



C/43/16

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Third Ordinary Session
Geneva, October 22, 2009

REPORT ON THE DECISIONS

adopted by the Council

Introduction

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its forty-third ordinary session in Geneva on October 22, 2009, chaired by Mr. Doug Waterhouse (Australia), President of the Council.
2. The list of participants is reproduced in the Annex to this document.
3. The session was opened by the President who welcomed the participants.
4. The President informed the Council that the Republic of Slovakia, which had been a member of the Union since January 1, 1993, became bound by the 1991 Act of the UPOV Convention on June 12, 2009.
5. The Council took the decisions recorded below under each relevant agenda item.
6. The draft detailed report on the session will be submitted to the Council for adoption by correspondence.

Adoption of the Agenda

7. The Council adopted the draft agenda, as proposed in document C/43/1, after the inclusion of documents C/43/14 “Examination of the conformity of the Law on the Protection of Breeders’ Rights in New Varieties of Plants of the Sultanate of Oman with the 1991 Act of the UPOV Convention” and C/43/15 “Examination of the conformity of the Draft Law No. 4013 on the Protection of New Varieties of Plants of the Republic of Guatemala with the 1991 Act of the UPOV Convention”, under 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

Sultanate of Oman

8. The Council considered document C/43/14.

9. The Council decided to:

(a) take note of the analysis in document C/43/14;

(b) take a positive decision on the conformity of the Law on the Protection of Breeders’ Rights in New Varieties of Plants of the Sultanate of Oman with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows the Sultanate of Oman to deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of the Sultanate of Oman of that decision.

10. The Council noted the intervention made by the Delegation of Oman that the Government of the Sultanate Oman intended to deposit its instrument of accession to the 1991 Act of the UPOV Convention on October 22, 2009.

Republic of Guatemala

11. The Council considered document C/43/15.

12. The Council decided to:

(a) take note of the analysis in document C/43/15 and the information provided by the Delegation of Guatemala that intends to delete the second sentence of paragraph 4 of Article 43 of the Draft Law “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law”;

(b) subject to the introduction in the Draft Law of the changes identified in document C/43/15 concerning the correction of cross references and the deletion of “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law” in paragraph 4 of Article 43 of the Draft Law, take a positive decision on the conformity of the Draft Law No. 4013 on the Protection of New Varieties of Plants of 2009 of

Guatemala with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows that, once the changes recommended in document C/43/15 concerning the correction of cross references and the deletion of “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law” in paragraph 4 of Article 43 of the Draft Law, have been introduced in the Draft Law and the Draft Law is adopted and the Law in force, Guatemala may deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of Guatemala of that decision.

13. The Council noted the clarification provided by the Delegation of Guatemala at the seventy-eighth session of the Consultative Committee that, as a result of an omission in the translation, the word “or” was missing in the English translation of the definition of breeder in Article 3 of the Draft Law. The Council noted that, with that correction, the definition of breeder in Article 3 of the English translation of the Draft Law would correspond to the definition of breeder in Article 1(iv) of the 1991 Act of the UPOV Convention.

Report by the President on the work of the seventy-eighth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee

14. The Council noted the oral report by the President on the seventy-eighth session of the Consultative Committee, held on October 21 and 22, 2009, and in addition to those items that had been or would be considered by the Council, at its forty-third ordinary session, that the Consultative Committee had, in particular:

(a) noted that the Second World Seed Conference, held at the Food and Agriculture Organization of the United Nations (FAO), Rome, from September 8 to 10, 2009, had been jointly organized by UPOV, FAO, the Organisation for Economic Co-operation and Development (OECD), the International Seed Federation (ISF) and the International Seed Testing Association (ISTA). Copies of the leaflet “Declaration from the Second World Seed Conference” were distributed to the Consultative Committee at the session. It was suggested that delegations might, for example, wish to make copies of the leaflet available to their colleagues attending the FAO World Summit on Food Security, to be held in Rome from November 16 to 18, 2009. The Consultative Committee noted that one of the suggestions at the Conference for a “follow-up” action had been for the five organizations to initiate a project in a group of model countries with a view to developing an enabling environment to encourage plant breeding and the production and distribution of high quality seed for the benefit of farmers. The Consultative Committee agreed that the Office of the Union should participate in discussions to pursue such a project;

(b) noted that there had been no objections to the draft Note to be presented to the Third Committee of the General Assembly of the United Nations on October 21, 2009, concerning the Report of the Special Rapporteur on the Right to Food, which had been circulated for approval by correspondence and that the Note had been presented to the Third Committee of the General Assembly of the United Nations, as set out in Circular 1124;

(c) noted that, on the basis of guidance by the *Ad hoc* Working Group on the Financial Regulations and Rules (“FRR Working Group”), document UPOV/INF/4/1 Draft 2

“Financial Regulations and Rules of UPOV” will be prepared for the consideration of the Consultative Committee at its seventy-ninth session, to be held in Geneva in March 2010;

(d) noted that, on the basis of guidance by the FRR Working Group, proposals concerning an audit committee and internal audit provisions for UPOV will be prepared for the consideration of the Consultative Committee at its seventy-ninth session, to be held in Geneva in March 2010;

(e) in relation to the procedure for the appointment of a new Vice Secretary-General:

(i) considered the Report of the first meeting of the *Ad hoc* Sub-Committee of the Consultative Committee (“the *Ad hoc* Sub-Committee”) which was held on October 21, 2009;

(ii) considered the applications received for the post of Vice Secretary-General and selected the following candidates, listed in alphabetical order, to be interviewed by the *Ad hoc* Sub-Committee:

Mr. Peter John BUTTON (United Kingdom of Great Britain and Northern Ireland);

Mrs. Antonia IVAȘCU (Romania);

Mr. Raimundo LAVIGNOLLE (Argentina);

(iii) decided that a circular be issued to invite members of the Union to attend an informal meeting in the morning of February 1, 2010, in Geneva, in order to listen to 10 to 15 minute presentations by the three candidates selected for interview. The topic of those presentations would be “How to address challenges facing UPOV in the next five years”; and that the *Ad hoc* Sub-Committee would conduct the interviews of the three selected candidates in the afternoon of February 1, 2010;

(f) agreed that, in accordance with Section I, paragraph 3, of 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” (the “Rules), as set out in the Annex to document C/39/13, the request of CropLife International for the granting of observer status to the CAJ, the Technical Committee (TC) and the Technical Working Parties (TWPs) could not be considered further until it provided a copy of its statutes and demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”;

(g) agreed that, in accordance with Section I, paragraph 2, of 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 set out in the Annex to document C/39/13, the request of the European Farmers Coordination (CPE) for the granting of observer status to the Council could not be considered further until it demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”;

(h) agreed that, in accordance with Section I, paragraph 2, of 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 set out in the Annex to document C/39/13, the request of Association for Plant Breeding for the

Benefit of Society (APBREBES) for the granting of observer status to the Council, the CAJ and the TC could not be considered further until it demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”;

(i) agreed that, unless otherwise agreed by the Council, documents which set out UPOV policies or guidance, once approved by the relevant UPOV Committees, as appropriate, must be adopted by the Council. In cases where a rapid presentation of a UPOV policy or guidance is required, such that adoption could not be achieved by presentation of a document to the Council, approval would be sought by correspondence from the representatives to the Council of the members of the Union;

(j) agreed to propose to the Council that it endorses the practice whereby Test Guidelines are adopted by the Technical Committee (TC) on behalf of the Council on the basis of the program of work approved by the Council, without the individual Test Guidelines being submitted to the Council for review; and

(k) endorsed the organization of a “Seminar on DUS Testing”, to be held in Geneva from March 18 to 20, 2010, to which UPOV members and observers would be invited.

Adoption of documents

15. The Council considered document C/43/13.

TGP/12/1: Guidance on Certain Physiological Characteristics

16. The Council adopted document TGP/12/1 “Guidance on Certain Physiological Characteristics” on the basis of document TGP/12/1 Draft 8.

TGP/13/1: Guidance for New Types and Species

17. The Council noted the recommendation of the Consultative Committee at the seventy-eighth session of the Consultative Committee that it had recommended to the Council to adopt document TGP/13/1 “Guidance for New Types and Species” on the basis of document TGP/13/1 Draft 15, subject to the deletion of the second sentence of paragraph 4.1.1, which reads “As a result, novel variety types such as: complex hybrid variety systems with varying levels of plant-to-plant uniformity; clonal varieties derived from within sexually reproduced and more variable populations; and species where more variable seed propagated varieties in addition to hitherto highly uniform vegetatively propagated varieties, are increasingly being introduced.”.

18. The Council adopted document TGP/13/1 “Guidance for New Types and Species” on the basis of document TGP/13/1 Draft 15.

TGP/0/2: List of TGP Documents and Latest Issue Dates

19. The Council adopted document TGP/0/2 “List of TGP Documents and Latest Issue Dates” on the basis of document TGP/0/2 Draft 1.

UPOV/INF/12/2: Explanatory Notes on Variety Denominations under the UPOV Convention

20. The Council noted that the Administrative and Legal Committee (CAJ), at its sixtieth session held in Geneva on October 19, 2009, had endorsed the proposal by the Technical Committee (TC), at its forty-fifth session, held in Geneva from March 30 to April 1, 2009, that Class 202 in document UPOV/INF/12/1, Annex I, Part II “Classes encompassing more than one genus”, be extended to cover *Megathyrsus*, *Panicum*, *Setaria* and *Steinchisma*, and that Class 211 should be modified to cover all species of *Agaricus*, *Agrocybe*, *Auricularia*, *Dictyophora*, *Flammulina*, *Ganoderma*, *Grifola*, *Hericium*, *Hypsizigus*, *Lentinula*, *Lepista*, *Lyophyllum*, *Meripilus*, *Mycoleptodonoides*, *Naematoloma*, *Panellus*, *Pholiota*, *Pleurotus*, *Polyporus*, *Sparassis* and *Tricholoma*, and that the name of Class 211 should be changed to “Class 211 (Mushrooms).”

21. The Council adopted document UPOV/INF/12/2 “Explanatory Notes on Variety Denominations under the UPOV Convention” on the basis of document UPOV/INF/12/2 Draft 1.

UPOV/INF/13/1: Guidance on How to Become a Member of UPOV

22. The Council adopted document UPOV/INF/13/1 “Guidance on How to Become a Member of UPOV” on the basis of document UPOV/INF/13/1 Draft 2.

UPOV/INF/14/1: Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention

23. The Council adopted document UPOV/INF/14/1 “Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention” on the basis of document UPOV/INF/14/1 Draft 2.

Explanatory notes

24. The Council adopted the following documents:

(a) UPOV/EXN/GEN/1 “Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention” on the basis of document UPOV/EXN/GEN Draft 2;

(b) UPOV/EXN/NAT/1 “Explanatory Notes on National Treatment under the 1991 Act of the UPOV Convention” on the basis of document UPOV/EXN/NAT Draft 2;

(c) UPOV/EXN/NOV/1 “Explanatory Notes on Novelty under the UPOV Convention” on the basis of document UPOV/EXN/NOV Draft 3;

(d) UPOV/EXN/PRI/1 “Explanatory Notes on the Right of Priority under the UPOV Convention” on the basis of document UPOV/EXN/PRI Draft 2;

(e) UPOV/EXN/PRP/1 “Explanatory Notes on Provisional Protection under the UPOV Convention” on the basis of document UPOV/EXN/PRP Draft 2;

(f) UPOV/EXN/EDV/1 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” on the basis of document UPOV/EXN/EDV Draft 3;

(g) UPOV/EXN/EXC/1 “Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention” on the basis of document UPOV/EXN/EXC Draft 4;

(h) UPOV/EXN/NUL/1 “Explanatory Notes on the Nullity of the Breeder’s Right under the UPOV Convention” on the basis of document UPOV/EXN/NUL Draft 2;

(i) UPOV/EXN/CAN/1 “Explanatory Notes on the Cancellation of the Breeder’s Right under the UPOV Convention” on the basis of document UPOV/EXN/CAN Draft 2; and

(j) UPOV/EXN/ENF/1 “Explanatory Notes on the Enforcement of Breeders’ Rights under the UPOV Convention” on the basis of document UPOV/EXN/ENF Draft 3.

UPOV/INF/6/1: Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention

25. The Council noted that the “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention” (document UPOV/INF/6/1 Draft 3) was intended to provide assistance to States/ intergovernmental organizations wishing to Draft a law in accordance with the 1991 Act of the UPOV Convention. The Council noted that document UPOV/INF/6/1 would replace the “Model Law on the Protection of New Varieties of Plants” (UPOV Publication No. 842).

26. The Council adopted document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention” on the basis of document UPOV/INF/6/1 Draft 3.

Annual report of the Secretary-General for 2008; Report on activities during the first nine months of 2009

27. The Council noted the report of the Secretary-General on the activities of the Union in 2008, as provided in document C/43/2.

28. The Council noted the report on activities during the first nine months of 2009, as provided in document C/43/3.

Interim financial statement for 2008; arrears in contributions as of September 30, 2009

29. The Council took note of the interim financial statement for 2008, the status of payment of contributions and the Working Capital Fund participations as provided in document C/43/11 and noted the information that, as a result of recent payments, Brazil and Panama 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 2010-2011 biennium

30. The Council considered document C/43/4.

31. The Council agreed, as a result of the request of the Delegation of Japan at the seventy-eighth session of the Consultative Committee, to the deletion of the words “and Pacific” in the first indent of paragraph 39 (a) of document C/43/4.

32. The Council approved:

(a) the proposals contained in this Draft Program and Budget for the 2010-2011 Biennium, including the amount of contributions from members of the Union;

(b) the proposed maximum ceiling of expenditure in the regular budget; and

(c) the total number of posts for the Office of the Union.

Progress report of the work of the Administrative and Legal Committee

33. The Council noted the work of the CAJ, as provided in document C/43/9 and in the oral report by the Chair of the CAJ, and approved the work program for the sixty-first session of the CAJ, as presented in the oral report of the Chair of the CAJ.

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

34. 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/43/10, and approved the programs of work set out in document C/43/10.

35. The Council endorsed the practice whereby Test Guidelines are adopted by the TC on behalf of the Council on the basis of the program of work approved by the Council, without the individual Test Guidelines being submitted to the Council for review.

Calendar of meetings in 2010

36. The Council approved the calendar of meetings in 2010, as presented in document C/43/8, subject to the following additions:

(a) Informal meeting concerning the procedure for the appointment of the new Vice Secretary-General on the morning of February 1, 2010, in Geneva;

(b) Meeting of the *Ad hoc* Sub-Committee of the Consultative Committee on the afternoon of February 1, 2010, in Geneva;

- (c) “Seminar on DUS Testing”, to be held in Geneva from March 18 to 20, 2010; and
- (d) Meeting of the *Ad hoc* Working Group on the Financial Regulations and Rules of UPOV [date to be fixed].

37. The Council also noted the proposed dates of meetings in Geneva in 2011.

Election of the new President and the new Vice-President of the Council

38. The Council elected, in each case for a term of three years ending with the forty-sixth ordinary session of the Council, in 2012:

- (a) Mr. Keun-Jin Choi (Republic of Korea), President of the Council;
- (b) Ms. Kitisri Sukhapinda (United States of America), Vice-President of the Council.

39. The Council expressed its appreciation to the outgoing President, Mr. Doug Waterhouse (Australia), for the work carried out during his term.

Situation in the legislative, administrative and technical fields

40. The Council noted documents C/43/5, C/43/6, C/43/7 and C/42/7 Rev. and the presentation given by the Delegation of Japan on the East Asian Plant Variety Protection Forum. It noted that a revised version of document C/43/7 would be produced if further data for 2008 was received; no decisions were called for under this agenda item.

41. *This report was adopted by the Council at the close of its session on October 22, 2009.*

[Annex follows]

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

(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/
por orden alfabético de los nombres en francés de los miembros)

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