



C/30/9

ORIGINAL: French

DATE: September 30, 1996

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirtieth Ordinary Session
Geneva, October 23, 1996

REPORT ON THE PROGRESS OF THE WORK OF THE ADMINISTRATIVE
AND LEGAL COMMITTEE

Document prepared by the Office of the Union

1. Since the twenty-ninth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "Committee") did not hold any session. Its next session, the thirty-sixth will be held on October 21, two days before this session of the Council.

2. The draft agenda for the session of the Committee includes the following:

(a) Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") and plant variety protection. — The Committee will examine in more depth the question whether the TRIPS Agreement is applicable to plant variety protection and creates obligations going beyond the obligation to protect plant varieties "either by patents or by an effective *sui generis* system or by any combination thereof" (Article 27.3(b)). The Committee will advise the Consultative Committee on this matter.

(b) Questions raised by the Technical Committee. — Three questions were referred to the Committee:

(i) The Committee will consider once again the interpretation to be given to the phrase "the expression of the characteristics resulting from a given genotype or combination of genotypes" appearing in Article 1(vi) of the 1991 Act of the Convention, in relation to the

question whether that phrase would prohibit the use of characteristics observed on the material which forms the basis of heredity.

(ii) It will consider how the national offices may proceed to get a better knowledge of the trademarks which are used in the trade with plant material.

(iii) It will consider the drafting of an additional question to be inserted into the technical questionnaires with respect to the authorization that may be required to release a genetically modified variety.

The Committee will give advice to the Technical Committee.

(c) Settlement of intellectual property disputes between States. — The Committee will consider the possibility that UPOV member States adopt a common position on the proposal, made within the (WIPO) Committee of Experts on the Settlement of Intellectual Property Disputes Between States, to extend the field of application of the draft WIPO Treaty to disputes arising from the UPOV Convention. The Committee will report to the Consultative Committee.

(d) Transitional provisions included in laws adapted to the 1991 Act. — The Office of the Union will present, for information and possible discussion, a summary of the provisions which certain States and certain organizations have already adopted for the transition between legislation based upon the 1978 Act and legislation based upon the 1991 Act, with respect to the requirements of novelty, farm-saved seed and essentially derived varieties.

3. The Office of the Union continued its work on the Model Law on the Protection of New Varieties of Plants. Following consultation of the members of the Working Group which was established in October 1994 and met in February 1995, the Office of the Union finalized the Model Law and requested its printing in English, French and Spanish.

4. The Council is invited to note and approve this report.

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