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C/26/15

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-sixth Ordinary Session

Geneva, October 29, 1992

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-sixth ordinary session in Geneva on October 29, 1992.
- 2. The session was presided over by the President of the Council, Mr. R. López de Haro y Wood (Spain).
- 3. The list of participants is given in Annex I to this report.
- 4. The Delegation of the United Kingdom made the following statement:

"I have the honor to speak on behalf of the European Community and its member States.

"As we have already made clear on a number of occasions, the European Community and its member States do not accept that the Federal Republic of Yugoslavia is the automatic continuation of the Socialist Federal Republic of Yugoslavia.

"In this context, we take note of General Assembly Resolution 47/1, adopted on 22 September 1992, in which the Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and should therefore apply to join the United Nations, and

therefore decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly.

"The European Community and its member States have also noted the United Nations Legal Counsel's advice on the applicability of the General Assembly resolution to other United Nations bodies. We regard General Assembly Resolution 47/1 as a model for action in the specialized agencies and other United Nations bodies in due course, as appropriate. The Community and its member States will be examining ways to pursue this.

"We do not accept that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) may validly represent Yugoslavia in this meeting. The presence of the representatives in question is without prejudice to any future action which the Community and its member States may take."

5. The Secretary-General observed that Yugoslavia was not a member of UPOV, that it was not represented at the session and that UPOV was not a specialized agency or a United Nations body.

Adoption of the Agenda

6. The Council adopted the agenda as appearing in document C/26/1 Rev. after having included Austria under item 3 as a State having requested the Council to study the conformity of its Government Bill on Variety Protection with the 1978 Act of the UPOV Convention.

Examination of the Conformity of the Laws of Finland with the 1978 Act of the UPOV Convention

7. Discussions were based on document C/26/12.

8. Pursuant to Article 32(3) of the 1978 Act of the Convention, the Council unanimously decided to take a positive decision on the conformity of the Law on Breeders' Rights of Finland with the provisions of the 1978 Act.

9. The Council further asked the Secretary-General to inform the Government of Finland of the decision recorded in the preceding paragraph.

Examination of the Conformity of the Government Bill on Variety Protection of Austria with the 1978 Act of the UPOV Convention

10. Discussions were based on document C/26/13.

11. The Council unanimously decided to take a positive decision on the conformity of the Government Bill of Austria on Variety Protection with the provisions of the 1978 Act.

12. The Council further asked the Secretary-General to inform the Government of Austria of the decision recorded in the preceding paragraph, it being understood that if the law enacted on the basis of the Bill was substantially different from the latter, the Government of Austria would have to seek a new advice from the Council.

Report by the President on the Work of the Forty-fifth Session of the Consultative Committee

13. The Council noted the oral report of the President on the work of the forty-fifth session of the Consultative Committee, which took place on October 28. That session had been mainly devoted to a preliminary examination of the conformity of the laws of Finland and of the Government Bill on Variety Protection of Austria with the 1978 Act of the UPOV Convention, and to the examination of the following questions: status of the activities financed by extrabudgetary resources and possibility of mobilizing further human and financial resources for development cooperation activities; level of the contributions to the Working Capital Fund in certain cases; observers at certain meetings of UPOV; activities of the Office of the Union resulting from the 1991 Diplomatic Conference, in particular as regards publications; the possibility for States offering protection under both a breeders' rights system and the utility patent to adhere to the 1978 Act; the possibility of creating a central computerized data base on plant variety protection and related matters, with particular emphasis on variety denominations; biodiversity and plant variety protection (the implications of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro (Brazil) in June 1992).

14. On the basis of a recommendation of the Consultative Committee, the Council:

(i) confirmed the principle that voluntary additional contributions were not taken into account for the determination of payments to the Working Capital Fund;

(ii) subject to that, decided that payments to the Working Capital Fund would be fixed at the amounts of:

4,167 Swiss francs for 0.5 contribution unit
8,333 Swiss francs for one contribution unit
16,666 Swiss francs for two contribution units
24,999 Swiss francs for three contribution units
33,332 Swiss francs for four contribution units
41,667 Swiss francs for five contribution units

and that, for States choosing--for the purposes of mandatory contributions--another number of contribution units, whether expressed as a whole number or a fraction thereof, the payment to the Working Capital Fund would be fixed at the number of their contribution units times 8,333 Swiss francs.

Report by the Secretary-General on the Activities of the Union in 1991 and in the First Nine Months of 1992

15. The Council unanimously approved the report by the Secretary-General on the activities of the Union in 1991 and in the first nine months of 1992 as contained in document C/26/2 and document C/26/3.

16. In reply to a question from the Delegation of the United Kingdom, the Secretary-General stated that, as shown by experience, the activities deployed in relation to non-member States would require several years until they resulted in an accession to UPOV. Those activities would nevertheless be continued since they constituted a worthwhile investment.

17. The Delegation of Spain referred to the fact that plant variety protection had become highly topical in Latin America and that various initiatives had been taken at national and regional levels. In its opinion, the Office of the Union should continue to deploy activities in the region. It recalled that it had stated on the previous day, in the Consultative Committee, that the Government of Spain was willing to consider possible contributions to development cooperation activities organized by UPOV, in particular the making available, at its expense, of staff members to participate in such activities. The Delegations of Argentina and Colombia expressed their appreciation at UPOV's activities in the region.

18. The Delegation of the Netherlands observed that work at the level of the European Community had shown that there were provisions in the 1991 Act of the UPOV Convention on which member States might wish to receive guidance from the Office of the Union. It asked whether there was a program to assist member States in the implementation of the 1991 Act. The Secretary-General stated that the Office of the Union would be at the disposal of the member States, but that the initiative should come from the latter.

19. The Delegations of Senegal and Côte d'Ivoire underlined the increasing need for, and interest in, national legislation for the protection of new plant varieties in Africa, in particular in their respective States, and expressed the wish that UPOV extend its activities to those States, for instance in the form of a seminar. The Secretary-General recalled that a manifestation of interest was necessary before any activity was to be organized in a particular region, but that the Office of the Union was at the disposal of any State seeking assistance in the drafting of plant variety protection legislation. He took note of the interest for a seminar directed at the francophone States of Africa and stated that the matter would be pursued.

Report by the Secretary-General on his Management During the 1990-91 Biennium and on the Financial Situation on the Union at December 31, 1991

20. The Council unanimously approved the report by the Secretary-General on his management during the 1990-91 biennium and on the financial situation of the Union at December 31, 1991, as contained in document C/26/4, and thanked the Secretary-General for his sound financial management of the Union.

21. The Secretary-General recalled that the deficit shown by the report conformed to the decision, taken by the Council when it had adopted the budget for the biennium concerned, to draw a substantial part of the income from the Reserve Fund. He observed that the consequences of the depletion of that Fund would have to be faced in the budget for the next biennium. The Delegations of Denmark, France and the Netherlands stated that, in view of the financial situation in member States, the prospects for increases in the contributions of member States were not good and that this should be taken into account when elaborating the draft program and budget for 1994-95.

Report on the Auditing of the Accounts of the 1990-91 Biennium

22. The Council noted the report of the auditors on the accounts of UPOV for the 1990-91 biennium contained in document C/26/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in this matter.

Progress of the Work of the Administrative and Legal Committee

23. The Council unanimously approved the report on the progress of the work of the Administrative and Legal Committee as contained in document C/26/9 and its supplement (document C/26/9 Add.).

24. The Council noted that the Declaration on the Conditions for the Examination of a Variety Based Upon Tests Carried out by the Breeder reproduced in the Annex to document C/26/9 Add. primarily addressed one form of testing and that other forms existed or were being contemplated; the case where the tests would be conducted at the premises of a breeder for all varieties of a given species, possibly for several member States under cooperation agreements, was mentioned in particular. It adopted the Declaration on the understanding that the Administrative and Legal Committee, together with the Technical Committee, would study the possible implications of such other forms of testing.

25. On the proposal of the Delegation of Germany, the Council also requested the Administrative and Legal Committee and the Technical Committee to examine the relations between Articles 1(vi), 7 and 14(5) of the 1991 Act of the UPOV Convention, in particular the consequences of any particular policy adopted with respect to the distinctness criterion (the requirement that the variety be "clearly distinguishable") on the new legal instrument embedded in Article 14(5) and relating to essentially derived varieties.

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

26. The Council unanimously approved the report on the progress of the work of the Technical Committee and of the Technical Working Parties and their programs for their forthcoming sessions as contained in document C/26/10 and its supplements (documents C/26/10 Add. and C/26/10 Add. 2).

27. The Council further agreed to set up a Working Group on biochemical and molecular techniques, and DNA-profiling in particular, and noted that the Consultative Committee had requested further preliminary studies on the proposed central computerized data base on plant variety protection and related matters.

Calendar of Meetings in 1992

28. The Council adopted the calendar of meetings as appearing in document C/26/14.

Election of the New Chairman and Vice-Chairman of the Administrative and Legal Committee

29. The Council unanimously elected Mr. Henning Kunhardt (Germany) and Mr. H. Dieter Hoinkes (United States of America) as Chairman and Vice-Chairman of the Administrative and Legal Committee, respectively, for a term of office of three years, expiring at the end of the twenty-ninth ordinary session of the Council, in 1995.

30. The Council requested the Delegation of France to convey to Mr. Jean-François Prevel its appreciation for the work he had carried out during his term of office.

Election of the New Chairman and Vice-Chairman of the Technical Committee

31. The Council unanimously elected Miss Jutta Rasmussen (Denmark) and Mr. Joël Guiard (France) as Chairman and Vice-Chairman, respectively, of the Technical Committee for the same term of office as mentioned above.

32. The Council requested the Delegation of Germany to convey to Mr. Georg Fuchs its appreciation for the work he had carried out during his term of office.

Situation in the Legislative, Administrative and Technical Fields

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

33. The Council noted the reports reproduced in documents C/26/11 and its supplement (document C/26/11 Add.). The reports given orally during the session are reproduced in Annex II to this report.

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

34. The Council also noted, with appreciation, the contents of documents C/26/5, C/26/6 and C/26/7.

Retirement

35. The President announced that Mr. Dirk Böringer (Germany) was attending a session of the Council for the last time. In the name of UPOV, he thanked him for his contribution to the foundation, work and development of the Union over the last thirty years and expressed his best wishes for a long and happy retirement.

36. This report was adopted by the Council at its twenty-seventh ordinary session, on October 29, 1993.

[Annexes follow]

ANNEXE I/ANNEX I/ANLAGE I

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

(dans l'ordre alphabétique des noms français des Etats/
in the alphabetical order of the names in French of the States/
in alphabetischer Reihenfolge der französischen Namen der Staaten)

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Thomas A.J. KEEFER, Controller and Director, Budget and Finance Division

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

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Barry GREENGRASS, Vice Secretary-General
André HEITZ, Director-Counsellor
Max-Heinrich THIELE-WITTIG, Senior Counsellor
Makoto TABATA, Senior Program Officer

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

**REPORTS AND DECLARATIONS BY REPRESENTATIVES OF STATES
AND ORGANIZATIONS ON THE SITUATION IN THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS***

I. MEMBER STATES

South Africa

The Republic of South Africa is revising its Plant Breeders' Rights Act of 1976 (as revised at Pretoria in 1980, 1981 and 1983) so that it will conform to the Convention for the Protection of New Varieties of Plants as revised at Geneva on March 19, 1991. It is anticipated that the revised Plant Breeders' Rights Act will be submitted to the South African Parliament for ratification during the 1993 session.

In South Africa, there is still considerable interest in plant breeders' rights despite fees having risen by at least 20% per annum over the last few years. During the period October 1, 1991, to September 30, 1992, 109 plant breeders' rights were granted and 129 applications were filed. To date a total of 656 plant breeders' rights have been granted and 324 applications are under consideration.

During 1992, a variety list for strawberry was established and three new plant genera, namely Anthurium, Clivia and Lilium, were added to the list of kinds of plants for which plant breeders' rights can be obtained.

A variety list for tobacco is being finalized and will probably come into operation in 1993.

Presently, the plant variety lists are being amended to include the names of the holders of plant breeders' rights. This amendment will not only make it easier for inspectors to establish whether plant breeders' rights are being infringed by retailers of propagating material, but also assist prospective buyers in identifying the holder of a plant breeder's right.

Studies on the use of electrophoresis to distinguish between morphologically similar plant varieties have been continued, but difficulties are still being experienced in obtaining consistent results.

Germany

See document C/26/11, Annex I.

The Delegation of Germany added during the session that about 10,000 titles of protection would be in force at the end of 1992.

* The reports are given in the alphabetical order of the names in French of the States.

Pursuant to a procedure agreed upon by the Administrative and Legal Committee in October 1991, a number of representatives of States have submitted written reports in advance of the session to increase the ability of the Council to effectively carry out its tasks. In the case of those States, reference is made to document C/26/11 and its addendum (document C/26/11 Add.).

Australia

The preparations for the accession to the 1991 Act, starting with the amendment of the Plant Variety Rights Act of 1987, were moving ahead at a fair pace at one stage. The proposed amendments to the Act were entered onto the legislative program for the current parliamentary session. However, possibly as a result of the increased awareness of environmental issues created by the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro (Brazil) in June 1992, the proposed legislation might be delayed. It is hoped that it would then be included in the next legislative program, in April 1993.

As mentioned in the previous report to the Council, it had been a condition for the establishment of a breeders' rights scheme in Australia, in 1986, that the scheme was to be reviewed after five years. An independent review under Department of Finance guidelines is now complete and is due to be issued in mid-November. A favorable report is anticipated. Relevant details would be published in the Gazette.

Belgium

See document C/26/11, Annex II.

Canada

Regulations covering the first six taxa came into effect on November 6, 1991. As of October 23, 1992, a total of 113 applications had been received for those taxa. Regulations extending the list of protected taxa to an additional 17 have been drafted, and it is hoped that they will come into operation early in 1993.

The fees for plant breeders' rights will remain unchanged. The current Government policy requires the Office to operate on a full cost-recovery basis within ten years.

No action has been taken so far to revise the Plant Breeders' Rights Act to comply with the 1991 Convention, since it is only in its first year of operation.

Denmark

See document C/26/11, Annex III.

Spain

The fees were increased by 5% on January 1, 1992. Preparatory studies have been made with a view to adapting the plant variety protection law to the 1991 Act. Like the majority of EC member States, Spain is waiting for the final decisions to be taken in Brussels before initiating the procedure for amending the law.

An appeal against a ruling on the novelty of inbred lines used in the commercial production of maize hybrid seeds is pending.

The plant variety protection system will be extended to cover varieties of cotton, rapeseed, Prunus cerasifera and P. insititia.

Work is under way to solve some internal difficulties arising from the proposed conclusion of bilateral agreements.

The National Institute of Seeds and Nursery Plants, which is responsible for the administration of the plant variety protection system, is no longer an autonomous body but has come under a Vice Directorate-General of the Ministry of Agriculture, Food and Fisheries.

The activities between October 1, 1991, and September 30, 1992, were as follows:

- Applications received: 247
- Certificates granted: 229
- Certificates in force on September 30, 1992: 769

Plant variety protection has been on the agenda of several meetings and seminars recently held in Spain.

Experts and officials from Spain participated during the 1991-92 period in seminars in Argentina, Bolivia, Brazil, Colombia and Mexico. They noted a great interest for plant breeders' rights both at national and regional level.

Experts from Argentina, Morocco and Portugal visited Spain to study the implementation and operation of the plant variety protection system.

Work on updating of the National Lists (for 92 species of economic interest) was continued during the last year.

A draft law on the release of genetically modified organisms is under preparation.

New regulations governing the marketing of plantlets of vegetables, ornamentals and fruit crops are under preparation to follow up the corresponding EC Directives.

United States of America

No written report has been submitted in advance of the session essentially because activities in the past year were basically routine.

France

France did not submit a written report because there was no legislative change in 1991 and that a report would have been a mere restatement of statistical data already published elsewhere. It is hoped that the report to be submitted to the next session will reflect a resumption of the fundamental legislative activity. This does not mean, however, that nothing has been done in the past year; activities were regional rather than national.

France has taken firm positions at the Diplomatic Conference, and it feels strongly about the new provisions included in the 1991 Act. It hopes to finalize the preparatory work for the adoption of new legislation in the course of 1993, but it should be kept in mind that there is a major problem to be solved: that of farm-saved seed and of a provision under Article 15(2) of the 1991 Act. The current overall political situation calls for caution if one wishes to have the amended legislation adopted expeditiously. It is the firm intention of the Ministry of Agriculture to start soonest the work which will lead to ratification of the 1991 Act.

Hungary

There has been no major change in legislation during the past year. However, the examination fees were amended by a Ministerial Decree of March 1992. As a compensation, the limitations on royalties payable by users to breeders were eliminated.

Concerning accession to the 1991 Act, which is a matter to be referred to Parliament, it has to be understood that Hungary is building up a new State and that the UPOV Convention is a very marginal problem in this respect. It is nevertheless hoped that the matter will be put on Parliament's agenda in 1993.

In 1992, 37 applications for protection were filed and 31 titles were issued.

The authorities have made a considerable effort to improve activities in the technical field. Experts have been delegated for the first time to the sessions of three Technical Working Parties. The ring tests on barley, pea and wheat with Austria, Czechoslovakia, Germany and the Netherlands have completed their first year, providing training opportunities for Hungarian staff.

Ireland

Some preliminary work has been carried out on redrafting the current Act, but was suspended pending clarification of the situation at Community level.

Activities have slightly increased during the past year, with 41 applications received and 28 titles granted. Protection has been extended to two further taxa.

A bilateral agreement with the United Kingdom, covering potatoes, is in preparation.

Israel

The Plant Breeders' Rights Council has decided to extend protection to the whole plant kingdom, in line with the provisions of the 1991 Act. Work has started on the amendments to the law that are required for the ratification of the 1991 Act.

During the last year, 89 new applications were filed and 195 new rights were granted.

Italy

See document C/26/11 Add., Annex I.

Japan

See document C/26/11, Annex IV.

New Zealand

See document C/26/11, Annex V.

Netherlands

See document C/26/11 Add., Annex II.

Poland

The preparation of a new revision of the Seed Industry Law, which governs plant variety protection, in the light of the 1991 Act, is well advanced.

On October 15, 1992, a total of 195 applications for protection had been received and 91 certificates issued. The interest in plant variety protection is increasing and is expected to increase even further in the years to come.

United Kingdom

Parallel to the activities deployed at Community level, the United Kingdom authorities have initiated the legal procedure required for implementing the 1991 Act domestically. The law requires a formal consultation with industry; a consultation document was issued in May this year, and the replies have now been received and are being examined in relation to both the Convention and the draft EC Regulation. The authorities have taken the precaution of seeking a place in the parliamentary timetable in anticipation of decisions being taken.

The fees were increased by 3% on average as from April 1, 1992. Protection was extended to Galtonia candicans in August and it is intended to extend it to a further 70 species by the end of this year. The duration of protection has also been extended from 25 to 30 years in the case of potatoes.

Bilateral agreements have been concluded with Belgium and New Zealand, and a further agreement, with Ireland, is to be concluded soon. Finally, the United Kingdom authorities are conducting the first tests for distinctness, uniformity and stability on a genetically modified chrysanthemum variety, on behalf of the Netherlands.

The statistics for the year which ended on March 31, 1992, are as follows:

- Applications received: 441 (12% decrease over previous year)
- Grants issued: 430 (44% increase over previous year)
- Grants terminated: 260 (11% increase over previous year)
- Grants renewed: 1,470 (2% increase over previous year)

The number of grants is artificially high because it includes 40 rose varieties held from the previous year when hot weather distorted the growth of the plants and prevented the Panel reaching a decision. Correcting for this anomaly, the increase would be nearer to 15%.

Sweden

See document C/26/11, Annex VI.

Switzerland

The draft amendment law and its explanatory memorandum have been prepared. Unfortunately, the matter has not been pursued in view of the fact that the current policy is to refuse to entertain any legislative project that is not EC-compatible. The developments in Brussels have therefore to be awaited.

This year, 60 applications have been filed, bringing the overall total to 840, and 53 titles have been granted, bringing the overall total to 610.

Czechoslovakia

See document C/26/11 Add., Annex III.

II. NON-MEMBER STATES

Argentina

The National Seed Institute (Instituto nacional de semillas - INASE) began its operations on April 6 of this year. INASE is a decentralized organ of the Secretariat for Agriculture, Livestock and Fisheries whose primary function is to operate the Seed Law, the law regulating in particular plant variety protection.

The supreme organ of INASE is the Board of Directors, on which breeders, farmers, seed merchants and producers, the provincial States, the National Institute of Agricultural Technology (INTA) and SAGYP are represented. INASE is financially autonomous and has a highly qualified staff.

A National Commission of Agricultural Biotechnology has also been set up. This is the body which delivers the permits for tests on transgenic varieties. At present, such tests are being conducted on 12 varieties, and five further permits have been applied for recently. The biosecurity norms of the Department of Agriculture of the United States of America (USDA) have been adopted in this respect.

The Government is well aware of the fact that the regulatory activity of the State requires a well-organized breeding industry. It is in the public interest that both the public and the private sector promote respect for the rights of breeders. The private sector has realized that it had to structure itself, and has set up the Argentine Association of Producers of New Plant Varieties (Asociación argentina de productores de obtenciones vegetales - ARPOV), which unites 95% of the national and multinational breeding firms operating in Argentina and whose primary function is to administer the license contracts relating to protected varieties.

Such cooperation was soon to bear fruit since a major campaign was launched this year in cooperation with ARPOV and INTA to promote awareness of breeders' rights and of the benefits accruing from research and development in the field of plant varieties. The campaign involved the mass media and the main agricultural events and fairs and was country-wide.

Many companies have started again work on plant breeding and research. This is the result of the redefinition of the legal framework for such activities and the setting up of an executing agency in which all interested circles are represented. These initiatives naturally fall under the more general policy of deregulation and economic opening-up pursued by the Government.

This year, 130 titles of ownership have been issued--an increase of 242% over the preceding year--bringing the total number of such titles to 569.

Finally, this session of the Council should be the last one in which the Delegation of Argentina would participate as an observer, since the National

Congress currently sitting in extraordinary session has before it the law on the accession to the 1978 Act of the UPOV Convention. The Argentine authorities wish to thank UPOV for its support and cooperation and the delegations from member States for the experience which they have shared with them and their cooperation.

Austria

In addition to the Government Bill on Variety Protection, the Parliament will also have to deal with an amendment of the plant health law. A new seed law is under consideration as well.

The regulation of genetic engineering, including the release of genetically modified organisms in the environment, is also the subject of intensive discussions in Austria. There is no draft law on this at the present stage.

Bolivia

Bolivia is very interested in plant variety protection. It is a country endowed with biodiversity.

Chile

At the end of 1991, the Vice Secretary-General paid a visit to Chile, where he had discussions with the Undersecretary for Agriculture and other officials from the Ministry. These contacts and the further contacts established thereafter in Geneva set the basis for a national information seminar on the UPOV system of plant variety protection which took place on October 15 and 16, 1992. The Chilean authorities wish to thank UPOV and the speakers from UPOV for their contribution.

Chile views such activities as very important. The seminar, the first of its kind, was presided over by the Minister for Agriculture and attracted more than 60 participants from the plant varieties and seeds industry, the farming community and industrial property circles. The seminar was a success not only in view of the interest which it aroused, but also from the point of view of its conclusions. Chile attaches great importance to agricultural research and consequently to a possible accession to the UPOV Convention. To this effect, it was agreed to set up a working group with participation from the Ministry of Agriculture and Members of Parliament to study together the preparation of a draft for a modern law on seeds and plant varieties which would at the same time respond to national circumstances and be compatible with the provisions of the Convention.

Colombia

The authorities of Colombia wish to stress the readiness of the Office of the Union to respond to requests for cooperation extended by that country. Members of the Office of the Union accepted an invitation by the Government of Colombia to held a workshop in Santa Fé de Bogotá in November of last year. The attendance to the workshop reflected the attention given to the aims of the Union. The workshop has been of great importance and has aroused great interest in the protection of the rights of breeders.

A system common to the countries of the Andean subregion is being negotiated within the framework of the Cartagena Agreement. It is hoped that it will conform to the provisions of the UPOV Convention.

Côte d'Ivoire

The legal and administrative structure exists; the National Office of Seeds and Seedlings is responsible for seed certification and control.

Côte d'Ivoire, like other countries from western Africa, has based its economy on agriculture. It conducts classical plant breeding work in the form of interspecific and intraspecific crossings; it is also adopting modern biotechnological techniques.

From August 4 to 14, 1992, a Regional Introductory Course on Industrial Property organized by the World Intellectual Property Organization (WIPO) in cooperation with the African Intellectual Property Organization and the Government of Côte d'Ivoire took place; unfortunately, it did not extend to plant variety protection. The Government of Côte d'Ivoire has sent a delegation to this Council session with an instruction to express the wish that, after the seminars to be held in Kenya for the eastern and southern regions of Africa and in Morocco for the northern region, a seminar be organized in western Africa to create awareness of plant variety protection among the Governments of the region.

Croatia

Croatia participates for the first time as a new State in a session of the Council. Official variety testing has already been organized within the Ministry of Agriculture.

Egypt

Egypt has been developing regulations on the protection of new plant varieties and the organization of the seed industry for quite some time. This matter is now taking much more importance in view of the policy of the Government to go out of seed production and to privatize the sector concerned. It is expected that the Office of the Union will soon receive correspondence in relation to Egypt's accession to the Convention.

Finland

The Law on Breeders' Rights entered into force on October 15, 1992. The administration was set up on the same date. The first application was received on Friday, October 23. It is intended to deposit an instrument of accession as soon as possible, in the beginning of 1993.

Norway

The Ministry of Agriculture has been in contact with the Office of the Union in relation to draft legislation over the last year and a half. The Bill is now ready and will be presented to Parliament probably in the early spring of 1993. On the assumption that it is enacted into law, which is likely since Parliament has already taken a decision in principle to join UPOV, Norway will request an advice from the Council on the occasion of the next session of the Consultative Committee, next April.

Portugal

See document C/26/11 Add., Annex IV.

Republic of Korea

The Republic of Korea has a keen interest in the activities of UPOV for the protection of new varieties of plants, including in the achievements in the administrative, legal and technical fields. In particular, the work of the Administrative and Legal Committee on the harmonization of legislation and the implementation of the 1991 Act should be furthered to the benefit of both UPOV member States and non-member States preparing their accession to UPOV.

The Government of the Republic of Korea will host from November 17 to 19, 1992, a Seminar on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention, which is organized by UPOV, in cooperation with the Rural Development Administration of the Republic of Korea and with the assistance of the Japanese Ministry of Agriculture, Forestry and Fisheries, for developing countries in the Asian and Pacific Region.

The Government of the Republic of Korea will continue preparatory work, including on an amendment of national legislation, with a view to acceding to the UPOV Convention and participating actively in future meetings organized by UPOV.

Romania

The new Law Concerning Patents for Inventions (No. 64/1991), which contains specific provisions on the protection by means of patents of plant varieties and animal breeds came into force. New regulations were drafted and approved by the Government on April 13, 1992; a separate chapter thereof was devoted to the conditions for the grant of a patent for a new variety or animal breed, conditions that conform to the provisions of the 1991 Act of the UPOV Convention.

The text is being implemented in cooperation with the Ministry of Agriculture using the UPOV standards for each species. Difficulties are being faced, however, because there is no specialized staff able to work according to the UPOV Convention and because the necessary equipment for tests regarding minimum distances is lacking.

Senegal

The question of plant variety protection did not arise in Senegal until two or three years ago, since plant breeding was conducted in governmental research centers by either civil servants or experts sent to Senegal in the framework of international cooperation and since the varieties belonged to the State. Since 1990, when privatization of the seed industry began, the private sector is taking an interest in seed production from selections. A draft law to regulate seed production, certification and trade was then initiated; unfortunately, it did not yet go through the Parliamentary Commission for Agriculture. It is planned to take up the matter again after the elections of February and May 1993 and, with the assistance of UPOV and France--a country with which there is a very fruitful cooperation in the field of agriculture, and seeds in particular--to see how the new legislation can be adapted to the UPOV Convention so as to permit accession thereto.

III. ORGANIZATIONS

European Community (EC)*

There is no legal instrument of the Community that would oblige the EC member States to ratify the 1991 Act of the UPOV Convention or to accede thereto. However, the Community is working on a Regulation on Community plant variety rights which would conform to the 1991 Act. Individual member States of the Community will have to ensure that their laws are in conformity or do not conflict with the Community law itself. To that extent, it may be assumed that the laws of the member States, when amended, will be in conformity with both the 1991 Act and the Community law itself.

In relation to the timing of the amendments, the theoretical position is that each EC member State can amend any time its legislation to bring it into line with the 1991 Act. In practice, however, it is to be noted that the 1991 Act contains a number of provisions allowing discretion to member States, of which the most important are on farm-saved seed and on the extension of protection to products directly obtained from harvested material. The EC member States tend to await the positions established by the European Community as such before starting to amend their laws. The discussions on the draft Regulation are at a fairly advanced stage. Consultation with the European Parliament will hopefully be completed by the end of this year.

Organization for Economic Co-operation and Development (OECD)

The OECD is mainly an economic and even political discussion forum. It comprises 24 member States, all so-called "industrialized" countries. Its headquarters is in Paris and its Secretariat has a staff of 1,700.

The OECD is concerned mainly with the marketing of seed, not with breeders' rights, but there is a link between the two. Since 1962 the OECD has published annually a list of cultivars eligible for certification. It has registered more than 10,000 cultivars and more than 800 breeders for more than 150 species. At the same time it has introduced, since 1953, six voluntary schemes for the varietal certification of seed moving in international trade. The designated authorities meet once a year, which gives the systems great flexibility. The latest developments are the introduction of sorghum in the "maize" scheme and the revision of the "herbage and oilseed crops" scheme as applied to sunflower and rape hybrids.

In the minds of a number of breeders, the OECD list of cultivars is an international catalogue, and some wrongly believe that all the countries participating in the system are allowed to produce and market a cultivar entered in the list using OECD labels, and that according to OECD rules any unregistered cultivar cannot be produced according to OECD rules, and therefore is not

* Due to commitments in relation to the proposed Regulation of the Council (of the EC) on Plant Variety Rights, the Commission of the European Community has not been able to participate in the session of the Council. A report was given by the Delegation of the United Kingdom, the country holding the presidency of the Community, on the invitation of the Secretary-General, who had observed that there was always an interest in WIPO to learn that the European Community has prepared legislation obliging each EC member State to ratify the latest text of a Convention administered by WIPO. The report amalgamates the declarations of the Delegation of the United Kingdom and the observations of the Secretary-General.

marketable. The truth is that cultivars are entered in the OECD list on the sole responsibility of the designated authorities. According to Rule 3 of each system, every participating State has to publish annually an official list of varieties open to certification in its territory. An advisory group will meet in Paris in November 1992 to draw up a foreword to the list of cultivars and explain its scope in detail.

The use of characteristics in control plots is of more direct interest to UPOV. The role of the control plots is twofold: verification of cultivar identity, and verification of the varietal purity of seed batches. In both cases, a list of morphological characteristics has been devised in order to facilitate the conduct of the test. The last annual meeting of the OECD approved the publication of a non-compulsory list of characteristics. The list is largely based on the UPOV Test Guidelines. What it is in fact is a simplified list for the benefit of experts in the field.

At European Community level, vegetable varieties were described too broadly towards the end of the 1970s, and it is becoming impossible today to renew their acceptance. The EC has therefore decided to revise its Directive 72/168 with regard to the list of characteristics to be used to describe varieties. A document containing revised lists of characteristics for each of the varieties was published last May.

Today we are faced with three different approaches:

(i) the UPOV approach, with the publication of exhaustive lists of characteristics, from which those useful in the description of a variety may be selected;

(ii) the OECD approach, involving a simplified list of characteristics, all of which have to be used to determine varietal purity;

(iii) the EC approach, where lists by variety have been drawn up in the case of vegetables, allowing a minimum description to be given for new varieties.

International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) and International Federation of the Seed Trade (FIS)

ASSINSEL and FIS thank UPOV for inviting them to Council sessions, which are very instructive and at which very beneficial contacts may be made or renewed with representatives of official departments.

At the more practical level, it is at the sixth meeting with international organizations that one of the most important questions for users will be discussed. The introduction of dependency will be a very long drawn-out job which will also require close collaboration on the part of all those involved. The collaboration has already begun, and ASSINSEL and FIS are grateful to UPOV for it.

The growing influence of developing countries - and also the international negotiations within GATT or at the Rio de Janeiro Summit - will give a very powerful stimulus to breeders' rights. It is important therefore that UPOV should further increase its membership, and ASSINSEL and FIS are pleased to note the growth in the number of observer States attending Council sessions.

Farm seed is of course one of the great concerns of breeders and seed traders. They are following with great attention and interest the discussions that are going on at present within the EC. It is very important that breeders

should be not just protected but well protected. They have a crucial role to play in development and environmental protection processes, as described for instance at the Rio de Janeiro Summit. In order to heighten awareness of the problems encountered in its area of concern, ASSINSEL has embarked on the publication of a series of information brochures.

Association of Plant Breeders of the European Economic Community (COMASSO)

The representative of COMASSO wishes to underline the interest shown by the Secretary-General in the state of affairs regarding the draft Community plant variety rights system and to thank the Delegation of the United Kingdom, as representative of the Community, for its report. The EC Regulation might be the first instrument converting the 1991 Act into internal law. COMASSO also wishes to thank wholeheartedly the representatives of the States that are members of both UPOV and the EC: as a result of negotiations that have not always been that easy with the Commission, they seem to be on the best way towards establishing a legal instrument that conforms to the 1991 Act and might be adopted already in the beginning of 1993.

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