

C/35/3

ORIGINAL: English

**DATE:** October 19, 2001

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

### COUNCIL

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

#### REPORT ON ACTIVITIES DURING THE FIRST NINE MONTHS OF 2001

Document prepared by the Office of the Union

#### I. COMPOSITION OF THE UNION

#### Members and Future Members

- 1. On February 16, 2001, <u>Romania</u> deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force with respect to Romania on March 16, 2001.
- 2. On June 20, 2001, <u>Finland</u> deposited its instrument of accession to the 1991 Act of the Convention. The 1991 Act entered into force with respect to Finland on July 20, 2001.
- 3. On August 1, 2001, <u>Croatia</u> deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force with respect to Croatia on September 1, 2001.
- 4. On August 6, 2001, <u>Nicaragua</u> deposited its instrument of accession to the Convention. The Convention (1978 Act) entered into force with respect to Nicaragua on September 6, 2001.

- 5. As of September 30, 2001, the Union comprised 49 member States: <u>Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Kenya, Kyrgyzstan, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Ukraine, United Kingdom, United States of America, Uruguay.</u>
- 6. Under Article 34(3) of the 1991 Act, "any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention."
- 7. Two requests were considered in the period under review:
  - (a) a request by the Republic of Latvia, by letter of February 22, 2001,
  - (b) a request by Yugoslavia, by letter of February 16, 2001.
- 8. At its eighteenth extraordinary session, held on April 6, 2001, the Council examined the laws of the above-mentioned States and took the decisions described in paragraphs 9 and 10 below.

#### 9. The Council decided:

- (a) to advise the Government of the Republic of Latvia that the Law, after adoption of suitable amendments, provides a legal basis conforming with the Convention, and that it may then, after consultation with the Office of the Union as to whether the amendments to the Law are adequate, deposit an instrument of accession to the Convention;
- (b) to request the Office of the Union to offer its assistance to the Government of Latvia for the drafting of the correction of the Law, as well as the preparation of a more satisfactory translation into one or more of the official languages of UPOV.

#### 10. The Council decided

- (a) to advise the Government of Yugoslavia that the Law does not incorporate some important provisions of the Convention;
- (b) to request the Office of the Union to offer its assistance to the Government of Yugoslavia in drafting the necessary amendments to the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;
- (c) to further advise the Government of Yugoslavia that, upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

#### Situation in Relation to the Various Acts of the Convention

- 11. Nicaragua acceded to the 1978 Act on September 6, 2001, bringing to twenty-nine the number of member States bound by the 1978 Act.
- 12. The 1991 Act was acceded to by Romania, on March 16, 2001, by Finland, on July 20, 2001, and by Croatia, on September 1, 2001, bringing to eighteen the number of Contracting Parties bound by the 1991 Act.
- 13. Under Article 30(2) of the 1991 Act, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of the 1991 Act at the time of depositing its instrument of adherence.
- 14. In the first nine months of 2001, according to the information of the Office of the Union, Austria passed a law to adapt its system of protection to the 1991 Act. It came into force on September 1, 2001. Accordingly, the number of member States which have laws that conform in all respects with the 1991 Act reached twenty-three, while thirteen non-member States (and the European Community) were in a position to accede at any time to the said Act. The African Intellectual Property Organization (OAPI Organisation Africaine de la Propriété Intellectuelle) and its member States will be in a position to accede to the 1991 Act after the revised Accord de Bangui has come into effect. Most other member States have adopted amendments in line with that Act or drawn up draft laws.
- 15. The table annexed to this report summarizes the situation of the members of the Union with regard to the various Acts of the Convention as of September 30, 2001.

#### II. SESSIONS OF THE COUNCIL AND ITS SUBSIDIARY BODIES

#### Council

16. The Council held its eighteenth extraordinary session on April 6, under the chairmanship of Mr. Karl Olov Öster (Sweden). It examined the requests for advice under Article 34(3) of the 1991 Act of the Republic of Latvia and of Yugoslavia.

#### **Consultative Committee**

17. The Consultative Committee held its sixty-first session on April 6, under the chairmanship of Mr. Karl Olov Öster (Sweden). It discussed the developments in the Council for TRIPS concerning the review of Article 27.3(b) of the TRIPS Agreement and the developments concerning biodiversity, plant genetic resources and plant variety protection. It also heard a report from the Vice Secretary-General on the implementation of the new organizational structure of the Office of UPOV and discussed the medium-term work program of the Office of UPOV and the request by the Delegation of Kyrgyzstan to introduce Russian as a working language.

Administrative and Legal Committee, Technical Committee, Technical Working Parties and Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular

18. For the work of the Administrative and Legal Committee and the Technical Committee, reference is made to documents C/35/9 and C/35/10. The nineteenth session of the Technical Working Party on Automation and Computer Programs (TWC) was held in Prague from June 4 to 7, 2001. The Technical Working Party for Vegetables (TWV) held its thirty-third session in Baltipaglia, Italy, from June 25 to 29, 2001. The Technical Working Party for Agriculture Crops (TWA) held its thirtieth session in Texcoco, Mexico, from September 3 to 7, 2001. The thirty-fourth session of the Technical Working Party for Ornamental Plants and Forest Trees (TWO) was held in Nagano, Japan, from September 24 to 28, 2001. The five crop-specific *ad hoc* subgroups on Molecular Techniques, established by the Technical Committee at the proposal of the Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT), held their first meetings in Cambridge, United Kingdom, from February 23 to 28, 2001 (subgroups for Maize and for Wheat), and in Le Magneraud, France, from March 19 to 21, 2001 (subgroups for Oilseed Rape, for Rose and for Tomato).

#### III. COURSES, SEMINARS, WORKSHOPS

- 19. On April 23 and 24, UPOV and the Ecuadorian Institute on Intellectual Property Rights (IEPI *Instituto Ecuatoriano de la Propiedad Intelectual*) organized a National Seminar on Plant Variety Protection in Quito. About 100 participants attended the meeting, including officials from the government and judicial sector, researchers and plant breeders, representatives from the Plant Breeders' Association and intellectual property attorneys. Argentina, Colombia, Panama and Uruguay provided speakers. Special interest was shown in the use of the plant variety denominations and trade marks, in the commercialization of ornamental crops and in the implementation of UPOV principles at national level.
- On April 26 and 27, UPOV and the Ministry of Commerce and Industry, Directorate 20. General of the Industrial Property Registry (DIGERPI), organized, with the cooperation of the Secretariat for the Central American Economic Integration (SIECA), a National Seminar on Plant Variety Protection in Panama City. About 150 participants related to DIGERPI, researchers, plant breeders and many intellectual property attorneys attended. There was specific interest in the relationship between cost and benefits of the research involved, in the way in which plant varieties are commercially exploited by the seed industry, in plant variety protection and in the release to the environment of genetically modified organisms (GMOs). SIECA financed the participation of officials from Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Many participants from the private sector made contact with the lecturers from the Latin American Federation of Seed Associations (FELAS) and the Argentine Association for Plant Variety Protection (ARPOV), seeking to set up breeders' associations. On the occasion of the Seminar, the Ministry of Agricultural Development appointed the members of the Plant Variety Council, which is formed by members from the governmental and private sector.
- 21. On July 2 and 3, UPOV organized, in cooperation with the Government of Senegal and OAPI and with support from the Ministry of Agriculture and Fisheries of France, a Regional Seminar on a Common Technical Examination System for Plant Varieties in Africa under the UPOV Convention in Dakar. In addition to participants from Senegal, there were participants

from Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger and Togo. The Community Plant Variety Office (CPVO), Angers, France, provided a speaker. The participants elaborated and adopted conclusions and recommendations concerning the implementation of a regional system of plant variety protection under the revised *Accord de Bangui*.

- 22. On July 16, UPOV, in cooperation with the Government of Suriname, organized a National Seminar on Plant Variety Protection Under the UPOV Convention in Paramaribo. About 60 participants attended the meeting, including officials from the government, researchers, representatives from Amerindians and breeders.
- 23. On July 19, UPOV, in cooperation with the Ministry of Foreign Trade and International Co-operation of Guyana, organized a National Seminar on Plant Variety Protection in Georgetown. About 40 participants attended the meeting, including officials from the government, researchers and breeders. The participants expressed interest in the development of an appropriate structure for the technical examination of plant varieties, in the relationship between plant genetic resources regulations and the plant breeders' rights system, and in issues related to the transfer of local material to foreign companies.
- 24. From July 23 to 26, UPOV organized, in cooperation with the Ministry of Agriculture, the State Forestry Administration and the State Intellectual Property Office of China, and with assistance from the Ministry of Agriculture, Forestry and Fisheries of Japan, a Regional Technical Meeting for Asian Plant Variety Protection Systems and a Workshop on the Principles of Technical Examination and the Preparation of National Test Guidelines in Beijing. In addition to participants from China, there were participants from India, Indonesia, Malaysia, Pakistan, Philippines, Republic of Korea, Sri Lanka, Thailand and Viet Nam as well as from the International Rice Research Institute (IRRI), Los Baños, Philippines. Australia, France and Japan provided speakers. The Technical Meeting adopted conclusions and recommendations, agreeing, in particular, that the non-member States of the region should seek to participate more actively in the technical work of UPOV.
- 25. On September 13 and 14, UPOV and the Seed Direction of the Ministry of Agriculture of Paraguay organized a National Seminar on Plant Breeder's Rights under the UPOV Convention in Asunción. About 60 participants were present, including officials from the government, breeders, seed producers, representatives of the national seed association and researchers. Argentina, Brazil and Uruguay provided speakers. Due to the commercial relations of Paraguay with its neighboring countries, the participation of speakers from the other three MERCOSUR members, from both the government and the private sector, was most welcome. The relationship between the plant breeders' rights system and genetically modified varieties (GM) was discussed, with regard to the different status among the countries in the region concerning the release of GM varieties.
- 26. On September 17 and 18, UPOV and the Cuban Office for Industrial Property organized a National Seminar on the Protection of New Varieties of Plants in La Havana. About 90 participants, comprising officials from the government, researchers and intellectual property attorneys, attended the meeting. Argentina, Guatemala and Mexico provided speakers either from national Plant Breeders' Rights Offices or from the private sector. Subjects of main interest were practice and strategy of licensing plant varieties under a plant breeders' rights system and the relationship between the UPOV Convention and other international treaties relevant to intellectual property, plant genetic resources and biodiversity.

#### IV. RELATIONS WITH STATES AND ORGANIZATIONS

- 27. A major part of the activities of the Union, and the Office in particular, was focussed on advice and assistance on plant variety protection legislation and the procedure to accede to the Convention by potential members of the Union, or members of the Union that intended to accede to the 1991 Act of the Convention. The Office provided written or oral comments, paid visits to national authorities or received representatives of the respective States in order to give the required advice. In this respect, the Office had contacts with Austria, Belarus, Croatia, Egypt, Fiji, Georgia, Ghana, Guatemala, Guyana, Lao People's Democratic Republic, Latvia, Lebanon, Lithuania, Mauritius, Peru, Republic of Guinea, Romania, Singapore, Suriname, The former Yugoslav Republic of Macedonia, Tonga, Uzbekistan, Viet Nam, Yugoslavia, Zambia and Zimbabwe.
- 28. Another important area of activities was advice and training with a view to implementing plant variety protection, often in cooperation with the World Intellectual Property Organization (WIPO). The Office organized seminars, and officials of the Office gave lectures in seminars and workshops organized by members of the Union, other States and organizations, to promote plant variety protection in the Asia Pacific Region, Latin America and West Africa. The Office also organized training, including finance, of experts from potential Contracting Parties. The Office discussed training activities and provided speakers for training courses organized by institutions of members of the Union.
- 29. The Office met with representatives of international organizations to coordinate activities or to explain UPOV's position in other fora. Of particular importance was the ongoing discussion on biological diversity, plant genetic resources and traditional knowledge, and the consideration of the draft African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (OAU Model Law). The Office participated in the consideration of these issues with the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA), the African Intellectual Property Organization (OAPI), the African Regional Industrial Property Organization (ARIPO), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of WIPO, the International Plant Genetic Resources Institute (IPGRI), the Secretariat of the Organization of African Unity (OAU), and the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS). The Office maintained close contacts with the Community Plant Variety Office (CPVO).
- 30. The Office of the Union provided interpretation of provisions of the Convention to members of the Union and individuals.
- 31. The Office of the Union met regularly with professional associations in order to follow developments in the practical application of plant variety protection on a global and regional level. Of particular relevance were meetings with the African Seed Trade Association (AFSTA), the Asia Pacific Seed Association (APSA), the European Seed Association (ESA), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), and the International Seed Trade Federation (FIS) / International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL).
- 32. The Office of the Union held meetings with non-governmental organizations in order to explain the main features of the UPOV Convention.

## V. PUBLICATIONS

- 33. The Office of the Union published:
  - (a) one issue of "Plant Variety Protection," the Gazette and Newsletter of UPOV;
- (b) updated editions, covering every event affecting the composition of the Union, of the information leaflet on UPOV and plant variety protection in English, Arabic, Chinese, French, German, Russian and Spanish;
- (c) five updated discs in the series constituting the UPOV central database, "UPOV-ROM Plant Variety Database."

*34.* The Council is invited to note this report.

[Annex follows]

#### **ANNEX**

#### **MEMBERS OF THE UNION**

(September 30, 2001)

State	Date of Signature <sup>1</sup>	Date of Deposit of Instrument <sup>1, 2</sup>	Date Upon Which State Became Bound <sup>1</sup>
Argentina	- - -	- - November 25, 1994 -	- December 25, 1994
Australia	- - - -	- - February 1, 1989 December 20, 1999	- - March 1, 1989 January 20, 2000
Austria	- - -	- - June 14, 1994 -	- - July 14, 1994 -
Belgium	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	November 5, 1976 November 5, 1976 -	December 5, 1976 February 11, 1977 -
Bolivia	- - -	- - April 21, 1999 -	- - May 21, 1999 -
Brazil	- - -	- - April 23, 1999 -	- - May 23, 1999 -
Bulgaria	- - - -	- - - March 24, 1998	- - - April 24, 1998

2<sup>nd</sup> line: Additional Act of November 10, 1972

3<sup>rd</sup> line: Act of October 23, 1978 4<sup>th</sup> line: Act of March 19, 1991.

<sup>1 1&</sup>lt;sup>st</sup> line: International Convention for the Protection of New Varieties of Plants of December 2,

of ratification where the State has signed the Convention of 1961 or the Additional Act of 1972, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978 of the Act of 1991; of accession where the State or intergovernmental organization has not signed the Act concerned.

State	Date of Signature <sup>1</sup>	Date of Deposit of Instrument <sup>1, 2</sup>	Date Upon Which State Became Bound <sup>1</sup>
Canada	-	-	-
	- October 31, 1979 March 9, 1992	- February 4, 1991 -	- March 4, 1991 -
Chile	-	-	-
	-	- December 5, 1995	- January 5, 1996
	-	-	-
China	-	-	-
	-	- March 22, 1000	- A:1 22 1000
	-	March 23, 1999	April 23, 1999
Colombia	-	-	-
Colombia	-	-	-
	-	August 13, 1996	September 13, 1996
Croatia			
Cioana	-	-	-
	-	- August 1, 2001	September 1, 2001
	-	August 1, 2001	September 1, 2001
Czech Republic <sup>3</sup>	-	-	-
	-	-	January 1, 1993
	-	-	-
Denmark	November 26, 1962	September 6, 1968	October 6, 1968
	November 10, 1972 October 23, 1978	February 8, 1974 October 8, 1981	February 11, 1977 November 8, 1981
	March 19, 1991	April 26, 1996	April 24, 1998
Ecuador	-	-	-
Leuadoi	-	-	-
	-	July 8, 1997	August 8, 1997
Estonia		_	_
Estonia	-	-	-
	-	- August 24, 2000	- September 24, 2000
Finland	-	August 24, 2000	September 24, 2000
	-	-	-
	-	March 16, 1993	April 16, 1993
	-	June 20, 2001	July 20, 2001
France	December 2, 1961	September 3, 1971	October 3, 1971
	November 10, 1972 October 23, 1978	January 22, 1975 February 17, 1983	February 11, 1977 March 17, 1983
	March 19, 1991	- February 17, 1983	March 17, 1985

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<sup>&</sup>lt;sup>3</sup> Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

State	Date of Signature <sup>1</sup>	Date of Deposit of Instrument <sup>1, 2</sup>	Date Upon Which State Became Bound <sup>1</sup>
Germany	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	July 11, 1968 July 23, 1976 March 12, 1986 June 25, 1998	August 10, 1968 February 11, 1977 April 12, 1986 July 25, 1998
Hungary	- - -	- - March 16, 1983	- - April 16, 1983 -
Ireland	- September 27, 1979 February 21, 1992	- - May 19, 1981 -	- - November 8, 1981 -
Israel	- - - October 23, 1991	November 12, 1979 November 12, 1979 April 12, 1984 June 3, 1996	December 12, 1979 December 12, 1979 May 12, 1984 April 24, 1998
Italy	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	June 1, 1977 June 1, 1977 April 28, 1986	July 1, 1977 July 1, 1977 May 28, 1986
Japan	- - October 17, 1979 -	- - August 3, 1982 November 24, 1998	- September 3, 1982 December 24, 1998
Kenya	- - - -	- - April 13, 1999 -	- - May 13, 1999
Kyrgyzstan	- - -	- - - May 26, 2000	- - - June 26, 2000
Mexico	- - July 25, 1979 -	- - July 9, 1997 -	- - August 9, 1997 -
Netherlands	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	August 8, 1967 January 12, 1977 August 2, 1984 October 14, 1996	August 10, 1968 February 11, 1977 September 2, 1984 April 24, 1998
New Zealand	- July 25, 1979 December 19, 1991	- November 3, 1980	- - November 8, 1981 -
Nicaragua	-	- - August 6, 2001 -	- - September 6, 2001 -

State	Date of Signature <sup>1</sup>	Date of Deposit of Instrument <sup>1, 2</sup>	Date Upon Which State Became Bound <sup>1</sup>
Norway	-	-	-
	-	August 13, 1993	September 13, 1993
Panama	-	-	-
	-	April 23, 1999	May 23, 1999
Paraguay	-	-	-
	-	January 8, 1997	February 8, 1997
Poland	-	-	-
	-	October 11, 1989	November 11, 1989
Portugal	-	-	-
	-	September 14, 1995	October 14, 1995
Republic of Moldova	-	-	-
	-	- September 28, 1998	- October 28, 1998
Romania	-	-	-
	-	- February 16, 2001	- March 16, 2001
Russian Federation	-	-	-
	-	- March 24, 1998	- April 24, 1998
Slovakia <sup>3</sup>	-	-	-
	-	-	January 1, 1993
Slovenia	-	-	-
	-	- - June 29, 1999	- - July 29, 1999
South Africa	- - October 23, 1978 March 19, 1991	October 7, 1977 October 7, 1977 July 21, 1981	November 6, 1977 November 6, 1977 November 8, 1981

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<sup>&</sup>lt;sup>3</sup> Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

State	Date of Signature <sup>1</sup>	Date of Deposit of Instrument <sup>1, 2</sup>	Date Upon Which State Became Bound <sup>1</sup>
Spain	- - - March 19, 1991	April 18, 1980 April 18, 1980 -	May 18, 1980 May 18, 1980 -
Sweden	January 11, 1973 December 6, 1978 December 17, 1991	November 17, 1971 January 11, 1973 December 1, 1982 December 18, 1997	December 17, 1971 February 11, 1977 January 1, 1983 April 24, 1998
Switzerland	November 30, 1962 November 10, 1972 October 23, 1978 March 19, 1991	June 10, 1977 June 10, 1977 June 17, 1981	July 10, 1977 July 10, 1977 November 8, 1981
Trinidad and Tobago	- - -	- - December 30, 1997 -	- - January 30, 1998 -
Ukraine	- - -	- - October 3, 1995 -	- - November 3, 1995 -
United Kingdom	November 26, 1962 November 10, 1972 October 23, 1978 March 19, 1991	September 17, 1965 July 1, 1980 August 24, 1983 December 3, 1998	August 10, 1968 July 31, 1980 September 24, 1983 January 3, 1999
United States of America	- October 23, 1978 October 25, 1991	- November 12, 1980 January 22, 1999	- November 8, 1981 February 22, 1999
Uruguay	- - -	- - October 13, 1994 -	- - November 13, 1994 -

Total: 49 member States

[End of Annex and of document]