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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Ninth Ordinary Session
Geneva, October 27, 2005

REPORT

adopted by the Council

Introduction

- *1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-ninth ordinary session in Geneva on October 27, 2005, chaired by Miss Enriqueta Molina Macías (Mexico), President of the Council.
2. The list of participants is reproduced in Annex I to this document.
3. The President extended a warm welcome to the Delegation of the European Community which, on July 29, 2005, had been the first intergovernmental organization to become a member of UPOV, and to the Delegation of Albania, a State which had become the sixtieth member of UPOV on October 15, 2005.
4. The Delegation of the United Kingdom, speaking on behalf of the Presidency of the Council of the European Union, and the Delegation of Albania, expressed their gratitude for the welcome which they had received on becoming members. The Statements made by those Delegations are reproduced in Annexes II and III of this document, respectively.

* An asterisk next to the paragraph number indicates that the text has been taken from the Record of the Decisions (document C/39/14).

Adoption of the Agenda

*5. The Council, having agreed to delete item 3 “Examination of the conformity of the legislation or proposed legislation of any State or organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention” and to add document C/39/13 “Rules governing the grant of observer status in UPOV bodies and access to UPOV documents” under item 4, adopted the draft agenda, as proposed in document C/39/1.

Report by the President on the Work of the Sixty-Ninth and the Seventieth Sessions of the Consultative Committee; Adoption of Recommendations, if any, Prepared by that Committee

6. The President informed the Council that the Consultative Committee had:

(a) received information on the status of the examination of laws of those States and organizations that had initiated the procedure for acceding to the UPOV Convention;

(b) endorsed the recommendations of the Consultative Group on Long-term Financial Issues of UPOV;

(c) agreed to a proposal for the establishment of a UPOV database for facilitating assistance in the development of plant variety protection according to the UPOV Convention;

(d) taken note that UPOV had successfully launched an on-line distance learning course “Introduction to the UPOV system of plant variety protection under the UPOV Convention” in September 2005 and had endorsed the proposed plans for distance learning courses in 2006;

(e) endorsed the publication of a UPOV Report on the Impact of Plant Variety Protection;

(f) taken note of information provided concerning biodiversity, plant genetic resources and plant variety protection and the developments in the Council for TRIPS concerning the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and

(g) decided to include an item in the draft agenda of its seventy-first session, to be held on April 7, 2006, in order to consider the issues raised by the breeders’ organizations at the Meeting on Enforcement of Plant Breeders’ Rights, which was held on the afternoon of October 25, 2005.

*7. The Council adopted the “Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies and Access to UPOV Documents”, as contained in document C/39/13, and decided to post them in the freely accessible area of the UPOV website.

Annual Report of the Secretary-General for 2004; Report on Activities During the First Nine Months of 2005

*8. The Council approved the report of the Secretary-General on the activities of the Union in 2004, provided in document C/39/2, and noted the report on activities during the first nine months of 2005, provided in document C/39/3.

9. The Council expressed its appreciation to the Office of the Union for the work it had carried out, and also to the World Intellectual Property Organization (WIPO) for the assistance it had provided.

Progress of the Work of the Administrative and Legal Committee

10. The Council noted the work of the Administrative and Legal Committee (CAJ) at its fifty-first session, held on April 7, 2005, as described in document C/39/9.

11. The Chair of the CAJ informed the Council that discussions at the fifty-second session of the CAJ had focused on: Draft explanatory notes on Article 15(1)(i) and (2) of the 1991 Act of the UPOV Convention: Acts done privately and for non-commercial purposes and provisions on farm-saved seed; Draft guidance concerning information, documents or material furnished by the breeder for examination purposes and for verifying the maintenance of varieties and draft recommendations to ensure the independence of those DUS examination centers which have, or have links to, breeding activities; Molecular techniques; Draft explanatory notes on Article 20 of the 1991 Act of the UPOV Convention concerning variety denominations; An approach for the development of information materials concerning the 1991 Act of the UPOV Convention; and developments concerning UPOV information databases.

12. The proposed draft agenda for the fifty-third session of the CAJ in April 2006 contained the following items: Molecular techniques; Draft explanatory notes on variety denominations under the UPOV Convention; Development of information materials concerning the UPOV Convention; Development of TGP documents; Enforcement of plant breeders' rights; UPOV information databases; and publication of variety descriptions.

Progress Report of the Work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

*13. The Council noted the work of the Technical Committee (TC), the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular, as provided in document C/39/10, and approved the programs of work set out in that document.

14. In relation to paragraph 12 of document C/39/10, the Delegation of Australia noted that paragraph 16 of document CAJ/52/4 provided a clearer explanation of the background of document TGP/3/1 Draft 2 "Varieties of Common Knowledge", namely that:

“16. [...] the document used as a basis for document TGP/3/1 Draft 2 “Varieties of Common Knowledge” had been adopted by the Council (document C(Extr.)/19/2 Rev. “The Notion of Breeder and Common Knowledge in the Plant Variety Protection System based upon the UPOV Convention”), the Enlarged Editorial Committee (TC-EDC) wondered whether the document went beyond what was contained in the General Introduction in terms of practical clarification in relation to varieties of common knowledge. [...]”

Interim Financial Statement for 2004; Arrears in Contributions as of October 21, 2005

*15. The Council noted document C/39/11 and the information that, due to a recent payment, Brazil had no arrears. No decision was called for under this agenda item.

Examination and Approval of the Draft Program and Budget of the Union for the 2006-2007 Biennium

*16. The Council approved the proposals contained in document C/39/4, draft Program and Budget for the 2006-2007 Biennium, including the amount of contributions from members, the proposed maximum ceiling of expenditure in the regular budget and the total number of posts for the Office of the Union.

17. The Council was informed of the United Nations Joint Inspection Unit (JIU) Report of February 2005, entitled “Review of Management and Administration in WIPO: Budget, Oversight and Related Issues”, which contained Recommendation 7 concerning remuneration related to the duties of the Director General of the World Intellectual Property Organization (WIPO) as Secretary-General of UPOV.

“JIU Recommendation 7:

“The General Assembly is invited to institutionalize the decision of the current Director General not to accept extra remuneration for his duties in relation to UPOV, as provided for in the relevant WIPO/UPOV Agreement. In the future, the Director General should not receive any extra remuneration for additional tasks that may be entrusted to the post.”

18. The Council noted JIU Recommendation 7 and the fact that the present Director General of WIPO and Secretary-General of UPOV had, on a voluntary basis, declined any salary or allowance for his functions as Secretary-General of UPOV.

Calendar of Meetings in 2006

19. The representative of the European Seed Association (ESA) mentioned that the date of the Annual Meeting of ESA of 2006 coincided with a CAJ session, and wondered whether it would be possible to find a solution.

20. The Vice Secretary-General noted that, in order to ensure the availability of the meeting rooms for UPOV sessions, it was necessary to make the reservations of the proposed dates well in advance. In order to allow interested organizations to coordinate their arrangements, the Vice Secretary-General announced that the provisional dates for the sessions of the UPOV bodies in 2007 were March 26 to 30 and October 22 to 26.

*21. The Council approved the calendar of meetings in 2006, as presented in document C/39/8, subject to consultations of the Office of the Union, the Chairperson of the Technical Committee and the Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT), with the Government of the Republic of Korea concerning their new offer to hold the next session of the BMT in 2006.

Election of New Chairpersons

*22. The Council elected, in each case for a term of three years ending with the forty-second ordinary session of the Council, in 2008:

(a) Mrs. Beate Rücker (Germany), Chairperson of the Technical Working Party for Agricultural Crops;

(b) Mrs. Sally Watson (United Kingdom), Chairperson of the Technical Working Party on Automation and Computer Programs;

(c) Mr. Alejandro Barrientos Priego (Mexico), Chairman of the Technical Working Party for Fruit Crops;

(d) Ms. Sandy Marshall (Canada), Chairperson of the Technical Working Party for Ornamental Plants and Forest Trees;

(e) Mr. Niall Green (United Kingdom), Chairman of the Technical Working Party for Vegetables;

(f) Mr. Henk Bonthuis (Netherlands), Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular.

Situation in the Legislative, Administrative and Technical Fields

23. The Vice Secretary-General reported that the Office of the Union had received a letter from the European Community proposing to improve the presentation of the information provided in document C/39/5 "Cooperation in Examination". In particular, the information on the possibility of purchasing DUS reports was not clearly explained in that document. It was suggested that proposals for improving document C/39/5 should be developed by the Office of the Union and submitted to the members of the Council for consideration by correspondence.

24. In relation to document C/39/6, the Vice Secretary-General reported that, following the accession of the European Community to UPOV, the title of the document had been changed to "List of the Taxa Protected by the Members of the Union".

25. With regard to document C/39/7 "Plant Variety Protection Statistics", the Vice Secretary-General recalled that UPOV used the information on plant varieties received through the WIPO questionnaire on intellectual property to avoid unnecessary duplication of requests. However, changes to the WIPO questionnaire in 2005 had caused confusion for contributors and, as a result, information from many UPOV members was invalid, or was not available from the WIPO source. In order to avoid such problems in the future, the Office of

the Union was considering whether to create its own questionnaire for the future. It was explained that all efforts would be made to minimize inconvenience for authorities, while ensuring that UPOV could obtain the necessary information. Members of the Union were requested to review document C/39/7 and to let the Office of the Union know of any errors in their data.

26. The Delegation of the United States of America requested some modifications to their General Note in document C/39/6 and provided a text to the Office of the Union for inclusion in the document to be prepared for the fortieth session of the Council, in October 2006.

27. The Council took note of documents C/39/5, C/39/6, C/39/7 and C/39/12 and the information provided by the Vice Secretary-General as well as the update requested by the Delegation of the United States of America. The Council agreed to the proposals concerning possible improvements to future versions of document C/39/5.

Other Matters

28. The Council noted that working documents would only be made available on the UPOV website and would no longer be distributed by mail. Delegates and representatives were encouraged to bring their own copies to the relevant sessions.

Retirement

29. The President noted that Mr. Karl Olov Öster (Sweden) would be retiring before the next session of the Council and thanked him for his service to the Union as a national delegate and in his capacity of President of the Council of UPOV from October 26, 2000, to October 3, 2003.

30. *The present report has been adopted by correspondence.*

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

I. MEMBRES / MEMBERS / VERBANDSMITGLIEDER / MIEMBROS

(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
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[L'annexe II suit/
Annex II follows/
Anlage II folgt/
Sigue el Anexo II]

ANNEX II

Presidency Statement (United Kingdom) to the Council of UPOV in October 2005 on the
Occasion of the European Community's Accession to the
UPOV 1991 Act of the UPOV Convention

Madam President,
Mr. Vice Secretary-General,
Distinguished Heads of Delegations,
Ladies and Gentlemen,

On behalf of the Presidency of the Council of the European Union, and on the occasion of the participation of the European Community in UPOV for the first time as a Contracting Party, I would like to express our thanks and appreciation for the welcome to UPOV which we have been given.

The Council of the European Union is the EU's main decision-making body. The Presidency of the Council rotates every six months, with each EU country in turn taking charge of the Council agenda: from July to December 2005, it is the turn of the United Kingdom.

The European Community deposited its instrument of accession with the Secretary-General of UPOV on June 29, 2005, and, one month later, became the fifty-ninth member of UPOV; it is the first intergovernmental organisation to have joined UPOV.

Community plant variety rights within the EC are administered by the Community Plant Variety Office (CPVO) which has its headquarters in Angers, France. The CPVO receives more than 2,600 applications a year for variety protection: it provides for one application, one examination and one title of protection that is valid and enforceable in all 25 members of the European Union.

The European Community looks forward to a long and productive relationship with UPOV, and hopes that its accession will lead to a strengthening of the system of plant variety protection and to a broadening of international cooperation in this area.

Madam President, thank you for the opportunity you have given to the European Union to express its thanks and appreciation.

[Annex III follows]

ANNEX III

Statement by the Republic of Albania

Madam President,
Ladies and Gentlemen,

On behalf of the Government of the Republic of Albania, I have the pleasure to express our greetings and appreciation for the invitation to participate in this important event and the warm welcome extended by UPOV as a new member of this international organization.

One of the priorities of the new Albanian Government in the agriculture and food sectors is the increase of agricultural production. In order to fulfill this objective, the development of the seed sector and improvement of plant varieties play an important role.

In such context, the Law for the “Plant Breeder’s Rights” was adopted in Albania in 2002. This Law was submitted to the Council of UPOV at the beginning of 2004 for advice on its conformity with the 1991 Act of the UPOV Convention. The Council, during the extraordinary session of April 2, 2004, decided that the Albanian Law conformed with the Convention and decided that the Albanian Government could deposit its instrument of accession. The Council also recommended some amendments. In the meantime, we have prepared implementing regulations. Our Ministry of Foreign Affairs deposited the instrument of accession on September 15, 2005, with the UPOV Office.

In accordance with the Council recommendation, draft amendments to the Law have been prepared. I would like to thank Mr. Barry Greengrass and Mr. Arnold van Wijk for the assistance given to our experts for legislative matters and implementation of the PBR system.

Finally, I would also like to thank the Secretary-General and the staff of the UPOV Office for the assistance in the accession procedure and the experts from those members of the Union who have shared their information and experience with us, and to assure the full commitment and cooperation of Albania in the future.

Thank you.

[End of Annex III and of document]