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UPOV

UPOV/C/V/28  
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INTERNATIONALER VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION  
FOR THE PROTECTION OF  
NEW PLANT VARIETIES

COUNCIL

Fifth Session

Geneva, October 13, 14 and 15, 1971

DRAFT REPORT

First Part

1. The fifth meeting of the Council of UPOV was held in Geneva, at the headquarters of UPOV, on October 13, 14 and 15, 1971.
2. The list of participants in the meeting is annexed to this report.

Opening of the Meeting and Admission of Observers

3. The meeting was opened by Mr. L.J. Smith, Chairman of the Council of UPOV, who also acted as Chairman of the meeting. On behalf of the Council and the Secretariat, he welcomed the observers from signatory and interested States. He extended a special welcome to the Delegation of France after the Vice Secretary General had announced that the instrument of ratification by France of the Convention for the Protection of New Varieties of Plants had been deposited at the Ministry of Foreign Affairs, that there already existed in France a system for the protection of species which met the requirements of the Convention, and that a Committee for the Protection of New Plant Varieties had been set up with Mr. B. Laclavière as Secretary General, who would be responsible for liaison with UPOV.
4. The Chairman informed the Council that the Secretary General had apologized for being unable to attend on October 13, owing to an important mission, but that he hoped to be able to take part in the meetings of October 14 and 15.

5. The Vice Secretary General further announced that the new Swedish law on the protection of plant breeders' rights had entered into force on July 1, 1971, and that, by a Note dated August 30, 1971, the Royal Embassy of Sweden in Berne had presented a request for accession to the Convention in the name of the Swedish Government. The Chairman of the Council greeted the representatives of Sweden as future members of the Council.
6. The Vice Secretary General reported on his talks with representatives of the FAO and the OECD, at which it had been agreed that closer relations should be envisaged between the Organizations. Being invited to express its views on this subject, the Council considered the exchange of observers premature, but felt that the Vice Secretary General could remain in contact with the two Organizations mentioned, and that they might be invited to the UPOV Symposium.
7. Referring to a matter discussed at the previous meeting of the Consultative Working Committee, the Vice Secretary General asked the Council whether it wished to have other States invited to UPOV meetings. The Council replied in the negative, emphasizing that the invitation of any new observers should be submitted to it beforehand for approval.

#### Adoption of the Agenda

8. The Council unanimously adopted the draft Agenda as contained in document UPOV/C/V/1, after having noted that item 12 in the German text should be supplemented with a sub-item (b) as in the English and French texts, and that sub-item (b) related to document UPOV/C/V/10.
9. It was agreed:
- (a) that discussion of items 6, 7, 8, 9 and 10 would be postponed to the second day of the session, when the Secretary General would be present;
  - (b) that the nomination of the Coordinator and Chairmen of the Technical Working Parties (including the Chairman of the Working Group on Variety Denominations) would be put back to item 19;
  - (c) that the Vice Secretary General and the representative of the United States, Mr. S. Rollin, would discuss between themselves the Note sent to UPOV by the United States Government concerning the obstacles to that State's accession to the Convention, and that if necessary they would decide to insert the question for examination under item 18 of the Agenda.

Adoption of the Report of the Fourth Meeting  
of the Council (document UPOV/C/IV/17)

10. The Vice Secretary General suggested the addition in paragraph 19 of a mention that the German text of the Rules of Procedure for Cooperation had been presented by the German Delegation, and to indicate in paragraph 39 of the German text of the Report that amendments appeared in Annex II.

11. He also communicated the wish of Mr. B. Laclavière (France) to have some changes made to the text relating to the intervention of Mr. Bustarret (France) on France's contribution class, and also to paragraph 69, which deals with the intervention of Mr. Mathely. The Vice Secretary General asked the French Delegation to submit a new text to him.

12. The Council unanimously adopted the Report of its fourth session, subject to the amendments mentioned.

Report on the Results of the Fourth Meeting  
of the Consultative Working Committee

13. The Chairman remarked that this report was contained in a document which had not been distributed to all the delegates participating in the meeting of the Council, but that the majority of the subjects dealt with in that document were on the Agenda.

Symposium on Plant Breeders' Rights

14. The Chairman said that the purpose of this Symposium could be to stimulate interest in plant breeders' rights, to show non-member States the advantages of the UPOV protection system, and therefore of their accession to the Convention.

15. The idea of organizing a Symposium and the objectives as explained by the Chairman were approved by the Council, which also considered the other points raised in document UPOV/C/V/17. It was decided:

- (a) that the Symposium would be organized by UPOV alone, in collaboration with the host country;
- (b) to propose the United Kingdom as host country. This was accepted by the Delegation of that country, which added that the United Kingdom would meet part of the cost of the Symposium;

- (c) that UPOV would provide interpreters, documents, etc., thereby incurring expenditure of about 40,000 Swiss francs;
- (d) to choose the first week of July 1973 as a provisional date, and to confirm this choice in 1972;
- (e) that the Symposium would last for a week, three days being set aside for legal and administrative questions, with remaining days spent on technical questions, visiting testing stations, etc.;
- (f) that the agenda would therefore include primarily legal and administrative questions (UPOV protection system, relationship between trademarks and variety denominations, harmonization of fees etc.) and also technical questions and visits;
- (g) to set up a Working Group to prepare the Symposium, composed of the United Kingdom and any other member States which so desired;
- (h) that the Working Group would meet for the first time in December 1971, and that any proposals it might have would be approved in May 1972 by the Consultative Working Committee.

Diplomatic Conference for the Purpose of a  
Revision of the Convention

16. The Chairman commented briefly on document UPOV/C/V/16 and its Annex, and asked the Secretariat to adapt paragraphs 4 and 5 of the draft resolution to the new situation.

17. It was understood that the limits set in the letters from the Ministries of Agriculture of Denmark, the Netherlands and Sweden (see the Annexes to document UPOV/C/V/6) concerned only the 1972 budget.

18. The Council approved the draft resolution as adapted by the Secretariat, which appears in document UPOV/C/V/30. It decided in addition that the Revision Conference would take place at the time of the sixth Council session in 1972 (see paragraph 97 below).

Accession of Sweden

19. The Chairman referred to the resolution adopted by the Consultative Working Committee of the Council at its fourth meeting in May 1971, and to the formal request for accession presented by the Government of Sweden (documents UPOV/C/V/7 and 7 Add.). He expressed the opinion that the problem of the accession of Sweden had been sufficiently examined and that no further questions of principle were in need of discussion. Consequently there was no need for the Swedish Delegation to retire. This opinion was endorsed by the participants of the meeting.

20. The President then asked for voting to take place, and the Council declared itself unanimously in favor of Sweden's accession to the Convention.

21. The Chairman welcomed the Swedish delegates.

22. Professor H. Esbo (Head of the Swedish Delegation) thanked the Chairman for his words of welcome and UPOV for the frankness of the attitude adopted by it during the period of Sweden's participation as an observer. He announced that his country had set up a new body, the National Plant Variety Board, which would shortly be publishing a periodical review, and that the members of the Swedish Delegation would give UPOV their loyal cooperation.

23. The Vice Secretary General pointed out that the present translation of the new Swedish law on plant breeders' rights should be regarded as a provisional text, and that a final translation would be sent to the representatives of member States.

24. On a request by the Swedish Delegation to be provided as soon as possible with the text of the discussion of item 11 of the Agenda, the Secretariat prepared document UPOV/C/V/26, which contained the minutes of the debate on Sweden's request for accession. These minutes, which correspond to paragraphs 19 to 23 above, were approved by the Council.

25. For the purposes of the provisions on the quorum required for the accession of a non-signatory State (see Article 32(3) in fine of the Convention), it should be added that all the member States were present at the time of the discussions and the decision on the Swedish request.

Variety Denominations(i) Exchange of Variety Denominations

26. Dr. Böringer (Germany (Federal Republic)) introduced documents UPOV/C/V/8 and 9, and announced the decision of the Working Group for Variety Denominations to apply the draft Rules of Procedure as from September 1, 1971.

27. The Council adopted this draft (the adopted text appears in document UPOV/C/V/33) and approved the above-mentioned decision of the Working Group.

28. Dr. Böringer informed the Council that the bulletins of the competent authorities in the United Kingdom and the Netherlands now contained a section devoted to the examination of variety denominations, the presentation of which was in conformity with the provisional Rules of Procedure, and that the competent authorities in Denmark, the Federal Republic of Germany, France and Sweden would soon be taking steps in the same direction.

29. Professor Esbo said that the Swedish law on plant breeders' rights regarded varieties entered in the national list of plant varieties between July 1, 1968, and June 30, 1971, as being eligible for the protection introduced by the new law; applications under this principle had been made by breeders in respect of 33 varieties, and the National Plant Variety Board would publish them in due course; these applications had to be submitted within the six months following July 1, 1971, and examination had to be completed by January 1, 1972. He asked the competent authorities of UPOV member States, as an exceptional measure, to carry out the examination of the varieties thus published as rapidly as possible, in order that their objections, if any, might reach the Swedish authorities by November 15, 1971.

30. The Council decided that, as far as old denominations, to which the transitional provisions would apply, were concerned, these should not be submitted to the exchange procedure.

31. Mr. de Zeeuw invited delegations to agree on the attitude that should be adopted towards a breeder's variety denominations which all embodied the same trade name or the initials of that breeder.

32. Dr. Böringer pointed out that this was a long-standing practice among breeders in UPOV member States and that, at a world level, a similar system had been adopted for maize variety denominations which contained the name of the breeder's domicile and a number assigned by FAO.

33. The Chairman considered that the Council could not take a decision without first being familiar with the practical aspect. He proposed that the Working Group prepare a document for the Council and that in the meantime member States take no steps against the kind of denomination referred to by Mr. de Zeeuw and Dr. Böringer.

34. The Council approved its Chairman's proposal.

(ii) Classes for Naming Purposes

35. Dr. Böringer introduced document UPOV/C/V/10 and its Annex, pointing out that the Working Group had observed the principle whereby not only botanically related genera should be placed in the same class but also economically related genera.

36. He asked the Council for its views on the United Kingdom proposal for the *Lupinus* and *Nicotiana* genera, suggesting:

- (a) that *Lupinus* be removed from Class 7 and that a separate class be created for the three agricultural species (*Lupinus albus*, *L. angustifolius* and *L. luteus*), considering that for both breeding and marketing they were distinct from the other four genera in Class 7;
- (b) that for the *Vicia* genus (not included in the list of classes) the species *Vicia faba* (major and minor) be accepted as constituting a new class.

37. The Council approved Dr. Böringer's two suggestions and the United Kingdom proposal for *Nicotiana*, namely, the setting up of a separate class for *N. rustica* and *N. tabacum*.

38. The Council decided that the list of classes thus amended would be officially applied as from April 1, 1972, but that its practical application would take place prior to that date where possible. The new list of classes appears in document UPOV/C/V/34.



(iii) Comments by ASSINSEL and CIOPORA on  
the Provisional Guidelines for  
Variety Denominations

39. The Chairman expressed the opinion that, in view of the provisional nature of the Guidelines and the Council's intention to examine the trademark problem in the light of practical experience, the Council should not embark on a discussion of basic principles in connection with the trademark problem.

40. Mr. Bustarret endorsed the Chairman's views, pointing out, however,

- (a) that the Guidelines could be interpreted in different ways and that a uniform approach should be adopted as soon as possible;
- (b) that UPOV should also express a clear opinion on the question of the relationship between variety denomination and trademark, taking into account that the Convention allowed both to be applied to the same plant.

41. At the same time he proposed that these problems be solved within the Union (and before they were taken up at the Symposium)

- (a) by seeking a basis for agreement with breeders' representatives in the light of concrete cases and without making any substantial changes to the Working Group's decisions;
- (b) by investigating whether the legislations of member States were in accord with the rules on trademarks and those on variety denominations (Convention and Guidelines).

42. The Vice Secretary General announced that he had also received a letter from the FIS demanding outright abolition of the Guidelines.

43. As a result of this discussion the Council decided:

- (a) to ask the Secretary General to write to ASSINSEL and CIOPORA and inform them that the Council had asked the Working Group for Variety Denominations to resume the study of their problems and discuss these with them in 1972, and that, to this end, he wished to be informed of the specific points which in their experience gave rise to difficulty;

- (b) that on receipt of the replies of the two organizations mentioned above the Working Group and the Secretariat would prepare an agenda, and that the Working Group would meet to examine the various points and later arrange for an interview with representatives of the two organizations;
- (c) that until the FIS adopted a less extreme attitude the Working Group could not consult it.

#### Technical Working Parties

##### (i) Report by the Coordinator and Choice of Future Priority Species

44. The Coordinator, Mr. Kelly (United Kingdom) referred to the meeting of the Chairmen of the Technical Working Parties which took place in February 1971, in which he had announced the species for which the Council wished to have draft Guidelines prepared.

45. He then described as follows the progress achieved by the five Technical Working Parties:

##### (a) Self-Fertilized Agricultural Crops

The draft Guidelines for wheat had been published in an English-language document (UPOV/TW/A/I/3) and in a French-language document (UPOV/C/V/19). No German version of this text was available as yet. The table of characters appeared in the three UPOV working languages in only one of the documents (the Annex to document UPOV/C/V/19). A sub-working group on potatoes had worked on preliminary draft Guidelines.

##### (b) Cross-Fertilized Agricultural Crops

The draft Guidelines for maize (document UPOV/TW/B/III/1) had been completed, those for red clover and lucerne would be shortly and those for ryegrass had been started.

##### (c) Vegetables

Draft Guidelines had been prepared for peas, and preliminary drafts for lettuce and beans had been discussed when the Chairman of the Working Party sent a letter to Mr. Kelly to explain that some difficulties had been encountered with the test minima; he regarded the Guidelines as a minimum

and felt that member States were free to do more; he further asked whether the Working Groups should accept their draft Guidelines unanimously. Mr. Kelly asked the Council to give its opinion, in order that the Working Party for Vegetables might complete the drafts.

(d) Ornamental Plants

Draft Guidelines for roses had been completed, and drafts for chrysanthemums, carnations, Saintpaulia, Freesia, Alstroemeria, Euphorbia (pulcherrima and fulgens) and begonias would probably be ready in May 1972. The Working Party had looked into the technical preliminaries which would enable the United Kingdom and Denmark to undertake examinations for other member States concerning chrysanthemums and Euphorbia respectively, and was currently awaiting the consent of the Council and national Offices.

(e) Fruit Crops

Draft Guidelines for apples had been prepared and work had started on drafts for pears and strawberries.

46. The Council expressed its satisfaction with the progress achieved in the various Technical Working Parties, and agreed on the following as future priority species:

(a) Self-Fertilized Agricultural Crops

Oats, barley, rice, flax, in that order. When the draft Guidelines for garden peas were ready, work on the draft Guidelines for field peas could start with an examination as to whether the principles laid down for garden peas could be applied to field peas.

(b) Cross-Fertilized Agricultural Crops

After the species mentioned in paragraph 72(b) the Technical Working Party should deal with the more important grasses (giving priority to the most important from an economic point of view), such as meadow-grass, and rye.

(c) Vegetables

When the three partial draft Guidelines were finished, Brussels sprouts, tomatoes, cauliflower, cabbage, spinach, carrots and broad beans would be given general priority in the sense that the Working Party would give special priority only to plants protected in four member States.

(d) Ornamental Plants

After the species mentioned by Mr. Kelly, draft Guidelines should be prepared for tulips, gladioli, narcissi and hyacinths.

(e) Fruit Crops

Future priorities would be pears, strawberries, Prunus (avium and domestica); blackcurrants, redcurrants and whitecurrants; Rubus sp. (including raspberries).

(ii) Proposals for the Adoption of Guidelines for the Harmonization of Trials, Including a Uniform System for the Assessment of Plant Variety Characters; Proposals for Future Work

47. Mr. Kelly introduced documents UPOV/C/V/20 and 14.

48. Mr. Butler (Netherlands) raised the question whether there was a common philosophy--and if so what it was--underlying the draft Guidelines containing lists of "important characters," and whether the examination of some of those characters should be obligatory while others could be optional. He expressed the wish that the Technical Working Parties investigate the possibility of including in all draft Guidelines a definition of the important characters, as had been done in the maize draft. He also requested that the Technical Working Parties prepare a collective reply to the question whether a breeder might submit a second sample of material for the propagation of the variety he wished to have protected (priority problem).

49. Mr. Kelly replied that while the most important characters had of course always to be considered, the list was not a restrictive one. He proposed that the various draft Guidelines be submitted all together to the Chairmen of the Technical Working Parties for harmonization.

50. The Chairman suggested that a distinction be made, for instance in the wheat draft, between obligatory and optional characters, and that some ideas on a common philosophy be introduced into the General Remarks (Annex II to document UPOV/C/V/20). He asked the Council if it felt that the draft Guidelines should use the same method of definition as the maize draft.

51. Mr. Bustarret agreed on the need for a common philosophy but felt that it could only be evolved on the basis of comparisons in the field. He pointed out that the quantitative definition of distinctness as used in the draft Guidelines for maize was one which had become necessary but was not unalterable. He agreed that the Technical Working Parties should be entrusted with the examination of the questions raised by Mr. Butler, at the same time drawing attention to the fact that maize was easy to define, whereas other cross-fertilized crops presented such awkward problems that the essential value of the corresponding new plant variety certificates could be cast in doubt.

52. Dr. Pielen proposed the abandonment of the term "important characters" and its replacement in the draft Guidelines by the "obligatory characters and optional characters" suggested by the Chairman.

53. Mr. Kelly endorsed Dr. Pielen's proposal.

54. Mr. de Zeeuw, who felt that the new tasks imposed on the Technical Working Parties and the fact that the harmonization of the draft Guidelines would now be beyond the powers of the Coordinator, proposed that the Council set up a Technical Steering Committee to coordinate the various tasks of the Technical Working Parties and to ensure that all their draft Guidelines were based on a common philosophy.

55. This proposal was favorably received by the participants of the meeting, who then insisted that the new Committee should be composed of persons with sufficient influence in their countries to bring about the acceptance of the Guidelines.

56. At the request of the Council the Secretariat prepared a draft resolution and presented it as document UPOV/C/V/23.

57. The Council adopted this text subject to some slight amendment and the addition of a paragraph (to be drafted by the Secretariat) containing a request by the Council that each member State designate its representatives for the Technical Steering Committee before December 1, 1971.

The amended and completed text appears in document UPOV/C/V/31. The election of the Chairman of the Technical Steering Committee was placed under item 19 of the Agenda.

58. Dr. Böringer asked that the Technical Steering Committee proceed with the examination of the working document submitted by the German Delegation (document UPOV/C/V/14).

(iii) Adoption of Draft Guidelines for Wheat,  
Maize, Roses and Apples

59. The Council decided to adopt these four draft Guidelines in principle, on the understanding that they would be checked and published by the Technical Steering Committee; there was nothing to prevent their immediate application.

Joint Utilization of Testing Stations  
and Other Joint Arrangements

60. The Vice Secretary General introduced document UPOV/C/V/18. With Reference to paragraph 6 (examination of species with limited prospects of applications for protection), he said that an agreement had been made with respect to certain species and that, generally speaking, future progress would be conditioned by progress in the drafting of Guidelines.

61. With regard to joint trials for roses (put into effect in 1971), Mr. Bustarret said that his country would take part whereas Dr. Böringer said that his country would not adopt them until the Guidelines for roses had been reviewed and published by the Technical Steering Committee, but that in the intervening period it would adopt a favorable attitude towards such concrete cases as might present themselves. Professor Esbo said that the Swedish law admitted of joint trials, that his country might, however, make reservations with respect to plants which were highly sensitive to daylight, and that it would shortly be taking part in the arrangements for roses. Mr. Simony (Denmark) informed the Council that his country accepted tests carried out abroad but carried them out again nevertheless.

62. The allocation of examination of species with limited prospects of applications for protection gave rise to some comments which led the Council to state:

- (a) that this allocation should not be considered exclusive; on the contrary, member States remained free to make any examination considered necessary;
- (b) that bilateral agreements between States were not required;
- (c) that in all cases the examination of a species was to be carried out in accordance with the Guidelines laid down for that species.

63. The list of allocations in paragraph 6 of document UPOV/C/V/18 was approved by the Council subject to the following changes and reservations:

- (a) Mr. Bustarret asked whether plums were not too strongly influenced by environmental factors for that species to be allocated to Denmark;
- (b) with regard to carnations, Mr. Butler said that the Netherlands would examine only glasshouse varieties;
- (c) Mr. Sondergaard proposed the allocation to Denmark of *Euphorbia fulgens* as well as *Euphorbia pulcherrima* (*Poinsettia*); this was approved by the Council.
- (d) Mr. Smith announced that the United Kingdom was prepared to take responsibility for the examination of rhododendrons (including *Azalea*); this was accepted by the Council.

The revised list appears in Annex II.

64. The Council decided to entrust the Technical Steering Committee with continuing the study of the allocation of examination of species with limited prospects of applications for protection, and with seeing to the preparation of the necessary guidelines.

Harmonization of Fees to be Paid for  
the Protection of New Plant Varieties

65. The Council took note of document UPOV/C/V/15 and its Annexes. Taking into account the existing numerous divergences between the fee systems of member States, it considered itself unable to examine the substantive aspects of the fee question. It decided:

- (a) to set up a Working Group to study the possibilities of harmonization of fees and to establish principles for their collection;
- (b) that the Working Group would deal first with the harmonization of all the fees charged up to the issue of the title of protection;

- (c) that the Working Group would study the principles to be recommended concerning fees for varieties submitted to joint trials;
- (d) that the Working Group would meet as soon as possible;
- (e) that the election of the Chairman of the Working Group would take place when item 19 of the Agenda was discussed;
- (f) that member States would designate their representatives to the Working Group as soon as possible.

66. Mr. Erasmus (Netherlands) felt that the task of the Working Group in relation to fees could be combined with the one entrusted to the Technical Steering Committee under item 14 of the Agenda (joint trials). He also expressed the view that the Working Group should finish by drawing up a table of the harmonized fees which could be presented to interested States at the Symposium.

67. Following a proposal by the Chairman that the Council decide to make the fee systems non-subsidizable, Mr. Bustarret invited the Council not to recommend officially for the moment that national plant variety protection services should be self-supporting. He made the distinction between administrative fees, which were difficult to harmonize, and trial fees, which had to be harmonized before cooperation could be introduced. In this connection he raised the question as to the amount of the fee and its recipient where a foreign service was asked to carry out an examination or supply information.

68. Referring to Articles 3 and 6(2) of the Convention, which guarantee national treatment, the Secretary General pointed out that the fees would in any case be the same for foreigners.

#### Harmonization of National Lists of Species

69. The Chairman introduced document UPOV/C/V/11 and its Annexes.

70. Mr. Bustarret said that the extension of the list of species protected in France depended on the possibility of appropriate examination, and therefore on the harmonization



work undertaken by UPOV. He also wondered whether the validity of the protection afforded to many cross-fertilized species would not be merely illusory when an unlawfully used variety could not be proved identical with the protected variety.

71. Mr. de Zeeuw endorsed with respect to his country the first of Mr. Bustarret's ideas, adding that it would perhaps be difficult to ask a member State to protect a species which it did not itself cultivate. In this context he also pointed out that certain species marked in the list in Annex 3 to document UPOV/C/V/11 as being protected in the Netherlands were in fact not protected there.

72. Several delegates raised objections to the periods proposed in the draft resolution.

73. The Vice Secretary General drew the attention of the meeting to the second paragraph of page 2 of Annex 3 to document UPOV/C/V/11 ("... which are important and commonly grown in their respective areas"). If the Council did not wish to recommend periods, the two paragraphs beginning with the word "Recommends" could be deleted.

74. Emphasizing that the main idea of the resolution was the principle of specific reciprocity referred to in the first "Considering" of the draft, the Council adopted the draft resolution annexed to document UPOV/C/V/11, subject to the reservation that the two recommendations at the foot of page 2 of the draft should be deleted. The amended text appears in document UPOV/C/V/32.

#### Harmonization of Protection Periods

75. Dr. Pielen introduced document UPOV/C/V/13 and its Annex.

76. Mr. de Zeeuw recalled that member States had the possibility of adopting longer protection periods than those provided for in the Convention, that in any case a 25-year period did not interest his country, and that he considered the working document of the German Delegation to be only informative in character. He asked the Council to examine the related question of the possibility of ending on one and the same date the protection afforded to a breeder in various countries.

77. The Chairman and Mr. Bustarret endorsed Mr. de Zeeuw's first remark.

78. The Council took note of the document submitted by the German Delegation and decided that it could be re-examined at a later Council session. With regard to the question raised by Mr. de Zeeuw (harmonization of the date of the end of protection in several countries), the Council asked the Secretariat to prepare a note for the attention of the sixth Council meeting.

Reports on Legislative, Administrative and  
Technical Progress

(i) Signatory States

79. Mr. Derveaux (Belgium) informed the Council that he had received instructions from the Minister of Agriculture concerning the submission to Parliament of a new law on plant varieties and a proposal for ratification of the Convention, and that he hoped that the law would be adopted in July 1972.

80. Mr. Gfeller (Switzerland) reported that a bill meeting the requirements of the Convention had been approved in principle by his Government and by interested circles; only the question of competence had yet to be settled.

(ii) Interested States

81. Mr. Miranda de Onis (Spain) recalled that since 1965, when the Minister of Agriculture had asked the Spanish Government to accede to the Convention, the distribution of competence between the Department of Agriculture and the Department of Industry had been an open question. He said that, following the approval by the Cortes of a law on the reorganization of the administration of plant variety protection, the problem of competence had been solved to the advantage of the Department of Agriculture, and that the main obstacle to the introduction in Spain of legislation for the protection of plant breeders in conformity with the Convention had thereby been removed. He read out a letter which the Director General of the Department of Agriculture had recently sent to the Secretary General of UPOV, informing the latter:

- (a) that a General Law on the production of seeds and nursery plants, the text of which was annexed to the letter, had been approved in March 1971;

- (b) that the tasks entrusted to the Institute of Seeds and Nursery Plants included:
  - (i) maintaining the register of commercial varieties;
  - (ii) maintaining the register of protected varieties;
  - (iii) protection of breeders' rights;
- (c) that the general implementing regulations of the new law would probably be approved soon by the Council of Ministers and followed by specific regulations;
- (d) that a bill on plant breeders' rights in line with the Convention had been drafted and would be submitted to the Cortes;
- (e) that after the approval of the latter Law Spain would be in a position to accede to the Convention;
- (f) that the Department of Agriculture wished that Spanish specialists might already take part in the Technical Working Parties.

82. Mr. Vadell (Spain) said that the approval of the reorganization law would be confirmed by the Minister of Agriculture in November 1971, but that no dates were known as regards consideration of the bill on plant breeders' rights.

83. The Council decided that the text of the Spanish reorganization law would be examined by the Secretariat and that the Chairman of the Technical Steering Committee might invite Spanish experts to take part in the activities of the Technical Working Parties.

84. Mr. Rasten (Norway) said that the Minister of Agriculture of his country would shortly be proposing a law on the protection of new plant varieties, that Norway's accession to the Convention was less urgent since it was an importing country, but that he thought it would take place in a few years when the appropriate legislative adaptations had been made.

85. Dr. Meinx (Austria) said that a new law on plant breeders' rights which would allow Austria to accede to the Convention would not enter into force for four years yet. He informed the Council of the fears of Austrian breeders that Austria's accession to the Convention would cause an increase in protection fees and an overload of work in the testing service.

86. The Chairman asked Dr. Döringer whether German breeders could not dispel the fears of their Austrian counterparts. Dr. Böringer promised to take steps in this direction.

87. Mr. Dar-Ziv (Israel) announced that a bill on plant breeders' rights would probably be passed by the Knesset during the winter of 1971-72, and that afterwards his country's accession to the Convention could be considered.

88. The Vice Secretary General said he wished to ask some questions on the Israeli bill. Considering the imminence of his departure from the meeting, Mr. Dar-Ziv invited the Vice Secretary General to let him have any questions and comments in writing, if possible very soon in order that amendments might yet be made to the bill.

89. To a request by Mr. Erasmus that member States might see the Israeli bill, the Vice Secretary General replied that the Secretariat would send copies.

90. Mr. Rollin (United States) gave a brief account of some of the obstacles in the way of his country's accession to the Convention. He mentioned first the fact that potatoes were not covered either by the new law on plant breeders' rights (1970) or by the law on plant patents, although in fact it would be possible to remedy this situation when the planned merging of the two laws took place. He then said that the Guidelines for the harmonization of trials established by UPOV ruled out the compromise on the word "examination" suggested by the Convention. He said that his Office would try to harmonize its descriptions with UPOV examination procedures and would look into the question of introducing growing tests (which were not ruled out under the law). According to the present law, the American plan would consist in standardizing the descriptions of all marketed varieties and then carrying out examination by computer. By way of conclusion he asked whether the Secretariat could not compare the American law with the Convention and indicate where adaptation would be necessary. He mentioned as an example the four-year maximum period of commercialization in another State (Convention, Article 6(1)(b)), which in the United States was only one year; this period would be changed

when the American law was revised in a few years' time.

91. The Chairman replied that he thought harmonization was possible and that the Secretariat could certainly examine the American law and inform the Council of its conclusions.

92. The Council approved the Chairman's suggestion.

93. Mr. Rollin promised to send the Secretariat copies of the draft regulation for the implementation of the Act and of any other draft which might be available and likely to interest the Council. He further pointed out that the United States was in favor of "equal" reciprocity in the sense that it would accept application for protection originating in countries where American applications for the same species would be accepted.

Election of the Chairman of the Council  
and of Other Groups and Committees

94. The Council decided that, in general, Chairmen should change every three years and that only in exceptional circumstances might an extension be allowed. Moreover, in the interests of equitable geographical distribution, the Council adopted the principle that it would find candidates for election itself and did not wish to receive proposals from the various Working Parties.

95. The Council unanimously elected the following persons, who accepted their appointment.

Dr. Pielen: Chairman of the Council;

Mr. Bustarret: Chairman of the Technical Steering Committee;

Mr. Smith: Chairman of the Working Group for the Symposium;

Miss Thornton: Chairman of the Working Group on Fees.

96. With regard to the Working Group for Variety Denominations and the five Technical Working Parties, the Council decided to keep the current Chairmen in office for another year with the exception of Mr. Potter, who would remain for two more years (in view of the fact that he had been Chairman for one year only).

Date of the Next Meeting

97. The Council decided that the sixth Council meeting would be held in the first week of November 1972.

Any Other Business

98. The Council took note of the letter dated September 23, 1971, sent to the Chairman of the Council by the National Federation of Horticultural Producers and Nurserymen, Paris (document UPOV/C/V/21).

99. Mr. Erasmus asked:

- (a) whether in future the Netherlands might not receive the draft report of Council sessions as soon as it had been drawn up in one of the three working languages;
- (b) whether it would not be advisable to send copies of the provisional Guidelines to the FAO and the EEC;
- (c) whether--considering their wish to bring about a closing of communications with UPOV--ASSINSEL and CIOPORA should not be sent copies of the provisional Guidelines;
- (d) whether it was true that in Germany (Federal Republic) the provisional Guidelines for Variety Denominations might be the subject of additional regulations under the law on the protection of new plant varieties.

100. Dr. Pielen endorsed the first idea expressed by Mr. Erasmus (paragraph 99(b)).

101. The Vice Secretary General replied as follows to the questions of Mr. Erasmus, in the order of their being asked:

- (a) as in the past, the Secretariat would send its documents in a given language if it knew that the addressee was interested in receiving them;
- (b) to date the Secretariat had sent the provisional Guidelines on Variety Denominations to the FAO and the OECD, but in future all Guidelines would be sent to those organizations and to the EEC;

- (c) the reply under (b) applied also to ASSINSEL and CIOPORA but, in view of the fact that the Council had already approved four sets of Guidelines in principle, it would be difficult to go further and, for instance, consult these two bodies before drawing up the final versions of the Guidelines;
- (d) as far as German intentions were concerned, ASSINSEL had informed the Secretariat.

102. To this Mr. Kelly added that relations with the EEC and contacts with the FAO and the OECD existed within the Technical Working Parties.

103. The Chairman asked the Council whether it wished to have ASSINSEL and CIOPORA consulted prior to the final drafting of the Guidelines.

104. Dr. Böringer, Mr. Erasmus and Mr. Bustarret spoke against such a step.

105. The Secretary General, however, expressed the desire to avoid the development of a rift between UPOV and the bodies mentioned. In his opinion they should be heard, without this in fact having to involve amendment of the Guidelines. He quoted the specific example of IAPIP, which was not satisfied with its contacts with UPOV.

106. The Council decided to re-examine the question of contacts at a later session.

107. Dr. Pielen thanked the Council for the confidence it had shown in appointing him Chairman. He promised to continue the work and maintain the profitable cooperation with the Secretariat achieved by Mr. Smith, whose name, along with that of Mr. Bustarret, would always be associated with UPOV's first successes.

108. Mr. Smith took his leave of the Council in the capacity of Chairman and thanked it for the post and the responsibilities it had entrusted to him.

/End of document UPOV/C/V/28;  
Annexes follow/

## Annex I to document UPOV/C/V/28

## LIST OF PARTICIPANTS

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Mr. A. de ZEEUW, The Hague - Vice Chairman

V. REPRESENTATIVES OF UPOV

Prof. G.H.C. BODENHAUSEN - Secretary General  
Mr. H. SKOV - Vice Secretary General

VI. REPRESENTATIVES OF WIPO

Dr. A. BOGSCH, First Deputy Director General  
Mr. M. LAGESSE, Counsellor, Administrative Division  
Mr. H. A. WARNIER, Legal Assistant, Industrial Property Division

/End of Annex I;  
Annex II follows/

## Annex II to document UPOV/C/V/28

Allocation of Certain Species among  
Member States for the Purpose  
of Preliminary ExaminationI. Fruit Crops

Apples: United Kingdom  
Apricots: France  
Blackberries: Germany (Federal Republic)  
Cherries: Denmark  
Currants (black,  
red and white): Germany (Federal Republic)  
Gooseberries: Germany (Federal Republic)  
Peaches: France  
Plums: Denmark  
Strawberries: Germany (Federal Republic)

II. Ornamental Plants

African Violet: Germany (Federal Republic)  
Alstroemeria: Netherlands  
Begonia: Germany (Federal Republic)  
Carnations (in glasshouses): Netherlands  
Chrysanthemums: United Kingdom  
Euphorbia fulgens: Denmark  
Euphorbia pulcherrima: Denmark  
Freesia: Netherlands  
Hyacinths: Netherlands  
Rhododendrons (including  
Azalea): United Kingdom  
Tulips: Netherlands

/End of Annex II  
and end of document/