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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**

ANNUAL REPORT OF THE SECRETARY GENERAL FOR 1989

(Twenty-first Year)

I. STATE OF THE UNION

1. On February 1, 1989, Australia deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, and October 23, 1978 (Revised Act of October 23, 1978). The accession of Australia took effect on March 1, 1989.

2. On October 11, 1989, Poland deposited its instrument of accession to the Revised Act of October 23, 1978. The accession of Poland took effect on November 11, 1989.

3. Since then, the Union has comprised 19 member States: Australia, Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Poland, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America. All, except Belgium and Spain, are parties to the Revised Act of October 23, 1978.

4. The table in the Annex to this report summarizes the position of the various States as regards the various Acts of the Convention, as at December 31, 1989.

II. SESSIONS

5. During 1989, the various bodies of UPOV met as described below. Unless otherwise specified, the sessions took place at Geneva.

6. Council.-- The Council held its twenty-third ordinary session on October 17 and 18, under the chairmanship of Mr. W.F.S Duffhues (Netherlands). The session was attended by observers from nine non-member States,¹ four inter-governmental organizations² and six international non-governmental organizations.³

7. At that session, the Council took the following main decisions:

(i) It approved the Secretary-General's report on the activities of the Union in 1988 and the first nine months of 1989;

(ii) It adopted the Union's program and budget for the 1990-91 biennium;

(iii) It took note of the medium-term plan for the 1992-95 period presented by the Secretary-General;

(iv) It approved the progress reports on the work of its various subsidiary bodies and drew up or approved plans for their work in the year ahead. In that connection, it decided that the next Diplomatic Conference on the revision of the Convention would be held in March 1991, and that preparations for that conference should be entrusted to preparatory meetings to be held in April, June and October 1990;

(v) It elected the members of the bureaux of certain subsidiary bodies for a term of three years expiring at the end of the twenty-sixth regular session of the Council, in 1992: Mr. J.-F. Prevel (France) and Mr. H. Kunhardt (Federal Republic of Germany) were respectively elected Chairman and Vice-Chairman of the Administrative and Legal Committee; Dr. G. Fuchs (Federal Republic of Germany) and Mrs. Jutta Rasmussen (Denmark) were respectively elected Chairman and Vice-Chairman of the Technical Committee; Dr. M.S. Camlin (United Kingdom) was elected Chairman of the Technical Working Party for Agricultural Crops.

8. Consultative Committee.-- The Consultative Committee held its thirty-ninth session on April 14 and its fortieth session on October 16, under the Chairmanship of Mr. W.F.S Duffhues (Netherlands).

9. Discussions at the thirty-ninth session were mostly devoted to preparations for the fourth Meeting with International Organizations, reconsideration of the list of States and organizations invited to the meetings of UPOV, consideration of the necessity and periodicity of the "statistical" documentation

¹ Argentina, Czechoslovakia, Egypt, Kenya, Morocco, the Philippines, Poland--whose accession had not yet taken effect at the time of the session--, the Republic of Korea, Turkey.

² European Communities (EC), European Free Trade Association (EFTA), Organisation for Economic Co-operation and Development (OECD), European Patent Organisation (EPO).

³ International Association for the Protection of Industrial Property (AIPPI), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA), Association of Plant Breeders of the European Economic Community (COMASSO), International Federation of the Seed Trade (FIS), International Chamber of Commerce (ICC).

submitted to the regular sessions of the Council, and a general debate on the preparation and date of the meeting of the (joint UPOV/WIPO) Committee of Experts on the Interface Between Patent Protection and Plant Breeders' Rights, which was subsequently scheduled for the period January 29 to February 2, 1990. The fortieth session was mostly devoted to preparing the twenty-third ordinary session of the Council.

10. Administrative and Legal Committee.- The Administrative and Legal Committee held its twenty-fourth session from April 10 to 13, under the chairmanship of Mrs. C. Holtz (Sweden), and its twenty-fifth session from October 11 to 13, under the chairmanship of Mr. J.-F. Prevel (France). Observers from the following States and organizations participated in the twenty-fourth session: Argentina, Austria, Brazil, Bulgaria, Finland, Norway, World Intellectual Property Organization (WIPO), EC, EFTA, EPO; observers from the following States and organizations participated in the twenty-fifth session: Argentina, Austria, Brazil, Bulgaria, Canada, Finland, Norway, WIPO, EC, EPO.

11. The Committee devoted both sessions almost entirely to the revision of the Convention. At the twenty-fourth session, it also took note of a draft document drawn up in preparation for the session of the (joint WIPO/UPOV) Committee of Experts on the Interface Between Patent Protection and Plant Breeders' Rights (document CAJ/XXIV/4).

12. Technical Committee.- The Technical Committee held its twenty-fifth session on October 5 and 6, under the chairmanship of Mr. J.K. Doodson (United Kingdom).

13. On the basis of the preparatory work carried out by the Technical Working Parties, the Technical Committee adopted Test Guidelines for the following eight taxa (the asterisk denotes a revised version): (1) banana; (2) chestnut; (3) black currant*; (4) gerbera*; (5) Protea; (6) sorghum; (7) triticale; (8) walnut.

14. The Committee considered the progress reports on the work of the Technical Working Parties and defined the main features of their future work. It also examined the matters raised by the Technical Working Parties on the basis of the experience gained by the member States in carrying out the examination for distinctness, homogeneity and stability of new plant varieties.

15. Furthermore, the Committee took the following main decisions:

(i) As regards fodder grasses, it formally approved the replacement of the present method of examination for distinctness, in which data are analyzed separately for each vegetation cycle, by the Combined Over-Years Analysis (COY), including the modified joint regression analysis (MJRA). The significance level to be used was set at 1% over two years of testing; the same level is to be used over three years of testing. However, in order to facilitate the transition, member States would be allowed to apply the 5% level for a period of three years;

(ii) It further recommended that the COY analysis should be applied, whenever possible, to the measured characteristics of agricultural and vegetable species;

(iii) It requested the Technical Working Party on Automation and Computer Programs to continue to study the possibility of replacing the criterion

applied in examining homogeneity in cross-fertilized plants by a criterion which would also be based on the analysis of data from several years;

(iv) It approved the modification of several standard forms used in variety examination.

16. Lastly, the Committee examined reports on three workshops, namely, on the examination of varieties of *Elatior Begonia* and *Pelargonium*, the examination of varieties of soybean and the examination of varieties of maize (see paragraphs 20 to 22, below).

17. Technical Working Parties.— The Technical Working Parties each held one session in 1989, outside Geneva, as follows:

(i) The Technical Working Party on Automation and Computer Programs (TWC) held its seventh session from May 17 to 19 in Madrid (Spain), under the chairmanship of Dr. F. Laidig (Federal Republic of Germany);

(ii) The Technical Working Party for Ornamental Plants and Forest Trees (TWO) held its twenty-second session from May 29 to June 1 at Hanover (Federal Republic of Germany), under the chairmanship of Mr. C.J. Barendrecht (Netherlands);

(iii) The Technical Working Party for Agricultural Crops (TWA) held its eighteenth session from June 13 to 16 at Belfast (United Kingdom), under the chairmanship of Mr. D.P. Feeley (Ireland);

(iv) The Technical Working Party for Vegetables (TWV) held its twenty-second session from July 3 to 7 at Tsukuba (Japan), under the chairmanship of Mr. R. Brand (France);

(v) The Technical Working Party for Fruit Crops (TWF) held its twentieth session from September 26 to 29 at Wageningen (Netherlands), under the chairmanship of Mrs. Elise Buitendag (South Africa).

18. The basic task of four of these Working Parties is to draw up Test Guidelines. In addition to the drafts submitted to the Technical Committee for adoption, they drew up further drafts, for the following taxa, to be submitted to the professional organizations for comment (the asterisk denotes a draft revised edition): bent*, Kentucky bluegrass*, ryegrass*, safflower (TWA); red and white currants* (TWF); carnation*, chinchinchee, Dieffenbachia, Hydrangea, rose*, Spathiphyllum, Norway spruce (TWO); asparagus, carrot*, parsley, Brussels sprouts*, tomato* (TWV).

19. In addition, the Technical Working Party for Agricultural Crops decided to include characteristics obtained by electrophoresis in the Test Guidelines for wheat, barley and oats, which are at present under revision; in this connection, it plans to regard the clear absence or presence of a band as a new characteristic, without an asterisk; examination for such a characteristic would therefore be optional. The Technical Working Party for Ornamental Plants and Forest Trees noted that in several countries applications for protection must be accompanied by color photographs of the variety. It expressed the opinion that the other member States should adopt the same practice.

20. Workshops.— Three workshops were organized jointly by the authorities of the host country and UPOV in 1989:

(i) A Workshop on the Examination of Varieties of Elatior Begonia and Pelargonium was held on June 1 and 2 at Hanover (Federal Republic of Germany). It was opened by Dr. D. Böringer, President of the Federal Varieties Office;

(ii) A Workshop on the Examination of Varieties of Soybean was held from September 27 to 29 at New Carrollton (Maryland, United States of America). It was opened by Dr. K.H. Evans, Commissioner of the Plant Variety Protection Office, and Mr. C.A. Reed, Director of the Commodities Scientific Support Division, Department of Agriculture.

(iii) A Workshop on the Examination of Varieties of Maize was held on October 2 and 3 at Versailles (France). It was opened by Mr. P.-L. Lefort, Director of GEVES (Study and Control Group for Varieties and Seed) and Mr. F. Rapilly, President of the Versailles Center of the National Institute of Agricultural Research.

21. At each of these workshops, a number of lectures were given on a variety of technical and legal topics by speakers from public services, scientific and legal circles and industry. Practical demonstrations were given in glasshouses and field plots, and discussions led to the identification of general trends in variety examination, minimum distances between varieties and the revision of the Convention, including the introduction of a principle of "dependency."

22. As regards Elatior Begonia and Pelargonium, the general conclusion was reached that the varieties should have minimum distances which are in balance between the scientific possibilities and the interests of breeders and growers. In these species, an average expert should be able to distinguish varieties. As regards soybean, the participants requested that characteristics of a biochemical nature, notably as obtained by electrophoresis, should be included in the Test Guidelines in the next revision. Lastly, the workshop on maize provided an opportunity to review available methods of examining hybrids and to look into the potential of examination methods based on agronomic, morphological, biochemical and genetic characteristics (restriction fragment length polymorphism).

III. CONTACTS WITH STATES AND ORGANIZATIONS

23. On January 16, the Vice Secretary-General paid an official visit to the Commission of the European Communities in Brussels (Belgium) where he met with officials of the Directorate General for Agriculture.

24. On January 30, the Vice Secretary-General received a visit from Mr. T. Okada, Director of the Seeds and Seedlings Division of the Ministry of Agriculture, Forestry and Fisheries of Japan, and Mr. T. Oobayashi, official of that same Ministry responsible for the International Garden and Greenery Exhibition to be held in Osaka in 1990.

25. From January 31 to February 3, the Vice Secretary-General participated at Anaheim (California, United States of America) in a working group dealing with the problems, challenges and prospects of plant patents. The event was organized, with the financial assistance of the Department of Agriculture, by the American Society of Agronomy, the Crop Science Society of America, the Soil Science Society of America, the American Agricultural Economics Association and the American Society for Horticultural Science.

26. On February 13 and 14, an official of the Union participated in Paris (France) in a meeting of the designated authorities responsible for the implementation of the OECD Scheme for the Control of Forest Reproductive Material Moving in International Trade.
27. In February and March, the Vice Secretary-General had contacts with various persons in India and with the Secretariat General of ASSINSEL in respect of a symposium that was to be held on March 13 in New Delhi (India). Further contacts also took place in the meantime as a result of the growing interest in plant variety protection in India.
28. On March 1, the Vice Secretary-General paid a visit to the Secretary-General of ASSINSEL to discuss matters of mutual interest.
29. On March 8, the Vice Secretary-General received a visit from Academician B.A. Runov, a departmental director of Gosagroprom (Central Committee for Agriculture) of the Soviet Union. It should be noted in this respect that the new draft patent law provides that plant and animal varieties are to be protected under a special law.
30. On March 9, the Secretary-General and the Vice Secretary-General received a visit from Mr. Arpad Szabó, Director of the Department for International Economic Cooperation of the Federal Ministry of Agriculture and Food of Czechoslovakia. Discussions concerned, in particular, the conformity of the draft Czechoslovak law on the legal protection of new varieties of plants and breeds of animals with the UPOV Convention.
31. On March 10, the Vice Secretary-General received a visit from Mr. A. Calvelo, Honorary Secretary of the Argentine Cereal Exchange, and Mr. A.G. Trombetta, Second Secretary at the Permanent Mission of Argentina in Geneva.
32. On March 20, the Vice Secretary-General received a visit from Mr. N. Monya, Professor of intellectual property law at Seikei University, and Mr. A. Yamaguchi, of the Food and Agriculture Research and Development Association, of Japan.
33. On April 5, the Vice Secretary-General participated in London (United Kingdom) in a working group on intellectual property protection for innovation in farm animals and poultry, organized by the British Animal Production Society, and presented a paper on the plant variety protection system.
34. From April 13 to 16, UPOV participated in the International Exhibition of New Varieties of Plants in Geneva (Expoflore).
35. From April 17 to 20, the Vice Secretary-General participated in Rome (Italy) in the third session of the FAO Commission on Plant Genetic Resources.
36. On April 21, the Vice Secretary-General paid an official visit to the United Kingdom where he met the officials responsible for plant variety protection.
37. At the end of April, the Office of the Union was requested by the French authorities to produce a translation into Chinese of the UPOV Convention. The request was made in relation to a visit by a high-level delegation from China. The translation was produced in the early part of May and given by the French authorities to the Vice Minister for Agriculture Wang Liang Zheng.

38. On May 16, the Vice Secretary-General paid an official visit to Lisbon (Portugal) mainly to discuss the state of progress of the draft Portuguese plant variety protection law.

39. In the course of the session of the Technical Working Party on Automation and Computer Programs held in Madrid (Spain) from May 17 to 19, the Vice Secretary-General had discussions with the officials responsible for plant variety protection in Spain.

40. From May 22 to 24, the Vice Secretary-General participated in Paris (France) in the annual meeting organized by OECD of the representatives of the designated authorities responsible for the implementation of the OECD Schemes for the Varietal Certification of Seeds Moving in International Trade.

41. On May 31 and June 1, an official of the Union participated in Brussels (Belgium) in a meeting of the Working Group of the European Economic Community "Seeds and Propagating Material: Plant Breeders' Rights," whose task it is to consider a proposal by the Commission relating to a regulation of the Council of the European Communities on Community breeders' rights.

42. On this occasion, the said official also paid a visit to the Secretary-General of the General Committee for Agricultural Co-operation in the European Economic Community (COGECA) and of the Committee of Agricultural Organisations in the European Economic Community (COPA).

43. On June 1 and 2, the Vice Secretary-General participated in Tel-Aviv (Israel) in the annual world congress of ASSINSEL.

44. From June 5 to 8, the Vice Secretary-General participated in Amsterdam (Netherlands) in the World Industrial Property Congress of AIPPI and gave a lecture.

45. On June 9, the President of the Council and the Vice Secretary-General participated in Amsterdam (Netherlands) in a meeting of the Committee for Novelty Protection of the International Association of Horticultural Producers (AIPH).

46. On June 12, the Vice Secretary-General received a visit from Mr. Makoto Tabata, Assistant Director of the Seeds and Seedlings Division, Ministry of Agriculture, Forestry and Fisheries of Japan, and from an official of that Ministry and discussed the organization and financing of a UPOV seminar proposed to be held in Japan in 1991.

47. On June 16, an official of the Union gave a lecture on plant variety protection in Zurich (Switzerland) in the framework of a training course for patent agents organized by the Association of Patent Agents from Industry of Switzerland (VIPS) and the Association of Swiss Private Patent Practitioners Registered with the European Patent Office (VESPA).

48. From June 20 to 22, the Vice Secretary-General and an official of the Union paid an official visit to the German Democratic Republic at the invitation of the German Democratic Republic Group of AIPPI and the German Democratic Republic Association for the Protection of Industrial Property. In addition to the discussions on the protection of intellectual property in the field of plants which they had with various interested circles in restricted groups or in a colloquium, a visit was made to the premises of the Central Organization for Variety Matters (Zentralstelle für Sortenwesen) in Nossen.

49. From June 26 to 29, an official of the Union participated in Edinburgh (United Kingdom) in the twenty-second congress of the International Seed Testing Association (ISTA) which took place from June 21 to 30.

50. From July 1 to 7, the Vice Secretary-General paid an official visit to Japan where: he participated in Tsukuba Science City in part of the session of the Technical Working Party for Vegetables; he participated in Tokyo in a symposium on the protection of new plant varieties and biotechnology and gave a lecture; he participated, also in Tokyo, in the celebration of the tenth anniversary of plant variety protection in Japan; he met with high officials of the Ministry of Agriculture, Forestry and Fisheries and the Patent Office; he paid a visit to a number of professional organizations; he visited several undertakings and institutions in Tokyo, Yokohama and Tsukuba.

51. From July 10 to 18, the Vice Secretary-General paid an official visit to Australia where: he participated in Canberra in a workshop on intellectual property protection for plants; he participated in Perth in a conference on the production and marketing of Australian flora; he gave a lecture in Toowoomba at the Queensland Wheat Research Institute to members of that Institute and representatives from the seeds industry; he met with the members of the Plant Variety Rights Advisory Committee and the Acting Commissioner of Patents, and also with representatives of interested circles in Canberra, Sydney and Toowoomba.

52. On July 26 and 27, an official of the Union participated in Brussels (Belgium) in the meeting of the EEC Working Group "Seeds and Propagating Material: Plant Breeders' Rights."

53. On August 21, the Vice Secretary-General went to Cambridge (United Kingdom) to discuss the program of future work concerning the revision of the Convention and other questions of general interest with the United Kingdom authorities.

54. On August 22, the Vice Secretary-General went to Paris (France) for a similar purpose.

55. On September 1, the Vice Secretary-General went to Hanover (Federal Republic of Germany) for a similar purpose.

56. On September 11 and 12, the Vice Secretary-General received a visit from Mr. Peter Slimák, Director of the Principal Division for Legislative Affairs, Federal Ministry of Agriculture and Food of Czechoslovakia, and Mr. Vladimír Duris, Third Secretary at the Permanent Mission of Czechoslovakia in Geneva. Detailed discussions took place on the conformity of the draft Czechoslovak law on the legal protection of new varieties of plants and breeds of animals with the UPOV Convention and on the procedure to be followed in relation to accession to the Convention.

57. On September 20, the Vice Secretary-General participated in Brussels (Belgium) in the meeting of the EEC Working Group "Seeds and Propagating Material: Plant Breeders' Rights."

58. On September 21 and 22, the Vice Secretary-General participated in Cambridge (United Kingdom) in the Fifth Conference on Plant Variety Protection, Biotechnology and Intellectual Property, organized by Queen Mary College (University of London), and gave a lecture.

59. On September 26, in connection with the Workshop on the Examination of Varieties of Soybean, the Vice Secretary-General and an official of the Union met in Washington, D.C. (United States of America) with high officials of the Department of Agriculture and with representatives of interested circles.

60. On October 23, the Vice Secretary-General participated in Brussels (Belgium) in the meeting of the EEC Working Group "Seeds and Propagating Material: Plant Breeders' Rights."

61. On October 25, the Vice Secretary-General participated in Paris (France) in a conference on recent legal developments in the field of biotechnology in Europe, the United States and Japan, and gave a lecture.

62. On November 16 and 17, the Vice Secretary-General paid an official visit to Moscow (Soviet Union) where he met high-ranking officials and members of the V.I. Lenin Academy of Agricultural Science.

63. On December 4 and 5, the Vice Secretary-General and an official of the the Union participated in Brussels (Belgium) in the meeting of the EEC Working Group "Seeds and Propagating Material: Plant Breeders' Rights."

64. On December 13 and 14, the Vice Secretary-General participated in a conference organized at Cambridge (United Kingdom) by the National Institute of Agricultural Botany on the theme "New technologies--cultivated plants of the 1990s," at which he gave a lecture.

65. On December 14 and 15, an official of the Union participated in Geneva in an informal meeting for coordination between a number of intergovernmental organizations involved in the field of environmental protection and the conservation of fauna and flora.

IV. PUBLICATIONS

66. In 1989, the Office of the Union published two issues of Plant Variety Protection.

67 The Council is invited to approve this report.

[Annex follows]

ANNEX

MEMBERSHIP OF THE UNION (as at December 31, 1989)
(including signatory States that are not yet members)

State	Date of signature ¹	Date of deposit of instrument ^{1,2}	Date of effect ¹
Australia	- - -	- - February 1, 1989	- - March 1, 1989
Belgium	December 2, 1961 November 10, 1972 October 23, 1978	November 5, 1976 November 5, 1976 -	December 5, 1976 February 11, 1977 -
Canada (not yet a member)	- - October 31, 1979	- - -	- - -
Denmark	November 26, 1962 November 10, 1972 October 23, 1978	September 6, 1968 February 8, 1974 October 8, 1981	October 6, 1968 February 11, 1977 November 8, 1981
France	December 2, 1961 November 10, 1972 October 23, 1978	September 3, 1971 January 22, 1975 February 17, 1983	October 3, 1971 February 11, 1977 March 17, 1983
Germany (Federal Republic of)	December 2, 1961 November 10, 1972 October 23, 1978	July 11, 1968 July 23, 1976 March 12, 1986	August 10, 1968 February 11, 1977 April 12, 1986
Hungary	- - -	- - March 16, 1983	- - April 16, 1983
Ireland	- - September 27, 1979	- - May 19, 1981	- - November 8, 1981
Israel	- - -	November 12, 1979 November 12, 1979 April 12, 1984	December 12, 1979 December 12, 1979 May 12, 1984

[Cont'd]

¹ First Line: International Convention for the Protection of New Varieties of Plants of December 2, 1961.
Second Line: Additional Act of November 10, 1972.
Third Line: Revised Text of October 23, 1978.

² of ratification where the State has signed the Convention or the Additional Act, depending on the case; of ratification, acceptance or accession where the State has signed the Revised Text of 1978; of accession where it has not signed the text concerned.

MEMBERSHIP OF THE UNION (as at December 31, 1989)
(including signatory States that are not yet members)

State	Date of signature ¹	Date of deposit of instrument ^{1,2}	Date of effect ¹
Italy	December 2, 1961	June 1, 1977	July 1, 1977
	November 10, 1972	June 1, 1977	July 1, 1977
	October 23, 1978	April 28, 1986	May 28, 1986
Japan	-	-	-
	October 17, 1979	August 3, 1982	September 3, 1982
Mexico (not yet a member)	-	-	-
	July 25, 1979	-	-
Netherlands	December 2, 1961	August 8, 1967	August 10, 1968
	November 10, 1972	January 12, 1977	February 11, 1977
	October 23, 1978	August 2, 1984	September 2, 1984
New Zealand	-	-	-
	July 25, 1979	November 3, 1980	November 8, 1981
Poland	-	-	-
	-	October 11, 1989	November 11, 1989
South Africa	-	October 7, 1977	November 6, 1977
	-	October 7, 1977	November 6, 1977
	October 23, 1978	July 21, 1981	November 8, 1981
Spain	-	April 18, 1980	May 18, 1980
	-	April 18, 1980	May 18, 1980
Sweden	-	November 17, 1971	December 17, 1971
	January 11, 1973	January 11, 1973	February 11, 1977
	December 6, 1978	December 1, 1982	January 1, 1983
Switzerland	November 30, 1962	June 10, 1977	July 10, 1977
	November 10, 1972	June 10, 1977	July 10, 1977
	October 23, 1978	June 17, 1981	November 8, 1981
United Kingdom	November 26, 1962	September 17, 1965	August 10, 1968
	November 10, 1972	July 1, 1980	July 31, 1980
	October 23, 1978	August 24, 1983	September 24, 1983
United States of America	-	-	-
	October 23, 1978	November 12, 1980	November 8, 1981