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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-fourth Ordinary Session Geneva, October 18 and 19, 1990

DETAILED REPORT

adopted by the Council

Opening of the Session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-fourth ordinary session in Geneva on October 18 and 19, 1990.
2. The session was presided over by the President of the Council, Mr. W.F.S. Duffhues (Netherlands).
3. The list of participants is given in Annex I to this report.
4. The indented paragraphs are taken over from the report on the decisions of the Council, which the latter adopted at its meeting of October 19, 1990 (document C/24/17).

Adoption of the Agenda

5. The Council adopted the agenda as appearing in document C/24/1.

Situation in the Legislative, Administrative and Technical Fields

a. Statements by Representatives of States (Member States and Observer States) and International Organizations

6. The Council noted the declarations made under this agenda item.

The main information given under this agenda item is recorded below.

1. Statements by Representatives of Member States

7. South Africa - As regards legislative and administrative developments, the fees payable concerning plant breeders' rights would gradually be increased over the next few years in order to recover all the costs. At this stage only approximately 50% of the costs involved were recovered. In the related field of regulations on the seeds and seedlings trade, variety lists for Citrus and subtropical fruit were in the process of being finalized and should come into operation later during the year or early in 1991.

8. Since the last session of the Council, two plant species, *Setaria* (pasture grass) and *Vicia faba* (broad bean) had been added to the list of plants for which Plant Breeders' Rights could be obtained. This had brought the total of plant taxa for which plant breeders' rights could be obtained in South Africa to 115.

9. Interest in obtaining plant breeders' rights in South Africa was still very high. During the report period 90 titles of protection had been granted and 115 applications for plant breeders' rights had been filed. The following number of applications had been received:

Agricultural crops	40
Fruit crops	20
Vegetable crops	21
Ornamental plants	34
 TOTAL	 115

10. Electrophoretic investigations were being continued, and tests had been conducted on nearly all dry bean and soya bean cultivars on the South African variety list. The purpose of this research was to identify genetic groups within each crop. This would greatly reduce the number of reference varieties that must be planted and compared with new applications.

11. Germany - With effect from October 3, 1990, the German Democratic Republic acceded to the Federal Republic of Germany. From that date the Federal Republic of Germany comprised 16 Bundesländer. The reunification of the two former German countries had the following effects in the field of plant variety protection:

(i) As a result of the coming into force of the Agreement on German Reunification, the UPOV Convention had effect in relation to the territory of the former German Democratic Republic.

(ii) According to an annex to the Agreement on German Reunification, plant breeders' rights which had been granted in one of the two countries before October 3, 1990, were effective in each case in the whole territory of Germany, from October 3, 1990. This settlement was possible as the legislation on plant variety protection of the German Democratic Republic had been widely adapted to the law in the Federal Republic of Germany and consequently to a law conforming with the UPOV Convention.

(iii) With effect from October 3, 1990, the former plant variety protection law of the German Democratic Republic was abolished subject to some minor transitional regulations. The Zentralstelle für Sortenwesen, former central office responsible for the protection of plant varieties in the German Democratic Republic, had been dissolved.

(iv) Since October 3, 1990, the Federal Office of Plant Varieties (Bundessortenamt) in Hanover had been the only office competent in plant breeders' rights matters. The Bundessortenamt had been expanded through the integration of the personnel as well as some equipment and testing stations of the former Zentralstelle.

(v) The applications for plant breeders' rights which had been pending before the former Zentralstelle on October 3, 1990, would be processed by the Bundessortenamt. Correspondence concerning the varieties protected in the former German Democratic Republic and related matters should be exchanged with the Bundessortenamt only.

12. A draft law was to be submitted to the Federal Cabinet in the near future. According to the draft law the so-called "farmer's privilege" would be widely removed for vegetatively propagated plant species (with the exception of potato and vine). The provisions of the law would also be applied to certain seed-propagated agricultural plant species for a transitional period in the territory of the former German Democratic Republic, where there was no "farmer's privilege" prior to accession to the Federal Republic of Germany. The maintenance of this situation was almost obligatory due to the size of the agricultural production cooperatives in that territory, which extended at times over thousands of hectares, and because it was easy to use as seed the harvested material produced by those cooperatives. The Federal Ministry for Food, Agriculture and Forestry had established a Committee of Experts to work out a proposal for the Ministry on the German standpoint with regard to all plant species to be ready before the Diplomatic Conference.

13. Bilateral cooperation in technical examination with certain other member States had continued successfully. As for the existing bilateral agreements with neighboring member States, mutual discussions had suggested that the agreements were likely to be extended to further plant species in due course.

14. Up to October 3, 1990, the number of applications for the granting of breeders' rights had reached 966 for the report year. The applications which had been filed before October 3, 1990, in the German Democratic Republic had been recently transferred to the Bundessortenamt. The number had not yet been determined. The number of protected varieties had been 3,405. After the accession of the German Democratic Republic the number would be over 5,000.

15. Australia - Since March 1990 all genera and species of the plant kingdom had been eligible for protection. Since January 1990 the Plant Variety Rights Act had been amended to remove the farmer's exemption for asexually propagated species and recently a further amendment was submitted to Parliament to facilitate bilateral agreements with other countries.

16. The Plant Variety Rights Office continued to work towards more efficient operations, providing the Australian community with no more bureaucracy than was necessary for an effective scheme, granting valid rights on legal and technical parity with other UPOV member States. The Office had developed an empathy with the plant industries with sensitivity to their needs and advice. It participated actively in UPOV activities and was pursuing bilateral arrangements where possible to facilitate the international flow of varieties. These arrangements were of particular interest where Australian-bred varieties were given access to protection in overseas countries.

17. The Australian Plant Variety Rights scheme was maintaining its momentum towards becoming successfully established and was consolidating and expanding the progress already made. Since the establishment of the scheme in March 1988, there had been over 270 applications made and 83 rights granted. Although there had been a recent decline in the volume of overseas applications, there had also been a noticeable increase in the volume of applications for Australian-bred varieties, such that they currently constituted 25% of applications received. The recently increased level of investment in Australian plant breeding programs would probably result in an even greater volume of applications from Australia. With over 160 applications in the 1990 financial year, the size of the scheme and level of participation was likely to rise much further. In this last financial year the Plant Variety Rights Office achieved a figure of over 55% cost recovery from application fees received. The Plant Variety Rights Office was still receiving a very high proportion of applications for ornamental plant varieties consistent with other UPOV member States, to the extent that over 70% of applications were for ornamental plants and it was foreseen that this trend would continue.

18. The future of plant variety protection in Australia would probably see many changes in response to international developments. It was important that Australia kept pace with these changes and had the best incentives and legislative climate to take advantage of new technology. The delay in implementing Australian Plant Variety Rights had already provided enough examples of lost opportunities. This year the Plant Variety Rights Office had conducted a workshop to study methods of variety identification with particular interest in biochemical techniques. The Plant Variety Rights Office had also commissioned, in collaboration with the Patent Office, an expert study on the legal protection of plants in Australia. Both the proceedings of the workshop and the report of that expert study would be made publicly available and available to UPOV member States.

19. Belgium - As regards legislative and administrative developments, the Plant Variety Protection Office had established a list of 108 taxa to which protection would be extended in the near future (the law was currently applicable to 168 taxa).

20. Agreements on cooperation in technical examination with Denmark, France, Germany, Israel, the Netherlands, Sweden and the United Kingdom had been planned and were now in preparation.

21. By August 31, 1990, 1,167 applications in total had been filed and 672 titles of protection granted, 360 of which were still in force. The titles granted covered 44 taxa.

22. Denmark - As from January 1, 1991, the costs of variety testing were to be fully recovered through fees from breeders. From January 1, 1990, the fees had been increased quite heavily as had been published in the official gazette, though full recovery was not required at that time. From the beginning of November it would be discussed with the breeders how full recovery could be successfully achieved without reducing the variety testing more than was necessary in 1990. Full recovery of variety testing costs referred not only to the DUS examination with respect to plant breeders' rights, but also to the testing for value for cultivation and use for the purpose of the national listing of varieties.

23. The following table sums up the use of the plant variety protection system:

	1989	1990*
Number of applications for protection, including: - agricultural crops	253	170
- fruit crops	94	
- vegetables	1	
- ornamentals	4	
	154	
Number of certificates issued, including: - agricultural crops	226	183
- fruit crops	63	
- vegetables	7	
- ornamentals	1	
	155	

* up to October 5

24. Spain - Since the last session of the Council, protection had not been extended to any further species. The Plant Variety Protection Board decided to extend protection to cotton, but there were still some difficulties with the necessary arrangements to carry out the variety examination.

25. The fees had been increased by some 5% with effect from January 1, 1990.

26. Spain was interested in establishing bilateral cooperation in examination this year for grasses and probably vegetables. It was planned for the first attempt of its kind to conclude an agreement with Germany.

27. During the past year, 249 applications had been filed, thereby bringing the total to 2,687 since the entry into force of the Law. The number of titles issued during the period had been 102 and the total number up to now was 600 approximately. In November 1990, the Plant Variety Protection Board would meet again to grant about 100 new titles.

28. United States of America - Since the last session of the Council there had been no significant development in the field of plant variety protection.

29. France - As with most European countries, France was affected by a certain number of regulations, in particular the EEC regulation on the dissemination of genetically modified organisms which had implications for plant varieties. There was deep concern as to the procedures to be used for putting such varieties on the market.

30. Farm-saved seed was delimited by an interprofessional agreement established under public law. Its implementation at the practical level had met with major difficulties. There had been demonstrations against the authority in charge of its implementation. It was believed that the agreement would have to be reviewed at the end of the current year to check whether it did not have the unlooked-for effect of increasing (rather than decreasing) the use of farm-saved seed.

31. Hungary - In the last year there had been no legal or administrative changes affecting plant variety protection in Hungary. The Institute for Agricultural Qualifications carried out DUS tests on varieties belonging to 28 plant species.
32. An agreement signed with the Plant Variety Rights Office of the United Kingdom this year provided for cooperation in the field of variety protection. On the occasion of the UPOV Seminar held in Budapest from September 19 to 21, 1990, further bilateral cooperation in the field of variety protection had been discussed with a number of delegations.
33. In 1989 101 applications for variety patents had been submitted to the National Office of Inventions--30% more than in 1988.
34. Ireland - In the course of the last year protection had been extended to 3 new species. There were 3 more under active consideration at present. In the period up to the beginning of October 17 applications had been received and in the same period 14 applications had been granted.
35. Israel - This year testing had been conducted on Aster varieties for the Netherlands, test reports of which had also been submitted to Denmark and Germany, upon their request.
36. The introduction of the new procedure for the submission of applications for plant breeders' rights had proved to be successful for the second year running. The fact that applicants had to make one payment--both the administrative and testing fees--at the time of the application, had reduced the volume of applications by half (122 applications during the report year). Protection had been granted to 164 varieties. At present the law applied to 110 genera and species.
37. This year the Plant Breeders' Rights Office had enjoyed the benefits of a computer. The examiner's work as well as the administrative work of the Council had been computerized, enabling the Office to do more in less time and more effectively. The Gazette would be issued quarterly and not twice a year as at present.
38. Italy - There had been no developments with regard to the legislative and administrative provisions. The extension of protection to further taxa had had to undergo some corrections, so it had not yet been implemented.
39. During the first 6 months of 1990 another 81 titles had been granted, thus bringing the total to 694. The species involved were mainly almond, barley, carnation, dieffenbachia, French bean, lucerne, peach, pear, potato, rape, rice, rose, soya bean, tomato, triticale and wheat.
40. Japan - The annual application number had increased from 385 in 1985 to 537 in 1989. From January to the end of September 1990, 416 applications had been received. The total number of applications was now 4,309. Among those applications 50% were made for annual flowers, followed by woody ornamental plants (14%) and vegetables (12%). In these years a remarkably large number of applications had been sent from abroad, representing 18% of all applications.

41. The International Garden and Greenery Exposition had been held from April 1 to September 30, in Osaka. This Exposition had been the first one held in the Far East as a horticultural exhibition, therefore the Japanese Government made efforts for its success. Eighty-two countries, 55 international organizations including UPOV and 325 Japanese public and private groups had participated in the Exposition. UPOV had exhibited, as most of the participating international organizations, an information panel in the International Exhibition Hall. The total number of visitors had been 23,126,934--16% more than the Association of the Exposition had expected.

42. It was planned to hold a Preparatory Meeting for the Seminar for Developing Countries in the Asian and Pacific region on plant variety protection from November 27 to 30 in Tokyo. Six countries from this region, namely Indonesia, Malaysia, the Philippines, the People's Republic of China, the Republic of Korea and Thailand, had already sent the names of their participants.

43. New Zealand - The administration of plant variety rights in New Zealand had been transferred from the Ministry of Agriculture and Fisheries to the Ministry of Commerce on August 1. As a result, a number of forms of intellectual property rights, namely plant variety rights, patents, industrial designs and trademarks, had now come under the one administrative umbrella of the Ministry of Commerce.

44. During the year, further discussions had continued on limiting the freedom of farmers to save seed of protected varieties without payment of a royalty. It was hoped that this matter would be satisfactorily concluded in the near future.

45. As for the activity of the Plant Variety Rights Office, there had been a pleasing increase of the order of 19% in the number of applications for protection. Also during the year, greater use of reports from other member States had been made, and for the first time reports from Germany and from Japan had been obtained.

46. Netherlands - Some of the proposed amendments of the UPOV Convention had been considered so important by the Dutch authorities that implementation at national level should not wait until the new Act was adopted. As a consequence of that position protection was extended to varieties of the entire plant kingdom on July 1, 1990. Furthermore, a proposal had been submitted to Parliament to amend the legislation, in order to bring the duration of the right to the levels laid out in the draft of the new UPOV Convention.

47. The extension of protection to varieties of the entire plant kingdom created practical problems concerning the way in which varieties belonging to species that were unknown or little known in the Netherlands should be examined on the DUS criteria. No general strategy had yet been developed to deal with this problem. However, it was expected to intensify cooperation on DUS testing with other countries, in order to make the most efficient use of the expertise available. Cooperation of this nature between member States should not be limited to countries in the same part of the world. The Netherlands had, for instance, very recently accepted an offer from Australia to undertake testing on varieties of species indigenous to Australia. Another possibility to tackle possible problems in the field of DUS testing could be to make more use of the facilities of the breeders concerned.

48. It was to be expected that the Centre for Variety Research and Seed Technology (CRZ), the institute in charge of the DUS testing, would in the future,

be merged together with the Centre for Research on Plant Breeding (CPO), the institute which was the successor of the Institute for Horticultural Plant Breeding (IVT), well-known in professional circles. The purpose of this reorganization was to ensure that the DUS testing would take place within a legal framework, totally independent from other activities, for instance the breeding activities of the new institute.

49. In 1990 the number of applications for Plant Variety Protection had risen to a level higher than that of recent years. In 1989 the total number of applications had been 1,248.

50. Poland - With regard to legislative developments, the Minister of Agriculture and Food Economy had signed the Order supplementing the list of genera and species to which the UPOV Convention was applicable in Poland. The following taxa had been added to the list:

- *Aronia melanocarpa* Elliot.
- *Cydonia oblonga* Mill.
- *Prunus cerasifera* var. *divaricata* Led.
- *Prunus insititia* L.
- *Prunus mahaleb* L.
- *Ribes aureum* Pursh.

51. The same Order determined that the exclusive right granted to the breeder of a variety of ornamental plant covered the use of the entire plants of the said variety, as well as parts of plants, used as propagating material in order to produce whole plants or parts of plants for commercial purposes. It was expected that the Polish legislation which, according to the observations made by the Council of UPOV at its last session, had not completely covered the principles mentioned in article 5(1) of the Convention, would be amended.

52. United Kingdom - On August 28, 1990, protection had been extended to the following taxa: Borage, Coriander, Cornus L., Euphorbia milii, x Festulolium, Impatiens, Kalanchoë, Scaevola aemula, Sunflower and Turnip Rape. Work was currently in progress for the introduction of protection during 1991 for the following taxa: Agapanthus, Astrantia, Hibiscus, Lavatera, Osteospermum, Quince rootstocks, Quinoa, Ruscus aculeatus and Tomato.

53. In future fruit testing would be carried out by Wye College, part of the University of London, and the testing would continue to be situated at Brogdale, where it had always been carried out. There was therefore no change to the undertaking of testing under the bilateral arrangements. There had not been any change in vegetable testing.

54. Sweden - No administrative or legislative changes had occurred during the past year. A proposition had been submitted to the Government by the National Plant Variety Board regarding the extension of protection to include Aronia, x Festulolium, Hippophaë, Lonicera, Populus and Sorbus on the list of protected taxa.

55. Switzerland - As a result of the coming into force of a modification of the regulation on July 1, 1990, protection could be sought for plant varieties of 144 families, of virtually all species. In contrast to the system of fixed fees for applications and for the maintenance of titles, no fixed fees for

examination had been introduced in the new regulation. The Swiss authorities would pass on to applicants individually the costs which had been incurred, in most cases, with foreign examining stations.

2. Statements by Representatives of Non-member States

56. Argentina - Since 1973 there had been a law that provided plant breeders' rights for varieties of all species and genera of plants. The law had been implemented by a decree in 1978 and since then property titles had been delivered. A further 160 varieties were waiting to be examined.

57. In August the Vice Secretary-General had visited Argentina. He had discussions with the Secretaria de Agricultura and had attended meetings with breeders and farmers in the Cereals Exchange in Buenos Aires. Studies were under way on the basis of proposals sent by the Office of the Union to make the national legislation compatible with the 1978 Convention. Preparations on a national level for the 1991 Diplomatic Conference for the revision of the Convention were under way. No final decision had been made, however, as to which Act of the Convention Argentina would accede to.

58. With regard to the harmonization of seed certification, seed quality analysis and the promotion of breeders' rights in the Latin-American region, the ALADI approach (Asociación Latinoamericana de Integración) was supported energetically by Argentina.

59. Bolivia - The Delegation of Bolivia stated that its participation in the session of the Council was a token of the growing interest for plant variety protection in its country, which was rich in botanical diversity.

60. Bulgaria - A kind of national protection of new plant varieties already existed. Currently there were more than 20 research organizations working on the selection of new plant varieties.

61. The interest of Bulgaria in joining the UPOV Convention was very great among agricultural and patent experts who considered that it was necessary and reasonable. For that reason work was under way to adjust the national legislation in accordance with the principles of the UPOV Convention. This work would be finished next year.

62. The preparation of the new legislation was a serious and difficult process and Bulgaria would gratefully accept any help from countries which had experience in this field. In this context the Chairman of the UPOV Council and the Vice Secretary-General of the Union had been invited to visit Bulgaria.

63. Bulgaria was following with great interest the work on the revision of the Convention and hoped that the Convention--after its revision--would be much better and more effective.

64. Egypt - The Ministry of Agriculture had now adopted a system of variety registration. Any variety developed inside the country or introduced from outside had to be registered with the relevant Institute of the Agriculture Research Center according to a certain protocol. Once a variety was registered, it could be released for circulation in the country.

65. India - From the annual report of 1989 and the report of activities during the first 9 months of 1990, it could be seen that the Vice Secretary-General had visited India. The Government of India was very interested in the activities undertaken by UPOV and there would probably be further interactions in the future.

66. Morocco - The Delegation of Morocco mentioned that the improvement of agricultural production depended on the results achieved in the field of research. There would be investments in plant breeding only if breeders' rights were protected. Morocco was aware of the importance of the protection of plant varieties. The Government of Morocco was preparing the legislative and juridicial bases, including the education of officials and the establishment of technical institutions, with a view to becoming party to the UPOV Convention in the near future.

67. Portugal - The Government of Portugal had recently approved legislation on the protection of new varieties of plants and would begin to accept the first applications for registration during November. During the first months, protection would be limited to certain cereal and oil crop species and grass species. It was envisaged that protection would be extended to varieties of fruit crops and ornamental plants before long.

68. Czechoslovakia - In the beginning of 1990, Czechoslovakia had passed a new law for the protection of plant and animal varieties. This law had been discussed at the ninth extraordinary session of the Council in April. According to the results of the discussion, the Federal Agricultural Ministry and the Ministry for Foreign Affairs would prepare proposals for the Government with a view to becoming a member of UPOV. It was hoped that the discussions would be finished at the end of this year with positive results.

69. In Czechoslovakia there had recently been many changes in personnel and in the responsibilities of authorities. For example, as from last month, the Federal Agricultural Ministry had become a part of the new Ministry for Economy. However, application forms could still be sent to the former address of the Federal Agricultural Ministry in Prague.

70. The Federal Agricultural Ministry had received 133 applications for new varieties.

71. Venezuela - Protection of new varieties of plants would be important for Venezuela, in particular in conjunction with questions relating to biotechnology. It would be useful if it was applied to the improvement of tropical products.

3. Written Statements from Non-member States Read out by the Office of the Union

72. Austria - The proposed draft for the Plant Variety Protection Law of Austria would again be submitted to Parliament. This submission was necessary as during the last legislative period, the parliamentary treatment of the draft law had not been completed.

73. The new draft for the Plant Variety Protection Law would be essentially the same as the submitted draft. It was hoped that the draft would pass Par-

liament during the legislative period that had just started. For the accession of Austria to the UPOV Convention, preparatory work had already been initiated. Austria had the intention of acceding to the UPOV Convention immediately after the Plant Variety Protection Law was enacted. Consequently, it was planned to base the list of species in particular on agreements with other member States. The revision of the UPOV Convention was being observed with much interest by Austria.

74. Finland - There was now a Bill on plant breeders' rights in Finland drawn up a few weeks ago by a Committee. The Bill was based on the present text of the Convention. It was envisaged that the Government would introduce it to Parliament later next Spring after the elections.

75. Norway - The Norwegian Government had recommended accession to the present Convention in a proposal to Parliament. In the proposal it was mentioned that the Convention was under revision, and that accession must be considered in the light of this revision. With reference to this, the Ministry of Agriculture was now setting up a Committee in charge of drafting a law conforming to the Convention. It was difficult to predict when the draft law in question would be ready, but this work was being given high priority.

4. Statements by Representatives of Intergovernmental Organizations

76. Commission of the European Communities (CEC) - As a result of the reunification of Germany, there had been a large number of provisional and transitional Community measures relevant to the ex-GDR territories, particularly in the field of the common agricultural policy as a whole. Whilst this had necessitated some provisional and transitional measures in the field of seeds and propagating material marketing, there had been no such measures necessary in fields of direct interest to the Union.

77. The Commission had completed during 1990 its consultations and submitted to the Council of Ministers on September 6, 1990, a Proposal for a Council Regulation on Community plant variety rights. This proposal formed an integral part of the program for completing the Community internal market by 1992. It sought to create a system of Community plant variety rights, in parallel with national systems of member States, under which breeders would be able to benefit on the basis of a single application through a single decision from direct and uniform protection throughout the Community. In particular, the proposal envisaged the creation of a Community Plant Variety Office to implement and administer the system. The Commission's objective had been to keep the text in line, as much as possible, with the UPOV Convention and its intended revision. The preamble formally recognized the developments occurring at international level, including those in UPOV, and the probable need to amend the Community Regulation as necessary in the light of such developments. In this connection, Commission departments had been grateful for the interest and cooperation of the UPOV Secretariat during the preparatory stage over the past three years.

78. The other Community initiative of interest to the Union was the Commission's proposal for a Council Directive on the legal protection of biotechnological inventions, made in October 1988. Its detailed examination and passage through the various Community institutions was still under way.

79. With regard to the forthcoming Revision of the UPOV Convention, there was wide interest within the Community for the Community to accede to the revised

Convention in due course. The Commission was grateful to UPOV for the opening offered in the drafts prepared for the Council meeting and the Community was looking forward to being able to participate actively and constructively in the forthcoming Conference.

80. Food and Agriculture Organization of the United Nations (FAO) - FAO had developed since 1953 a global system of plant genetic resources which was based on the principle that plant genetic diversity was the heritage of mankind and designed to ensure the safe conservation and unrestricted availability of plant germplasm for present and future generations. The system included the following three elements: a legal framework (the International Undertaking on Plant Genetic Resources), an intergovernmental forum (the Commission on Plant Genetic Resources), and a financial mechanism (the International Fund for Plant Genetic Resources).

81. To date, 126 countries were members of the Commission or had adhered to the International Undertaking, or had taken both steps. The establishment of the FAO global system had not been easy. It had had to face and overcome from the very beginning a large number of obstacles. The major reservations raised by some countries to the FAO Undertaking and Commission had been related to the compatibility of the Undertaking with the systems of national laws related to plant breeders' rights in many developed countries and to the restriction in some developing countries on the exchange of certain species.

82. The first session of the Commission, held in April 1989, had contributed to the consolidation of the system by overcoming these difficulties and achieving an agreed interpretation of the International Undertaking. This ensured full respect for national legislation and recognized the rights of both donors of technologies and donors of germplasm to be compensated for their contributions through the recognition of plant breeders' and farmers' rights. These agreements, which had been endorsed by the FAO Conference in November 1989, were now annexed to the International Undertaking. It was very important to read and understand the following two lines of the agreed interpretation. In the first paragraph, it said that "plant breeders' rights as provided for under UPOV are not incompatible with the international undertaking," and secondly, that "free access as used in FAO, does not mean free of charge." FAO thought that this acceptance of farmers' rights and breeders' rights was a kind of peace-making mechanism between developed and developing countries.

83. Many countries in FAO, above all developing countries, had expressed concern on the possible modification of the present UPOV Convention, especially in relation to the abolition of the farmer's privilege and eventually the research exemption. These modifications could bring into danger the particularities of the UPOV system, making it more similar to the normal industrial patent system, and it was the impression of FAO that some developing countries would rather adhere to the present UPOV Convention than to a modified UPOV Convention where farmer's and research exemptions were abolished. The application of the industrial patent system to plants in general could mean that the principle of free availability of germplasm, and with it the principle of genetic resources as a heritage of mankind, could come under pressure due to the position of some developing countries.

84. Organisation for Economic Co-operation and Development (OECD) - As a result of the reunification of Germany, the Convention of OECD had become applicable to the whole territory of Germany.

85. The OECD Cereal Seed Scheme had been modified by the Council of OECD in July to enable the certification of hybrid varieties of rye, wheat and triticale. It was now possible to certify practically all cereal hybrids. As for the Herbage and Oil Seed Scheme, discussions were under way on the possibility of certifying cross-hybrid seeds. With regard to the Beet Seed Scheme, there had been tentative discussions to incorporate the EEC standards into the rules.

86. For the Vegetable Seed Scheme, the OECD meeting had noted an explanation given by an expert from the Netherlands on the system of quality control operating in that country for vegetable and flower seeds. It was thought that the system would offer a model from which other control systems could be developed within the OECD Vegetable Seed Scheme.

87. Further discussions were under way concerning the characteristics to be used for post-control and the relationship between the OECD list of cultivars and national or Community catalogs, which were going to receive juridical values.

88. Costa Rica and Spain would now join the OECD Seed Schemes. A mission would be sent to Zimbabwe in January 1991 to examine the degree of preparation for the certification according to the OECD rules. The member States of ALADI (Asociación Latinoamericana de Integración) had adopted, or were now adopting, the rules of the OECD certification. There had also been contact with the People's Republic of China.

5. Statements by Representatives of International Non-Governmental Organizations

89. International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) - ASSINSEL's participation in the Fifth UPOV Meeting with International Organizations, with the largest of all delegations, was clear proof of the interest of its members in the work for the revision of the Convention. ASSINSEL was by far the most important client of the Convention and the proposals made by them had resulted from the consensus of the breeders of all member States of UPOV. ASSINSEL's wish was that the value of its contribution in terms of its economic importance be recognized and taken into consideration. They further wished to see more and more new countries joining UPOV and the efforts undertaken for this purpose were welcomed.

90. Association of Plant Breeders of the European Economic Community (COMASSO) - COMASSO hoped that discussions on the revision of the Convention would end by establishing a strong and attractive body of legislation for plant breeders since the protection of their intellectual property was in the interests of plant breeders and the national and international communities.

91. Seed Committee of the Common Market (COSEMCO) - The representative of COSEMCO mentioned that European breeders, members of COSEMCO, were greatly interested in protection. COSEMCO was much concerned with UPOV activities and considered that the Convention represented the essential basis for the future development of plant breeding. COSEMCO was also expecting the Community regulation currently proposed to develop in the same direction as the UPOV revision and was following its development very carefully. The representative of COSEMCO emphasized that there would be many difficulties for plant breeding in the near future if the notion of "farmer's privilege" was maintained in an international text.

92. International Federation of the Seed Trade (FIS) - The representative of FIS emphasized the dangers of the introduction of the concept of "farmer's privilege" into the Convention and explained that the introduction of "farmer's privilege" would lead to a contradiction between the principles of intellectual property and the results of negotiations currently going on in GATT. There were currently many changes for agriculture within GATT, including, on the one hand, the gradual passage to a rule more compatible with liberalism and, on the other, an agreement on the trade-related intellectual property rights. The aim of the agreement was to minimize the distortions and obstacles disturbing trade by introducing minimum obligations with respect to the protection of intellectual property rights among the member States of GATT. If UPOV introduced a provision consecrating the legal existence of this practice, there would be much disharmony unless the same privilege was granted to all farmers of the member States of GATT. FIS was aware that farmer's privilege raised problems for some countries and should therefore be evaluated case by case and country by country. It would be useful to consult GATT in this respect. The Representative of FIS continued that FIS maintained its total opposition to the recognition of a farmer's privilege, which would weaken the potential of the seed business without any acceptable justification.

93. Union of European Practitioners in Industrial Property (UPEPI) - During this past year, UPEPI had established a separate biotechnology Committee, which had been divided out of its patent Committee, so that more time could be spent on biotechnological subjects, including discussions concerning the plant variety-patent interface.

6. Discussions Relating to the Statements

94. A comment on fees and cost recovery led to a general discussion on this subject. The Council decided that this subject should be added to the agenda for the next session of the Consultative Committee.

b. Data Assembled by the Union on the State of Protection in Member States and Cooperation Between Them

95. The Council also noted, with appreciation, the contents of documents C/24/5, 6 and 7.

Report by the President on the Work of the Forty-first and Forty-second Sessions of the Consultative Committee

96. The Council noted the report on the work of the forty-first session of the Consultative Committee as given in paragraph 14 of document C/24/3 and also the oral report by the President on the work of the forty-second session. That session took place on October 17 and had been mainly devoted to the preparation of the current session of the Council, to the relations of UPOV with developing countries and the holding of a symposium in 1991.

97. On the basis of a recommendation made by the Consultative Committee, the Council decided not to hold a symposium in 1991.

Report by the Secretary-General on the Activities of the Union in 1989 and in the First Nine Months of 1990

98. The Council unanimously approved the report by the Secretary-General on the activities of the Union in 1989 and in the first nine months of 1990 as contained in document C/24/2 and document C/24/3.

Report by the Secretary-General on his Management During the 1988-1989 Biennium and on the Financial Situation of the Union at December 31, 1989

99. The Council unanimously approved the report by the Secretary-General on his management during the 1988-1989 financial period and on the financial situation of the Union at December 31, 1989, as contained in document C/24/4, and thanked the Secretary-General for his successful management of the Office of the Union.
100. As far as arrears in contributions were concerned, it was noted that for 1989 all member States had paid the full amount of their contributions except the United States of America which, out of the assessed contribution of 217,560 Swiss francs, still owed 152,462 Swiss francs. As concerns the contributions for the current year (1990), all countries had paid all their contributions except the United States of America, which was in arrears for the total of its contribution (217,560 Swiss francs) and Italy, which still owed 3,014 Swiss francs out of its contribution of 87,024 Swiss francs. In a discussion, in which several delegations participated, the Delegation of the United States of America said that its Administration was actively seeking authorization from Congress to promptly pay the contributions, which authorization did not yet exist. The Council, in conclusion, instructed the Secretary-General that in his next letter reminding the Government of the United States of America of its arrears in contributions, he should mention that the Council noted with concern the above facts and expressed the hope that the United States of America would remedy the situation.

Report on the Auditing of the Accounts of the 1988-1989 Biennium

101. The Council unanimously accepted the report of the auditors on the accounts of UPOV for the 1988-1989 biennium contained in document C/24/4, Annex B, and expressed its thanks to the Government of Switzerland for the work of auditing the accounts.

Progress of the Work of the Administrative and Legal Committee

102. The Council unanimously approved the report on the progress of the work of the Administrative and Legal Committee as contained in document C/24/9. It also noted the oral report on the twenty-eighth session of the Administrative and Legal Committee, given by Mr. J.-F. Prevel (France), its Chairman.

Preparations for the 1991 Diplomatic Conference for the Revision of the UPOV Convention

103. On the basis of a recommendation by the Consultative Committee, the Council unanimously decided to hold a Diplomatic Conference for the Revision of the UPOV Convention in Geneva from March 4 to 19, 1991.

104. The Council approved the draft new Act of the Convention to be submitted to the Diplomatic Conference in 1991 as the "Basic Proposal," as contained in document C/24/11, with the following changes:

(i) that the word "newness" be replaced by "novelty" in the title and paragraph (2) of Article 6;

(ii) that the word "events" be replaced by the word "facts" in Article 11(4);

(iii) that the reference to "Article 5" in Article 12 be replaced by a reference to "Articles 5 to 9";

(iv) that the words "directly obtained" in Alternative A of Article 14(c) be replaced by the words "made directly";

(v) that the words "directly obtained" in Article 16(2) be replaced by the words "made directly";

(vi) that the title "Income and Expenditure" of Article 29 be replaced by the title "Finances," that Article 30 become paragraph (6) in Article 29 and that consequential renumbering of later Articles and cross-references be effected;

(vii) that the reference to Article 2 in Article 36(2) be replaced by a reference to Article 3(1).

105. The Council unanimously approved the draft provisional agenda of the Diplomatic Conference of 1991 as referred to in document C/24/12.

106. The Council unanimously approved the draft Provisional Rules of Procedure of the Diplomatic Conference of 1991 as referred to and with the changes specified in document C/24/13. Furthermore, a new Rule 2(4) reading as follows was added: "The representatives of the European Communities shall have the same status as Observer Delegations." As one of the consequences, the representatives of the European Communities would have the right to sign the final act of the Diplomatic Conference. The Delegation of the United States of America reserved its position on that addition.

107. The Council unanimously approved the draft Notes and letters of invitations to the Diplomatic Conference of 1991 as referred to in document C/24/14 and noted that countries wishing the Note contained in Annex II of document CAJ/28/5 to be addressed to Ministers in addition to or in lieu of the Minister of Agriculture should give the necessary information in writing to the Office.

108. The Council unanimously approved the list of the States and organizations to be invited to the Diplomatic Conference of 1991 as proposed in document C/24/15.

Progress of the Work of the Technical Committee and of the Technical Working Parties

109. The Council unanimously approved the reports on the progress of the work of the Technical Committee and of the Technical Working Parties as contained in document C/24/10 and its two supplements (documents C/24/10 Add. 1 and C/24/10 Add. 2).

110. The Council noted that the question of the setting-up of an international variety denomination database would be taken up by the Administrative and Legal Committee in a future session in the context of the question of interactive access to international data.
111. The Council noted with approval the plans for the future work of the Technical Committee and the Technical Working Parties.

Calendar of Meetings in 1991

112. Discussions were based on document C/24/8.
113. The Council unanimously adopted the calendar of meetings as appearing in Annex II to this document.

Recognition of the Competence of the Administrative Tribunal of the International Labour Organisation (ILO)

114. The Council unanimously made the following declaration and asked the Secretary-General to forward a certified copy of it to the Director General of ILO:

"The Council of the International Union for the Protection of New Varieties of Plants (UPOV) hereby recognizes the jurisdiction of the Administrative Tribunal of the International Labour Organisation, as well as its Rules of Procedure, for the purpose of hearing complaints by staff members of UPOV alleging non-observance, in substance or in form, by UPOV of the terms of appointment of staff members of UPOV and of the provisions of the Staff Regulations and Staff Rules of the International Bureau of the World Intellectual Property Organization that are applicable to the said staff members."

Election of New Chairmen

115. The Council unanimously elected the following as Chairmen of Technical Working Parties for a term of three years, expiring at the end of the ordinary session of the Council in 1993:

Technical Working Party on Automation and Computer Programs:
Mr. K. Kristensen (Denmark)

Technical Working Party for Fruit Crops: Dr. B. Spellerberg (Germany)

Technical Working Party for Ornamental Plants and Forest Trees:
Mrs. E. Buitendag (South Africa)

Technical Working Party for Vegetables: Mr. N.P.A. van Marrewijk (Netherlands).

116. The Council decided to prolong the chairmanship of the Technical Working Party for Agricultural Crops of Dr. M.S. Camlin (United Kingdom) for one year so as to end after the ordinary session of the Council in 1993.

117. This report has been adopted by Correspondence.

[Annexes follow]

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS*/LISTE DES PARTICIPANTS*/TEILNEHMERLISTE*

I. ETATS MEMBRES/MEMBER STATES/VERBANDSSTAATEN

AFRIQUE DU SUD/SOUTH AFRICA/SUEDAFRIKA

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BELGIQUE/BELGIUM/BELGIEN

M. W.J.G. VAN ORMELINGEN, Ingénieur agronome, Ministère de l'agriculture, Manhattan Center, 21, avenue du Boulevard, 1210 Bruxelles

DANEMARK/DENMARK/DAENEMARK

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ESPAGNE/SPAIN/SPANIEN

Mr. R. LÓPEZ DE HARO, Director Técnico de Certificación y Registro de Variedades, Instituto Nacional de Semillas y Plantas de Vivero, José Abascal, 56, 28003 Madrid

* In French alphabetical order of the names of the States and the acronyms of the organizations/
Dans l'ordre alphabétique français des noms des Etats et des sigles des organisations/
In französischer alphabetischer Reihenfolge der Namen der Staaten und der Akronyme der Organisationen

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NOUVELLE-ZELANDE/NEW ZEALAND/NEUSEELAND

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II. ETATS OBSERVATEURS/OBSERVER STATES/BEOBACHTERSTAATEN

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EGYPTE/EGYPT/AEGYPTE

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INTERGOVERNMENTAL ORGANIZATIONS/
ZWISCHENSTAATLICHE ORGANISATIONEN

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)/
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)/
ERNAEHRUNGS- UND LANDWIRTSCHAFTSORGANISATION DER VEREINTEN NATIONEN (FAO)

- Dr. L.M. BOMBIN, Legal Officer, FAO, Via delle Terme di Caracalla,
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COMMISSION OF THE EUROPEAN COMMUNITIES (CEC)/
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- Dr. G. HUDSON, Head of Division, Legislation on plant products and animal
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IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS/
INTERNATIONALE NICHTSTAATLICHE ORGANISATIONEN

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INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (AIPPI)/
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SEED COMMITTEE OF THE COMMON MARKET (COSEMCO)/
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- Dr. A. MENAMKAT, Assistant Secretary General, FIS, Chemin du Reposoir 5-7, 1260 Nyon, Switzerland

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V. BUREAU/OFFICERS/VORSITZ

- Mr. W.F.S. DUFFHUES, Chairman
- Mr. R. LÓPEZ DE HARO Y WOOD, Vice-Chairman

VI. BUREAU DE L'UPOV/OFFICE OF UPOV/BUERO DER UPOV

- Dr. A. BOGSCH, Secretary-General
- Mr. B. GREENGRASS, Vice Secretary-General
- Mr. A. HEITZ, Senior Counsellor
- Dr. M.-H. THIELE-WITTIG, Senior Counsellor
- Mr. M. TABATA, Senior Program Officer

VII. BUREAU INTERNATIONAL DE L'OMPI/
INTERNATIONAL BUREAU OF WIPO/
INTERNATIONALES BUERO DER WIPO

- Dr. T.A.J. KEEFER, Director and Controller, Budget and Finance Division

[Annex II follows/
L'annexe II suit/
Anlage II folgt]

C/24/18

ANNEX II

DATES OF MEETINGS IN 1991

presented in the order of the organsCouncil

October 24 and 25

Diplomatic Conference

March 4 to 19, Geneva

Consultative CommitteeMarch 18
October 23Administrative and Legal Committee

October 21 and 22

Technical Committee

October 16 to 18

Technical Working Party for Agricultural Crops

May 13 to 17, Beltsville, United States of America

Technical Working Party on Automation and Computer Programs

May 29 to 31, La Minière, France

Technical Working Party for Fruit Crops

June 11 to 14, Bordeaux, France

Technical Working Party for Ornamental Plants and Forest Trees

June 24 to 28, Cambridge, United Kingdom

Technical Working Party for Vegetables

June 4 to 7, Kecskemét, Hungary

UPOV Seminar

November 12 to 15, Tsukuba, Japan

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