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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-seventh Ordinary Session

Geneva, October 29, 1993

REPORT

adopted by the CouncilIntroduction

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-seventh ordinary session in Geneva on October 29, 1993, under the chairmanship of Mr. Ricardo López de Haro y Wood (Spain).
2. The list of participants is given in Annex I to this report.
3. The indented paragraphs are taken from the record of the decisions adopted in the session, which the Council adopted at the end of its meeting (document C/27/14). This draft report on the session will be submitted to the twenty-eighth ordinary session of the Council for adoption.

Opening of the Session

4. The session was opened by the President, who welcomed the participants.
5. The President particularly welcomed the representatives of Finland, Mr. Olli Rekola and Mr. Arto Vuori, and the representatives of Norway, Mr. Nordahl Roaldsoy and Mr. Kare Selvik. Those two States had become members of UPOV during 1993.
6. The Secretary-General announced that Mr. Max-Heinrich Thiele-Wittig had completed twenty years of service with UPOV. He emphasized the considerable work undertaken by Mr. Thiele-Wittig in the technical field and expressed to him his thanks. The Council expressed its appreciation by a round of applause.

Adoption of the Report on the Twenty-sixth Ordinary Session

7. The Council adopted the report as given in document C/26/15 Prov.

Report by the President on the Work of the Forty-sixth and Forty-seventh Sessions of the Consultative Committee; Adoption of Recommendations, if any, Prepared by that Committee

8. The Council noted the report on the work of the forty-sixth session of the Consultative Committee given in paragraphs 7 to 9 of document C/27/3 and of the oral report by the President on the work of the forty-seventh session. That session had been held on October 28 and had been mainly devoted to preparing the present session of the Council; the Committee also decided to open sessions of the Technical Committee to observers from seven international organizations.

9. On the basis of recommendations made by the Consultative Committee, the Council took the decisions reported below.

10. The Council decided that the texts in the Chinese language of the 1978 and 1991 Acts of the Convention to be established by the Office of the Union in cooperation with the Chinese authorities would be official texts of those Acts.

11. The Council:

(i) approved the preparation of a prototype CD-ROM in the framework of the possible establishment of a UPOV central computerized data base on plant variety protection and related matters, on the conditions specified by the Consultative Committee, and

(ii) approved the proposal that the cost of the development of the prototype should be met by transferring up to 100,000 Swiss francs from the reserve fund, provided that the ad hoc Working Group which was in charge of establishing the format for the communication of data would report to the Consultative Committee if its discussions revealed any difficulty which suggested that the decision to invest in the prototype or to develop the final product ought to be reconsidered because of the unexpected difficulty.

Report by the Secretary-General on the Activities of the Union in 1992; Supplementary Report on Activities During the First Nine Months of 1993

12. The Council approved the report by the Secretary-General on the activities of the Union in 1992 given in document C/27/2.

13. The Council noted the report on activities undertaken during the first nine months of 1993 given in document C/27/3.

Progress of the Work of the Administrative and Legal Committee

14. The Council noted and approved the report on the progress of the work of the Administrative and Legal Committee given in document C/27/9 and its addendum.

15. The Council adopted the revised Declaration on the Conditions for the Examination of a Variety Based Upon Trials Carried out by or on Behalf of the Breeder reproduced in Annex II hereto.
16. The Council adopted the revised UPOV Model Administrative Agreement for International Cooperation in the Testing of Varieties reproduced in Annex III hereto.
17. The Council endorsed the interpretation of Article 11 of the 1991 Act of the Convention given in paragraph 13 of document C/27/9.*

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

18. The Council noted the report on the progress of the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular, given in document C/27/10 and its two addendums. It approved the report together with the programs of work set out in those documents.
19. The Council noted with approval the suggestion that the documents of the Technical Committee should become available to any interested person.

Examination and Approval of the Program and Budget of the Union for the 1994-95 Biennium

20. Discussions were based on document C/27/4 and on a graph showing the development of the UPOV contribution unit in relation to inflation in Geneva. The graph is reproduced in Annex IV hereto.
21. The Secretary-General presented the above mentioned document and reported on the outcome of a preliminary examination of that matter by the Consultative Committee. He emphasized, in particular, that the delegations of the Czech Republic, Denmark, Germany and Spain had stated that they would have abstained had there been a vote in the Consultative Committee.
22. The Delegation of Denmark emphasized the fact that, at previous discussions on the budget, it had expressed its concern at the increase in the amount of the contribution unit and had explained that it would be difficult for it to accept that increase. However, the Delegation was forced to admit that it was unable, on the basis of the draft budget, to propose any savings. Consequently, it was unable to support the draft budget and, should the case arise, would have to abstain from voting. Moreover, it would have to look at the matter of the amount of the contribution at national level, in the light of the national financial situation and of the arguments put forward to support the proposed program and budget. The Delegation wished to explain that its

* According to that interpretation, Article 11 means:

- (i) that an application comprising a priority claim has to be examined as if it had been filed on the priority date;
- (ii) that the examination of the application might be deferred for two years under the conditions set out in paragraph (3) of that Article.

position was in no way to be interpreted as criticism of the Office of the Union, whose work and dedication were recognized and appreciated.

23. The Delegation of the Czech Republic pointed out that discussions in the Consultative Committee had been based on the current situation of the Union. In view of the fact that other States were to accede to the Union in the near future, it asked whether a more flexible attitude could not be adopted and whether the amount of the contribution could not be laid down as a function of the number of member States applicable at the time of laying down the amount.

24. The Delegation of France thanked the Secretary-General for the proposals he had made at the session of the Consultative Committee and the efforts he had made to refocus the activities of the Union on essential matters.

25. The Delegation of Spain said that its country was in a special situation since it had increased its participation from one unit to one and a half units in 1992 and was now confronted with a considerable loss in the value of its national currency with regard to the Swiss franc. Furthermore, the Spanish Government had adopted a policy of budget austerity and wished that the international organizations to which Spain made a contribution should follow that same policy. The Delegation had therefore received instructions not to accept any increase in the contribution. It emphasized, as had done the Delegation of Denmark, that its position implied no criticism of the Office of the Union, that it considered a model of effectiveness.

26. The Delegation of Germany welcomed the efforts made to ensure in a lasting manner the proper operation of the Union. It considered that the program was going in the right direction from that point of view and that the budget could hardly be criticised. The Delegation would have to abstain for purely formal reasons should there be a vote, since it had not yet obtained authorization from the Ministry of Finance.

27. The Delegation of the Netherlands understood the financial difficulties and concerns of certain member States. It nevertheless felt that the Secretary-General's proposals constituted the vital minimum for UPOV.

28. The Council--with the abstention of the Delegations of the Czech Republic, Denmark, Germany and Spain--adopted the program and budget of the Union for the 1994-95 biennium as given in document C/27/4, subject to the following amendments:

(i) The overall amount of the expenditure for the 1994-95 biennium was reduced by 25,500 Swiss francs to 4,949,500 Swiss francs;

(ii) The amount of the contributions budgeted for the 1994-95 biennium was also reduced by 25,500 Swiss francs, to 4,855,500 Swiss francs, and the contribution unit was fixed at 49,668 Swiss francs for 1994 (i.e., 8.0% higher than the contribution unit for 1993) and at 53,641 Swiss francs for 1995 (i.e., 8.0% higher than the contribution unit for 1994).

29. The decisions on the calendar of meetings in 1994 allowed a reduction of the overall amount of the expenditure for the 1994-95 biennium by 25,000 Swiss francs. Annex V contains a revised summary table of budget and comparisons. The resulting contributions of member States for 1994 and 1995 are shown in Annex VI.

Examination and Approval of the Plan for the Medium Term 1996-99

30. The Council noted the medium-term plan for the years 1996 to 1999 given in document C/27/11. No comments were made on the plan.

Designation of Auditor

31. The Council renewed the designation of Switzerland as auditor of the accounts of UPOV up to and including the year 1997 and thanked the Swiss authorities for their contribution to the working of the Union.

Calendar of Meetings in 1994

32. The Council established the calendar of meetings in 1994 as reproduced in Annex VII hereto.

33. In conjunction with the decision to cancel the symposium that was proposed to be held in principle in 1994 on the subject of the protection of animal breeds, the Council also cancelled the mandate given previously to the Office of the Union to prepare a study on that subject.

Election of New Chairmen

34. The Council elected, in each case for a term of three years ending with the thirtieth ordinary session of the Council, in 1996:

(i) Mr. Huib Ghijsen (Netherlands) Chairman of the Technical Working Party for Agricultural Crops;

(ii) Mr. Sylvain Grégoire (France) Chairman of the Technical Working Party on Automation and Computer Programs;

(iii) Mrs. Elise Buitendag (South Africa) Chairman of the Technical Working Party for Fruit Crops;

(iv) Mrs. Ulrike Löscher (Germany) Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

(v) Mrs. Elisabeth Kristof (Hungary) Chairman of the Technical Working Party for Vegetables;

(vi) Mr. Joël Guiard (France) Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular.

35. The Council thanked the outgoing chairmen for the work they had accomplished during their terms of office; it requested the delegations concerned to transmit to them its gratitude.

Situation in the Legislative, Administrative and Technical Fields

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

36. The Council noted the reports reproduced in document C/27/13 and its three addendums.

37. The reports and additional statements made during the session are reproduced in Annex VIII to this report.

b. Information Collected by the Office of the Union on the Situation of Protection in the Member States and Cooperation Between Those States

38. The Council noted the contents of documents C/27/5, C/27/6 and C/27/7.

Retirement

39. The Council was informed that Mr. John Harvey (United Kingdom) was participating for the last time in a Council session. On behalf of the Council, the President thanked him for his contribution to the working of the Union and expressed to him his best wishes for a long and happy retirement.

40. This report was adopted by the Council at its twenty-eighth ordinary session, on November 9, 1994.

[Eight annexes follow]

C/27/15

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/
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V. BUREAU DE L'OMPI/OFFICE OF WIPO/BUERO DER WIPO

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

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

Arpad BOGSCH, Secretary-General
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]

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ANNEX II

**DECLARATION ON THE CONDITIONS FOR THE EXAMINATION
OF A VARIETY BASED UPON TRIALS CARRIED OUT BY OR ON BEHALF OF THE BREEDER**

**The Council of the International Union for the Protection of New Varieties
of Plants,**

Pursuant to Article 21(h) of the 1978 Act of the International Convention for the Protection of New Varieties of Plants;

Considering Article 7(1) of the 1978 Act of the Convention, under which: "Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species";

Considering Article 12 of the 1991 Act of the Convention, under which: "Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material";

Recognizing that Article 7(1) of the 1978 Act and Article 12 of the 1991 Act permit but do not require the authority to base its examination upon growing and other necessary tests carried out by or on behalf of the breeder;

Declares that a system for the examination of applications based upon such tests carried out by or on behalf of the breeder and on the information submitted by him on the basis of those tests will be considered in keeping with the provisions of the Convention if:

1. The growing tests and other necessary tests are conducted according to guidelines established or accepted by the authority;
2. The testing arrangement is maintained--in order to permit the checking of data or the collecting of further data--until a decision has been made on the application or until the authority has informed the breeder that the arrangement is no longer necessary;
3. Access to the tests by persons properly authorized by the authority is provided;
4. The breeder, when requested to do so, deposits in a designated place, and within a time limit set by the authority, a sample of propagating material representing the variety.

[Annex III follows]

ANNEX III

**MODEL ADMINISTRATIVE AGREEMENT FOR
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES**

- CONSCIOUS of the importance attaching to cooperation between the members of the International Union for the Protection of New Varieties of Plants (UPOV) in the examination of the distinctness, uniformity and stability of the varieties that are the subject of an application for a breeder's right, as a means of optimizing the functioning of their plant variety protection systems,
- CONSIDERING that cooperation may take various forms depending on the special biological, technical and economic features of each botanical taxon,
- CONVINCED that the centralization of the examination and the standardization of the technical procedures brought about by other forms of cooperation have a beneficial effect on international trade in the field of plant varieties and seeds,
- CONSIDERING that, where the centralization of the examination has not been achieved, it may be desirable that the examination of the distinctness, uniformity and stability of a variety being the subject of an application in more than one State be undertaken once only,
- CONSIDERING that this Agreement must be conceived in such a way that it may also serve as the basis for cooperation in areas related to the protection of new plant varieties, in particular in the administration of the lists of varieties admitted to trade,
- CONSIDERING that the parties are also desirous to conclude comparable agreements with other members of the Union, and that it is therefore necessary to base this Agreement on the Model Administrative Agreement for International Cooperation in the Testing of Varieties drawn up by UPOV and adopted by its Council at the twenty-seventh ordinary session, on October 29, 1993,
- CONSIDERING that any agreement in this field must necessarily be reviewed, evaluated and adjusted periodically,

Party A

and

Party B

have agreed as follows:

Article 1

(1) Authority A shall provide the following services to Authority B, at the latter's request, in respect of the varieties which are the subject of an application for a breeder's right filed with Authority B in accordance with the International Convention for the Protection of New Varieties of Plants, or for entry in the national list of varieties admitted to trade:

(i) for the genera and species whose list is given in Annex A.1, it shall undertake the examination for distinctness, uniformity and stability of the variety concerned;

(ii) for the genera and species whose list is given in Annex A.2 [or A.2/B.2], it shall undertake the part of the examination specified in the said Annex;

(iii) for the genera and species whose list is given in Annex A.3, it shall supervise the examination of the variety, where such examination is undertaken on its territory by the applicant, or by a third party on his behalf, and evaluate the results thereof.

(iv) for the genera and species whose list is given in Annex A.4 [or A.4/B.4], it shall supply the results of the examination or supervision which it has undertaken or agreed to undertake on the basis of a prior application;

(2) Authority B shall, under the same conditions, provide the aforementioned services to Authority A, for the genera and species whose list is given in Annexes B.1, B.2 [or A.2/B.2], B.3 and B.4 [or A.4/B.4], respectively.

(3) The authorities may agree, on an ad hoc basis, to apply this Agreement to a variety from a genus or species not listed in the relevant Annex.

(4) For the purposes of this Agreement:

(i) "Executing Authority" means the Authority which provides one of the services specified in subparagraphs (i) to (iv) of paragraph (1) above;

(ii) "Receiving Authority" means the Authority to which one of the aforementioned services is provided.

Article 2

Where the Council of UPOV has adopted Guidelines for the conduct of the testing of a species subject to this Agreement, the examination shall be conducted according to those Guidelines. In the absence of such Guidelines the Authorities shall adopt the testing methods by mutual consent before this Agreement is applied to the species in question.

Article 3

(1) For each variety the Executing Authority shall submit to the Receiving Authority, as the case may be:

(i) the reports relating to each testing period and a final examination report;

- (ii) the reports relating to the part of the examination entrusted to it;
 - (iii) the reports relating to the supervision of the examination undertaken by the applicant, or by a third party on his behalf, and to the evaluation of the results thereof, and a final examination report.
- (2) The final examination report shall detail the results of the examination concerning the characteristics of the variety and shall state the opinion of the Executing Authority on the distinctness, uniformity and stability of the variety. When those requirements are considered to be fulfilled or when the Receiving Authority asks for it, a description of the variety shall be added to the report.
- (3) Reports and descriptions shall be written in ... (language).
- (4) Any emerging problems shall be notified immediately to the Receiving Authority.
- (5) With respect to the distinctness, uniformity and stability criteria, the Receiving Authority shall decide on the application, in principle, on the basis of the final examination report, or with due regard being given to the partial reports of the Executing Authority. Where exceptional circumstances require it, the Receiving Authority may carry out supplementary tests and trials. If it chooses to do so, it shall inform the Executing Authority thereof.

Article 4

- (1) The Authorities shall take all necessary steps to safeguard the rights of the applicant.
- (2) Except with the specific authorization of the Receiving Authority and the applicant, the Executing Authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.
- (3) Access to the documents and the test plots shall be given only to:
- (i) the Receiving Authority, the applicant and any duly authorized person;
 - (ii) the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of hybrid varieties only if it is strictly necessary and if the applicant does not object.

This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

- (4) If another authority is a receiving authority under a similar agreement, access may be granted in accordance with the rules applicable under that agreement.

Article 5

Where, in the case of a service specified in Article 1(1)(iv) above, the prior application is rejected or withdrawn, the Authorities may agree on the continuation of the examination or supervision on behalf of the Receiving Authority.

Article 6

Practical details arising out of this Agreement--regarding in particular the provisions relating to the considerations, application forms, technical questionnaires and requirements as to propagating material, testing methods, exchange of reference samples, maintenance of reference collections and the presentation of the results--shall be settled between the authorities by correspondence.

Article 7

(1) The Receiving Authority shall pay to the Executing Authority the consideration agreed upon under Article 6.

(2)(i) In the case of a service specified in Article 1(1)(iv) above, an administrative consideration equivalent to 350 Swiss Francs or of an amount agreed upon by correspondence between the Authorities shall be charged.

(ii) Where the prior application has been rejected or withdrawn and where, pursuant to Article 5 above, the Authorities have agreed on the continuation of the examination or supervision on behalf of the Receiving Authority, the amount payable shall be equal to the additional cost resulting from the continuation of the examination or supervision.

(3) Payments shall be effected within three months of receipt of an invoice specifying their amount.

Article 8

Each Authority shall make available any information, facilities or services of experts that the other Authority may need additionally, on condition that the latter undertakes to pay the costs involved.

Article 9

(1) This Agreement shall enter into force on ... (date) [and shall replace the Agreement of ... (date) on cooperation in the examination of plant varieties].

(2) This Agreement and its Annexes may be amended by mutual agreement.

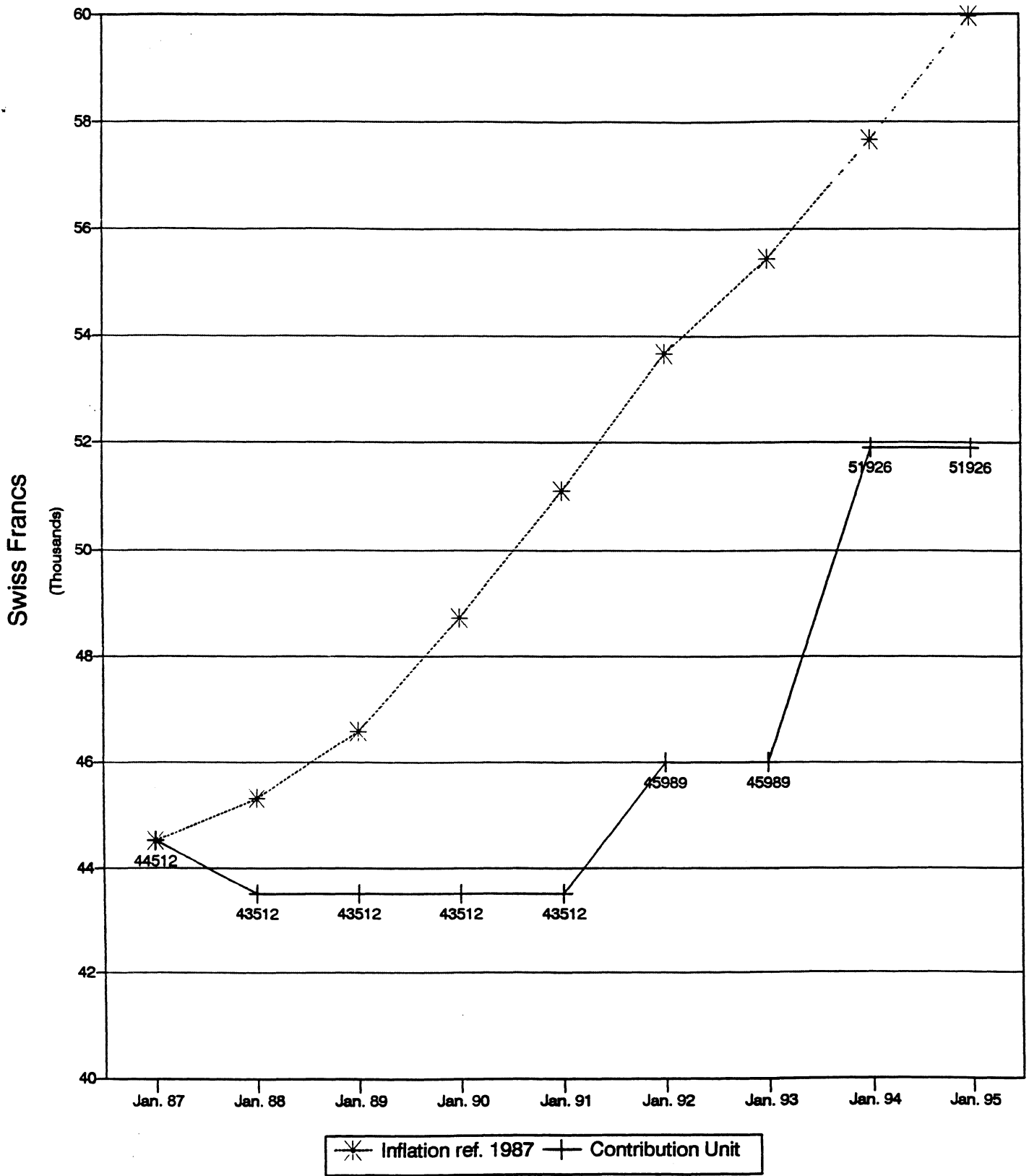
(3) Any party wishing to revoke this Agreement in whole or in part shall give the other party notice to that effect.

(4) Unless the parties agree otherwise, any such revocation shall take effect only after observance of two years' notice, completion of pending tests and transmittal of the relevant reports.

[Annex IV follows]

ANNEX IV

Progression of UPOV Contribution Unit compared with inflation in Geneva



Number of budgeted contribution units:

41 41 41 42.5 42.5 43.5 43.5 47 47

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ANNEX V

CHAPTER I - SUMMARY OF BUDGET AND COMPARISONS
(expressed in thousands of francs)

1990-91 <u>Actual</u>	1992-93 <u>Budget</u>		Approved 1994-95 <u>Budget</u>
3,699	4,001	INCOME	
		Contributions	4,855.5
		Other Income	
16	25	- Publications	5
259	170	- Miscellaneous	89
<u>3,974</u>	<u>4,196</u>		<u>4,949.5</u>
=====	=====		=====
		EXPENDITURE	
2,227	2,591	UV.10 <u>Staff Expenses</u>	2,975
		<u>Travel on Official Business</u>	
		- Missions [Staff]	
		UV.04 - Technical Working Parties 48	
		UV.09 - Contacts with Governments and Organizations 120	
161	154	- Sub-total	168
		- Third Party Travel [non-staff]	
		UV.01 - Council: Symposium speakers 15	
106	108	- Sub-total	15
		<u>Contractual Services</u>	
		- Conferences	
		UV.01 - Council 29	
		UV.02 - Consultative Committee 14	
		UV.03 - Technical Committee 31	
		UV.05 - Administrative and Legal Committee 31	
		UV.07 - Meeting with International Organizations 7	
274	139	- Sub-total	112
89	118	UV.08 - Printing: Information and Documentation	128
		- Other	
		UV.08 - Information and Documentation 63	
48	65	UV.11 - Program Support Expenses 8	
		- Sub-total	71
104	114	UV.11 <u>General Operating Expenses: Rental of Premises</u>	127
3	7	UV.11 <u>Supplies and Materials</u>	8
4	13	UV.11 <u>Acquisition of Furniture and Equipment</u>	14
6	34	UV.11 <u>Other Expenses</u>	35.5
<u>3,072</u>	<u>3,343</u>	Sub-total: Expenses proper to UPOV	<u>3,653.5</u>
<u>1,115</u>	<u>1,170</u>	UV.12 <u>Common Expenses</u>	<u>1,296</u>
4,187	4,513	Total Expenditure	4,949.5
=====	=====		=====
(213)	(317)	(DEFICIT) - Transferred from Reserve Fund	0

[Annex VI follows]

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ANNEX VI

CONTRIBUTIONS OF MEMBER STATES
(expressed in Swiss francs)

<u>1992</u> <u>Actual</u>	<u>1993</u> <u>Actual</u>	<u>Member States</u>	<u>Number</u> <u>of Units</u>	<u>1994-95</u>	
				<u>Payable in</u> <u>January 1994</u>	<u>Payable in</u> <u>January 1995</u>
45,989	45,989	Australia	1.0	49,668	53,641
68,983	68,983	Belgium	1.5	74,502	80,462
45,989	45,989	Canada	1.0	49,668	53,641
22,994	-	Czechoslovakia	-	-	-
-	22,994	Czech Republic	0.5	24,834	26,820
68,983	68,983	Denmark	1.5	74,502	80,462
-	-	Finland	1.0	49,668	53,641
229,945	229,945	France	5.0	248,340	268,205
229,945	229,945	Germany	5.0	248,340	268,205
22,994	22,994	Hungary	0.5	24,834	26,820
45,989	45,989	Ireland	1.0	49,668	53,641
22,994	22,994	Israel	0.5	24,834	26,820
91,978	91,978	Italy	2.0	99,336	107,282
229,945	229,945	Japan	5.0	248,340	268,205
137,967	137,967	Netherlands	3.0	149,004	160,923
45,989	45,989	New Zealand	1.0	49,668	53,641
-	-	Norway	1.0	49,668	53,641
22,994	22,994	Poland	0.5	24,834	26,820
-	22,994	Slovakia	0.5	24,834	26,820
45,989	45,989	South Africa	1.0	49,668	53,641
68,983	68,983	Spain	1.5	74,502	80,462
68,983	68,983	Sweden	1.5	74,502	80,462
68,983	68,983	Switzerland	1.5	74,502	80,462
229,945	229,945	United Kingdom	5.0	248,340	268,205
229,945	229,945	United States of America	5.0	248,340	268,205
<u>2,046,506</u>	<u>2,069,500</u>		<u>47.0</u>	<u>2,334,396</u>	<u>2,521,127</u>
=====	=====		=====	=====	=====

ANNEX VII

DATES OF MEETINGS IN 1994

presented in the order of the organs

Council

November 9 (afternoon)

Consultative Committee

November 9 (morning)

Administrative and Legal Committee

November 7 and 8

Technical Committee

November 2 to 4

Technical Working Party for Agricultural Crops

May 17 to 20, Seville, Spain

Technical Working Party on Automation and Computer Programs

April 12 to 14, Kiryat Anavim, Israel

Technical Working Party for Fruit Crops

September 19 to 24, Napier, New Zealand

Technical Working Party for Ornamental Plants and Forest Trees

September 26 to October 1, Canberra, Australia

Technical Working Party for Vegetables

September 5 to 9, Edinburgh, United Kingdom

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

March 21 to 23, near Paris, France

[Annex VIII follows]

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ANNEX VIII

**REPORTS AND DECLARATIONS BY REPRESENTATIVES OF STATES AND ORGANIZATIONS
ON THE SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS*****I. MEMBER STATES****South Africa**

See annex to document C/27/13 Add. 3.

Germany

See Annex I to document C/27/13.

The Delegation of Germany supplemented its written report in the session by explaining that the budget of the Federal Ministry of Food, Agriculture and Forestry had contained over the last two years a special heading for training in the fields of plant variety protection and variety catalogues, at the Federal Plant Variety Office, for the benefit of the countries of Eastern Europe.

Australia

In 1992, the Delegation of Australia had announced that the system of plant variety protection set up in 1986 was to be assessed after five years. The assessment led to the conclusion that the system was economically justified and that it had had a considerable impact on the horticultural sector; on the other hand, it had had no significant effect on investment in grain crops due to the provision on farm saved seed.

Rather than adapting the law to the 1991 Act of the Convention, a new law will be drafted with the name "Plant Breeders' Rights Act." The preliminary draft has been completed and has undergone limited consultation with the circles concerned. A second version will be subjected to broader consultation before the end of the year.

Australia has changed its policy on varieties of foreign origin. It is no longer required that they should systematically be examined in Australia; if an examination has already been carried out and the available documentation is sufficiently comprehensive, a simple administrative examination of the variety will be carried out.

The Plant Variety Rights Office has a budget that is based on a 100% coverage of running costs by revenue. That aim has been achieved without increasing the fees since 1990, due mainly to the increase in the number of applications.

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

Pursuant to the agreed procedure, a number of representatives of States and organizations 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/27/13 and to its addendums.

In reply to a question, it was explained that an attempt had been made to remove the provision on farm-saved seed. However, that idea had been dropped following the limited consultation with the circles concerned. The provision would therefore be maintained, but with the possibility for users of varieties to waive the faculty open to them, in order to promote investment in research with respect to the species involved.

Belgium

See Annex III to document C/27/13.

Canada

See Annex I to document C/27/13 Add. 2.

Denmark

See Annex IV to document C/27/13.

The Delegation of Denmark supplemented its written report in the session by explaining that Denmark also had a fund, administered by the Ministry of Foreign Affairs, for cooperation projects with Eastern European countries. Steps had been taken to have projects in the varieties and seed area financed by that fund.

Spain

During the past year, protection has been extended to cotton and to rape.

The schedule of fees is presently being revised. It is planned to increase the fees substantially in order to achieve an improved balance of revenue and expenditure and to enable agreements to be concluded for cooperation in examination.

During the past year, 283 applications for protection have been filed and 173 titles of protection granted; 894 titles are currently in force.

The question of protecting living matter by means of patents has aroused considerable interest within industry, amongst lawyers and at the universities; this is witnessed by the number of seminars and other meetings held on the subject, and by the number of requests for information received by the National Seed and Nursery Plant Institute.

Spain has continued to receive foreign trainees for instruction in variety examination, plant variety protection and variety catalogues.

United States of America

Last August, Senator Kerry introduced a Bill to amend the Plant Variety Protection Act to make it consistent with the 1991 Act of the Convention. A related Bill has been introduced into the House of Representatives by Congressman De la Garza.

The Subcommittee chaired by Senator Kerry conducted a hearing on September 20. The Government, represented by the Department of Agriculture and the Department of Commerce, testified in favor of adopting a law to amend the Plant Variety Protection Act in line with the 1991 Act. The Bills are likely to be examined in full committee in the near future. The 1991 Act has not yet been submitted to the Senate for advice and consent.

The development of case law on plant variety protection is the second point of interest. The United States of America has a provision that enables farmers not only to save seed of protected varieties, but also to sell it under certain circumstances. That provision has long been a source of concern for the seed industry. One firm has taken legal action against a farming couple that had sowed 250 hectares of soybeans, produced 10,000 bushels of seed which it then sold practically in its entirety to farmers in the region.

The firm claimed in particular that the law had to be interpreted as permitting farmers to save simply the seed necessary to resow their own holding; since approximately one bushel was required per hectare, the defendants could therefore only sell 250 bushels. The court ruled in summary judgment--thus no facts were in dispute--in favor of the seed company. However, in appeal, the Court of Appeals for the Federal Circuit reversed the decision.

The matter has now been brought before the Supreme Court, which rarely deals with disputes on matters such as plant variety protection and concentrates rather on constitutional matters. On the first day of its session, it usually dismisses some 95% of the cases brought before it. However, that particular case was not dismissed and it is therefore altogether possible that the court would review it further.

The Plant Variety Protection Office has pursued its efforts towards improved participation in UPOV, particularly as regards the technical work.

Finland

See Annex V to document C/27/13.

Hungary

1. Situation in the Legislative Field

During the current year, the circles concerned were further consulted on the implications of applying the 1991 Act of the Convention. Hungary will align itself on that Act as soon as possible. Since Parliament is engaged in other matters and elections are to take place in 1994, ratification of the 1991 Act cannot take place before 1994 at the earliest.

2. Cooperation in Examination

Agreements for cooperation in examination are under preparation with the Czech Republic and France. The form to be taken by cooperation and the species involved have not yet been specified.

3. Situation in the Administrative Field

On October 18, 1993, in relation to the figures given in document C/27/7, 89 patent applications had been filed for varieties and 65 patents had been granted.

4. Situation in the Technical Field

The number of applications for technical examination has decreased considerably in relation to preceding years. Thirty-one applications were received up to October 18, 1993 (24 for maize, 4 for sunflower, 1 for potato, 1 for crown vetch, 1 for poppy).

5. Activities for the Promotion of Plant Variety Protection

The ring test that aimed to improve and harmonize examination procedures for winter wheat, spring barley and pea continued its activities, with Romania joining the ring to make a total of six countries.

Three national experts (for maize, soybean and sunflower) completed training programs in DUS tests with GEVES, the French Group for the Study and Control of Varieties and Seeds; the training was funded by the French authorities. Two experts in vegetable plants participated in a training program in the Netherlands.

6. National Listing, Seed Certification

A new plant production law is under preparation with the aim of achieving improved harmonization with European Community Regulations. For that purpose, experts from France, Germany, the Netherlands and the United Kingdom had delivered lectures and given advice to national experts.

7. Genetic Resources

At the beginning of the year, the Minister for Agriculture decided to separate the Research Center for Agrobotany from the rest of the Institute for Agricultural Quality Control and to set it up as the Institute of Agrobotany.

Ireland

See Annex VI to document C/27/13.

Israel

Adaptation of the law to satisfy the 1991 Act of the Convention is a long-term task, but it is expected that the final draft would be available and submitted to the Knesseth within a year.

Protection has been extended to further genera and species; the list now comprises 151 entries. The term of protection has been raised to 20 years for melon and a similar extension is to be introduced shortly for cotton.

Cooperation in examination has continued with several States. Examination results for gypsophila have been forwarded to Denmark, Germany and the Netherlands. An agreement has been concluded with Germany for it to examine pelargonium.

The annual number of applications amounts to approximately 175; they mostly concern foreign varieties and ornamental plants. Some 700 varieties are protected.

Italy

See Annex I to document C/27/13 Add.

Japan

See Annex VII to document C/27/13.

The Delegation of Japan explained in session that the planned extension of protection would only concern 26 genera and species (and not the 30 initially intended).

New Zealand

See Annex VIII to document C/27/13.

The Delegation of New Zealand supplemented its report in session, stating that a Bill to extend plant variety protection to fungi had been submitted to Parliament.

Netherlands

See Annex IX to document C/27/13.

Poland

See Annex X to document C/27/13.

It was added in session that preparation of a new Seed Industry Law was well advanced; the part related to plant variety protection had been submitted to the Office of the Union and discussed with it. It was hoped that the draft could be submitted to Parliament in 1994.

United Kingdom

See Annex II to document C/27/13 Add. 2.

Slovakia

Since the splitting-up of Czechoslovakia and the declaration of continuation addressed to the Secretary-General on January 12, 1993, Slovakia has continued to apply Czechoslovak Law No. 132 of November 15, 1989, on the Legal Protection of New Plant Varieties and New Animal Breeds, as also the Czechoslovak schedule of fees.

Slovakia has begun drafting a new law to be based on the 1991 Act of the Convention.

Slovakia has concluded a bilateral agreement for cooperation in examination with the Czech Republic. It is prepared to conclude agreements with other countries.

Sweden

See Annex XII to document C/27/13.*

II. NON-MEMBER STATES

Argentina

The law on accession to the UPOV Convention has been adopted by Congress and it is hoped that the legislative work will be concluded in the near future and that the Argentine Government will soon be able to deposit its instrument of accession.

Austria

Accession to the Convention has to be subjected to a parliamentary procedure. The Government is soon to submit a draft. However, in view of the parliamentary workload, it is unlikely that the matter will be examined in the current year.

Brazil

Varieties do not enjoy specific protection in Brazil, but growing interest in accession to UPOV can be noted. A draft law based on the 1978 Act of the Convention is under examination by an inter-ministerial committee of the Federal Government.

The National Agricultural Council is working on a parallel draft.

Congress has held a debate during its current session on the patentability of living matter, including plant varieties, in relation to the draft intellectual property law. The National Industrial Property Institute, for its part, has made a start with revising the 1971 Law to determine whether it can apply to plant organisms and tissues.

Chile

Last year, the Delegation of Chile announced that, following a national seminar on plant variety protection organized in cooperation with UPOV, a working group comprising representatives of the Ministry of Agriculture had been given the task of preparing a draft law to modernize the currently applicable law.

At the beginning of the present year, the draft has been submitted to Parliament; it is currently under examination by the House of Deputies and has been transmitted to the Senate.

* The second paragraph of item 1.3 should be corrected to read as follows:

"The National Plant Variety Board has suggested extension of protection to seven further genera and species: *Crocoshia* spp., *Ficus* spp., *Impatiens* spp., *Petunia* spp., *Scaevola* spp., *Tulipa* L. and *Verbena* spp."

The statement of grounds in the draft explains that one of the aims is to adapt the law to the provisions of the 1978 Act of the Convention to enable Chile to accede to UPOV.

These are some features of the draft:

- (i) it covers various matters that are at present covered by regulations;
- (ii) it employs the concept of breeders' rights or of protection rights and no longer that of plant property;
- (iii) it supplements the right that is currently generated by entry in a register, by the issue of a special title of protection;
- (iv) it lays down the minimum terms of protection (18 years for trees and vines, 15 years for other species);
- (v) it suppresses the faculty possessed by the State to order propagation of a variety where the owner fails to do so, and replaces that faculty by the applicability of competition law provisions;
- (vi) it suppresses the faculty afforded to the owner to have his right entered in the trademark register;
- (vii) it simplifies the arrangements for entering foreign varieties coming from countries that have a similar system of protection.

The past year has therefore been an active one; it is hoped that it will be possible to announce the entry into force of the revised law at the next session of the Council.

Finally, the excellent help given to the Agriculture and Animal Husbandry Service by UPOV has to be emphasized.

Morocco

The draft national law for the protection of new plant varieties has been transmitted to the higher instances and is currently with the General Secretariat of the Government. The Moroccan authorities wish to thank in that respect, particularly, the Office of UPOV and the French Committee for the Protection of New Plant Varieties for the assistance they have given.

In June, a Seminar on the nature of and rationale for the protection of plant varieties under the UPOV Convention was organized jointly by UPOV and the Ministry of Agriculture and Agrarian Reform of Morocco for the countries of North Africa. The Moroccan authorities consider that the seminar was of great value and had enjoyed large success.

Portugal

See Annex XI to document C/27/13.

Republic of Korea

A Seminar on the nature of and rationale for the protection of plant varieties under the UPOV Convention was held in Suweon in November 1992. The seminar had a considerable impact on the countries of the region with respect to recognition of the importance of protection and of the activities of UPOV.

Asexually reproduced varieties have been eligible for patent protection since 1946. It is now recognized that the system has to be supplemented to provide more appropriate and fuller protection. The work is currently underway.

The authorities of the Republic of Korea are very interested in the work undertaken by UPOV. They feel that the protection of new plant varieties is close to the patent system; it would be desirable for more patent specialists to participate in future meetings of UPOV.

Romania

A seed law has been drafted and tabled before the Parliament. Patent Law (No. 52 of 1991) and its Regulations, that also concern plant variety protection, will be amended and adapted to the 1991 Act of the Convention on the basis of the comments made by the Office of the Union.

The Vice Secretary-General is to visit Romania in November 1993 in order to clarify certain points in the protection of plant varieties at national level.

The fees relating to plant variety protection are the same as for other fields of industrial property. A new schedule is currently being drawn up for the examination fees.

The application forms for protection and for variety denominations are exactly the same as the forms for patent applications. Technical questionnaires are being drawn up on the basis of the corresponding UPOV documents.

In 1993, Romania participated in a ring test with a view to harmonizing the testing procedures. Two months of training were received in the United Kingdom by a specialist from the State Committee for Variety Study and Approval.

Slovenia

Two laws cover most elements of the 1991 Act of the Convention. A request for accession to that Act has been submitted to the Ministry of Agriculture one year ago. A model is anxiously awaited in order to promulgate the final law.

III. INTERNATIONAL ORGANIZATIONS

European Community (EC)

1. Situation in the Legislative Field

1.1 The Community does not have any legislative activity with respect to the domestic systems of its member States in the field of plant variety protection. This holds true for the adaptation, from the point of view of both substantive law and time limits, of those systems to the 1991 Act of the Convention and for the ratification or accession by Community Member States to that Act; this also applies to possible harmonization of provisions based on the options afforded by that Act to the Contracting Parties. However, the Community is aware of the fact that measures appear desirable with respect to Article 6(3) (novelty) and Article 16(3) (exhaustion of the breeder's right) of the 1991 Act.

1.2 The major activities of the Community in the field of plant variety protection currently concern the final phase of establishing a Community breeder's right which:

- is to permit breeders to obtain on the basis of a single application and a single decision a breeder's right having direct and unitary effect throughout the Community,
- is to coexist with the domestic arrangements for protection of the Member States and
- is to comply with the 1991 Act of the Convention.

1.3 Examination of the proposed Council Regulation submitted by the Commission in September 1990 is progressing well. The statutory consultation of the European Parliament and of the Economic and Social Committee has been completed. Where the Commission has been able to accept the amendments proposed by European Parliament, it has formally amended its initial proposal in March 1993.

1.4 The modifications to the proposed text resulting from the examination were, in the very great majority of cases, the subject of a consensus of all member States and of the Commission. Apart from a number of matters of a political and institutional nature (as for example: the headquarters of the future Community Plant Varieties Office, the languages of the Office and the operating mode of various committees), there remain only two questions to be resolved with respect to protection as such; those are certain aspects of the term of protection and the "agricultural exception" that is generally known as "farmer's privilege."

On that latter point, it has now become clear that the Community will avail itself of the option afforded in Article 15(2) of the 1991 Act. However, it has to be emphasized that diverging points of view--particularly as regards the list of species to which the "agricultural exception" would apply within the Community and on the basic matter of deciding whether remuneration has to be paid to the breeder where the exception is made use of--have meant that a solution acceptable to all parties has not yet emerged. The Commission has held a "dialogue" in order to negotiate balanced conditions with respect to the economic operators that are directly concerned; in July 1993, in the final phase of the dialogue, the tentative negotiation was postponed in view of the opposition from one organization.

The Ministers for Agriculture of the twelve member States and the Member of the Commission responsible for agriculture are currently dealing with that matter on the basis of a compromise proposal made by the Belgian presidency in an effort to strike a balance between the interests of the breeders and those of the farmers. A third discussion at Ministerial level is scheduled for November 16, 1993.

1.5 During a further examination of the draft Directive on the Protection of Biological Inventions Under Patent Law, the matter of "agricultural exception" has also assumed considerable importance.

2. Developments in Related Fields of Activity

Reference is made to paragraph 1.5 above with regard to the protection of biotechnological inventions under patent law; attention is also drawn to a proposal that the Commission has recently submitted to the Council concerning amendment of the entire Community law on seed in order to adapt it to the conditions that have obtained on the internal market since January 1, 1993.

Those amendments would also affect the system of marketing authorization of varieties at Community level. They would also take into account aspects linked to varieties deriving from genetically modified organisms and varieties linked to "new feedingstuffs."

Organisation for Economic Co-operation and Development (OECD)

See Annex II to document C/27/13 Add.

The report was supplemented in session by a reference to the fact that the Science Directorate, the Environment Directorate and the Agriculture Directorate had initiated a joint project on the marketing of agricultural products obtained by advanced biotechnology. A questionnaire had been sent to the OECD member States and to non-member States that participated in the seed schemes. The matter of the safety of biotechnology could obviously have repercussions in the field of seed production.

International Board for Plant Genetic Resources (IBPGR)

See Annex XIII to document C/27/13.

International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL)

ASSINSEL has adopted two positions at its annual congress held in Nairobi, Kenya, in May: one on the concept of essentially derived variety and one on farm-saved seed. It requests the Council to be vigilant on conformity of national legislation with the 1991 Act of the Convention with respect to the provisions adopted to apply Article 15(2) of the latter.

The Congress also reactivated the ASSINSEL arbitration procedures in view of the fact that disputes are likely to arise in the forthcoming years with respect to essentially derived varieties. Each of the national associations was to submit in the coming months a list of experts to the arbitration boards of their countries.

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