



C/40/18

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Fortieth Ordinary Session
Geneva, October 19, 2006

REPORT ON THE DECISIONS

adopted by the Council

Introduction

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its fortieth ordinary session in Geneva on October 19, 2006, chaired by Miss Enriqueta Molina Macías (Mexico), President of the Council.
2. The list of participants is reproduced in the Annex to this document.
3. The President extended a warm welcome to the Delegation of Morocco, which had become the sixty-second member of UPOV on October 8, 2006.
4. The Delegation of Morocco expressed its appreciation for the welcome which Morocco had received on becoming member.
5. The Council took the decisions recorded below under each relevant agenda item.
6. The draft detailed report on the session will be submitted to the Council for adoption by correspondence.

Adoption of the Agenda

7. The Council adopted the draft agenda, as proposed in document C/40/1, after having noted that there were additional documents C/40/14 (Examination of the conformity of the Draft Law on Protection of Breeder's Rights for Varieties of Plants of the Dominican Republic with the 1991 Act of the UPOV Convention) and C/40/15 (Examination of the conformity of the Draft Law on the Protection of New Varieties of Plants of the Republic of Guatemala with the 1991 Act of the UPOV Convention) under item 3, C/40/16 (Avian Flu Preparedness Plan) under item 6, C/40/8 Rev. (Revised Calendar of Meetings) under item 11, and C/40/17 (Presentation by the Food and Agriculture Organization of the United Nations (FAO) on the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/PGRFA) under item 15.

Examination of the Conformity of the Legislation or Proposed Legislation of any State or Organization Having Submitted a Request under Article 34(3) of the 1991 Act of the UPOV Convention

Dominican Republic

8. The Senior Legal Officer introduced document C/40/14.

9. The Council decided to

(a) take note of the information given in document C/40/14;

(b) take a positive decision on the conformity of the Draft Law on Protection of Breeder's Rights for Varieties of Plants of the Dominican Republic with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Dominican Republic to deposit its instrument of accession once the Draft Law is enacted and in force; and

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

10. The Delegation of the Dominican Republic thanked the Council for the examination of the Draft Law and looked forward to becoming a member of UPOV and to cooperating with the members of the Union.

Guatemala

11. The Senior Legal Officer introduced document C/40/15.

12. The Council agreed to amend paragraphs 15, 16 and 27 of document C/40/15 as follows:

“15. Article 16(1) of the Draft Law contains provisions concerning the exceptions to the breeder's right which conform with Article 15(1) of the 1991 Act.

“16. Article 16(2) of the Draft Law provides for the optional exception under Article 15(2) of the 1991 Act. In order to fully comply with Article 15(2) of the 1991 Act, it is recommended to insert “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder” after “using” in Article 16(2) of the Draft Law. Article 16(3) of the Draft Law provides that varieties of fruit, ornamentals and forest species are excluded from this exception and that the regulations will introduce additional limitations to Article 16(2), as considered appropriate.

“27. In the opinion of the Office of the Union, subject to the inclusion in Article 16(2) of the Draft Law of “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder” after “using”, the Draft Law incorporates the substance of the 1991 Act, and once adopted without substantive changes, it would enable Guatemala “to give effect” to the provisions of the 1991 Act, as required by its Article 30(2).”

13. The Council decided to

(a) take note of the information given in document C/40/15, as modified by the Council;

(b) take a positive decision, subject to the inclusion in Article 16(2) of the Draft Law of “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder” after “using”, on the conformity of the Draft Law for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Republic of Guatemala to deposit its instrument of accession once the Draft Law is enacted and in force; and

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

14. The Delegation of Guatemala thanked the Council for the examination of the Draft Law and looked forward to becoming a member of UPOV.

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

15. The Council noted the report by the President.

Explanatory Notes on Variety Denominations Under the UPOV Convention

16. The Vice Secretary-General introduced document C/40/12. He noted that, in paragraph 6 of the Annex to document C/40/12, the reference to “Article 26(h)” of the 1991 Act should be replaced by “Article 26(5)(x)” of the 1991 Act.

17. The Council adopted the “Explanatory notes on variety denominations under the UPOV Convention”, as contained in document C/40/12, and noted that prior guidance provided by the “UPOV Recommendations on Variety Denominations” (document UPOV/INF/12 Rev.), was superseded by those Explanatory Notes.

Annual Report of the Secretary-General for 2005; Report on Activities During the First Nine Months of 2006

18. The Council approved the report of the Secretary-General on the activities of the Union in 2005, as provided in document C/40/2.

19. The Council noted the report on activities during the first nine months of 2006, as provided in document C/40/3. It also noted the oral report by the Vice Secretary-General on the need for extra-budgetary funding of regional seminars in Kenya and in Tunisia. The Vice Secretary-General reported on extra-budgetary funding by the European Commission of a project for assistance to the African Intellectual Property Organization (OAPI) in the implementation of plant variety protection to be undertaken in 2007.

20. The Council also took note of information provided by the Vice Secretary-General on an FAO project on plant variety protection in the Islamic Republic of Iran.

21. The Council received a presentation by the Senior Counsellor on the UPOV Distance Learning Course DL-205.

22. The Council noted the contents of document C/40/16 and its Annex on the “Avian Flu Preparedness Plan” and the oral report by the Vice Secretary-General.

23. The Council expressed its appreciation to the Office of the Union for the work it had carried out and to the World Intellectual Property Organization (WIPO) for the assistance it had provided.

Finances of the International Union for the Protection of New Varieties of Plants as at December 31, 2005

24. The Council approved the accounts for the 2004-2005 financial period. It noted the report of the auditor on the accounts of the 2004-2005 biennium, contained in document C/40/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in that matter.

Arrears in Contributions as of September 30, 2006

25. The Council noted document C/40/11 and the information that, due to a recent payment, Brazil had no arrears. No decision was called for under this agenda item.

Progress of the Work of the Administrative and Legal Committee

26. The Council noted the work of the Administrative and Legal Committee (CAJ), as described in document C/40/9, and the oral report made by the Chairman of the CAJ.

Progress Report of the Work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

27. The Chairperson of the Technical Committee introduced document C/40/10 in relation to the work of the Technical Committee. 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 provided in document C/40/10, and approved the programs of work set out in that document.

Calendar of Meetings in 2007

28. The Council approved the revised calendar of meetings in 2007, as presented in document C/40/8 Rev., which reflected the change in location of the Technical Working Party on Automation and Computer Programs (TWC), to be held from September 3 to 6, 2007, in Bucharest, Romania. The TWC and the preparatory workshop would be held in Sibiu instead of Bucharest.

29. The Council also noted the proposed dates of meetings in Geneva in 2008.

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

30. The Council elected, in each case for a term of three years ending with the forty-third ordinary session of the Council, in 2009:

- (a) Mr. Doug Waterhouse (Australia), President of the Council;
- (b) Mr. Keun-Jin Choi (Republic of Korea), Vice-President of the Council.

31. The Council expressed its appreciation to the outgoing President, Miss Enriqueta Molina Macías (Mexico), for the work carried out during her term.

Extension of the Appointment of the Vice Secretary-General

32. The President informed the Council that the term of appointment of Mr. Rolf Jördens would expire on November 30, 2006.

33. The Secretary-General congratulated the Vice Secretary-General, Mr. Rolf Jördens, on the excellence and distinction with which he had accomplished his duties.

34. The Council noted that the Consultative Committee had stressed the importance of the independence of the Council of UPOV in its decisions concerning the appointment of the Vice Secretary-General.

35. The Council unanimously decided to extend the term of Mr. Rolf Jördens as Vice Secretary-General of UPOV until November 30, 2009.

36. The Council noted that the Consultative Committee had also agreed to have an initial discussion on that item at its seventy-third session, in March 2007, and to make a final recommendation for a Council decision regarding the one-year extension at the seventy-fifth session of the Committee in April 2008. The final decision would be taken at the twenty-fifth extraordinary session of the Council in April 2008, at the latest.

Situation in the Legislative, Administrative and Technical Fields

37. The Council noted documents C/40/5, C/40/6, C/40/7 and C/40/13, and noted that a revised document on “Plant Variety Protection Statistics” for the period 2000-2004 (document C/39/7 Rev.) was now available. No decisions were called for under this agenda item.

Presentation by the Food and Agriculture Organization of the United Nations (FAO) on the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/PGRFA)

38. The President invited Mr. Clive Stannard, Senior Liaison Officer, Interim Secretariat of the IT/PGRFA, FAO, to make a presentation on the IT/PGRFA as part of the cooperation between UPOV and FAO. She recalled that there had been a UPOV briefing session in February 2006 for relevant FAO experts and officers of the FAO Legal Office.

39. The Council noted document C/40/17 and the presentation on the IT/PGRFA.

UPOV Medal

40. In recognition of her contribution as President of the Council of UPOV, the Secretary-General awarded to Miss Enriqueta Molina Macías a UPOV Gold Medal.

41. In recognition of her remarkable professional contribution to UPOV, the Secretary-General awarded to Mrs. Pia Huber a UPOV Gold Medal.

Retirement

42. The President noted that Mr. José María Elena (European Community) would be retiring before the next session of the Council and expressed to him her best wishes on behalf of the Council for a long and happy retirement.

43. The Council adopted this report at the close of the session.

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

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

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