39 below), has had repercussions in Belgium: the Belgian section of ASSINSEL published in the farming press at the beginning of August an attack on seed cleaning by contractors ("trriage à façon") and the abuses committed as a result of the fact that the breeders' rights are applicable only to the production of seeds for the purposes of commercial marketing.

15. The agreement on cooperation in examination with the Federal Republic of Germany has been extended to celeriac, rape and streptocarpus. The agreements with other States will have to be adapted to recent developments.

16. With regard to the use of the plant variety protection system by breeders, things seem to have settled down somewhat, although some of the after-effects of the 1985 extension of protection are still noticeable. Between January 1 and July 1, 1987, 111 applications for protection were filed and 37 titles granted. As of the latter date, 318 titles were in force; they concerned 38 of the 168 taxa eligible for protection. Since the system came into operation, a total of 744 applications have been filed for varieties of 48 taxa, and 494 titles have been granted.

17. Denmark.— The Committee entrusted with writing a draft revised Law on the Protection of Plant Breeders' Rights completed its work at the beginning of the year. It was not possible to put the draft before Parliament in its spring session, however; it is expected to be considered in the course of the session that has just started.

18. The draft is a compromise between the two sides involved, the breeders and the producers. Among the more important provisions, it should be mentioned that the proposed term of protection is 25 years for all species, that there is to be provisional protection with payment of license royalties into a closed account, and that there would be no means of charging trademark license royalties throughout the (theoretical) life of the breeder's rights. In addition, particular care has been taken to adapt the Law to prevailing legislative practice.

19. A new committee has been set up, composed of representatives of organizations of breeders and producers with an interest in plant variety protection. Its task will be to advise the Minister of Agriculture on general questions of plant variety protection, and it will undoubtedly be a forum for discussions on the revision of the Convention.

20. A study group has also been set up at Nordic Council level to consider matters concerning the protection of biotechnological inventions. It is composed of a patent expert and a plant variety protection expert from each country.

21. The Law on the Protection of Plant Breeders' Rights provides the possibility of having protection extended to the propagation of a variety effected not for the purposes of commercial marketing but for the professional purposes of the propagator. This provision has been applied to apple, and also to certain ornamental plants. It is about to be extended to strawberry, raspberry and blackberry.

22. Protection was extended to Chinese cabbage and buckwheat with effect from June 18, 1987. Another extension, to naked oats and gerbera, is about to be made.

23. A new agreement on cooperation in examination has been concluded with the Federal Republic of Germany with effect from February 1, 1987, with extension to buckwheat on June 15. It is hoped that revised agreements can shortly be concluded with France, the Netherlands and the United Kingdom, and that the agreements with Belgium, Sweden and Switzerland can thereafter be adapted.

24. The pilot project for the examination of varieties by breeders was put into operation this month for Christmas cactus. It will be remembered that it was set up in response to the wish that protection be extended to a greater number of ornamental species, and also as a means of estimating the cost of such an examination system as compared with the established one. The tests have been entrusted to three experienced producers and/or breeders, with a control test done by the official body. The descriptions are drawn up by those persons, by a person without any particular skills in variety examination and by a government expert. They are drawn up on the basis of the test guidelines, but it is also intended to have them drawn up without any predetermined plan or guiding principle. The descriptions will also be evaluated by members of the official body who do not usually do the testing. The statistical methods that could be used will also be decided upon.

25. An administrative reorganization will be taking place on January 1, 1988. A new department will be put in charge of examination for both agricultural and horticultural species, and it will also take care of the day-to-day management of the plant variety protection system; the Plant Variety Protection Office will be eliminated. General questions such as the amendment of legislation and cooperation in examination will come under a new department created within the central administration. This reorganization will not entail any substantial staff changes, so that there is no risk of a loss of continuity.

26. The use of the plant variety protection system by breeders is summarized in the table below:

	1986	1987 (up to September 17)
Number of applications for protection including:	189	179
- agricultural crops	70	
- vegetable crops	4	
- fruit crops	4	
- ornamentals	111	
Number of certificates issued including:	107	114
- agricultural crops	33	
- fruit crops	3	
- ornamentals	71	

27. The Representative of the Federal Republic of Germany pointed out that the UPOV Convention did not deal expressly with the matter of trademarks. It did however have implications for trademark law, which was also directly connected, on account of marketing practices, with the exercise of the rights deriving from the Convention. It invited the Delegation of Denmark to continue to inform the other member States on the development of the proposals put forward in that country.

28. Spain.-- Work continues within the Plant Variety Protection Board on the revision of the Plant Variety Protection Law; it is hoped that a draft will be submitted to the government authorities before the end of the year. Fees have been increased with effect from January 1, 1987.

29. A new Patent Law has come into force in the course of the past year. It provides that species covered by the Plant Variety Protection Law are excluded from patent or utility model protection.

30. At present 25 taxa are protected. There has been a proposal to extend protection to almond, red clover, lentil, melon, ryegrass and watermelon, and it is hoped that the extension may yet come into effect before the end of the year.

31. Spain continues to carry out examinations for itself. It will consider the possibility of entering into cooperation agreements when the financial problems have been solved.

32. Since the last ordinary session of the Council, 170 applications for protection have been filed, which brings the total since the entry into force of the Law to 1,771. During the same period 118 titles of protection have been granted.

33. United States of America.-- In the United States of America, statistics are being compiled on the activities of the Patent Office--based on the Plant Patent Law and the (utility) Patent Act--and those of the Plant Variety Protection Office.

34. With regard to the administration of the patent legislation, draft guidelines have just been published on the deposit of biological material. Those guidelines apply also to plants. In general it may be said that the requirements deriving from the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure apply also to plant material with respect to industrial patents for inventions in the plant world.

35. Guidelines will soon be published for variety denominations as well. They will apply both to varieties protected under the Plant Patent Law and to those protected under the (utility) Patent Act.

36. France.-- Protection was extended on July 24, 1987, to some 15 taxa in response to requests from French breeders or representatives of foreign (European) breeders. Another extension, in the field of ornamental plants in particular, is under consideration. However, the difficulty lies in the fact that, for a number of species, the varieties involved are reproduced by sexual means.

37. Examination fees were increased by 2.5% in January 1987, and are now 2,390 francs or 1,330 francs depending on whether species with great commercial potential or ornamental plants for amateurs (garden or pot-grown) are involved. They will be readjusted in 1988, within the limits of governmental authorizations, according to price developments.

38. The Committee for the Protection of New Plant Varieties is at present considering the possibility of introducing a new definition of the scope of

breeders' rights which, by being less precise, would make it possible to respond better to the evolution of technology and to the needs of breeders.

39. In a first-instance judgment dated May 15, 1987, the Court of Nancy ruled that seed cleaning by contractors ("trriage à façon")--that is, the fact of a firm or cooperative transforming a bulk crop of grain into sorted, graded and treated seed--is an infringement of breeders' rights. In view of the jurisdictional level involved, it is still too early to comment on the decision.

40. The Committee for the Protection of New Plant Varieties decided that a line forming part of the formula of a hybrid variety lost its novelty as soon as the hybrid variety was first marketed. The Paris Court of Appeal accepted that reasoning, but the Supreme Court of Appeal asked for reasons why a confidentiality clause covering lines, written into contracts for the production of the hybrid variety, could not be invoked against loss of novelty. The case was therefore referred back to an appeal chamber, which has just handed down its decision, on October 7, confirming the Committee's ruling.

41. In 1986, 729 applications for protection were filed and 316 certificates granted.

42. The Committee for the Protection of New Plant Varieties is approached more and more for participation in meetings concerned with the protection of biotechnological inventions in the plant world. No conclusion has yet emerged, but reflections abound, which in itself suggests that no form of protection existing at present is really suited.

43. Hungary.-- There has been no change in plant variety protection legislation and practice in 1987. However, the National Office of Inventions and the Institute for Plant Production and Qualification have published a book on "Qualification and Patent Protection of New Plant Varieties." A paper was presented at the conference of the Hungarian Society for Industrial Patents on the subject of patents for plant varieties and animal breeds, and it was followed by a lively discussion.

44. Between January 1986 and September 1987, 40 patent applications were filed for new plant varieties (two-thirds of national origin and one-third of foreign origin). At the end of August 1987 there were 56 patents in force; they related to 15 species.

45. Examinations were carried out in 1987 on varieties of maize, soft wheat, durum wheat, oats, white and blue lupin, sorghum, tobacco, onion and foxglove.

46. In reply to a question from the President, the Delegation of Hungary pointed out that the provisions on the protection of plant varieties applied mutatis mutandis to animal breeds, but that practical experience on the latter was still lacking.

47. Ireland.-- There has been no change in legislation or administration since the last session of the Council.

48. In the course of the past year, 20 applications have been filed and 23 titles granted. During the same period, 16 titles of protection have been abandoned. A total of 248 applications in due form have been filed since the introduction of the plant breeders' rights system, and 181 titles have been granted.

49. Israel.— Most of the administrative and examination work has now been computerized.

50. The Law applies to 94 taxa at present. With regard to applications for protection, there have been 186 filings. This year the majority came from local breeders, mainly of ornamental plants, whereas 76 were of foreign origin. Protection was granted to 66 varieties, four of them agricultural and vegetable crops and 62 ornamentals, including 46 of foreign origin.

51. Italy.— A Ministerial Decree dated March 16, 1987, extended protection to 26 taxa, bringing the total to 110.

52. Between August 1, 1986, and August 15, 1987, 163 patents were granted.

53. Japan.— There have been no legislative changes in the course of the past year.

54. As of September 30, 1987, 198 test guidelines have been adopted, 20 more should be by next March, and a further 11 are in preparation.

55. Between October 1, 1986, and September 30, 1987, 440 applications for protection were filed and 239 titles of protection granted, bringing the total to 1,433 (including 153 titles granted for foreign varieties).

56. In August a title of protection was granted to a major firm in Japan for a sterile male tobacco variety. The sterility, derived from a wild species, had been introduced into the variety by protoplast fusion.

57. New Zealand.— A considerable amount of work has been done in recent years on the revision of the plant variety rights legislation. An important stage has been reached with the promulgation, in February 1987, of the Plant Varieties Act 1987. Unfortunately the drafting of the new Implementing Regulations has fallen behind schedule, so that protection is still governed by the old texts.

58. A fee increase of about 26% came into effect on December 25, 1986.

59. During the year ending on September 30, 1987, the number of applications for protection fell by about 15%. The table below summarizes the position.

	Applications received	Titles granted	Titles in force
Arable crops	1	11	66
Fodder plants	6	4	15
Ornamentals	58	32	193
Fruit crops	9	6	31
TOTAL	74	53	305

60. In reply to an inquiry from the Delegation of Denmark, the Delegation of New Zealand announced that there had been a serious decrease in the number of applications relating to agricultural crops, which dropped from 17 to 1. It was difficult to explain the drop, which could well be entirely fortuitous. Yet one could also point to the increase in fees, the disenchantment of breeders with their protection--notably the scope of their rights--and the slump in the staple crop sector. With regard to the scope of rights, New Zealand was favorably disposed towards the principle of a revision of the Convention.

61. Netherlands.-- Once again, faster progress has been made in plant breeding techniques during the past year than in the search for adequate solutions for the protection of the intellectual property. The discussions that have been going on in various countries and at the international level show that there is a more and more marked trend towards adaptation of patent legislation and plant variety protection legislation, which should result in the near future in a balanced and uniform intellectual property protection system.

62. In the Netherlands, the discussions are taking place at the level of the Department of Agriculture, between the various departments concerned and also between the Department of Agriculture and users, that is, the members of the Netherlands Seeds and Seedlings Board. The discussions within the Board are on three main subjects:

- (i) Extension of protection to the marketed product;
- (ii) Availability of the protected variety as an initial source of variation for the purposes of variety creation;
- (iii) Scope of protection in the case of use of the variety by farmers (private use, non-commercial use).

63. The Netherlands Delegation considers the main task of UPOV to be that of promoting the protection of new varieties, and thereby satisfying the vital needs of breeders throughout the world. It has emerged from the various debates that two stipulations should underlie any legal solution: on the one hand the breeder has to be able to earn adequate remuneration for the development of his variety, which is a very costly operation, and on the other hand the availability of plants for the development, propagation and marketing of a new variety will always be an essential prerequisite of an active, stable agriculture. The UPOV Convention must therefore be adapted if necessary, apart from which many more States should become members of UPOV.

64. There is another debate going on in the Netherlands concerning the possibility of having examination carried out under official supervision on the premises of breeders or in a predetermined place. The certainty of the examination being objective and reliable will obviously be a prior condition, as will the further assurance that the rules of UPOV and the agreements on cooperation in examination will be respected.

65. The creation this year of a Center for Genetic Resources was an important event. Its task is to preserve genetic variability, which is an essential task for breeders throughout the world, and it has been given responsibility for the collection of samples of a number of species, including cabbage, onion, lettuce and beetroot.

66. On March 9, 1987, 26 taxa were added to the list of protected taxa. A further extension is in preparation.

67. The new agreement on cooperation in examination concluded with the Federal Republic of Germany is satisfactory. The negotiations on the updating of the agreements concluded with other States are continuing and in some cases are on the point of completion.

68. In the course of the past year 1,010 applications for protection have been filed, which represents an increase of almost 100% in relation to 1976 and 40% in relation to 1983. During the same period, 507 titles of protection have been granted.

69. United Kingdom.- There has been no major change in United Kingdom legislation during the past year. However, the Agriculture Ministers have asked for an evaluation to be made of examination systems for varieties and seeds. The report on the evaluation is expected to be handed in towards the end of the year.

70. As mentioned by the Delegation of the Federal Republic of Germany, a new cooperation agreement has been concluded with that country. It is hoped that similar agreements may yet be concluded before the end of the year with Denmark and the Netherlands, and that negotiations may be started with France.

71. In-depth discussions have taken place among those responsible for plant variety protection and for patents. They have resulted in an agreement that has yet to be sealed in an official document. The authorities of the United Kingdom firmly hope that this agreement will be reported at the international level, as it is important for international bodies not to stand aloof from developments occurring at national level.

72. In the course of the year that ended on March 31, 1987, 1,056 varieties were under examination, and 218 titles of protection were granted.

73. Sweden.- There has been no legislative change, apart from an increase in administrative fees.

74. The Swedish authorities will shortly be approaching the authorities of the other member States with a view to the broadening of cooperation in examination to accommodate a greater number of taxa.

75. On July 1, 1987, there were 244 protected varieties (122 varieties of agricultural crops, 15 vegetable varieties and 107 ornamental and fruit varieties). In the course of the year that ended on that date, 85 applications for protection were filed.

76. Switzerland.- It is hoped that the extension of the list of protected taxa, which has been planned for some time already, can actually take place in the spring of 1988. Subject to the approval of the Federal Justice Department, the list will be extended from 44 to 77 taxa. The agreements on cooperation in examination necessary for that extension have been concluded for practically all the taxa concerned.

77. To date, 420 applications for protection have been filed (including 35 subsequently withdrawn), and 265 titles of protection have been granted (including 40 that have already expired). This year 53 applications have been filed, including 46 relating to ornamental plants.

(b) Statements by the Representatives of Non-Member States

78. Australia.- After many years of effort, a Plant Variety Rights Act was finally approved by Parliament last March. On September 31, the Registrar and the members of the Advisory Committee responsible among other things for advising the Minister on the taxa to be protected were appointed.

79. The Law provides that all taxa may be protected. However, in view of the fact that barely three weeks have elapsed since the appointments, no decision has yet been taken regarding the first taxa to which the Law is to be applied. Examination will be carried out by the breeder, although the Registrar will be empowered by the Law to carry out examinations if necessary. With regard to novelty, the Law provides that varieties must not have been marketed in Australia before the filing of the application. There is therefore no period of grace.

80. The Law provides also for accession to UPOV, and it is hoped that it may take place rapidly.

81. The Delegation of New Zealand welcomed the introduction of plant variety protection in Australia. Close relations had been maintained throughout the years during which the Australian authorities had worked towards that objective. The authorities of both States wished to continue along the same path and to explore the further possibilities of close cooperation in the field of plant variety protection.

82. The President, speaking on behalf of all the member States and the Office of the Union, assured the Delegation of Australia and also those of the other non-member States that the member States and the Office of the Union were entirely willing to give their assistance in the various steps that were necessary for a country to accede to UPOV.

83. China.- China is participating for the first time in a meeting of the Council to familiarize itself with UPOV and its activities.

84. Morocco.- The Moroccan authorities are aware of the importance of the protection of new plant varieties as a means of promoting research investment and thereby improving agricultural production. Against that background, the Ministry of Agriculture and Agrarian Reform is in the process of organizing structures, arranging for staff training and preparing draft legislation on the protection of new plant varieties for presentation to Parliament.

85. Poland.- On October 10 last, the Parliament adopted the new Law that deals with all seed problems and, in that framework, with the protection of new plant varieties. The Law conforms to the 1978 Revised Text of the Convention.

86. The new Law enters into force on January 1, 1988. The final texts of the implementing orders are now being drawn up.

87. The Delegation of Poland considered that it would be possible, as of the present time, to embark on the official steps towards Poland's accession to the Convention, in other words to request the advice of the Council on the conformity of Polish legislation with the UPOV Convention, pursuant to the latter's Article 32. It considered however that, when those steps were taken, it would perhaps also be useful to invite a delegation from the Council and from the Office of the Union to Poland, to discuss certain legal and technical matters and to visit the department responsible for plant variety protection. It considered that such a visit could usefully take place before the next ordinary session of the Council.

88. The Delegation of Poland thanked the Council and the Office of the Union for their assistance in the drafting of the Law. The invitations to UPOV meetings and the literature provided had also been very useful in that connection.

89. The President expressed pleasure at the adoption of the Law by the Parliament of Poland, and commended the Polish Delegation for the work that it had done. He repeated the offer of cooperation that had already been made, and said that the sending of an UPOV delegation to Poland would be on the agenda of the next session of the Consultative Committee.

90. Portugal.- Portugal continues to follow the work and the development of UPOV with great interest. Portugal does not yet have any legislation on plant variety protection, but it does have legislation on the catalogue of varieties passed for marketing. This catalogue is open to varieties of seed-propagated agricultural and horticultural plants, and at present applies to 12 species, with 1,230 varieties on record. The catalogue is a first stage towards the protection of plant varieties inasmuch as the inclusion of a variety requires the agreement of the breeder or his representative, and the production and marketing of seed of unregistered varieties is prohibited.

91. Following Portugal's accession to the European Community, a growing interest in specific legislation to safeguard their interests has been noted among national and foreign breeders. Representations have been made to the Government: they have resulted in the creation of a working group responsible for submitting proposals. Moreover, the Ministry of Foreign Affairs has declared itself willing to take the necessary steps for accession to UPOV.

(c) Statements by the Representatives of Organizations

92. Food and Agriculture Organization of the United Nations (FAO).- The second session of the Commission on Plant Genetic Resources was held in March of this year. The objective of the International Undertaking embodied in Resolution 8/83 of the Conference of FAO is to ensure the preservation and utilization of genetic resources, that is, in practice, to assist States with plant improvement and seed production. The Undertaking is based on the universally accepted principle according to which genetic resources are part of the heritage of mankind and therefore have to be available. Article 11 of the Undertaking is flexible enough to allow very different national circumstances and legislation to be taken into account, and thereby to ensure that no State is excluded from the system.

93. The International Undertaking is not incompatible with the protection of new plant varieties; indeed a certain number of States that have endorsed it are members of UPOV. Moreover it was agreed at the second session of the

Commission that negotiations should begin with a view to working out a concerted interpretation of the Undertaking, which would contain express recognition of the rights of breeders.

94. It should however be mentioned that the question of patent protection for genes is of a very different nature, and will sooner or later have to be dealt with by FAO.

95. With regard to the International Fund for Plant Genetic Resources, it was mentioned in the discussions of the second session of the Commission that its main purpose should be to support the preservation and utilization of plant genetic resources in developing countries. The Fund will be financed by voluntary contributions. The first donation has been received from a foundation related to the General Motors corporation.

96. The Commission also embarked on a question that has yet to be made more specific, known by the expression "farmers' rights": it is considered that a large proportion of plant genetic resources have been conditioned and preserved by peoples, and that their contribution deserves to be recognized. It was suggested in this respect that one should abide by an expression such as "rights of farmers in the countries of the center of origin of the species."

97. It is considered at FAO that the increased amount of resources in developing countries earmarked for plant improvement could strengthen those countries' interest in accession to UPOV, which in turn would be beneficial to both UPOV and FAO.

98. European Community.- Two projects initiated last year within the Commission of the European Communities fall into UPOV's area of concern:

(i) The first has to do with a concerted, binding interpretation at Community level of certain provisions of the European Patent Convention, for the purpose of extending the patent system to biological material in the broadest sense of the term, or at least facilitating such extension.

(ii) The second has to do with the creation of a European Community breeder's right.

99. With regard to the second project, which comes into the sphere of competence of the Representative of the Communities, its purpose is to ensure that breeders can obtain protection with immediate, direct and uniform effect throughout the territory of the Community on the basis of a single application and a single decision. The characteristics of the project are the following:

(i) The proposed system is aligned on the provisions of the UPOV Convention. In particular it relies on Article 5(3) of the Convention, and leaves farmers free to produce their own seed. However, the latter provision will be made more specific in order to prevent over-use or misuse of the faculty.

(ii) Protection will be greatly enhanced. In particular: it is envisaged that the system will be applied to all botanical genera and species; protection will not necessarily be confined to reproductive or vegetative propagating material, as extension to other types of material is now planned in order to cover the movement of plant material of a variety protected within the Community from a country without protection; the duration of protection will be increased; protection will be offered for new methods of plant breeding.

(iii) The creation of a Community Office for the Protection of New Plant Varieties is planned. It will make use of the present structures of the various member States of the Community for the conduct of variety examinations.

(iv) The system provides for Community protection that relies on the Court of Justice of the European Communities.

(v) The system will be optional for breeders, who may continue to make use of national plant breeders' rights legislation.

(vi) It is planned that the system will be introduced by means of a legal enactment of the Community and not an international convention.

(vii) The system provides the possibility for non-Community States to participate under certain conditions. Its similarity in this respect to the single market concept as applied to the Community will play an important part.

100. The two projects are being developed in parallel and in cooperation by the competent departments. The objectives of each have been approved within the Commission. At the moment, certain questions relating to the practical demarcation of the rights protected according to the two systems are in the process of being settled. On completion of the work, details of the projects will be communicated to UPOV.

101. International Seed Testing Association (ISTA).- A standard reference method for the identification of wheat and barley varieties by means of electrophoresis on polyacrylamide gel came into effect on July 1, 1987.

102. The Working Group on Biochemical Methods for the Identification of Varieties held its third Symposium on the Identification of Varieties in Leningrad from September 1 to 8, 1987. The various methodic approaches were discussed (electrophoresis of reserve proteins, genetic markers, electrophoresis of enzymes, immunochemical methods, antibodies), and a broad range of species were considered. The Working Group decided to set up a pilot project. Further information is obtainable from issue No. 88 (October 1987) of the ISTA News Bulletin.

103. The third edition of the ISTA List of Stabilized Plant Names will be published shortly. It contains the names stabilized at the 21st Congress of ISTA in 1986.

(d) Documents of the Office of the Union

105. The Office of the Union thanked the representatives of the member States for their cooperation in the writing of the above documents. With regard to document C/XXI/6, it pointed out that the drawing up of a synoptic list of the taxa protected in the member States revealed some divergency in member States' interpretations of one and the same taxon designation. That could cause difficulties with the practical application of national legislation. It was therefore important to take particular care in the choice of such designations.

106. The Delegation of the Federal Republic of Germany thanked the Office of the Union, on behalf of all the member States, for the important work done on the drawing up of the documents concerned. With regard to document C/XXI/8, the Delegation noted that it allowed an assessment to be made of the taxa for which and the countries in which there was the most interest in protection.

It suggested that the Administrative and Legal Committee should consider the document in the interest of better application of the UPOV Recommendations on the Harmonization of the Lists of Protected Species, adopted by the Council at its twentieth ordinary session on December 2, 1986.

107. It was so decided.

Report by the President on the Work of the Thirty-Fifth and Thirty-Sixth Sessions of the Consultative Committee

108. The Council noted the report on the work of the thirty-fifth session of the Consultative Committee as given in paragraph 3 of document C/XXI/2 Add. and also the oral report by the President on the work of the thirty-sixth session.

109. The Council decided as follows on the basis of the recommendations made by the Consultative Committee:

(i) There would be no symposium in 1988 in connection with the twenty-second ordinary session of the Council; workshops on variety examination would be held instead in various countries in 1988 and 1989; the possibility of holding a symposium in 1989 was reserved;

(ii) The UPOV Recommendations on Variety Denominations were adopted as appearing in document C/XXI/11, subject to some drafting amendments in the German version;

(iii) The preparatory work for the revision of the Convention would be done by the Administrative and Legal Committee, which could create sub-groups to deal with special questions if necessary;

(iv) Mr. F. Gougé (France) was elected Vice-Chairman of the Administrative and Legal Committee for the remainder of the term of office of Mr. M. Simon (France), who has taken up other duties at national level;

(v) There would not be an UPOV stand at the EXPOFLORE Exhibition to be held in 1988, but the question of whether to have an UPOV stand at the 1989 EXPOFLORE Exhibition would be reviewed in the light of the 1988 EXPOFLORE Exhibition;

(vi) The principle that non-member States should be invited to UPOV meetings open to them only if they show, at official level, interest in participation was confirmed; the Office of the Union would extend invitations in future to Council and Administrative and Legal Committee sessions if it considered the said condition to be met and report post facto to the Consultative Committee; invitations of organizations would continue to require a decision of the Consultative Committee;

(vii) There would be no common UPOV/WIPO meeting on biotechnology and intellectual property and no joint invitation to the forthcoming session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property; a copy of the invitations to the said session issued by WIPO would be transmitted by the Office of the Union to the plant variety protection authorities of the member States to enable them to add plant variety protection experts to their national delegations.

110. On the subject of the Recommendations on Variety Denominations, the Council noted that Recommendation 4 could not have exhaustive character as desired by one participant in the third Meeting with International Organizations: it referred to grounds for the unsuitability of a proposed denomination that derived from other legal texts, and over which the plant variety protection departments had no control. It was pointed out that appellations of origin came into the category of the rights to which Recommendation 4 applied.

111. The Council thanked the Delegation of the Federal Republic of Germany for the hard work that it had done on the Recommendations on Variety Denominations.

Progress of the Work of the Administrative and Legal Committee

112. The Council unanimously approved the report on the progress of the work of the Administrative and Legal Committee and of its Biotechnology Subgroup as contained in document C/XXI/9. It also noted the oral report given by Mr. F. Espenhain (Denmark), Chairman of the Administrative and Legal Committee.

The oral report concerned in particular the work of the twenty-first session of the Committee, which was held on October 8 and 9, 1987, during the week preceding the Council session. During that session the Committee held a joint meeting with the Technical Committee to consider the question of minimum distances between varieties (meaning, in practice, the interpretation of the terms "clearly distinguishable" and "important characteristic" written into Article 6(1)(a) of the Convention) and the question of the examination procedure for hybrid varieties. The further consideration of those questions would be taken over by the Technical Working Party on Automation and Computer Programs. The Committee also noted the Technical Committee's decision that it was not competent to advise on the question of the list of priorities for the extension of protection to further genera and species. Finally it discussed the items on the agenda of the third Meeting with International Organizations.

113. The Council further noted with approval the plans for the future work of the Committee. It decided that the Committee should reconsider the question of the harmonization of national lists of protected taxa on the basis of document C/XXI/8 (statistics on the number of protected varieties) and consider establishing a subgroup comprising one delegate per member State in order to further progress in the matter. Council members were invited to take the necessary steps to facilitate the said work.

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

114. The Council unanimously approved the report on the progress of the work of the Technical Committee and of the Technical Working Parties as contained in document C/XXI/10. It also noted the oral report given by the Office of the Union in the absence of Dr. J.K. Doodson (United Kingdom), Chairman of the Technical Committee.

The oral report concerned in particular the work of the twenty-third session of the Technical Committee, which was held from October 6 to 8, 1987, during the week preceding the Council session. At that session the Committee had noted the reports submitted by the Chairmen of the Technical Working Parties and had taken decisions on the matters raised by them. It had adopted test

guidelines for 12 species (Alstroemeria (revised edition), leaf beet, Chinese cabbage, Christmas cactus, Easter cactus, gooseberry (revised edition), guava, Macadamia, mango, melon, regal pelargonium, and zonal pelargonium and ivy-leaved pelargonium (revised edition)). Finally, it noted the progress in areas such as distinctness examination (combined over-years analysis), homogeneity examination, electrophoresis and machine-vision techniques.

115. The Council further noted with approval the plans for the future work of these organs.

Report by the President on the Third Meeting With International Organizations

116. The Council noted the oral report by the President on the proceedings of the third meeting with international organizations.

117. The great majority of the points raised and proposals made in the course of the Meeting were already contained in the preparatory documents, notably document IOM/III/3. A new proposal that deserves to be mentioned was made by the representative of AIPPI on the subject of Article 5(3) of the Convention. The proposal concerned the introduction of the principle whereby equitable remuneration was paid to the breeder of a variety for the exploitation of a derived variety if the latter still embodied characteristics that were determinative for the first variety when that first variety was protected. ASSINSEL, for its part, suggested the drawing up of a glossary of technical and legal terms used in connection with varieties and related biotechnological inventions.

118. A discussion began on the question of the deletion of Article 2(1) of the Convention. It was pointed out that opinions were definitely divided, and that the mere counting of those opinions was valueless, as it was equally important to know the grounds for them. It was further pointed out that the deletion of Article 2(1) would not achieve the intended purpose of giving plant varieties access to patent protection; in that connection reference was made to the discussions of the fifteenth session of the Administrative and Legal Committee, which the Council had noted at its nineteenth ordinary session (see documents C/XIX/9, paragraphs 11 and 12, and C/XIX/13, paragraph 126), and also to the provisions of patent legislation and the rationality of the domestic legal order.

119. With regard to the "farmer's privilege," in other words the possibility that farmers had of producing their own seed owing to the fact that the right conferred on the breeder under Article 5(1) of the Convention related only to "production for purposes of commercial marketing" of seeds or seedlings, the Delegation of the Federal Republic of Germany pointed out that it caused different practices to evolve. In certain States the "privilege" was confined to production for the producer's own needs; in others, exchanges between farmers were allowed or tolerated; in still others, farm seed could even be disposed of for a consideration. A distinction should be made in the future between those various approaches.

120. The Delegation of Morocco recalled that the proposals for the strengthening of the breeder's rights, and among other things for the removal of the "farmer's privilege" would present developing countries with considerable difficulties, and probably would prevent them from acceding to UPOV: in developing countries part of the seed production had necessarily to take place at farm level, in view of the state of agricultural development and the supply

path followed by varieties and seed. Furthermore, the Delegation of Morocco had misgivings as to the possibility of protecting genes that were not the creation of a breeder.

121. The Delegation of the Netherlands and the Office of the Union assured the Delegation of Morocco that the member States were aware of the problem it had raised regarding the scope of breeders' rights, and that the Delegation's observations would be duly taken into account in the course of the work on the revision of the Convention.

122. Finally, the Delegation of the Federal Republic of Germany noted that there had been much discussion on questions relating to the concepts of "clearly distinguishable" and "important characteristic." It stressed that the question was not merely a technical question, but also a legal one, and a very important one at that, because it ultimately concerned a "perimeter of protection" concept.

Examination and Approval of the Program and Budget of the Union for the 1988-89 Biennium

123. Discussions were based on document C/XXI/4.

124. The Council adopted the draft program and budget as presented, with equal contribution units for 1988 and 1989, subject to the decisions recorded in paragraph 109(i), (iii) and (v) above. The value of one unit would thus be 43,512 Swiss francs.

125. The Delegation of Denmark suggested that in future the order of program objectives should be changed, with the objectives of general and permanent character being placed first. In addition, it congratulated the Office of the Union on the publication of the work marking the twenty-fifth anniversary of the UPOV Convention.

Calendar of Meetings in 1988

126. The Council adopted the calendar of meetings in 1988 as contained in document C/XXI/3 Rev. [A further session was subsequently added to the calendar by the Consultative Committee following the resignation of the Vice Secretary-General. The calendar of meetings, as updated, is given in Annex II to this report.]

Election of New Chairmen

127. The Council unanimously elected the following officers for a term of office of three years, expiring at the end of the twenty-fourth ordinary session of the Council, in 1990:

(i) Mr. D.P. Feeley (Ireland) as Chairman of the Technical Working Party for Agricultural Crops;

(ii) Dr. F. Laidig (Federal Republic of Germany) as Chairman of the Technical Working Party on Automation and Computer Programs;

(iii) Mr. B. Bar-Tel (Israel) as Chairman of the Technical Working Party for Fruit Crops;

(iv) Mr. C.J. Barendrecht (Netherlands) as Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

(v) Mr. R. Brand (France) as Chairman of the Technical Working Party for Vegetables.

Resignation of the Vice Secretary-General

128. The President announced that, by a letter addressed to him, Dr. Walter Gfeller, Vice Secretary-General, had resigned as from the end of February 1988.
129. The President, in his own name and in the name of all members of the Council, thanked Dr. Gfeller for his services rendered to UPOV during his tenure as Vice Secretary-General and wished him much success in his future career.
130. The Secretary-General, also in the name of the staff of the Office of the Union, expressed appreciation for the services of Dr. Gfeller and understanding for the family reasons which prompted his resignation. The Secretary-General also expressed his hope that, in his future positions, Dr. Gfeller would maintain contact with UPOV in connection with which he acquired a very vast experience thanks not only to his tenure as Vice Secretary-General but also, before that tenure and for 10 years, as the representative of Switzerland on the Council of UPOV.

Departure

131. The Council was informed that the appointment of Mr. Makoto Tabata as Associate Officer of UPOV would shortly be ending. The Council thanked him for the work he had done during his time at the UPOV Office, and offered him its best wishes for the future.

132. The indented paragraphs of this report were adopted by the Council at its meeting of October 16, 1987, and the remaining paragraphs have been adopted by correspondence.

[Annexes follow]

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATEN

BELGIUM/BELGIQUE/BELGIEN

M. W.J.G. VAN ORMELINGEN, Ingénieur agronome, Ministère de l'agriculture, Manhattan Center, 21, avenue du Boulevard, 1210 Bruxelles

DENMARK/DANEMARK/DAENEMARK

Mr. F. ESPENHAIN, Head of Office, Board for Plant Novelty, Tystofte, 4230 Skaelskor

Mr. A.B. JOSEFSEN, Head of Division, Board for Plant Novelty, Statens Planteavlkontor, Kongevejen 83, 2800 Lyngby

FRANCE/FRANKREICH

M. G. GEOFFROY, Sous-directeur des productions végétales, Ministère de l'agriculture, 3, rue Barbet de Jouy, 75007 Paris

Mlle N. BUSTIN, Secrétaire général, Comité de la protection des obtentions végétales, Ministère de l'agriculture, 11, rue Jean Nicot, 75007 Paris

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

Dr. D. BÖRINGER, Präsident, Bundessortenamt, Postfach 61 04 40, 3000 Hannover 61

Herr W. BURR, Ministerialrat, Bundesministerium für Ernährung, Landwirtschaft und Forsten, Rochusstrasse 1, 5300 Bonn

HUNGARY/HONGRIE/UNGARN

Dr. B. SZALÓCZY, Director General, Institute for Plant Cultivation and Qualification, Ministry of Agriculture and Food, P.O. Box 93, 1525 Budapest 114

Dr. J. BOBROVSZKY, Head of Legal and International Department, National Office of Inventions, P.O. Box 552, 1370 Budapest 5

IRELAND/IRLANDE/IRLAND

Mr. K. O'DONOHUE, Controller of Plant Breeders' Rights, Agriculture House, Kildare Street, Dublin 2

ISRAEL

Dr. M. HOFFMAN-HADAR, Chairman, Plant Breeders' Rights Council, Agricultural Research Organization, Volcani Center, P.O. Box 6, Bet Dagan 50 250

ITALY/ITALIE/ITALIEN

M. M.G. FORTINI, Délégué italien pour les accords de propriété intellectuelle, Ministère des affaires étrangères, Palazzo della Farnesina, 00100 Rome

Dr. B. PALESTINI, Primo Dirigente, Ministry of Agriculture and Forestry, D.G. Produzione agricola, 20, Via XX Settembre, 00187 Rome

JAPAN/JAPON/JAPAN

Mr. Y. BAN, Assistant Director, Seeds and Seedlings Division, Ministry of Agriculture, Forestry and Fisheries, 1-2-1, Kasumigaseki, Chiyoda-ku, Tokyo

Mr. N. INOUE, First Secretary, Permanent Mission of Japan, 10, avenue de Budé, 1202 Geneva, Switzerland

NETHERLANDS/PAYS-BAS/NIEDERLANDE

Mr. W.F.S. DUFFHUES, Director, Arable Crops and Horticulture, Ministry of Agriculture and Fisheries, Bezuidenhoutseweg 73, The Hague

Mr. M. HEUVER, Chairman, Board for Plant Breeders' Rights, P.O. Box 104, 6700 AC Wageningen

Miss Y.E.T.M. GERNER, Legal Adviser, Ministry of Agriculture and Fisheries, Bezuidenhoutseweg 73, The Hague

NEW ZEALAND/NOUVELLE-ZELANDE/NEUSEELAND

Mr. F.W. WHITMORE, Registrar of Plant Varieties, Plant Varieties Office, P.O. Box 24, Lincoln, Canterbury

SOUTH AFRICA/AFRIQUE DU SUD/SUEDAFRIKA

Mr. D.C. LOURENS, Deputy Director, Directorate of Plant and Seed Control, Department of Agriculture, Private Bag X179, 0001 Pretoria

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

SPAIN/ESPAGNE/SPANIEN

Dr. J.M. ELENA ROSSELLO, Jefe del Registro de Variedades, Instituto Nacional de Semillas y Plantas de Vivero, José Abascal 56, 28003 Madrid

SWEDEN/SUEDE/SCHWEDEN

- Mr. S. MEJEGÅRD, President of Division of the Court of Appeal, Armfelts-
gatan 4, 115 34 Stockholm
- Prof. L. KÅHRE, Vice-Chairman, Department of Plant Husbandry, Swedish Univer-
sity of Agricultural Sciences, Box 7042, 75007 Uppsala

SWITZERLAND/SUISSE/SCHWEIZ

- Frau M. JENNI, Leiterin des Büros für Sortenschutz, Bundesamt für Landwirt-
schaft, Mattenhofstrasse 5, 3003 Bern
- Dr. M. INGOLD, Adjoint de direction, Station fédérale de recherches agrono-
miques, Changins, 1260 Nyon

UNITED KINGDOM/ROYAUME-UNI/VEREINIGTES KOENIGREICH

- Mr. J. HARVEY, Controller, Plant Variety Rights Office, White House Lane,
Huntingdon Road, Cambridge CB3 0LF
- Mr. J. ARDLEY, Deputy Controller, Plant Variety Rights Office, White House
Lane, Huntingdon Road, Cambridge CB3 0LF

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE/VEREINIGTE STAATEN VON AMERIKA

- Mr. S.D. SCHLOSSER, Attorney, Office of Legislation and International
Affairs, Patent and Trademark Office, Department of Commerce,
Washington D.C. 20231

II. OBSERVER STATES/ETATS OBSERVATEURS/BEOBACHTERSTAATEN

AUSTRALIA/AUSTRALIE/AUSTRALIEN

- Mrs. K.H. ADAMS, Registrar, Plant Variety Rights, Department of Primary
Industry, NFF Building, Brisbane Ave., Barton A.C.T. 2600

BRAZIL/BRESIL/BRASILIE

- M. P.R. ALMEIDA, Premier secrétaire, Mission permanente du Brésil, 33, rue
Antoine-Carteret, 1202 Genève, Suisse

CHILE/CHILI/CHILE

- M. S. MONSALVE, Conseiller, Mission permanente du Chili, 56, rue de
Moillebeau, 1209 Genève, Suisse

CHINA/CHINE/CHINA

Mr. Z.Q. ZHANG, First Secretary, Permanent Mission of the Republic of China,
11, chemin de Surville, 1213 Petit-Lancy, Switzerland

MOROCCO/MAROC/MAROKKO

M. M. TOURKMANI, Chef du Service de contrôle des semences et des plants,
B.P. 1308, Rabat

M. R. LAKHDAR, Chef de la Division des contrôles techniques et phytosanitaires,
B.P. 1308, Rabat

Dr. K. ROHRMOSER, Chef du Projet GTZ, Contrôle et certification des semences,
B.P. 1308, Rabat

POLAND/POLOGNE/POLEN

M. J. VIRION, Chef-expert au Ministère de l'agriculture et de l'économie
alimentaire, Ministerstwo Rolnictwa, 30, rue Wspolna, Warszawa

Mr. K. DMOCHOWSKI, Head of the Laboratory in the Research Center on Cultivars
(COBORU), 63-022 Slupia Wielka

PORTUGAL

M. T.P. CORREA, Eng. Agronome, Ministère de l'agriculture, C.N.P.P.A. -
Tapada Ajuda, 1300 Lisboa

III. INTERGOVERNMENTAL ORGANIZATIONS/
ORGANISATIONS INTERGOUVERNEMENTALES/
ZWISCHENSTAATLICHE ORGANISATIONENEUROPEAN ECONOMIC COMMUNITY (EEC)/COMMUNAUTE ECONOMIQUE EUROPEENNE (CEE)/EURO-
PAEISCHE WIRTSCHAFTSGEMEINSCHAFT (EWG)

M. D.M.R. OBST, Administrateur principal, 200, rue de la Loi (Loi 84-7/9),
1049 Bruxelles, Belgique

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)/ORGANISATION DES
NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)/ERNAEHRUNGS- UND
LANDWIRTSCHAFTSORGANISATION DER VEREINTEN NATIONEN (FAO)

Mr. A.O. WIGNELL, Seed Certification Officer, Seed Service, Plant Production
and Protection Division, Via delle Terme di Caracalla, 00100 Rome, Italy

INTERNATIONAL SEED TESTING ASSOCIATION (ISTA)/ASSOCIATION INTERNATIONALE
D'ESSAIS DE SEMENCES (ISTA)/INTERNATIONALE VEREINIGUNG FUER SAATGUTPRUEFUNG
(ISTA)

Mr. H.U. SCHWARZENBACH, Executive Officer, P.O. Box 412, 8046 Zürich,
Switzerland

IV. OFFICERS/BUREAU/VORSITZ

Mr. S.D. SCHLOSSER, President
Mr. W.F.S. DUFFHUES, Vice-President

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

Dr. A. BOGSCH, Secretary-General
Dr. W. GFELLER, Vice Secretary-General
Dr. M.-H. THIELE-WITTIG, Senior Counsellor
Mr. A. HEITZ, Senior Officer
Mr. C. ROGERS, Legal Officer
Mr. M. TABATA, Associate Officer

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

Dr. T.A.J. KEEFER, Director and Controller, Budget and Finance Division
Mr. A. HARGREAVES, Head, Budget and Systems Section

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

DATES FOR MEETINGS IN 1988

Council

February 19 (eighth extraordinary session)
October 18 and 19 (twenty-second ordinary session)

Consultative Committee

April 22
October 17

Administrative and Legal Committee

April 18 to 21
October 11 to 14

Technical Committee

October 20 and 21

Technical Working Party for Agricultural Crops

July 5 to 8, Surgères, France

Technical Working Party on Automation and Computer Programs

June 7 to 9, Edinburgh, United Kingdom

Technical Working Party for Fruit Crops

June 29 to July 1, Hanover, Federal Republic of Germany
Subgroups on June 28 at the same place

Technical Working Party for Ornamental Plants and Forest Trees

June 20 to 24, Melle, Belgium

Technical Working Party for Vegetables

June 13 to 15, Wageningen, Netherlands

Workshops on Variety Examination

- for lettuce: June 16 and 17, Wageningen, Netherlands
- on examination techniques: September 27 and 28, Cambridge, United Kingdom

[others still to be decided]