



C/42/21

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Second Ordinary Session
Geneva, October 30, 2008

REPORT

adopted by the Council

Introduction

- *1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its forty-second ordinary session in Geneva on October 30, 2008, chaired by Mr. Doug Waterhouse (Australia), President of the Council.
2. The list of participants is reproduced in Annex I to this document.
- *3. The session was opened by the President who welcomed the participants.
- *4. The Council paid tribute to Mrs. Valerie Sisson, former delegate of Canada to UPOV meetings, who had passed away in recent months.
5. The President informed the Council that Georgia had deposited its instrument of accession on October 29, 2008, and would become the sixty-sixth member of UPOV on November 29, 2008. The intervention made by the Delegation of Georgia is reproduced in Annex II to this document.

* An asterisk next to the paragraph number indicates that the text has been taken from the Report of the Decisions (document C/42/20).

*6. The President reported to the Council that Switzerland had ratified the 1991 Act of the UPOV Convention on September 1, 2008.

Adoption of the Agenda

*7. The Council adopted the draft agenda, as proposed in document C/42/1, after the inclusion of document C/42/16 Add. under item 3, documents C/42/18 and C/42/19 and the comments of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) of October 28, 2008, under item 4, and document C/41/7 Rev. under item 18(b).

*8. The Council noted that, in the Spanish version of the draft agenda (document C/42/1), reference to “document C/42/13” under item 18 should be replaced by “document C/42/14”.

Appointment of the new Secretary-General

*9. The Council considered documents C/42/16 and C/42/16 Add.

*10. The Council decided to appoint Mr. Francis Gurry as the new Secretary-General of UPOV for the period from October 30, 2008 to September 30, 2014.

*11. The Council noted that the Secretary-General renounced his indemnity as Secretary-General of UPOV and expressed his wish for that indemnity to be used in the UPOV program and budget for financing activities of particular interest to developing countries (see paragraph 7 of document C/42/16 Add.).

12. The statement made by the Secretary-General is reproduced in Annex III to this document.

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

The former Yugoslav Republic of Macedonia

*13. The Council considered document C/42/18.

*14. The Council decided to

(a) take note of the analysis in document C/42/18 document;

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

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

15. The Delegation of the former Yugoslav Republic of Macedonia expressed its appreciation for the assistance provided by the Office of the Union and for the decision of the Council on the conformity of the Draft Law with the UPOV Convention. The Delegation informed the Council that the Draft Law would be adopted in the near future and the Council heard that the Government of the former Yugoslav Republic of Macedonia looked forward to the deposit of its instrument of accession.

Bosnia and Herzegovina

*16. The Council considered document C/42/19.

17. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) explained that CIOPORA had not provided comments on the Law of Bosnia and Herzegovina because of the recommendation that the Law should be amended. Nevertheless, he expressed CIOPORA's concerns about the Law, which CIOPORA considered had shortfalls and loopholes with respect to the protection for vegetative-propagated ornamental and fruit plants. He asked the Government of Bosnia and Herzegovina to communicate with CIOPORA in order to resolve those problems.

*18. The Council decided to

(a) take note of the analysis in document C/42/19;

(b) recommend that Bosnia and Herzegovina incorporate the additional provisions and amendments in the Law, as provided in document C/42/19, and recommend that once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance, at the earliest opportunity, to the Government of Bosnia and Herzegovina in drafting the necessary additional provisions and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of Bosnia and Herzegovina of that decision.

19. The Delegation of Bosnia and Herzegovina thanked the Council for the opportunity to attend the session and for the analysis contained in document C/42/19. It hoped that cooperation in drafting the necessary additional provisions and amendments to the Law would be successful.

Report by the President on the work of the seventy-sixth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee

*20. The Council noted the oral report by the President on the seventy-sixth session of the Consultative Committee, held on October 29 and on the morning of October 30, 2008, in particular, that the Consultative Committee had:

(a) approved an arrangement between UPOV and WIPO, concerning the UPOV Plant Variety Database whereby WIPO would undertake the collation of data for the UPOV-ROM and provide the necessary assistance to deliver a program of improvements and UPOV would agree that data in the UPOV-ROM Plant Variety Database could be included in the WIPO Patentscope® search service. It was explained that, in the case of data provided by parties other than members of the Union (e.g. the Organisation for Economic Co-operation and Development (OECD)), permission for the data to be used in the WIPO Patentscope® search service would be a matter for the parties concerned;

(b) approved the development of an “Assistance” webpage on the UPOV website to provide information on relevant forms of assistance in the development of plant variety protection according to the UPOV Convention and an approach to seek to enhance extra-budgetary sources of funding for assistance;

(c) noted the developments concerning the Second World Seed Conference “Responding to the challenges of a changing world: the role of new plant varieties and high quality seed in agriculture”, to be held from September 8 to 10, 2009, at the Food and Agriculture Organization of the United Nations (FAO) headquarters, Rome and had approved the allocation of 10,000 SFr. for operating costs of that Conference.

21. The representative of the African Regional Intellectual Property Organization (ARIPO) explained that ARIPO looked forward to using the Plant Variety Database for its member States in their quest towards developing an effective plant variety protection system. He reported that most of the member States of ARIPO were beginning to demonstrate some commitment towards developing a plant variety protection system and believed that the “Assistance” webpage on the UPOV website would be very useful for the members States of ARIPO in relation to developing appropriate steps towards acceding to the UPOV Convention.

Adoption of document TGP/10/1 “Examining Uniformity” and revisions to document TGP/5 “Experience and Cooperation in DUS Testing” (document C/42/12)

*22. The Council considered documents C/42/12, TGP/10/1 Draft 10 and the proposed revisions to document TGP/5.

TGP/10: Examining Uniformity (document TGP/10/1 Draft 10)

*23. The Council adopted document TGP/10/1 “Examining Uniformity” on the basis of document TGP/10/1 Draft 10.

TGP/5: Experience and Cooperation in DUS Testing (revisions)

*24. The Council adopted the revisions to document TGP/5 “Experience and Cooperation in DUS Testing”, on the basis of the following documents:

Introduction Draft 3:	Introduction;
Section 1/2 Draft 6:	Model Administrative Agreement for International Cooperation in the Testing of Varieties;
Section 2/2 Draft 6:	UPOV Model Form for the Application for Plant Breeders’ Rights;
Section 4/2 Draft 6:	UPOV Model Form for the Designation of the Sample of the Variety;
Section 5/2 Draft 6:	UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results;
Section 6/2 Draft 6:	UPOV Report on Technical Examination and UPOV Variety Description;
Section 7/2 Draft 6:	UPOV Interim Report on Technical Examination; and
Section 11/1 Draft 4:	Examples of Policies and Contracts for Material Submitted by the Breeder.

Measures to improve the efficiency, effectiveness and time flexibility of the UPOV sessions

25. The Council considered document C/42/13.

26. With regard to the examination of laws (paragraph 8 of document C/42/13), the President reported that the Consultative Committee, at its seventy-sixth session, had recommended that the requests for examination of laws should reach the Office of the Union at least three weeks prior to the week of the relevant Council session. The Consultative Committee had also proposed that, in general, in cases when requests were received later than that deadline, they would be considered at the subsequent session of the Council.

27. The representative of CIOPORA recalled that CIOPORA had been contributing to the work of UPOV for the last 47 years and had commented on nearly all the laws that had been submitted for the examination of the Council. CIOPORA considered that it was important to have the opportunity to discuss the provisions of laws with the members of the Union. He was concerned that it seemed that that opportunity would not be available in the future.

28. The President confirmed that the opportunity for CIOPORA to communicate with individual or all members of the Union would not be lost. He explained that, as provided in paragraph 8 of document C/42/13, comments on laws received from CIOPORA would be posted on the Consultative Committee section of the UPOV website. He explained that that arrangement would enable CIOPORA to provide its input before the recommendations of the Consultative Committee were made.

*29. The Council noted the new measures agreed by the Consultative Committee to improve the efficiency, effectiveness and time flexibility of the UPOV sessions as presented in document C/42/13.

30. The Council agreed that requests for examination of laws should reach the Office of the Union at least three weeks prior to the week of the relevant Council session. It also agreed that, in general, in cases when requests were received later than that deadline, they would be considered at the subsequent session of the Council.

Annual report of the Secretary-General for 2007; Report on activities during the first nine months of 2008

*31. The Council approved the report of the Secretary-General on the activities of the Union in 2007, as provided in document C/42/2.

*32. The Council noted that a revised version of document C/42/2 would be prepared in order to reflect the participation of the Community Plant Variety Office (CPVO) of the European Community in the Regional Seminar on Plant Variety Protection under the UPOV Convention and Workshop on DUS Examination and Data Handling, which was held from June 5 to 8, 2007, at the headquarters of the Kenya Plant Health Inspectorate Service (KEPHIS), Nairobi, Kenya.

33. The Council noted the report on activities during the first nine months of 2008, as provided in document C/42/3.

Finances of the International Union for the Protection of New Varieties of Plants as at December 31, 2007

34. The Council considered document C/42/4.

35. The Delegation of Germany noted that there had been a surplus at the closing of the financial year and recommended that that situation be taken into account for the preparation of the budget for the next financial period. It also observed that there was a significant difference between the budget allocations and the actual expenditures during the period under review. The Delegation explained that its decision to approve the accounts for the 2006-2007 financial period was on the basis of correct account-keeping. Its approval did not extend to the recommendations in the report of the auditor contained in Annex B of document C/42/4.

36. The President explained that the issue raised by the Delegation of Germany concerning the difference between the budget estimates and the actual expenses was a challenge for every organization. He gave the example of the allocation corresponding to consultancy services that had proved not to be necessary during that period. The President also referred to the negotiations between WIPO and UPOV concerning the amount corresponding to services rendered, which had resulted in significant savings for UPOV. He noted that it was difficult to anticipate those situations at the time of the adoption of the budget. However, he noted that it was important that those matters be fully taken into account in the preparation of the program and budget for the next financial period.

*37. The Council approved the accounts for the 2006-2007 financial period. It noted the report of the auditor on the accounts of the 2006-2007 biennium, contained in document C/42/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in that matter.

Arrears in contributions as of September 30, 2008

38. The Council considered document C/42/11.

39. The Chief Financial Officer (Controller) of WIPO informed the Council that, as a result of recent payments, Ireland and Italy had no arrears. He noted that the situation of arrears was deteriorating year-by-year and called on States to cover those arrears as soon as possible.

*40. The Council noted the status of payment of contributions and the working capital fund participations as provided in document C/42/11 and noted the information that, as a result of recent payments, Ireland and Italy had no arrears; no decision was called for under this agenda item.

*41. The Council noted that the arrears in respect of Belgium and France had arisen as a result of exchange rate variation and would be rectified shortly.

Financial Regulations and Rules of UPOV

*42. The Council considered document C/42/15.

*43. The Council noted that the Consultative Committee, at its seventy-sixth session, held on October 29 and on the morning of October 30, 2008, had agreed that:

(a) provisions concerning an external audit committee and internal audit for UPOV should be considered in parallel with the revision of the Financial Regulations and Rules of UPOV; and

(b) the Office of the Union should prepare a document for consideration at its seventy-seventh session, to be held on April 3, 2009, setting out possible approaches for the process of revising the Financial Regulations and Rules of UPOV, on the basis of discussions at its seventy-sixth session and a clarification of the proposal made by the Delegation of Germany. The Consultative Committee had noted that that timetable would mean that it would not be possible to make changes to the structure of the draft program and budget for the 2010-2011 biennium.

Progress report of the work of the Administrative and Legal Committee

*44. The Council noted the work of the Administrative and Legal Committee (CAJ), as provided in document C/42/9 and in the oral report by the Chair of the CAJ, and approved the work program for the fifty-ninth session of the CAJ, as presented in the oral report of the Chair 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

*45. The Council noted the work of the Technical Committee (TC), the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular, as provided in document C/42/10 and summarized in an oral report by the Chairman of the TC, and approved the programs of work set out in that document.

Calendar of meetings in 2009

*46. The Council approved the calendar of meetings in 2009, as presented in document C/42/8.

*47. The Council also noted the proposed dates of meetings in 2010.

Extension of the appointment of the Vice Secretary-General

*48. The Council considered document C/42/17.

*49. The Council decided to extend the term of the appointment of the Vice Secretary-General until November 30, 2010.

Election of the new Vice-Chairperson of the Technical Committee

*50. The Council elected Mr. Joël Guiard (France) as Vice-Chairman of the TC for the term 2008 to 2010.

Election of New Chairpersons

*51. The Council elected, in each case for a term of three years ending with the forty-fifth ordinary session of the Council, in 2011:

- (a) Mr. Dirk Theobald (European Community), Chairman, Technical Working Party for Agricultural Crops (TWA)
- (b) Mr. Gerie van der Heijden (Netherlands), Chairman, Technical Working Party on Automation and Computer Programs (TWC)
- (c) Mrs. Bronislava Bátorová (Slovakia), Chairperson, Technical Working Party for Fruit Crops (TWF)
- (d) Ms. Andrea Menne (Germany), Chairperson, Technical Working Party for Ornamental Plants and Forest Trees (TWO)

- (e) Mrs. Radmila Safarikova (Czech Republic), Chairperson, Technical Working Party for Vegetables (TWV)
- (f) Mr. Andy Mitchell (United Kingdom), Chairman, Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT)

Situation in the legislative, administrative and technical fields

*52. The Council noted documents C/42/5, C/42/6, C/42/7 and C/42/13 and noted that a revised document on “Plant Variety Protection Statistics” for the period 2002-2006 (document C/41/7 Rev.) had been produced. It noted that document C/42/7 indicated that, in 2007, the total annual number of titles issued by UPOV members had exceeded 10,000 for the first time. It noted that a revised version of document C/42/7 would be produced if further data for 2007 was received; no decisions were called for under this agenda item.

UPOV Medal

*53. The Secretary-General awarded Mr. Kamil Idris, the former Secretary-General of UPOV from December 1997 to September 2008, a UPOV Gold Medal.

54. The present report has been adopted by correspondence.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE PROVISOIRE DES PARTICIPANTS / PROVISIONAL LIST OF PARTICIPANTS /
VORLÄUFIGE TEILNEHMERLISTE / LISTA PROVISIONAL DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
por orden alfabético de los nombres en francés de los miembros)

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Yolanda HUERTA (Mrs.), Senior Legal Officer

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ANNEX II

STATEMENT BY THE DELEGATION OF GEORGIA

President,
Ladies and Gentlemen,

On behalf of the Government of Georgia, the Ministry of Agriculture, we appreciate the warm welcome into the UPOV family. We are very honored to be a member of UPOV.

Yesterday, on October 29, 2008, Georgia deposited its instrument of accession to the UPOV Convention (1991 Act) with the Acting Secretary-General of UPOV. Georgia will become the sixty-sixth member of UPOV.

The Law of Georgia for the Protection of New Varieties of Plants was adopted by the Parliament of Georgia on December 29, 2006. On March 1, 2007, the Council of UPOV took a positive decision on the conformity of the Law of Georgia for the Protection of New Varieties of Plants with the 1991 Act of the UPOV Convention.

In Georgia, protection is available for all plant genera and species. Applications for plant breeders' rights can be filed with the National Intellectual Property Center (SAKPATENTI). SAKPATENTI cooperates with the Ministry of Agriculture and Food for the examination of Distinctness, Uniformity and Stability (DUS).

I would like to emphasize our gratitude for the assistance received from the Office of the Union in the accession procedure of Georgia to the UPOV Convention.

I would like also to convey thanks to international experts and other authorities of members of the Union for their help and cooperation.

Thank you.

[Annex III follows]

ANNEX III

STATEMENT BY MR. FRANCIS GURRY,
SECRETARY-GENERAL OF UPOV

Mr. President,
Ladies and Gentlemen,

Let me first of all, at the outset, thank you all most sincerely for the confidence and trust that you have placed in me in appointing me to the post of Secretary-General of UPOV. I am very honored by the appointment and I thank you very much for this.

Let me at the outset, Mr. President, pay a tribute to you for the very able and efficient manner in which you lead the discussions of the Council. Let me also pay tribute to my predecessors and, in particular, to Dr. Kamil Idris who was the Secretary-General from 1997 until September 2008, and during his time as Secretary-General, UPOV experienced an unprecedented level of growth and outreach.

I think there are a number of recent developments in the world, and in our environment, which make the traditional task of plant breeding all the more relevant today, much more relevant and more important than ever before. Of course, in one sense the fundamental task, biological task, of human beings has always been to feed themselves and socially, of course, that translates itself into a task of ensuring food security and sustainability and affordability. I think you are all aware much better than I that there are a number of developments that have occurred that are challenging the capacity of humanity to fulfill those basic tasks more and more. First of all, there is the challenge that we all face in the area of climate change, the number of climate incidents or accidents or natural disasters, whether geophysical or hydrological or meteorological is constantly on the rise, this presents great challenges for agriculture in particular; our own lifestyle and behavior presents a great many challenges – we have increasing numbers of settlements in exposed regions of the world, a problem of urbanization, we have soil erosion, salinity difficulties and the extreme challenge of the diminishing availability of water. We also face an environment in which energy prices are extremely volatile and has enormous impact on our behavior and our responses to the volatility of energy prices and, of course, we are also in an environment of increasing globalization of markets which has a very important impact on the distribution of food. Plant breeding, as you all know better than I, is an extremely powerful tool to contribute to our capacity to deal with this very challenging environment and the UPOV system in particular is a very powerful tool to support both plant breeding and the production and distribution of its products in the form of high-quality seeds and propagating materials to farmers and other users.

I think there is every reason for us all to be very proud of UPOV, of the UPOV system, of its potential and of the Organization. But there is, at the same time, a great deal for us all to do in the future and let me mention just a couple of those items. First of all, I think that the culture of this Organization is being a technical organization, which is focused on its central mission, is a very dear thing that should be preserved. It really has been a pleasure for me to have participated in the meetings that have taken place this week and to see the technical focus that all of the members give to the discussions and the desire to find solutions and advance in an efficient manner and that culture of this Organization, I think, it certainly something to be preserved. I think outreach remains, of course, a very important element of

the Organization's work program. We now have, thanks to the accession of Georgia, 66 members of UPOV. That is still a relatively small number and while I think properly UPOV has a rigorous procedure for ensuring compatibility of the laws and systems of potential new members with the UPOV system, there is room for further expansion in the future. There is great room and scope for even more intense technical assistance to potential new members as well as the most recent members.

I was very pleased to see that you decided to place on the agenda of the Consultative Committee next year the notion of a strategic plan. International organizations are moving more and more towards the idea that a biennial program and budget, or the program and budget whatever its period, should fit into a larger strategic medium term plan and I think that there is much for us to reflect upon as to the mission of this Organization and the way in which it can be improved giving the very challenging environment that the Organization faces in the future and certainly, one of the items upon which we should reflect in this regard is enhancing the technical cooperation that occurs throughout the UPOV system. Unlike the patent system where there is a dire need for increased technical cooperation between the various patent offices of the world, it is a remarkable thing that within the UPOV system we see a very willing level of technical cooperation, particular with respect to testing amongst the various plant variety offices of the world and this is certainly something that needs to be encouraged in the future. It is also very encouraging that you have taken a decision, I think, to improve the UPOV database of information that is generated through the system of plant breeders' rights and this is a project which holds a great deal of promise for communicating better the central mission of UPOV and the social benefit also of the plant breeders' rights system in terms of the important technical information that it generates.

And finally let me mention in this regard that communication, I think, is one of the central challenges for UPOV as it is indeed for the World Intellectual Property Organization (WIPO), as an organization. Intellectual property, in general, including plant breeders' rights, faces a completely different environment from the one that they faced a mere 20 years ago. Intellectually property was unheard of a mere 20 years ago and now it features regularly on a daily basis in our newspapers. There is not always, however, a commensurate understanding of what intellectual property is about. While we now see that it is mentioned, it is not the case that it is always mentioned in flattering terms. So there is, I think, constant mission on our part to communicate the benefits of plant breeding and the plant breeders' rights system and to communicate that to the general public, in particular, and to demonstrate the practical ways in which the plant breeders' rights system actually assists the central missions of humanity in ensuring food security and sustainability around the world. The UPOV Report on the Impact of Plant Variety Protection that we have done, of course, is a very important tool for us to use in this regard.

I am very much looking forward to working with you all in the course of the coming years. I thank you once again for the confidence that you have expressed in me though this appointment and I look forward to our close cooperation in the future.

Thank you.

[End of Annex III and of document]