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C/28/13

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1505

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-eighth Ordinary Session Geneva, November 4, 1994

REPORT

adopted by the Council

Introduction

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-eighth ordinary session in Geneva on November 9, 1994, under the chairmanship of Mr. Ricardo López de Haro y Wood (Spain).
2. The list of participants is given in Annex I to this report.
3. The indented paragraphs are taken from the record of the decisions adopted in the session, which the Council adopted at the end of its meeting (document C/28/12). This draft report on the session will be submitted to the twenty-ninth ordinary session of the Council for adoption.

Opening of the Session

4. The session was opened by the President, who welcomed the participants.
5. The President expressed particular satisfaction at the presence of the delegation of Austria, a State which became a member of UPOV on July 14, 1994, of the delegation of Uruguay, a State whose accession to UPOV would take effect on November 13, 1994, and of the delegation of Argentina, whose instrument of accession to UPOV was on its way to Geneva (it was deposited on November 25, 1994).

6. The delegations of Argentina, Austria and Uruguay thereupon made declarations, the text of which is given in Annex II to this report.

Adoption of the Agenda

7. The Council adopted the agenda as given in document C/28/1, after having noted that item 4 did not call for any discussion, no State having submitted a request, under Article 32(3) of the 1978 Act or Article 34(3) of the 1991 Act of the UPOV Convention, for an advice on the conformity of its laws with the provisions of the Convention.

Adoption of the Report on the Twenty-seventh Ordinary Session

8. The Council adopted the report as given in document C/27/15 Prov.

9. The delegation of Italy requested that all reports and declarations made by representatives of States and organizations on the situation in the legislative, administrative and technical fields, including those published in a document submitted to the session, be reproduced in future in the report on the session. The Council agreed to the request.

Report by the President on the Work of the Forty-eighth Session of the Consultative Committee; Adoption of Recommendations, if Any, Prepared by That Committee

10. The President stated that the Consultative Committee had met in the morning and considered three main questions:

(i) It had taken note of the progress of the work on the envisaged central CD-ROM data base on plant variety protection and related matters, and approved the continuation of the project;

(ii) It had a first exchange of views on the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement," which constitutes Annex 1C of the Agreement Establishing the World Trade Organization (WTO)) and plant variety protection;

(iii) It had decided that the Office of the Union would continue to closely monitor developments in the field of biodiversity, plant genetic resources and plant variety protection, and would report to the subsequent session of the Consultative Committee.

11. The representative of ASSINSEL stated that ASSINSEL would be happy to participate in the work on the TRIPS Agreement. Concerning genetic resources, he mentioned that he had attended the extraordinary session of the FAO Commission on Plant Genetic Resources (November 7 to 11, 1994) and seen that the representatives of member States had not reacted to attacks against the plant variety protection system.

12. The representative of COMASSO indicated that ASSINSEL also intended to draft a document on the latter issue, and he expressed the wish that the document be transmitted to UPOV so that it could be taken into account in the framework of UPOV work.

Report by the Secretary-General on the Activities of the Union in 1993; Supplementary Report on Activities During the First Ten Months of 1994

13. The Council approved the report by the Secretary-General on the activities of the Union in 1993 given in document C/28/2.
14. The Council noted the report on the activities undertaken during the first ten months of 1994 given in document C/28/3.

Report by the Secretary-General on his Management During the 1992-1993 Biennium and on the Financial Situation of the Union at December 31, 1993

15. The Council unanimously approved the report by the Secretary-General on his management during the 1992-1993 biennium and on the financial situation of the Union at December 31, 1993, as contained in document C/28/4.
16. The delegation of the United Kingdom stated that the question of finances continued to be a source of worries and requested that the most prudent possible use of resources be made. The Secretary-General stated that these observations would be duly taken into account in the preparation of the draft budget for the next biennium.

Report on the Auditing of the Accounts of the 1992-1993 Biennium

17. The Council noted the report of the auditors on the accounts of UPOV for the 1992-1993 biennium contained in document C/28/4, annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in this matter.

Progress of the Work of the Administrative and Legal Committee

18. The Council noted the work of the Administrative and Legal Committee as described in document C/28/9.

Progress 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

19. The Council noted and approved the programs of work of the Technical Committee and the Technical Working Parties as given in document C/28/10 and its addenda.
20. The delegation of the Netherlands, referring to paragraph 3(i) of document TC/28/10 Add.2, asked about the legal consequences of the transfer of certain characteristics in an annex to the Test Guidelines. The delegation of Spain replied that the question of introducing electrophoretic characteristics into the Test Guidelines had led to detailed discussions. Since their acceptance as routine characteristics had given rise to reservations, it had been decided to single them out, thereby indicating that they could not in principle be used to establish

distinctness, but only to confirm or support a distinction suggested by differences recorded on “traditional” morphological or physiological characteristics. The delegation of the Netherlands declared that it was satisfied with this explanation, which was in line with its view that distinctness decisions should not be based solely upon electrophoretic characteristics.

Calendar of Meetings in 1995

21. The Council established the calendar of meetings in 1994 as reproduced in Annex III to this document.

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

22. The Council elected, in each case for a term of three years ending with the thirty-first ordinary session of the Council, in 1997:

(i) Mr. Bill Whitmore (New Zealand) President of the Council;

(ii) Mr. Ryusuke Yoshimura (Japan) Vice-President of the Council.

23. The Council expressed its appreciation to Mr. Ricardo López de Haro y Wood for the work he had carried out during his term.

Situation in the Legislative, Administrative and Technical Fields

a. Reports by Representatives of States (Member States and Observer States) and Intergovernmental Organizations

24. The Council noted the reports reproduced in document C/28/11 and its four addenda, and heard further reports. All reports are given in Annex IV to this document.

b. Data Assembled by the Office of the Union on the State of Protection in Member States and Cooperation Between Them

25. The Council noted the content of documents C/28/5, C/28/6 and C/28/7. It also noted that document C/28/6 had been prepared for the first time in Spanish as well.

26. This report was unanimously adopted by the Council at its twenty-ninth ordinary session, on October 17, 1995.

[Four annexes follow]

C/28/13

ANNEXE I/ANNEX I/ANLAGE I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS/
TEILNEHMERLISTE

(dans l'ordre alphabétique des noms français des États/
in the alphabetical order of the names in French of the States/
in alphabetischer Reihenfolge der französischen Namen der Staaten)

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André HEITZ, Director-Counsellor
Makoto TABATA, Senior Program Officer

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

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ANNEX II

DECLARATIONS BY THE DELEGATIONS OF ARGENTINA, AUSTRIA
AND URUGUAYArgentina

At its last sessions, the Council has been informed that the procedure for the accession of our country to the UPOV Convention was on the way. Today, we are pleased to say that the National Congress has adopted the law by which the Argentine Republic accedes to the International Convention for the Protection of New Varieties of Plants, adopted at Paris on December 2, 1961, and revised at Geneva on November 10, 1972, and October 23, 1978, and that the accession has been ratified recently.

We should like to underline once again the importance we attach to our participation in the Union, which will enable Argentine agriculture to benefit from the new varieties created in the member States of the Union and Argentine breeders to enjoy national treatment.

There are currently in Argentina 625 ownership titles, which relate to some 50 species.

I should like to thank the UPOV authorities for the assistance which they gave us all along the accession procedure and the delegations of States for the invaluable experience which they shared with us and also for the cooperation which they provided us.

Austria

I should like to thank you most sincerely for the reception given to us on the occasion of this twenty-eighth ordinary session of the Council, and to convey to you the greetings of the Federal Minister for Agriculture and Forestry, Dr. Fischler.

Austria is a country which has participated in the activities of UPOV as an observer for some decades. In fact, Austria contributed, in the fifties, to the initial work; however, a series of difficulties had subsequently arisen at internal level and prevented for many years the introduction of plant variety protection legislation.

The difficulties have now been overcome. I should like to thank in this connection the Office of the Union for the excellent relations which it has maintained with us and which enabled us to accomplish our task.

I can assure you that we will contribute to the work of UPOV in accordance with our possibilities and that we look forward to cooperating with our new colleagues in this forum and to sharing with them our experience.

Uruguay

I should like to thank you for the congratulations extended to us on the occasion of our accession to UPOV and for the cordial welcome extended to my country.

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I should like to take some minutes of your time to make a short declaration on behalf of Uruguay on the occasion of the recent deposit of its instrument of accession to the Union.

We should like to underline that our accession does not correspond to a protocolar participation; for Uruguay, this is a decision which is politically highly significant and carries with it the assurance and hope that we will meet our obligations towards the Union and that the latter will benefit our country.

We do not describe UPOV as being simply the best place for negotiations relating to the grant of breeders' rights; on the contrary, and this is generally accepted, UPOV is the depository of vital accumulated knowledge which enables it to advise countries when they define concrete actions, using thereby its technical experience and knowledge.

We find that the Union has an open attitude based upon a true capacity of making proposals, and that it can provide solutions based upon its undoubted credibility and its technical strength.

UPOV can count on the vigorous support of the Government of the Eastern Republic of Uruguay, which will endeavor to enable the Union to continue and develop its activities and thereby remain at the heart of the integration efforts in the field of plant breeders' rights.

In line with this objective, Uruguay actively contributes to the strengthening of subregional integration within ALADI and MERCOSUR and develops with Argentina, a sister nation which no doubt will become the twenty-seventh member of UPOV, a detailed strategy to have breeders' rights recognized in all States that are parties to the one or the other of the said agreements, and to have them recognized on the basis of harmonized legislation conforming to the UPOV Convention.

The law of Uruguay provides for the grant of breeders' rights in respect of all botanical genera and species; however, at the present time, the protection system is implemented in respect of 15 species only and an extension to four further ones is being contemplated. We encounter difficulties in granting protection to certain species, for instance to fruit crops and certain horticultural crops.

For this reason, and also to acquire experience on administrative procedures, we believe that we should inform the Council that Uruguay must strengthen and develop its protection system through a strengthening of its technical capacity in the above-mentioned fields, and rely on the cooperation of member States in the field of variety examination; this requires the assistance and support of the UPOV Secretariat and the member States.

The time has now come to express our deep gratitude to those who have extended to us a hearty welcome and have deployed untiring efforts to assist Uruguay and the other Latin-American countries.

Gratitude to the Secretariat General of UPOV and its staff, who provided through Mr. Barry Greengrass steadfast support to the initiatives taken on our continent in the field of plant breeders' rights and whose work has produced fruits which are now being reaped. Our thoughts and gratitude also go to Mr. Heribert Mast, who had guided our first steps in the field of protection and whom we remember feelingly.

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Gratitude to the Kingdom of Spain, which provided for more than a decade technical and economic assistance to the Spanish-speaking countries, and led us on the right course in relation to both protection and the national list of varieties admitted to trade and seed production.

The happy event which is the accession to the UPOV Convention adds to the knowledge and experience accumulated until today the impetus towards new horizons, and we join you in full awareness of our new responsibility.

[Annex III follows]

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ANNEX III

DATES OF MEETINGS IN 1995

presented in the order of the organsCouncil

October 19

Consultative CommitteeApril 28
October 18Administrative and Legal CommitteeApril 26 and 27
October 16 and 17Technical Committee

October 11 to 13

Technical Working Party for Agricultural Crops

June 20 to 22, Hanover, Germany

Technical Working Party on Automation and Computer Programs

June 7 to 9, Slupia Wielka, Poland

Technical Working Party for Fruit Crops

September 11 to 15, Wye College, United Kingdom

Technical Working Party for Ornamental Plants and Forest Trees

September 5 to 9, Wageningen, Netherlands

Technical Working Party for Vegetables

June 26 to July 1, Wageningen, Netherlands

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

September 19 to 21, Wageningen, Netherlands

DATES OF MEETINGS IN 1995

presented in the chronological orderApril

Wednesday, 26 and Thursday, 27 Administrative and Legal Committee

Friday, 28 Consultative Committee

June/July

Wednesday, 7 to Friday, 9 Technical Working Party on Automation and
Computer Programs

Tuesday, 20 to Thursday, 22 Technical Working Party for Agricultural Crops

Monday, 26 to Saturday, 1 Technical Working Party for Vegetables

September

Tuesday, 5 to Saturday, 9 Technical Working Party for Ornamental Plants
and Forest Trees

Monday, 11 to Friday, 15 Technical Working Party for Fruit Crops

Tuesday, 19 to Thursday, 21 Working Group on Biochemical and Molecular
Techniques, and DNA-Profiling in Particular

October

Wednesday, 11 to Friday, 13 Technical Committee
Monday, 16 and Tuesday, 17 Administrative and Legal Committee
Wednesday, 18 Consultative Committee
Thursday, 19 Council

[Annex IV follows]

ANNEX IV

REPORTS BY REPRESENTATIVES OF STATES AND ORGANIZATIONS
ON THE SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE
AND TECHNICAL FIELDS

I. MEMBER STATES

AUSTRALIA

The Plant Breeders' Rights Act 1994, which is based upon the 1991 Act of the Convention, was adopted by Parliament on October 9, 1994, i.e. three days after the adoption of the revised law of the United States of America, and entered into force on October 14, 1994. The law applies to all plant species, including fungi and transgenic plants.

The documents needed for the deposit of the instrument of accession to the 1991 Act are under preparation and should be finalized within the next four to six weeks.

This report offers the opportunity to thank the authorities from the United Kingdom and the United States of America, and also the Vice Secretary-General for their contribution to the refutation of the arguments used by environment groups in a relentless opposition campaign to the new law.

AUSTRIASituation in the Legislative Field

No date has been fixed yet for the adaptation of the law to the 1991 Act of the Convention.

The application and examination fees have been increased by the Ordinance No. 948/1994 of the Minister for Agriculture and Forestry with effect from January 1, 1994.

Protection was extended to five species (field bean, pea for use as grain for feeding purposes, oilseed rape, soya bean, sunflower) by the Ordinance No. 455/1994 of the Minister for Agriculture and Forestry with effect from July 1, 1994.

Cooperation in Examination

Agreements with France and Germany are under preparation.

Situation in the Administrative Field

The Federal Agricultural Institute (Bundesanstalt für Pflanzenbau)--which acts as Variety Protection Office (Sortenschutzamt)--has become part, on July 1, 1994, of the Federal Office

and Research Center for Agriculture (Bundesamt und Forschungszentrum für Landwirtschaft) instituted by Federal Law No. 515/1994.

BELGIUM

Situation in the Legislative Field

Adaptation of the Law to the 1991 Act of the Convention

An intensive activity was deployed at the end of 1991 and the first months of 1992 with regard to the preparation of a new plant variety protection law. The finalization of the Bill can now start since all obstacles have been removed (adoption of the Community Regulation on plant variety protection and signature--and for some of them publication--of the regulations on a budgetary fund redefining completely the financial mechanisms governing not only plant variety protection, but also related matters--plant protection, national lists of varieties, seed certification and control).

Financing

The redefinition of the financial mechanisms is close to completion. The law of March 17, 1993, creating a budgetary fund for the production and protection of plants and plant products was published in the "Moniteur belge" of May 28, 1993. The implementing regulations have been signed. Some of them have already been published in the "Moniteur belge." It is hoped that the others will be published still this year. The Council established in the framework of the budgetary fund will perhaps have to set a new tariff of plant variety protection fees and fees for related matters.

Extension of Protection to Further Genera and Species

A new Royal Decree has been assented to on October 1, 1993. It adds 16 taxa to those included in the previous version. The Service intends to extend protection to further species on the basis of requests made by the interested parties and after having published a notice to that effect in the next gazette (October 30, 1994).

Cooperation in Examination

Two agreements--with Denmark and France--are awaiting confirmation. New agreements or amendments to existing agreements may be concluded on the basis of the requests for extension of protection to further taxa.

Situation in the Administrative and Technical Fields

Changes in the Administrative Structure

The Service for the Protection of New Plant Varieties will become part of a new administrative structure within the Ministry of Agriculture, namely the administration for the quality of raw materials and the plant sector. This change is linked with a comprehensive

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reorganization of the Ministry and of its parastatal institutions due to become effective on January 1, 1995.

Amount of Activities--Status on August 31, 1994

From the entry into force of the system for the protection of new plant varieties to August 31, 1994, 1,877 applications for protection have been filed and 1,080 certificates issued, of which 520 are still in force. In 1993, 84 titles of protection were issued.

Developments in Related Fields of Activities

Community Protection

The Council Regulation (EC) No. 2100/94 of July 27, 1994, on Community Plant Variety Rights was published on September 1, 1994, in the Official Journal of the European Communities. Belgium actively participates in the discussions on the implementation of the Regulation and, in particular, on the setting-up and phasing-in of the Community Plant Varieties Office.

The creation of the Community protection system is expected to have an influence on the number of national applications since breeders will be able to choose between the Community and the national right.

Seed Certification and Control

The various applicable regulations and the structure of the control system for reproductive material in Belgium are being revised. The changes aim at simplifying the procedures with a view to achieving a greater efficiency and transferring responsibilities to the profession.

Furthermore, the Service for the Control of Seeds and Plants is being restructured in connection with the reorganization of the Ministry of Agriculture (see above); it will eventually belong to the same administrative unit as the Service for the Protection of New Plant Varieties.

Rules and Regulations in the Field of Genetic Engineering

Belgium participates in the discussions at European Community level on the simplification of the procedures for the tests on genetically modified plants contemplated in Council Directive 90/220/EEC on the release of genetically modified organisms into the environment.

A Royal Decree transposing the said Directive into national law and a Royal Decree for the creation of a system of scientific evaluation of biosecurity are in preparation.

CANADASituation in the Legislative Field

There are regulations in place for 23 categories of plants; it is expected that regulations will be implemented for an additional 16 categories (Begonia, blueberry, Clematis, creeping red fescue, Impatiens, Kentucky bluegrass, lentil, maple, mustard, peach, Pelargonium, plum, raspberry, Spiraea, timothy, Viburnum) in late fall. Most priority species will then be covered. The Regulations could subsequently be amended to enable all species to be eligible for protection.

The current legislation will eventually be amended with the intent of ratifying the 1991 Act of the Convention. However, it is anticipated that it will take several years before the amendment process will start, in order to provide time for industries to become familiar with the existing system.

Cooperation in Examination

At the present time, Canada does not participate in agreements for international cooperation in DUS testing. We have purchased results of tests and trials from plant breeders' rights offices in UPOV member States. To date, no general agreements have been formulated. However, it is anticipated that such agreements will be made in the future, if our Office continues to receive requests for purchase of results.

Achievements

Canada has been receiving applications for plant breeders' rights since November 6, 1991. As of October 26, 1994, 444 applications have been received and 118 rights granted.

Applications by crop kind are as follows:

African violet	1	Chrysanthemum	129	Pea	30	Rose	38
Apple	19	Corn	14	Pearl		Soybean	25
Barley	10	Flax	4	Poinsettia	10	Strawberry	15
Bean	1	Grape	3	Potato	92	Wheat	8
Canola	39	Oat	3	Potentilla	2		

Grants of rights by crop kind are as follows:

Canola	8	Flax	1	Potato	3	Soybean	4
Chrysanthemum	90	Pea	6	Rose	2	Wheat	3

Activities for the Promotion of Plant Variety Protection

In July 1994, Mr. Guillermo Sanguinetti, DIGRA Unidad de Semillas, Uruguay, visited the seed certification and plant breeders' rights offices. While in Canada, he studied the Canadian system of plant breeders' rights and visited field trials of some canola varieties.

DENMARKSituation in the Legislative FieldAdaptation of the Law to the 1991 Act of the Convention

It is expected that the Danish plant variety protection Act of 1987 will be revised by the end of 1995. Preparatory work with a view to drafting a first proposal has started.

Extension of Protection to Further Genera and Species

In 1994, the following seven genera and species were included under the plant variety protection Act:

Aubrieta Adans.
Catharanthus roseus (L.) G. Don
Echinodorus L.C. Rich. ex Engelm.
Malus toringo (Sieb.) Sieb. ex de Vriese var. *sargentii* (Rehd.) Schneid.
Microsorium L.
Pogonatherum paniceum (Beauv.) Hack.
Verbena L.

Cooperation in Examination

The existing bilateral agreements are under revision. New agreements with other member States are in preparation.

Situation in the Administrative Field

In 1993, 286 applications for plant breeders' rights were received, as follows:

Agricultural crops	85
Fruit	4
Vegetables	7
Ornamentals	187
Landscape plants	3

In 1993, the number of titles of protection issued was 274:

Agricultural crops	91
Fruit	5
Vegetables	5
Ornamentals	173

In the period from January 1 to September 14, 1994, 208 applications for protection were received and 198 titles of protection were issued.

Situation in the Technical Field

Cooperation with Estonia

During 1994, a number of experts from Estonia participated in courses on seed testing, seed certification and variety testing in Denmark. Lectures on seed legislation and variety testing were given in Estonia; the report on a study of the seed sector in Estonia is in preparation.

Testing of Agricultural Crops for Variety Listing

A new system for the testing of agricultural crops for value for cultivation and use (VCU) was introduced as from the autumn season of 1994. The new system includes a more intensive cooperation between the authorities, the extension services and the breeders. The part of the VCU testing which is statutory is under official supervision.

Genetically Modified Organisms

The Plant Directorate, Department of Gene Technology and Variety Testing, has been requested by the Ministry for Environment to comment on 175 European Union summary notifications concerning the experimental release of genetically modified plant. In addition, two applications for marketing approval in respect of genetically modified plants of oilseed rape and tobacco, respectively, have been examined. The application relating to oilseed rape is still under consideration.

Genetically modified varieties will enter the official variety testing in the near future. Work has been initiated to prepare for this development and allow the handling of those varieties. Persons filing an application for official testing of a genetically modified variety are currently requested to fill in a special form containing additional questions.

Activities for the Promotion of the Protection of Plant Varieties

A course on plant variety protection and patents has been organized by the Danish Patent Office and the Plant Directorate. The latter are jointly preparing a brochure on the possibilities for protecting plant material.

FINLAND

Cooperation in Examination

The bilateral agreement on technical cooperation in variety testing concluded with Germany has been extended to:

<i>Secale cereale</i> L.	rye
<i>Solanum tuberosum</i> L.	potato
<i>Triticum aestivum</i> L.	wheat

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An agreement has been concluded with the Netherlands and covers:

<i>Alstroemeria</i> L.	Alstroemeria
<i>Rosa</i> L.	rose
<i>Solanum tuberosum</i> L.	potato

Situation in the Administrative Field (Status on September 30, 1994)

Since October 15, 1992, the date of entry into force of the system for the protection of new plant varieties, 61 applications for protection have been filed and 20 certificates have been issued.

FRANCE

The legislative process which will enable France to protect the whole plant kingdom on the basis of current legislation is almost completed since the Conseil d'État has to give its advice before the end of the year. As in many other States, the revision of the law with a view to adapting it to the 1991 Act of the Convention has been initiated. It is hoped that the draft law will be submitted to Parliament in 1995, despite an unfavorable political calendar. The law has already been put on the legislative calendar, and a draft is being considered at governmental level.

GERMANY

The work on the draft for a new Plant Variety Protection Law based upon the 1991 Act of the Convention has been intensified, following the adoption, by the Council of the European Union, of the Regulation on Community Plant Variety Rights. Several hearings of interested circles have already taken place. It is expected that the draft will be submitted to Parliament in the course of next year.

The tariff of fees will be amended by ordinance at the end of 1994. The consideration of the corresponding draft by the competent ministries is almost completed. The testing fees for national listing will be increased by some 50% and the other fees relevant to plant variety protection by some 25%. In addition, the species will be partly reclassified.

A total of 1,200 applications were received during the reporting period. The applications increasingly relate to special purpose species, for instance aquarium plants (*Echinodorus*, *Microsorium*), plants for the production of renewable raw materials (*Euphorbia lagascae*, *Miscanthus sinensis*, *Reynoutria sachalinensis*) and aromatic and medicinal plants (*Foeniculum vulgare*, *Anethum graveolens*), and to the vast area of ornamental plants, with a great number of new species such as *Astilbe*, *Dicentra*, *Heuchera* and *Hypericum*. The large number of applications for this array of species may certainly be attributed to some extent to the extension of protection to all plant genera and species.

Under the training program for Eastern Europe, financed by the Ministry of Food, Agriculture and Forestry, some 30 experts from those countries visited the Federal Plant

Variety Office for a longer period of time to receive training on the conduct of tests for purposes of protection and national listing.

HUNGARY

Situation in the Legislative Field

The work on the revision of legislation with a view to its adaptation to the 1991 Act of the Convention and the Regulation of the Council of the European Union on Community Plant Variety Rights is continuing. No date has been fixed yet for the implementation of the 1991 Act.

Cooperation in Examination

A bilateral agreement for cooperation in examination has been concluded with the Czech Republic; it relates to 14 species. Agreements will be concluded in the near future with Poland and Slovakia. Preliminary discussions have taken place with Slovenia.

Situation in the Administrative Field

The annual number of applications amounted to 83; 59 patents have been granted.

Activities for the Promotion of Plant Variety Protection

The ring test on winter wheat, spring barley and pea was completed this year. The work will be continued by the same States, but on cross-pollinated species and hybrids.

The UPOV Subgroup on Maize met in Hungary on February 22 and 23, 1994. It was agreed to organize a ring test between the Czech Republic, France, Hungary and Slovakia with a view to harmonizing the testing procedures. The first results are encouraging; the activity will be continued in 1995.

IRELAND

Situation in the Legislative Field

Amendment of the Law and the Implementing Regulations--Adaptation to the 1991 Act of the Convention

A detailed study of the proposed amendments to the Plant Varieties (Proprietary Rights) Act, 1980, has been conducted to enable this country to ratify the 1991 Act of the Convention. The completion of the EC Regulation on Plant Variety Rights in Brussels has also enabled the position to be clarified at national level. In the course of the review of the Act, a two-day discussion session was held with colleagues from the United Kingdom to clarify difficult issues and problems. Legal consultation is now awaited before redrafting; it is anticipated that the Bill would be presented to the Dail in late 1995 or in 1996, depending on the legislative calendar.

Short-term Prospects; Problems Encountered

The prospects are difficult to describe in view of the uncertainties over the impact of the Community Plant Variety Rights Scheme at national level.

The trend of nursery people seeking protection in respect of new species of ornamental plants would seem to be continuing in this country. It is endeavored to accommodate these requests by preparing a new Statutory Instrument annually, extending protection to further genera and species.

Extension of Protection to Further Genera and Species

Extension of protection to seven new genera or species was completed on November 17, 1993 (S.I. No. 332 of 1993). A new instrument is currently under preparation to extend protection to a further seven.

Developments in Related Field of Activities

The Irish authorities are currently attending meetings in Brussels to determine the administrative system to be put in place in relation to the health and safety aspects as well as the registration of genetically modified plants.

ISRAEL

Situation in the Legislative Field

The final draft for the revision of the Plant Breeders' Rights Law has been completed, but has yet to be introduced in the Knesset for adoption. It is hoped that the 1991 Act of the UPOV Convention will be ratified next year.

The list of protected species presently comprises 165 taxa.

Cooperation in Examination

Israel has conducted extensive testing and submitted test results for Aster and Gypsophila to Denmark, Germany, the Netherlands and the United Kingdom. In turn, it has purchased test results for Poinsettia from Denmark and for Impatiens and Pelargonium from Germany.

Situation in the Administrative Field

During the past year, 175 applications have been received--the majority of them for ornamental varieties from foreign breeders--and 190 plant breeders' rights have been granted, bringing the total number of protected varieties to 1.300.

Miscellaneous

Israel is among the smaller group of member States participating in the setting up of the Central CD-ROM Data Base on Plant Variety Protection and Related Matters.

The Technical Working Party on Automation and Computer Programs held its twelfth session in Tel Aviv from April 12 to 14, 1994.

ITALY

Situation in the Legislative Field

The adaptation of plant variety protection legislation to the 1991 Act of the Convention is on the way.

Protection was extended to 36 further genera and species by ministerial decree of July 31, 1993, published in the official journal of December 29, 1993. A further extension is in preparation.

Situation in the Administrative Field

As a result of yet another political and administrative reorganization, the Ministry for Agriculture is now designated as "Ministry for Agricultural, Food and Forestry Resources."

JAPAN

Situation in the Legislative Field

Preparatory work is being undertaken to make the amendments to the Seeds and Seedlings Law that are necessary for its adaptation to the 1991 Act of the Convention.

The implementing Cabinet Order of the Seeds and Seedlings Law was amended in October 1993, to add 26 genera and species to the list of plants protected under the Law.

Cooperation in Examination

The Government of Japan is communicating with Governments of Denmark, Germany, the Netherlands and the United Kingdom for the establishment of agreements on cooperation in examination.

Activities for the Promotion of the Protection of Plant Varieties

The Japanese Government actively contributed to the National Seminars on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention held in China from September 15 to 22, 1994; it will likewise contribute to the national seminars planned to be held in Indonesia, Malaysia, Pakistan and the Philippines.

NETHERLANDS

Situation in the Legislative Field

Adaptation of the Law to the 1991 Act of the Convention

The advice of the Council of State on the draft law amending the Seed and Planting Material Act was received mid 1994. The draft law will be presented to the Council of Ministers as soon as possible. It is planned to submit it to Parliament still before the end of the year.

Case Law

The appeal against the decision to refuse the application for a plant breeder's right has been rejected in case number GRB 1215 ('Terpanyk'). The initial decision was based upon the absence of differences between variety 'Terpanyk' and variety 'Terstelle'; the application for 'Terstelle' had been rejected earlier on, based upon a lack of uniformity. The only difference between 'Terpanyk' and 'Terstelle' concerned uniformity. However, since uniformity is not regarded as a relevant factor for distinctness, the Board of Appeal decided that 'Terpanyk' belonged to 'Terstelle.' Consequently, as the novelty criterion under Article 29 of the Seed and Planting Material Act was no longer fulfilled when the application was filed for 'Terpanyk,' the initial decision to reject the application was upheld by decision of July 21, 1994.

Cooperation in Examination

No new agreements, nor extensions to existing agreements, have been signed during the last 12 months. The Netherlands will shortly conclude a bilateral administrative agreement for cooperation in the testing of varieties with Finland and Norway.

Situation in the Administrative Field

The investigations regarding the reorganization of the administrative structure for plant variety protection on the one hand and marketing authorization on the other were carried out in 1994.

In 1993, the number of applications and grants again showed an increase over the preceding year: 1,484 applications were received and 1,283 rights were granted. The examinations entrusted to foreign authorities rose from 39 to 43 percent. Furthermore, a substantial increase (by 48 percent) of the requests for information--coming from abroad--on tests conducted in the Netherlands can be reported.

In the period from January 1 to October 1, 1994, 1,095 applications were received and 690 rights were granted.

Situation in the Technical Field

In a meeting in which six member States of the European Union participated an agreement was reached on the centralization of the technical examinations designed to limit costs.

Activities for the Promotion of Plant Variety Protection

In September 1993, Mr. Bart Kiewiet, President of the Board for Plant Breeders' Rights, participated in a seminar organized by UPOV and the People's Republic of China and held in Beijing.

Experts from various countries visited the facilities of the Dutch Testing Center, the CPRO-DLO, in Wageningen.

From June 13 to 17, 1994, the Board for Plant Breeders' Rights received a delegation from the People's Republic of China. As the delegation wished to know more about the relations between the different parties in the Dutch plant breeding sector, the Board organized a program that included visits to, and discussions with, various public institutions and private companies.

NEW ZEALAND

Situation in the Legislative Field

The Government has agreed that a Bill to amend the Plant Variety Rights Act 1987 will be introduced to the House of Representatives in late 1994, provided the House has made satisfactory progress with the legislation already under consideration. The Bill will bring the Act into conformity with the 1991 Act of the Convention and also rectify certain problems that have become apparent. Drafting of the Bill is proceeding.

The 1987 Act was amended with effect from July 1, 1994, to provide protection for varieties or strains of any kind of fungus. Since that date, applications have been made for two varieties of a fungal endophyte of ryegrass (microscopic fungal organisms living in the seed and plants of ryegrass).

POLAND

Situation in the Legislative Field

A new Seed Industry Law has been prepared and submitted to Parliament for adoption. In its part concerning plant variety protection, it is adjusted to the 1991 Act of the Convention. It is expected that the Law will enter into force in 1995.

The amounts of fees for protection are revised twice a year. They are based on the price of rye fixed for farm rents. The currently applicable amounts have been published and

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forwarded to the offices of the member States and to the Office of the Union together with the Polish Plant Breeders' Rights Gazette.

The number of protected taxa will be increased to some 265 (some 35 more than at present). The list will be published by a decree of the Minister for Agriculture and Food Economy once the new Seed Industry Law has been adopted.

Cooperation in Examination

Until now, Poland has not entered into any bilateral agreement for technical cooperation with UPOV member States. The ring test described in the report for 1993 has been continued.

Situation in the Technical Field

The computer system for the identification of hordein alleles (according to the UPOV Guidelines) has been installed.

Activities for the Promotion of Plant Variety Protection

The program of assistance to certain States of the former Soviet Union has been continued.

Practical instruction on the practical aspects and the procedures of DUS testing was given to three specialists from the Russian Federation at COBORU from August 1 to 6, 1994. Two further specialists from that country will visit COBORU in 1995.

A conference on the testing of top and soft fruit varieties was organized at COBORU from August 23 to 25, 1994. Four specialists from Lithuania and one from Latvia attended it.

The President and the Vice-President of the All-Russian State Commission for Testing and Protection of Selection Achievements, Messrs. Vitaly Alexashov and Serguei Bessarabov, visited COBORU from June 6 to 9, 1994, and acquainted themselves with the activities of COBORU. An agreement relating *inter alia* to cooperation in examination was signed.

The Director of COBORU, Prof. E. Bilski, visited Latvia from July 11 to 15, 1994. An agreement relating *inter alia* to cooperation in examination between COBORU and the Latvian Research Center for Cultivar Testing was signed. From 1995 to 1998, ten Latvian varieties belonging to ten selected species will be tested at COBORU.

SOUTH AFRICA

Situation in the Legislative Field

The Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976) was revised in terms of the 1991 Act of the Convention. The new Act was submitted to the Cabinet for approval in February/March 1994.

The newly appointed Deputy Minister for Agriculture requested time to study the revised Act and for this reason it has been temporarily withdrawn from the list of proposed legislation submitted to the Cabinet for approval.

In an attempt to progressively extend the Act to include the entire plant kingdom, legal protection has been extended to the following plant genera and species: *Alstroemeria*, *Bougainvillea*, *Canna*, *Eucalyptus*, *Hebe*, *Hemerocallis*, *Hosta*, *Impatiens*, *Koeleria*, *Medicago truncatula*, *Petunia*, *Plumbago*, *Rosmarinus* and *Scabiosa*.

Cooperation in Examination

During the year under review no new agreements have been concluded nor are any amendments to existing agreements contemplated.

Situation in the Administrative Field

From October 1, 1993, to August 31, 1994, 99 plant breeders' rights were awarded and 230 applications were received. As at August 31, 1994, there were 807 valid plant breeders' rights and 382 applicants under consideration. Further details are given below.

	Agricultural Crops	Vegetables	Ornamental Plants	Fruit Crops
Applications received	44	33	118	35
Plant Breeders' Rights granted	48	34	1	16
Plant Breeders' Rights valid	267	126	275	139
Applications being considered	58	44	193	87

No changes have taken place in the administrative structure. Several problems have been encountered in which applicants failed to provide proxies, especially in the case of old varieties.

Situation in the Technical Field

Homogeneity problems continue to be encountered in the evaluation of grasses and lucerne.

Variety lists for small grains were established in May 1994.

Activities for the Promotion of Plant Variety Protection

South Africa has been invited by the Vice Secretary-General to participate in and support a seminar on the protection of new plant varieties to be held in Zambia in May 1995. A

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submission has been made to the Department of Agriculture in this regard and a reply is awaited.

SLOVAKIA

The Slovak Government has decided to ratify the 1991 Act of the UPOV Convention. It is expected that the final draft of the law would be available within a year.

Agreements for cooperation in examination have been signed with Hungary and Poland.

Protection now concerns 72 plant and one animal species. 372 applications are currently pending and 57 titles granted. Six applications were rejected and one withdrawn.

SPAIN

Preparatory work was done during the past year with a view to revising plant variety protection legislation.

A new legislative text to amend the schedule of plant variety protection fees is under consideration. It is planned to increase the fees substantially in order to achieve an improved balance of revenue and expenditure.

It has been decided to extend the protection system to chick-pea, *Prunus cerasifera* and *Prunus insititia*. An extension to cherry and plum is under consideration. In addition, the situation of apple varieties used as rootstocks will be clarified.

The Spanish Supreme Court has upheld the decisions taken on a number of applications for inbred lines of maize whose protection had been refused on the ground of lack of novelty.

During the past year, 209 applications for protection have been filed and 306 titles of protection issued; 980 titles are currently in force.

Various aspects of the question of protecting living matter and also the question of national and regional (European Union) norms for the protection of new plant varieties continue to arouse considerable interest.

Spain has pursued the training program for foreign experts having an interest in the technical aspects of and the procedures for plant variety protection and variety catalogues.

SWEDEN

The plant variety protection law has been amended with effect from July 1, 1994, with respect to the part on infringement.

Protection has been extended to seven further genera.

UNITED KINGDOMSituation in the Legislative FieldAdaptation of the Law to the 1991 Act of the Convention

Work has been taking place in the Office on proposals to further amend the Plant Varieties and Seeds Act 1964 in order to implement the 1991 Act of the Convention. The consultation document containing the proposals will be issued to industry bodies on November 18. It has not yet been decided whether a place will be allocated for the proposed Bill in the 1994-95 Parliamentary session, but drafting instructions have been completed subject to any changes arising out of the consultation process.

Extension of Protection to Further Genera and Species

Protection was extended to 75 genera and species on December 1, 1993.

Protection is being extended to the following genera and species:

Ornamentals

Aptenia cordifolia (L. f.) N.E. Br.
Aubrietia DC.
Begonia semperflorens
Diascia Link et Otto
Helipterum anthemoides DC.
Houttuynia Thunb. corr. Thunb.
Lathyrus odoratus L.
Lysimachia L.
Symphytum L.
Verbena L.

Vegetables

Allium porrum L. Leek
Brassica carinata A. Braun TexSel Greens

Cooperation in Examination

No new arrangements nor extensions to existing agreements have been signed during the last 12 months.

Trends in Applications for Protection and Grants of Rights

During the year ending March 31, 1994:

550 applications were received	(13% increase over previous year)
326 grants were issued	(3% decrease over previous year)
227 grants were terminated	(10% decrease over previous year)
1,704 grants were renewed	(1% increase over previous year)

Financial Matters

Although the United Kingdom system operates on full recovery of costs, fees for DUS testing were reduced by 20 percent and for other services by 10 percent, with effect from April 1, 1994. This was as a result of economies within the Office, the upgrading of computer systems, and a continued higher level of demand than had been expected.

Activities for the Promotion of Plant Variety Protection

To mark the 30th anniversary of the Plant Varieties and Seeds Act 1964, an open day was held at the Office on June 24, 1994, with demonstrations, displays and lectures about the plant breeders' rights and national listing systems, for the benefit of companies based or represented in the United Kingdom. This was attended by over 70 guests. Many letters of appreciation were received by the Office and by the Minister of Agriculture, Fisheries and Food.

Members of the United Kingdom Office gave a number of lectures about plant variety rights to groups of visiting students and officials from both member States and non-member States of UPOV, and presented a paper on the European Community Regulation at a conference on "Protecting Biotechnological Inventions--Recent Developments in Law and Practice" at the European Patent Office, in Munich, Germany, on June 21 and 22, 1994.

UNITED STATES OF AMERICA

On October 6, 1994, the law amending the Plant Variety Protection Act and enabling implementation of the 1991 Act of the Convention was enacted. The law will enter into force on April 4, 1995. The preparations for the submission of the 1991 Act to the Senate for advice and consent to ratification have been initiated.

II. NON MEMBER STATES

COLOMBIA

Colombia is interested in adhering to UPOV. To that end, it submitted its legislation to the Council, in April 1994, for examination; the Council made a small observation on the implementing regulations, which are currently being adapted to the Convention.

CROATIA

A group of experts divided into two subgroups--for agricultural crops and vegetables, on the one hand, and for fruit crops and ornamental plants, on the other--has been set up. In view of the circumstances, the group did not receive financial means from the Ministry of Agriculture until the end of this year, whereas it had intended to start its work already last

year. Information, in particular from UPOV, is therefore being collected in the expectation that it would be useful to future work.

MOROCCO

The draft plant variety protection law has been considered by the various ministerial departments in the course of 1994, as a result of which a new draft has been prepared and submitted to the Secretariat General of the Government. The draft will be considered among the priority texts.

MEXICO

With the assistance provided by the Office of the Union, and in particular as a result of the seminars and other meetings held with the participation of officials from the Office of the Union, the patent law could be amended with respect to the protection of plant varieties. A draft plant variety protection law has been submitted to Congress, and it is hoped that the law will be adopted in the first months of 1995.

PORTUGAL

It is intended to amend the legislation in the light of the experience gained by the National Registry of Protected Varieties (CENARVE) since 1990, when the protection system was first implemented.

CENARVE received 17 applications in the course of the past year, issued three titles and rejected two applications for lack of novelty.

In 1994, CENARVE participated in several meetings with professional organizations and in symposia, and made presentations on plant variety protection. It has also published an information brochure on protection and the application procedure, and distributed it to the interested circles.

REPUBLIC OF KOREA

Vegetatively propagated plant varieties have been protectable by plant patents in the Republic of Korea since 1946. The new seed law, which incorporates the provisions of the UPOV Convention, was drafted this year to complement the patent protection system and to provide protection that is better adapted to new plant varieties. The draft is under study and it is intended to submit it to the National Assembly next year.

ROMANIA

The seed law is still being considered by Parliament. A draft special law on plant variety protection has been established on the basis of the 1991 Act of the Convention, but still needs

to be amended, in particular in the light of the comments from the Office of the Union, before being submitted to Parliament.

This year, the State Office for Inventions and Trademarks received 30 applications for the protection of new varieties; 139 plant patents are currently in force.

Progress has been achieved in the conduct of tests for distinctness, homogeneity and stability by the State Committee which administers the catalogue of varieties licensed for production.

Experts from the State Office for Inventions and Trademarks participated in seminars and scientific meetings organized by plant breeding institutes, and made presentations on protection and the application procedure in Romania.

A group of experts participated, in Rome (Italy), in a seminar organized by the European Patent Office on the protection of biotechnological inventions and new plant varieties. Breeders from the Academy of Agricultural Sciences and an expert from the State Office for Inventions and Trademarks participated, in Budapest (Hungary), in a round table organized by CIOPORA on the laws of Eastern Europe.

SLOVENIA

A new independent Office has been set up in the field of protection and catalogue. Over 20 applications for protection have been received under the old law.

III. INTERNATIONAL ORGANIZATIONS

EUROPEAN COMMUNITY

Situation in the Legislative Field

The Council of the European Union adopted, on July 27, 1994, a Regulation on Community Plant Variety Rights. The Regulation was published in the Official Journal of the European Communities of September 1, 1994.

The Regulation will permit breeders to obtain on the basis of a single application and a single decision a breeder's right having direct and unitary effect throughout the Community, which will be enlarged on January 1, 1995. The new Community system does not replace the protection systems set up on a national basis by the member States of the European Union in the course of the past years or decades. On the contrary, it will find its place next to those systems as an option enabling breeders to obtain a right that is adapted to the circumstances of the internal market of the European Union.

The mainspring of the Community's action is that the Community protection system conforms to the 1991 Act of the Convention. The system applies to all botanical genera and

species. The duration of protection is 25 years and, in the case of grapevine and trees, 30 years. It may be extended for certain genera and species to 30 or 35 years, respectively.

The Community has availed itself of the option afforded by the 1991 Act to provide for an "agricultural exception"--or "farmer's privilege"--, but solely in respect of agricultural crops. The other groups of species such as the vegetables and the fruit and ornamental plants are excluded from this arrangement. The agricultural exception is subject to conditions which include the payment of equitable remuneration; the latter, however, must be sensibly lower than the amount charged for the licensed production of propagating material of the variety concerned. "Small farmers" are not required to pay any remuneration.

The Regulation as such is in force since September 1, 1994. Applications for a Community plant variety right will be accepted as from April 27, 1995, and will be processed by the Community Office.

Naturally, the Regulation requires the adoption of implementing rules. Their drafting is already well advanced. The Commission is competent to promulgate them under a special procedure.

Situation in the Administrative Field

A "Community Plant Variety Office" is entrusted with the implementation of the Community plant variety rights system. The Office arranges for the technical examination of varieties to be carried out by the "Examination Offices". Possible examination offices are, in the first instance, the services existing in the member States of the Community. The Community Plant Variety Office is under the supervision of an Administrative Council: the Council is composed of one representative of each member State and one representative of the Commission and their alternates.

The decision on the seat of the Community Plant Variety Office, which belongs to the Conference of Governments, has not yet been taken.

The Community Plant Variety Office, which legally is already in existence, is an organ of the Community that is different in nature from the institutions such as the Commission or the Council.

The Administrative Council met for the first time on October 21, 1994, and took a series of important decisions and, in particular, adopted a list of actions to be undertaken by the Office without delay, independently from the question of the seat, so that it may deploy at least some activity on April 27, 1995. Moreover, measures have been taken at the session to enable the Office to act already now.

The second session of the Administrative Council is scheduled for November 23, 1994.

Developments in Related Fields of Activity

The Directive on the Protection of Biotechnological Inventions under Patent Law has reached, in the course of the reporting period, the stage where it can be adopted. The issue of the agricultural exception has also been dealt with in the Directive. The latter refers, as far as

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patent law is concerned, to the conditions applicable in the Community plant variety rights system.

The adoption of the Directive is still hampered by some questions of ethics which are being considered by a special committee set up by the Commission and the Council, on the one hand, and the European Parliament, on the other.

The proposal referred to in the report for 1993 concerning amendment of the entire Community law on seeds is still being considered by the Council. The purpose of revising and supplementing the law is to improve its functioning under the conditions that have obtained on the internal market of the Community. The European Parliament devoted particular attention to the principles of the new law relating to the protection of genetic diversity and to some questions touching upon genetically modified plant varieties.

INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF PLANT VARIETIES (ASSINSEL)

ASSINSEL has three new members--Finland, Kenya and Norway--but had to register the withdrawal of Spain.

As a result of the decision taken by the Council of UPOV at its October 1993 session, ASSINSEL could participate in the session of the technical Committee which, in its opinion, has been very fruitful.

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