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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Thirty-Fifth Ordinary Session**  
**Geneva, October 25, 2001**

DRAFT REPORT

*prepared by the Office of the Union*

Introduction

- 1.\* The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-fifth ordinary session in Geneva on October 25, 2001, under the chairmanship of Mr. Karl Olov Öster (Sweden).
2. The list of participants is given in Annex II to this document.
3. An asterisk next to the paragraph number means that the text has been taken from the Record of the Decisions adopted by the Council at the end of the session (document C/35/13).

Opening of the Session

4. The session was opened by the President who welcomed the participants. He extended a special welcome to the Delegations of Croatia and Nicaragua, States that had become members of UPOV since the last session of the Council. The Council also noted that Finland had acceded to the 1991 Act of the UPOV Convention.
5. The Delegation of Croatia made a statement, the text of which is included in Annex I to this document.

Adoption of the Agenda

6.\* The Council adopted the agenda as proposed in document C/35/1 Rev., subject to the deletion of item 4 (Examination of the conformity of the laws of any State having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention).

Adoption of the Report on the Thirty-Fourth Ordinary Session

7.\* The Council adopted the report as given in document C/34/16 Prov.

Report by the President on the Work of the Sixty-First and Sixty-Second Sessions of the Consultative Committee; Adoption of Recommendations, if Any, Prepared by That Committee

8. The President reported that the sixty-first session of the Consultative Committee, held on April 6, 2001, had dealt with the implementation of the organizational structure of the Office of the Union and the question of Russian as a working language of UPOV. It had given the law of the Republic of Latvia and the law of Yugoslavia a preliminary examination on their conformity with the UPOV Convention and it took note of reports concerning developments in the Council of the TRIPS Agreement for the review of Article 27.3 (b) and on biodiversity, plant genetic resources and plant breeders' rights.

9. The President further reported that the sixty-second session of the Consultative Committee had commenced the previous day and had adjourned. It had given preliminary consideration to the draft Program and Budget for the 2002-2003 Biennium, which would be considered by the Council under item 9 of document C/35/1 Rev. It had endorsed the proposal of the Office of the Union to have a UPOV mission statement and approved the following text in English, French, German and Spanish:

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.”

“Mettre en place et promouvoir un système efficace de protection des variétés végétales afin d'encourager l'obtention de variétés dans l'intérêt de tous.”

“Bereitstellung und Förderung eines wirksamen Sortenschutzsystems mit dem Ziel, die Entwicklung neuer Pflanzensorten zum Nutzen der Gesellschaft zu begünstigen.”

“Proporcionar y fomentar un sistema eficaz para la protección de las variedades vegetales, con miras al desarrollo de nuevas variedades vegetales para beneficio de la sociedad.”

10. The President continued that the Consultative Committee had also agreed to the preparation of a document with explanatory notes to the 1991 Act of the UPOV Convention and the setting up of a working group to make a study on the impact of plant breeders' rights.

It had discussed once more the aforementioned review of Article 27.3(b) of the TRIPS Agreement and biodiversity issues and it had heard oral reports on international developments in plant variety protection and discussed specific issues in draft national laws on plant variety protection.

Annual Report of the Secretary-General for 2000; Report on Activities During the First Nine Months of 2001

11.\* The Council took note of the report of the Secretary-General on the activities of the Union in 2000, given in document C/35/2, and noted the report on activities during the first nine months of 2001, given in document C/35/3.

12.\* The Council expressed appreciation to the Office of the Union for the work carried out.

Progress of the Work of the Administrative and Legal Committee

13.\* The Council noted the work of the Administrative and Legal Committee as described in document C/35/9 and in the oral report given by its Chairman, Mr. John Carvill (Ireland).

14. In the oral report, its Chairman, Mr. John Carvill (Ireland), stated that at its forty-fourth session, held on October 22 and 23, 2001, the Administrative and Legal Committee had discussed the position paper on “the notion of breeder and common knowledge,” had approved it and had decided to submit it to the next session of the Consultative Committee with a recommendation for adoption by the Council. It had discussed the terms of reference of an *ad hoc* working group to study the means to harmonize decisions on variety denominations, which proved to be of great interest for several delegations. It had also discussed the inclusion of patented methods in UPOV Test Guidelines, the status of the information included in the Technical Questionnaire of the UPOV Test Guidelines and legal aspects concerning the samples of parental lines submitted for examination. It had also considered the issue of plant variety identification and had endorsed the work plan and the model study proposed by the *ad hoc* working group on the publication of plant variety descriptions.

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

15. The Technical Director reported that the final version of the “Revised General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties” (document TG/1/3) would be discussed by the Technical Committee at its next session in April 2002 and subsequently submitted to the Council for adoption. He pointed out that reports of the Technical Working Parties meetings held in year 2001 had not been included in document C/35/10, because it was considered that those bodies should report to the Technical Committee before bringing information to the Council.

16.\* The Council noted the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques and DNA-Profiling in

Particular, as given in document C/35/10, and approved the programs of work for the forthcoming sessions.

#### Examination and Approval of the Draft Program and Budget for the 2002-2003 Biennium

17. The Vice Secretary-General introduced document C/35/4. He drew attention to the fact that the document was more streamlined in order to focus on the challenges and objectives than in previous years. He explained that the draft Program gave special consideration to securing the quality of the protection granted and to striving for cost reduction in the carrying out of the plant breeders' rights system. He highlighted the growing membership and the increasing activity of the Office as a result of the interest of many countries and organizations to join the Union. He said that discussions in other fora, such as on biodiversity and plant genetic resources, and developments in other forms of intellectual property rights, required an enhanced presence of UPOV to explain the principles of the UPOV Convention.

18. The Vice Secretary-General further explained that the draft Program and Budget consisted of four sub-programs which corresponded to the above-mentioned tasks. He clarified that the budget for the 2002-2003 biennium had a solid financial funding but it was necessary to draw on the reserves which had been built up in previous years in order to bring it to a level which was considered to be sufficient. He explained that performance assessments for measuring the performance of the activities had been included for the first time in a UPOV draft Program and Budget, and the first results would be presented to the Consultative Committee in spring 2003 followed by the report of the biennium by 2004.

19. The Delegation of France stated that it had no objection to the proposed budget, subject to a minor amendment to the text of the UPOV mission statement as it had been decided at the session of the Consultative Committee the previous day. The Delegation of France noted that the budget for the 2002-2003 biennium should not have any repercussions on commitments in relation to the budget for the 2004-2005 biennium. The Delegation of France specially requested the Office of the Union to have, in conformity with the established practice within the World Intellectual Property Organization (WIPO), preliminary consultations with member States prior to the presentation of a proposal for the program and budget for the 2004-2005 biennium, in order to avoid unforeseen budget expenditure that would be in excess of the contributing capacity of the member States.

20. The Delegation of Spain supported the request made by the Delegation of France to have consultations prior to the proposal of the program and budget for the 2004-2005 biennium, highlighting that these prior consultations should take place well beforehand to allow governments to provide an adequate reply and reaction. The Delegation of Spain recalled that budgets are usually prepared six months in advance and that the Office of the Union should bear this in mind when preparing the next program and budget.

21.\* The Council approved the draft Program and Budget for the 2002-2003 biennium proposed in document C/35/4, subject to clarification that this budget made no commitment for the level of the budget for the 2004-2005 biennium. The Office of the Union was requested to consult the member States prior to submission of the budget proposals for the 2004-2005 biennium to the Consultative Committee.

Interim Financial Statement for 2000; Arrears in Contributions as of October 19, 2001

22.\* The Council noted document C/35/11 and no decision was called for under this agenda item.

Calendar of Meetings in 2002

23.\* The Council approved the calendar of meetings in 2002 as presented in document C/35/8.

Election of New Chairmen and Vice-Chairmen

24.\* The Council elected, in each case for a term of three years ending with the thirty-eighth ordinary session of the Council, in 2004:

(a) Ms. Nicole Bustin (France), Chairperson of the Administrative and Legal Committee;

(b) Mr. Doug Waterhouse (Australia), Vice-Chairman of the Administrative and Legal Committee;

(c) Mr. Michael Camlin (United Kingdom), Chairman of the Technical Committee;

(d) Mrs. Julia Borys (Poland), Vice-Chairperson of the Technical Committee.

25.\* The Council expressed its appreciation to the outgoing Chair, Mr. John Carvill (Ireland), Chairman of the Administrative and Legal Committee, and Mrs. Elise Buitendag (South Africa), Chairperson of the Technical Committee, for the work carried out during their term.

Situation in the Legislative, Administrative and Technical Fields

26.\* The Council noted documents C/35/5, C/35/6, C/35/7 and C/35/12, and no decisions were called for under this agenda item. The following delegations made complementary oral reports.

27. The Delegation of Japan informed of a five-year project to harmonize the national test guidelines with the UPOV Test Guidelines. A committee which had been set up for this purpose had asked for the cooperation of the UPOV member States.

28. The Delegation of France reported on the implementation of a professional agreement for the payment of royalties for farm-saved seed, which had been endorsed by the Ministry of Agriculture. The Delegation considered that this was an important step towards the ratification of the 1991 Act of the UPOV Convention.

29. The Delegation of Switzerland informed that staff changes had taken place in the Plant Variety Office at the Ministry of Agriculture and that Mrs. Manuela Brandt had taken up position as Coordinator of the Office. It also said that the process for the revision of Swiss

legislation to conform with the 1991 Act of the UPOV Convention would be open but not concluded before the year 2004.

30. The Delegation of Ireland reported that the amendments to its national legislation on plant breeders' rights in conformity with the 1991 Act of the UPOV Convention had been finalized at the end of year 2000 and that it had already started the process for accession to this Act.

31. The Delegation of Bolivia informed about the new regulation for farmer's privilege which entered into force in April 2001 as a result of negotiation between seed producers and seed users. It also informed on the development of a new Intellectual Property Code, in which Chapter IV provided for plant variety protection in line with the 1991 Act of the UPOV Convention. It especially thanked the Government of Japan for assisting in the training of its staff in the field of plant variety protection.

32. The Delegation of Italy reported on the new organization of the Ministry of Agriculture and the new Agency of Intellectual Property that would deal with the protection of plant varieties.

33. The Delegation of Spain reported on the transfer of the Spanish Office for Plant Varieties (OEVV) to the Ministry of Agriculture, Food and Fisheries (MAPA), which is responsible for the control of seed commerce, import and production, national and international seed certification and the administration of the National Catalogue of Commercial Varieties and the National Register of Protected Varieties.

34. The Delegation of Colombia highlighted the excellent collaboration it had had with the national offices of Germany, the Netherlands and the Community Plant Variety Office (CPVO) of the European Union for the technical examination of varieties of rose. It also informed about the recent creation of a National Plant Breeders' Association and about the ongoing work in the Colombian Agricultural Institute towards the characterization of plant varieties by means of DNA profiles.

35. The Delegation of the Czech Republic reported that its new Plant Variety Protection Law had entered into force in February 2001 and was in conformity with the 1991 Act of the UPOV Convention. The procedure for the accession of the Czech Republic to this Act was before Parliament. It also informed that a new law for the treatment of genetically modified organisms and for the protection of biotechnological inventions had been enacted.

36. The Delegation of Ukraine reported that the State Commission of Ukraine for Testing and Protection of Plant Varieties was constantly working for the implementation of the provisions of the 1991 Act of the UPOV Convention. Ukraine provided protection for ten species of plants and 75 test guidelines had been developed, and this number was expected to reach 90 by the end of 2001. It informed that active work was being done towards the creation of a research institute for plant variety examination and, after the adoption of the new law for plant variety protection, Ukraine would be ready to join the 1991 Act of the UPOV Convention.

37. The Delegation of Belgium reported that the administration of plant breeders' rights would be moved from its present location at the Ministry of Agriculture to the Industrial Property Office.

38. The Delegation of Hungary reported on its country's cooperation with the Czech Republic and Germany for plant variety testing, and said that it expected the instrument of accession to the 1991 Act of the UPOV Convention to be deposited by the middle of 2002.

39. The Delegation of the Republic of Korea informed that 546 varieties had been protected since 1998, that national test guidelines had been developed for 88 different species and it expected its instrument of accession to the 1991 Act of the UPOV Convention to be deposited in the near future. It said that, in 2002, the Republic of Korea would host the UPOV Asian Regional Meeting.

40. The Delegation of Panama informed that a new network for the information and promotion of plant variety protection had been set up and had had a strong impact.

41. The Delegation of the European Community informed that more than two thousand applications had been filed during the year 2000, that an increase of between five to ten percent was expected for 2001 and that more than 6,000 titles were in force at the moment. It mentioned that the European Community was preparing its future enlargement which also involved the Community Plant Variety Office (CPVO). It informed of its intention to become a UPOV Contracting Party and was planning to cooperate with UPOV in the development of plant breeders' rights even though it only had observer status for the moment.

42. The representative of the Organisation for Economic Co-operation and Development (OECD) reported on a meeting that had taken place the previous week in which the issue of the presence of genetically modified seed in conventional seed had been discussed. Results from the meeting would be available soon. It also reported on its work on the development of certification rules for inter-specific cotton seed. A working group had been established for the certification of seed mixtures in seeds for grasses and new species had been included in the system. Four new countries would be admitted to the certification system, namely Latvia, Mexico, the Russian Federation and Yugoslavia, bringing the number of countries in the system to fifty-two.

43. The Delegation of China reported that plant variety protection in its country was in the charge of the Ministry of Agriculture and the State Forestry Administration. It said that the creation of five new testing stations and two molecular laboratories had been approved by its Government and could be operational within one or two years.

44. The Delegation of Poland informed that its country had amended the Seed Act to extend protection to all plant genera and species, for a period of 30 years for trees and vines and 25 years for the rest. It had incorporated provisional protection and a limitation of farmer's privilege. It informed that the Polish Gazette would be published every two months. It said it had had cooperation with the Czech Republic, Hungary, Latvia, Lithuania and Slovakia. It reported that 1,070 cultivars were protected, most of them ornamentals, and mentioned a new law for the regulation of genetically modified organisms. It especially thanked the Council of UPOV for the selection of Mrs. Julia Borys as Vice-Chairman of the Technical Committee.

45. Written reports by representatives of States and Intergovernmental Organizations on the Legislative, Administrative and Technical Fields, handed in at the session of the Council or sent to the Office of the Union, would be included in an addendum to document C/35/12.

[Annex I follows]

ANNEX I

Declaration made by the Delegation of Croatia

Mr. President, Highly Esteemed Ladies and Gentleman,

On behalf of the Government of the Republic of Croatia and the Ministry of Agriculture and Forestry, I would like to express our appreciation of the warm welcome given by the UPOV family. We are very honored to become a member of UPOV.

On August 1, 2001, Croatia deposited its instrument of accession to the 1991 Act of the UPOV Convention.

The Plant Variety Protection Law was approved by the Parliament of the Republic of Croatia in 1997. Amendments to the Law, which put the Croatian Plant Variety Protection Law into conformity with the 1991 Act of the UPOV Convention, were approved by Parliament in June 2000. Implementing Regulations of the Plant Variety Protection Law and Decree on the (amount of) costs relating to plant variety protection have been published and they entered into force in 2001.

Plant variety protection is new for Croatia. Until 2001, it was not possible for a plant breeder to protect the new variety he bred, found or invented, due to the fact that Croatia had no system for the protection of breeders' rights. The Croatian Government recognized that the implementation of plant breeders' rights has a high priority. The completion of the legal framework and the development of procedures and training of employees of the Institute started with the assistance of Dutch experts in 1999.

All activities related to plant variety protection are under the responsibility of the Institute for Seed and Seedlings. The Institute for Seed and Seedlings has the necessary equipment and facilities to perform variety testing for plant variety protection and registration of variety. The staff have been trained by Dutch and English experts and have had great help from Hungarian experts.

Croatia had technical assistance through the World Bank Project - Seed Industry Development. Project components comprised assistance to DUS testing, assistance to VCU testing, field inspection, seed certification and seed testing.

The Republic of Croatia has cooperation with Hungary and Slovenia. Hungary is performing the DUS testing of soybean for Croatia. Croatia is performing DUS testing of wheat, barley and maize for Slovenia. A formal request for cooperation with France and a few other countries will be initiated by the end of the year.

I would like to emphasize that the Law and Regulations were elaborated with the help of highly esteemed experts, Mr. Rolf Jördens, Vice Secretary-General, and Mr. Barry Greengrass, former Vice Secretary-General, and we would like to express our gratitude and thanks for all help and suggestions, as well as to all the staff of the UPOV Office.

Also, we would like to take this opportunity to thank all colleagues from other national institutes who helped us with the implementation of the plant variety protection system in Croatia.

Thank you.

[Annex II follows]



ANNEXE II/ANNEX II/ANLAGE II/ANEXO II

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

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names in French  
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L'AGRICULTURE (FAO) / FOOD AND AGRICULTURE ORGANIZATION OF THE  
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(OCDE) / ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT  
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ENTWICKLUNG (OECD) / ORGANIZACIÓN DE COOPERACIÓN Y DESARROLLO  
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Fin del Anexo II y del documento]