



C/34/16

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Fourth Ordinary Session
Geneva, October 26, 2000

REPORT

adopted by the Council

- 1.* The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-fourth ordinary session in Geneva on October 26, 2000, under the chairmanship of Mr. Ryusuke Yoshimura (Japan).
2. The list of participants is given in Annex I to this document.
3. The paragraphs with numbers followed by an asterisk have been taken from the Record of the decisions adopted by the Council at the end of the session (document C/34/15).

Opening of the Session

4. The session was opened by the President who welcomed the participants. He extended a special welcome to the Delegations of Kyrgyzstan and Estonia, States that had become members of UPOV since the last ordinary session of the Council.
5. The President introduced new staff members of the Office of the Union, the Vice Secretary-General, Dr. Rolf Jördens, who had taken up his duties on July 1, 2000, and the Technical Director, Mr. Peter Button, who had taken up his duties on September 4, 2000.

Adoption of the Agenda

6. The Council adopted the agenda as given in document C/34/1, noting that it was required to examine the laws of the Republic of Azerbaijan, The former Yugoslav Republic of Macedonia and Tunisia under agenda item 4.

Adoption of the Report on the Thirty-Third Ordinary Session

7.* The Council adopted the report as given in document C/33/18 Prov.

Examination of the Conformity of the Legislation of any State and any Organization Having Submitted a Request under Article 34(3) of the 1991 Act of the UPOV Convention

Republic of Azerbaijan

8.* Discussions were based upon document C/34/12.

9.* The Council decided

(a) to advise the Government of the Republic of Azerbaijan that the Law in its main provisions incorporates the substance of the Convention, and that it may deposit an instrument of accession to the Convention;

(b) to further advise the Government of the Republic of Azerbaijan that it may wish to correct the deviations and inconsistencies described in document C/34/12 at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of the Republic of Azerbaijan in the preparation of a revised translation into one or more of the official languages.

The former Yugoslav Republic of Macedonia

10.* Discussions were based upon document C/34/13.

11.* The Council decided

(a) to advise the Government of The former Yugoslav Republic of Macedonia that the Law does not incorporate some important provisions of the Convention;

(b) to request the Office of the Union to offer its assistance to the Government of The former Yugoslav Republic of Macedonia in drafting the necessary amendments to the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;

(c) to further advise the Government of The former Yugoslav Republic of Macedonia that upon the adoption of the necessary amendments described in C/34/13 to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

Tunisia

12.* Discussions were based upon document C/34/14.

13.* The Council decided

(a) to advise the Government of Tunisia that the Law in its main provisions incorporates the substance of the Convention, and that it may deposit an instrument of accession to the Convention;

(b) to further advise the Government of Tunisia that it may wish to supplement the texts of its legislation, where necessary, so as to avoid recourse to the Constitutional Provision.

Report by the Vice-President on the Work of the Fifty-Ninth and Sixtieth Sessions of the Consultative Committee; Adoption of Recommendations, if Any, Prepared by That Committee

14. The Vice-President reported that the fifty-ninth session of the Consultative Committee held on April 7, 2000, had dealt with matters concerning the nomination of a new Vice Secretary-General of UPOV on the retirement of Mr. Barry Greengrass. It had given the Bangui Agreement Establishing an African Intellectual Property Organization, the law of Kazakhstan and the Bill of Honduras a preliminary examination on their conformity with the UPOV Convention. The Committee had discussed matters concerning the review of Article 27.3(b) of the TRIPS Agreement and biodiversity, plant genetic resources and plant variety protection issues. It had noted the report on the activities and the evolution of the organizational structure of the Office of UPOV. The Committee was in agreement concerning the documents to be made available on the UPOV Website.

15. The Vice-President further reported that the sixtieth session of the Consultative Committee had commenced the previous day and had adjourned. It had given preliminary consideration to the laws of Azerbaijan, The former Yugoslav Republic of Macedonia and Tunisia. The Committee had discussed matters concerning the review of Article 27.3(b) of the TRIPS Agreement and biodiversity, plant genetic resources and plant variety protection issues. The Committee had noted the report on the implementation of the new organizational structure of the Office of UPOV.

16. The Consultative Committee had also noted a request made by the Delegation of Kyrgyzstan and supported by the Delegations of Ukraine and the Russian Federation, to introduce the Russian language as a working language in addition to the other four languages. The Committee had agreed with the proposal of the Vice Secretary-General that the Office of the Union would make investigations into that matter including the financial aspects and report on it at the next session of the Committee.

Report by the Secretary-General on the Activities of the Union in 1999; Supplementary Report on Activities During the First Nine Months of 2000

17.* The Council approved the report by the Secretary-General on the activities of the Union in 1999, given in document C/34/2, and noted the report on activities during the first nine months of 2000, given in document C/34/3.

18.* The Council expressed appreciation to the Office of the Union for the work carried out, and also to WIPO for the assistance provided.

Report by the Secretary-General on the Management of the Union During the 1998-99 Biennium and the Financial Situation of the Union at December 31, 1999

19.* The Council unanimously approved the report by the Secretary-General on the management of the Union during the 1998-99 biennium and the financial situation of the Union at December 31, 1999, as given in document C/34/4.

20.* The delegation of the United States of America advised that its contribution outstanding on December 31, 1999, had been paid in the year 2000. The Council decided to add the updated Annex A.7 of document C/34/4 as Annex II to this report [see document C/34/15].

Report on the Auditing of the Accounts of the 1998-99 Biennium

21.* The Council noted the report of the auditors on the accounts of the 1998-99 biennium contained in document C/34/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in this matter.

Representation Allowance for the Vice Secretary-General

22.* The Council decided that the Vice Secretary-General will receive a representation allowance at the same level as the Assistant Directors General of WIPO, namely, 12,000 Swiss francs per year effective from October 1, 2000.

Progress of the Work of the Administrative and Legal Committee

23.* The Council noted the work of the Administrative and Legal Committee as described in document C/34/9 and in the oral report given by its Chairman, Mr. John Carvill (Ireland).

24. In the oral report, the Chairman stated that Dr. Idris, who had opened the forty-third session held on October 23 to 24, 2000, had observed that there were a number of important issues to be discussed and had also noted links between UPOV and WIPO on traditional knowledge. The notion of “breeder” and common knowledge had been discussed. A draft paper was presented. There would be further clarification on “knowledge of relevant communities.” An inclusive list of what constituted “Varieties of Common Knowledge” would be prepared. The UPOV Office, with advice from an *Ad hoc* subgroup, would prepare a paper identifying legal and technical considerations and containing possible approaches to the publication of variety descriptions.

25. The Committee had discussed BMT issues. For the matter of phenotype versus genotype, the Office of UPOV clarified the latest position adopted by the CAJ. In discussions it had been agreed to establish an *Ad hoc* joint TC/CAJ subgroup to discuss issues arising from the possible use of molecular techniques in DUS examination. The Office of UPOV would prepare the draft Terms of Reference for consideration at the forty-fourth session of the CAJ.

26. The Committee had also discussed the revision of document TG/1/2 (General Introduction to the Guidelines for DUS Tests). It had focussed the discussions on issues of a legal and administrative nature as identified by the Technical Committee. In particular, it had been concluded that the Committee did not consider that the use of additional characteristics in determining distinctness was contrary to the UPOV Convention. However, there was a need to clarify the conditions in which those additional characteristics could be used for determining distinctness. Furthermore, the use of characteristics, or way in which characteristics were used, was not acceptable if it undermined the value of protection offered by the plant breeder's right. It had requested that the Technical Committee revise the General Introduction to ensure it was consistent with all Acts of the UPOV Convention, rather than only with the 1991 Act. It also requested that the Technical Committee remove the stated principle that "For the assessment of Distinctness no candidate can be distinguished from an existing variety solely by a characteristic that is part of the other variety but is not uniform in that variety", and any references to the consideration of Essential Derivation.

27. The Committee had concluded that the UPOV Guidelines on Variety Denominations were important for member States and should be updated with a view to improving clarity and harmonization. It had been noted that any revision must take into account the increasing membership of UPOV and the increasing diversity in language which must be covered. Delegates would provide information on their current rules, with indications of any divergence from the existing UPOV Guidelines, as a basis for the Office of UPOV to develop an approach to the review.

28. The Committee had paid tribute to Mr. Barry Greengrass and Mr. Evan Westerlind and wished them a long and enjoyable retirement.

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

29.* The Council noted the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular as given in document C/34/10 and its addendum, and approved the programs of work for the forthcoming sessions.

Calendar of Meetings in 2001

30.* The Council established the calendar of meetings in 2001 as reproduced in document C/34/8.

Election of the New President and the New Vice-President of the Council

31.* The Council elected, in each case for a term of three years ending with the thirty-seventh ordinary session of the Council, in 2003:

- (a) Mr. Karl Olov Öster (Sweden), President of the Council, and
- (b) Mrs. Adelaida Harries (Argentina), Vice-President of the Council.

32.* The Council expressed its appreciation to the outgoing President, Mr. Ryusuke Yoshimura (Japan), for the work carried out during his term.

Situation in the Legislative, Administrative and Technical Fields

- (a) Reports by Representatives of States (Member States and Observer States) and Intergovernmental Organizations

33. The Council took note of the written reports reproduced in document C/34/11 and of the written and oral reports given in the session which are reproduced in Annex II hereto.

- (b) Data Assembled by the Office of the Union on the State of Protection in Member States and Cooperation Between Them

34. The Council took note of the information given in documents C/34/5, C/34/6 and C/34/7.

Retirement

35.* The Council noted that Mr. Barry Greengrass retired on June 30, 2000. It paid tribute to his outstanding contribution to the development of the Union over the last twelve years. For the memorization of the service to UPOV, he was presented the Gold Medal of UPOV and, as an exceptional honor, Mr. Greengrass was given an opportunity to plant a tree on the site of the organization what he did at the presence of all delegates.

36. Mr. Greengrass made a speech which is reproduced in Annex III. All Delegations wished Mr. Greengrass a long and enjoyable retirement.

37. The Council unanimously adopted this report at its thirty-fifth ordinary session, on October 25, 2001.

[Annex I follows]

ANNEXE I/ANNEX I/ANLAGE I/ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des États / in the alphabetical order of the names
in French of the States / in alphabetischer Reihenfolge der französischen Namen
der Staaten / por orden alfabético de los nombres en francés de los Estados)

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TUNISIE / TUNISIA / TUNESIEN / TÚNEZ

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III. ORGANISATIONS / ORGANIZATIONS /
ORGANISATIONEN / ORGANIZACIONES

PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT (PNUE) /
UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) /
PROGRAMA DE LAS NACIONES UNIDAS PARA EL MEDIO AMBIENTE (PNUMA)

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EUROPEAN COMMUNITY (EC) /
EUROPÄISCHE GEMEINSCHAFT (EG) /
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ORGANISATION MONDIALE DU COMMERCE (OMC) /
WORLD TRADE ORGANIZATION (WTO) /
WELTHANDELSORGANISATION (WTO) /
ORGANIZACIÓN MUNDIAL DEL COMERCIO (OMC)

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ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES (OCDE) /
ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) /
ORGANISATION FÜR WIRTSCHAFTLICHE ZUSAMMENARBEIT UND ENTWICKLUNG (OECD) /
ORGANIZACIÓN DE COOPERACIÓN Y DE DESARROLLO ECONÓMICOS (OCDE)

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ASSOCIATION INTERNATIONALE D'ESSAIS DE SEMENCES (ISTA) /
INTERNATIONAL SEED TESTING ASSOCIATION (ISTA) /
INTERNATIONALE VEREINIGUNG FÜR SAATGUTPRÜFUNG (ISTA) /
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ASSOCIATION INTERNATIONALE DES SÉLECTIONNEURS POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES (ASSINSEL) /
INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF PLANT VARIETIES (ASSINSEL) /
INTERNATIONALER VERBAND DER PFLANZENZÜCHTER FÜR DEN SCHUTZ VON PFLANZENZÜCHTUNGEN (ASSINSEL) /
ASOCIACIÓN INTERNACIONAL DE LOS SELECCIONADORES PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES (ASSINSEL)

Bernard LE BUANEC, Secrétaire général, ASSINSEL, 7, chemin du Reposoir, 1260 Nyon, Suisse

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FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE (FICPI) /
INTERNATIONAL FEDERATION OF INDUSTRIAL PROPERTY ATTORNEYS (FICPI) /
INTERNATIONALE VEREINIGUNG DER ANWÄLTE FÜR GEWERBLICHES EIGENTUM (FICPI) /
FEDERACIÓN INTERNACIONAL DE ABOGADOS DE PROPIEDAD INDUSTRIAL (FICPI)

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INTERNATIONAL FEDERATION OF THE SEED TRADE (FIS) /
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V. BUREAU DE L'OMPI / OFFICE OF WIPO / BÜRO DER WIPPO /
OFICINA DE LA OMPI

Thomas KEEFER, Assistant Director General

VI. BUREAU DE L'UPOV / OFFICE OF UPOV / BÜRO DER UPOV /
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Kamil IDRIS, Secretary-General
Rolf JÖRDENS, Vice Secretary-General
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Evgeny SARANIN, Consultant
Sumito YASUOKA, Consultant
Choun-Keun PARK, Intern

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

ANNEX II

REPORTS AND STATEMENTS BY REPRESENTATIVES OF STATES AND
ORGANIZATIONS IN THE SITUATION IN THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS

I. MEMBER STATES

ARGENTINA

El informe ha sido remitido y consta en el documento C/34/11. Solamente deseo reiterar la propuesta que la Oficina de la UPOV cree un espacio informático para incorporar jurisprudencia relativa a la protección de variedades. En adición al informe que figura en el documento C/34/11, hemos presentado a la Secretaría de la UPOV los antecedentes que tenemos con respecto a los derechos de obtentor y las instancias administrativas realizadas en Argentina.

AUSTRIA

Auch wir haben unseren Bericht übermittelt; er ist in Anlage V des Dokuments C/34/11 enthalten Ich kann in Ergänzung dazu mitteilen, daß der Rohentwurf zur Novellierung unseres Sortenschutzgesetzes sich in der Endphase befindet und auch sehr bald der UPOV übermittelt werden wird. Ziel ist eine Beschlußfassung in der ersten Hälfte des nächsten Jahres. Die nationalen Sortenschutzerteilungen haben zwar abgenommen; dafür haben die Schutzerteilungen an österreichische Züchter nach dem gemeinschaftlichen Sortenschutz der Europäischen Union zugenommen, d. h. die Zahl der geschützten Sorten ist im wesentlichen unverändert geblieben. Wir erwarten von einem Beitritt zur UPOV-Akte 1991 eine Stärkung der Züchterrechte und weitere Sortenschutzanmeldungen.

CHILE

Como lo más destacado que hemos hecho en los últimos tiempos deseo mencionar que estamos trabajando para mejorar la eficacia del sistema de derecho del obtentor. Está en estudio una modificación para introducir una instancia en sede administrativa para sancionar las infracciones al derecho del obtentor. También hemos organizado talleres y seminarios nacionales dirigidos a todos los usuarios de variedades; agricultores, asociaciones de agricultores y exportadores de fruta; a fin de lograr un sistema más efectivo y transparente, lo cual de mucha importancia por nuestro país.

ESTONIA

Estonia appreciates the warm welcome into the UPOV family. Having enacted our Plant Variety Rights Act and ratified the UPOV Convention in 1999, we are indeed a member of the family. With regard to seed related aspects there are no big changes but they will come next year.

ITALY

The situation in the legislative field has not changed substantially. There have been some minor adjustments of the national law concerning taxation. As soon as these come into force we will be able to deposit the instrument of ratification for the 1991 Act of the UPOV Convention.

JAPAN

I would just like to mention one activity which the Japanese Government started this year. It is the training course for overseas developing countries in the field of plant variety protection in cooperation with the Japan International Cooperation Agency (JICA). This type of activity will take place next year as well.

KENYA

Situation in the Legislative Field

Accession to the 1978 Act of the UPOV Convention.

On April 13, 1999, Kenya deposited its instrument of accession to the 1978 Act of the UPOV Convention. Consequently, Kenya acceded to the 1978 Act of the UPOV Convention on May 13, 1999, as the fortieth member of the Union.

Plant breeder's rights fees, schemes and other legal instruments as required by the Kenyan Law have now been put in place in readiness for awarding grants.

Cooperation in Examination

The Republic of Kenya has been involved in arrangements to purchase examination reports within the framework of cooperation in examination from France, Germany and the Netherlands and the Community Plant Variety Office for varieties of species of *Rosa* L., *Alstroemeria* sp., etc. A formal request for cooperation has been initiated between Kenya and respective offices.

Situation in the Administrative Field

In the year 1999, a total of 61 plant breeder's rights applications were received but no breeder's rights were granted. 34 provisional PBR grants were however given. As at October 9, 2000, 329 applications were under processing and DUS testing. Application details for year 1999 follow:

	Agricultural Crops	Vegetable Crops	Ornamental Crops	Fruit Crops	Total
Applications received and under consideration	8	-	40	3	61
Plant breeder's rights granted	0	-	0	0	0

Issues to be Handled

- Most variety development in Kenya has been carried out by the public sector. Protection of those varieties bred before the existence of the PBR office have been discussed at national level. The recommendations from the breeders and other stakeholders have been considered, and a final solution will be gazetted soon.
- Ownership of the publicly bred material has been an issue. In most cases there was some level of joint research activities between two institutes in the course of development of some of these varieties. In most cases there were no clear responsibilities or agreement in the contracts on how to handle the developed technology. Such disagreements are generally handled by the office, and some by the Tribunal established under the law.
- The issue of royalty due to breeders in the public institutions has not been resolved. The breeders did not have the royalty provisions included in their employment contracts. This has been a disincentive in variety protection. There is an effort by the Plant Breeder's Association of Kenya to have some recommendations and to encourage breeders and employers to have a clause on benefits in their contracts.
- A few cases of collection of germplasm from farmers and eventual claim of breeders' rights for the same have been handled by the office. An effort is being made to document most of the existing germplasm with farmers and public institutions.

Situation in the Technical Field

Kenya is in the process of equipping the only variety testing station at Lanet with facilities to perform variety testing for PBR. This is involving training personnel in PBR and installing the necessary plant and equipment. Kenya will require collaboration from other established variety testing units in UPOV to train its personnel. Testing will include breeder's field, contracting specialists, as well as cooperation in examination.

Activities for the Promotion of Plant Variety Protection

During the report period, the organization of seminars, workshops and courses continued for people with an interest in plant breeder's rights. The main point of interest by the breeders is on royalties and benefit sharing and how these can be administered especially within the context of public research. An input from other UPOV member States' handling of public research institutions will be beneficial to the Kenyan system.

The office has participated in education and training in the PBR field. A workshop for the English-speaking African countries on Article 27.3(b) of the TRIPS Agreement was held in Nairobi on May 6-7, 1999. UPOV coordinated the meeting. The office also participated in similar meetings in Geneva and Zimbabwe. Participation in the Technical Working Parties for Biomolecular and Molecular Techniques and DNA Profiling in Particular, Vegetables, Ornamental Plants and Forest Trees and Fruit Crops has been undertaken during the period. Visits have been made to the French Testing system, and the Community Plant Variety Office. Discussions among the East African countries are at an advanced stage to encourage Tanzania and Uganda to develop their plant variety protection systems.

MEXICO

El informe ya figura en el documento C/34/11. Quisiera aprovechar esta oportunidad para mencionar que hemos estado participando en todos los Grupos de Trabajo Técnicos, cuyo tarea consideramos por demás importante. En este sentido hemos visto la necesidad de desarrollar directrices de examen para especies de interés para países tropicales o para países, como el nuestro, en los que la diversidad vegetal es muy grande. Nuestros técnicos están trabajando en ello. Finalmente deseo agradecer el apoyo que nos brinda la UPOV al aceptar la invitación de México para organizar la próxima reunión del Grupo de Trabajo de Especies Agrícolas.

NETHERLANDS

(Addition to written report C/34/11 Annex XIX)

I would like to add to our report which is in Annex XIX with regard to cooperation in examination that, apart from the request from Colombia, we have also received a request from Slovenia for cooperation in examination.

PORTUGAL

The draft legislation to bring the present Law on Plant Breeders' Rights into conformity with the 1991 Act of the UPOV Convention is in its final stage and will soon be submitted for internal discussion.

Plant breeder's rights now cover 88 species in Portugal.

We have also followed the meetings of the TRIPS Council concerning the revision of Article 27.3(b) and the relationship between the TRIPS Agreement and biodiversity-related issues.

REPUBLIC OF MOLDOVA

On March 13 and 14 this year, a national seminar entitled "The Protection of Plant Varieties Under the UPOV Convention, the Patent System and the TRIPS Agreement" was organized in the Republic of Moldova, with the support of UPOV and WIPO. In relation to that, I would like to express our thanks and appreciation to these organizations. This year we

have prepared a document for accession to protection of more new species, which will shortly be approved by our Government.

SPAIN

Nosotros ya hemos enviado el informe. Solamente querría decirles que se ha cometido un error. En el informe anexo no.10 en el penúltimo párrafo aquí figura que está abierto para 185 especies de frutales. Yo les diré que en España los cultivos frutales son muy importantes pero también debo decir que sobra el último cinco. Debería decir “dieciocho especies de frutales y patrones” y también a continuación debería decir “aparte de fresa y vid”. También sugiero verificar la traducción al inglés del término “patrones”. Además quisiera comentar que del 29 de mayo al 2 de junio se celebró, con la colaboración con la UPOV, un curso para países de Iberoamérica sobre la Protección de las Obtenciones Vegetales y manifestar aquí nuestro reconocimiento a todo el personal de la Oficina por el trabajo que realizaron y especialmente a Raimundo Lavignolle y Margaret Byskov.

I thought we were going to look at 13.b. We would like to mention that document C/34/6, page 2, paragraph 5 (page 1 in the English version) should include Spain because, according to the Spanish Law, protection is open for all species of the vegetable kingdom. There has been an error here and Spain should be included in this list and not in the tables and annexes which are there later for all countries.

SWEDEN

Cooperation in Examination

Extension of existing agreements with four countries are under discussion.

Situation in the Administrative Field

Number of applications received (annual average)

July 1, 1990 to June 30, 1995:	120
July 1, 1995, to June 30, 2000:	52

Number of titles of protection issued

1995:	80 (17 agricultural, 1 vegetable, 2 fruit and 60 ornamental)
1999:	23 (22 agricultural and 1 ornamental)

Number of grants valid as per July 1

1995:	427 (179 agricultural, 25 fruit, 214 ornamental and 9 others)
2000:	335 (218 agricultural, 3 vegetable, 32 fruit, 75 ornamental and 7 others)

Situation in the Technical Field-Genetically Modified Organisms

At present, applications are pending for 3 genetically modified varieties, 2 potato varieties (modified starch) and 1 spring rape variety (herbicide resistance). For one potato variety, the DUS test is completed and the decision is pending waiting for an EU decision on market release. For the other potato variety, the test has not yet been started. For the rape variety, a second test year is planned to start in 2001.

Activities for Promotion of Plant Variety Protection

The UPOV Technical Working Party for Agricultural Crops met in Uppsala from June 27 to 30, 2000, with 47 participants from 27 countries. Subgroup meetings were held for turnip rape in Landskrona on February 10 and 11 and for sugar cane in Uppsala on June 26, 2000.

The Vice Secretary-General of UPOV, Rolf Jördens, presented a paper on "The TRIPS obligation to protect plant varieties under the UPOV system" in connection with a hearing on "TRIPS and Biodiversity" in Stockholm on September 13, 2000.

Personal Changes

Mr. Evan Westerlind will retire on November 1, 2000. He will be succeeded by Mr. Gunnar Karltorp who will be Head of the Swedish Office and will take over the duties related to UPOV.

SWITZERLAND

J'aimerais saisir l'occasion pour compléter le rapport écrit par la délégation suisse figurant dans le document C/34/11 par une information concernant le personnel de notre office. Mme Maria Jenni, qui a participé pendant de nombreuses années aux travaux de ce conseil en tant que chef du Bureau suisse de la protection des obtentions végétales et qui garde le meilleur souvenir de cette participation, a pris sa retraite le 31 août de cette année et c'est Mme Eliane Scherrer, qui a été à mes côtés jusqu'à il y a quelques instants, qui a repris le flambeau dès cette date.

II. NON-MEMBER STATES

OMAN

I would like to inform the Union that the Sultanate of Oman issued its Royal Decree on plant variety protection at the beginning of this month. The Royal Decree could be one of the Arabic models on plant variety protection and could be used by other Arabic countries, since this law has been reviewed by UPOV and is in conformity with the main principles of the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

ROMANIA

Situation in the Legislative Field

In Romania the *sui generis* system of variety protection was set up by Law No. 255 adopted in December 30, 1998, and published in the Official Bulletin no. 525. On December 31, 1998, implementing rules being the subject of Governmental Decision No. 200 of March 20, 2000, published in the Official Bulletin of March 30, 2000, were drafted and approved by the Government and Legislative Council.

Law No. 255 corresponds to the 1991 Act of the UPOV Convention and also to the provisions of EC Regulation 2100/94 on Community plant variety rights. Consequently breeder's rights are protected by variety patents granted by the State Office for Inventions and Trademarks (SOIT) according to Law No. 255.

The examination procedure for granting a variety patent is as follows: there is a formal examination, a substantive examination made by SOIT, and a technical examination made by the national authority responsible for growing tests, the State Institute for Variety Testing and Registration (SIVTR). Any decision taken by SOIT or SIVTR may be appealed in the SOIT or in the Law Court of Bucharest.

At present the Law regarding accession to the 1991 Act of the UPOV Convention has been voted by the two Chambers of Parliament, and will be promulgated by the President. Thus Romania will very soon be in a position to deposit its instrument of accession to the 1991 Act of the UPOV Convention.

By joining the UPOV Convention, financial returns and research investments in the field of plant breeding are expected in Romania.

Seed Law No. 75/1995 amended by Act No. 131/1997 will be amended again in order to be in conformity with EEC directives referring to the seed and propagating material production, quality control and marketing.

Situation in the Administrative Field

This year, the Ministry of Agriculture has been reorganized in order to better respond to the needs of the market economy and to Community directives.

The State Institute for Variety Testing and Registration has also been reorganized this year and new rules have been drafted in order to simplify the technical examination of varieties.

Regarding the number of applications during 1999-2000, 27 applications were filed with the State Office for Inventions and Trademarks as follows:

- agricultural crops 16
- vegetables 6
- fruit trees and vines 4
- medicinal plants 1

28 titles of protection were granted. 156 variety patents are in force.

Situation in the Technical Field

A UPOV/WIPO Roving Seminar on the Protection of Plant Varieties under the UPOV Convention, Patent System and the TRIPS Agreement was held in Romania on March 16 and 17, 2000, in cooperation with the State Office for Inventions and Trademarks and the State Institute for Variety Testing and Registration. The Seminar provided a good opportunity for discussions with breeders, researchers, seed producers and crop experts, with a view to improving the situation with plant breeder's rights and to have a better understanding of the scope of protection and the technical aspects in order to ensure the true efficacy of the system.

A national seminar regarding the protection of industrial property objects with a special view on biotechnological inventions and plant variety protection was held on August 27 and 28, 2000, in Mamaia.

Experts from Romania actively participated in the UPOV Technical Working Parties for Agricultural Crops, Fruit Crops and Vegetables bringing their contribution to the clarification of some problems about the New General Introduction and UPOV Guidelines.

A special training course on plant variety protection organized by Plant Research International, Netherlands, was attended by a Romanian expert.

Some Romanian experts in seed and propagating material quality control and certification from the regional laboratories attended training courses in the Netherlands in the framework of a bilateral agreement for technical assistance signed between FAPS and the Romanian Ministry of Agriculture.

III. ORGANIZATIONS

EUROPEAN COMMUNITY/COMMUNITY PLANT VARIETY OFFICE (CPVO)

Situation in the Legislative Field

Rules for variety denominations: having regard to the need to promote the harmonization of the rules governing variety denominations throughout the European Union both for listing and plant variety rights, the following actions were completed:

The Commission Regulation (EC) No 930/2000 – 04.05.2000 establishing implementing rules as to the suitability of the denomination of varieties of agricultural plant species and vegetable species was published on May 5, 2000. This regulation provides detailed rules for the denomination of varieties to be registered in the national catalogues of the Member States and in the common catalogues of the European Community.

In parallel, the Administrative Council of the Community Plant Variety Office (CPVO) adopted in April 2000 a set of detailed Guidelines of variety denominations, to be used in the procedure of granting Community plant variety rights.

Both instruments are based on the content of Article 63 of the EC Regulation 2100/94 on Community plant variety rights.

Amendments of the CPVO fees:

By Commission Regulation 329/2000 (published 12.02.2000) the level of some fees payable to the CPVO was modified with retroactive effect from January 1, 2000.

Application fee and renewal fees were decreased. For details, please refer to the Official Journal of the European Communities or the CPVO Website.

The report fee to be paid by the applicant to the CPVO for taking-over an already existing examination report from national authorities has also been decreased from 300 to 225 Euros.

Situation in the Administrative Field

The CPVO based in Angers has recently moved to its permanent address in the centre of town. The new telephone, fax, e-mail and Web address are indicated below.

For the performance of the required DUS tests, the Community Office uses a network of more than 20 examination offices. For the preparation and the carrying out of the examination of proposals for variety denomination, the aid of 5 European national offices is now currently used.

Information and data concerning the functioning of the Community PBR system:

From October 1999 to October 2000, the CPVO received 1998 applications. So far, year 2000 shows an increase of 8.77 % compared to the same period in the previous year.

Since the beginning of its activity in 1995, 11.243 applications have been received: 13.5% from countries outside the European Union and 86.5% from member States of the EU.

The CPVO received applications for varieties belonging to 543 different genera/species. The breakdown by group as species, is as follows: 57.37% ornamentals, 25.10% agricultural crops, 11.56% vegetables, 5.67% fruit trees and 0.3% miscellaneous.

During the last year (Oct. 1999/Oct. 2000) 1.677 rights were granted. Since the beginning of the activity of the Community Office, 6.443 rights have been granted.

In addition to the periodical publication of its Official Gazette, the CPVO maintains a Website for general information. Updated lists of applications grants are also included.

Activities for the Promotion of Plant Variety Protection

The CPVO cooperated with the UPOV Office in organizing the sixth session of the BMT Working Group, held in Angers in March 2000.

By providing speakers for seminars and specialized meetings, organized by UPOV and EU member States, the Community Office has participated in the promotion of UPOV type PBR protection.

WORLD TRADE ORGANIZATION (WTO)

A number of issues discussed in the WTO bodies are certainly of great interest to this Council. Due to time constraints, I will limit myself to a few points.

In December 1998, the TRIPS Council agreed to initiate the review under Article 27.3(b) of the TRIPS Agreement through an information-gathering exercise. Between February and May 1999, we received replies from 18 members: Australia, Bulgaria, Canada, the Czech Republic, the European Communities and their member States, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Poland, Romania, Slovenia, South Africa, Switzerland, the United States and Zambia (documents IP/C/W/125 and addenda 1 to 17). Their replies have been compiled and reflected in two synoptic tables, one covering the information regarding patent protection of plant and animal inventions and the other the information regarding protection of plant varieties. The tables can be found in the informal note by the WTO Secretariat (Job N° 2689 of 7 May 1999). We have received after May 1999 two other replies: one from the Slovak Republic (document W/125 Add.18) and the other from Iceland (document W/125 Add.19). The table prepared by the Secretariat in May 1999, relating to the protection of plant varieties, was also distributed as an annex to document IP/C/W/175 concerning the issue of the relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement with a focus on Article 27.3(b). This document is available to the public on our Website, www.wto.org. This information gathering is a continuing exercise and several members are presently advocating that other members (e.g. those whose obligations stopped on January 1, 2000) also provide replies to the secretariat's questionnaires, so as to enable the TRIPS Council to have a full picture of the issue.

The issues raised in the TRIPS Council by delegations under the review provision of Article 27.3(b) include not only protection of plant varieties, but also a wider range of issues, such as: the link between Article 27.3(b) and development; issues relating to patent protection under Article 27.3(b); issues relating to the patentability of life forms; the conservation and sustainable use of genetic material; the relationship with the concepts of traditional knowledge and farmers' rights. In these two last items, the relationship between the TRIPS Agreement and the Convention on Biological Diversity has been raised by developing countries in particular. It should be pointed out all the issues mentioned were already put forward in 1999 before the Ministerial Conference of Seattle.

The protection of plant varieties has been, for almost two years, the subject matter of written submissions and oral interventions which are reflected in the minutes of the meetings of the TRIPS Council. I will not get into the details but only indicate the most recent communications made in the last meeting of the TRIPS Council in September 2000: a submission from Mauritius on behalf of the African Group, which deals, *inter alia*, with – I quote – “the technical issues relating to *sui generis* protection of plant varieties”; a non-paper from India dealing, *inter alia*, with the same topic; a submission from the United States on various issues, listing the main elements of an “effective *sui generis* protection” of plant varieties. There were also detailed and substantive interventions made by some delegations, for example the delegations of Australia, Kenya and Zambia on this issue. In the communications and interventions made by a number of developing countries, apart from the question of what would be an “effective” *sui generis* system of protection for plant varieties, there were also issues raised such as the protection of farmers' rights by a *sui generis* system of protection. I would also like to refer to an intervention made, in the last session of the TRIPS Council, by the Vice Secretary-General of UPOV, Dr. Jördens, regarding the UPOV

system of protection. As I said previously, discussions are ongoing and the TRIPS Council will revert to the issues raised in its next meeting in November.

One point which might be of interest to you is that some of the issues I have mentioned earlier were also discussed in the framework of the General Council as “Implementation-related issues and concerns”. The focus of the most recent informal consultations held by the Chairman of the General Council and the WTO’s DG so far was put on a topic which is relevant to your work here in the UPOV Council: the relationship between the TRIPS Agreement and the CBD. The relevant part of the report by the Chairman of the General Council and the DG reads as follows:

“Starting first with Tired 2 [of paragraphs 21(g) of the Draft Ministerial text of 19 October 1999], we have noted in our consultations that the issue is already being discussed in the TRIPS Council. In this connection, we would consider building on the following elements as a possible response to the proposal in Tired 2:

- *First, urging the TRIPS Council to continue its ongoing work with a view to clarifying the relationship between the TRIPS Agreement and the CBD;*
- *Second, urging the TRIPS Council, in this connection, to give positive consideration to granting observer status to the CBD Secretariat on an ad hoc basis pending the conclusion of wider discussions on observer status for international organizations in the General Council; and*
- *Third, requesting the TRIPS Council to report to the General Council on progress on the above points at its Special Session in December.”*

May I add that many issues discussed in the TRIPS Council were and are also debated in the Committee on Trade and Environment, where several documents relating to the issues of interest to the UPOV Council have been circulated in addition to the one I have mentioned earlier on plant variety protection.

Turning to technical cooperation, which is an important component of WTO’s work, I would like to underline the importance of the activities that UPOV is undertaking for developing, least-developed countries and countries in transition. The expertise of the UPOV secretariat is most welcome and we would like to underline here the excellent cooperation between both secretariats.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

I would like to limit myself to a number of general points about the OECD schemes, then to say a word about new countries and then expand a little bit about genetically modified seed issues.

As for the general point, I would like to say first that the OECD Seed Certification Schemes for International Trade have been the subject of a new Council decision adopted on September 28, 2000. The old 1998 Council decisions as amended were repealed and new provisions were introduced and these are, briefly:

- The opening of the schemes on a voluntary basis for countries to the accreditation of field inspection of seed crops of the category certified under a monitoring scheme. This was the result of a four year successful experiment after which we noticed that there was no change in the seed quality. About 20 countries have taken this route, partially or totally.
- We have also introduced in this new decision a time-limited experiment for the accreditation of seed sampling, testing and labeling. Interested countries will state their participation within the following months. New Zealand has already stated their participation. Needless to say this raises a number of issues with ISTA and FIS in respect of company laboratories, which national designated authorities have to address on a country by country basis. This experiment responds to an increasing need expressed by the seed industry.
- We will also authorize an experiment to ship grass seed lots in larger weights than currently permitted by the scheme. This results from the joint common initiative by ISTA and FIS.

My last point is about the introduction of a new scale of annual contributions for countries participating. Now we have both for non-OECD members and OECD members a combination of a lump sum and a proportional fee. For the sake of transparency, I would like to say that it lowers the cost of participation for developing countries, increases the cost for smaller OECD member countries and lowers the cost for large OECD countries. I think this is an interesting result, but I need not expand on it at this time.

New Countries

The number of countries belonging to the OECD Schemes is now 48, with last year's additions of Brazil and Lithuania. The Russian Federation is a recent applicant and is currently under evaluation. Ukraine, The former Yugoslav Republic of Macedonia, Yugoslavia and Albania have applied but, for various reasons, could not be admitted to the schemes until now and there is a clear interest from many other countries throughout the world for entering the schemes.

A few words now on the genetically modified seed issues. We have held several meetings since September 1999 on the subject of the accidental presence of genetically modified seed or organisms in non-genetically modified seed. The initiative for approaching the OECD seed schemes was taken by the FIS after its Melbourne Congress. An International Seed Network Initiative for the Transboundary Movement of Seed is an element of the OECD wide activity which culminated into a report to G8 and OECD opening to the civil society in the field of biotechnology. Some difficulties remain to make the Initiative integral to the OECD Seed Schemes as an official experiment but discussions are in progress.

The main issues being discussed are as follows:

- New testing methodologies have to be used for GM detection with new expected distribution of sample tests results and accuracy requirements. In many cases, as you know, traits have no link with the morphological characters that are used for the description and the post-control of the variety.

- Contracts allowing for the availability of primers, the communication of results and the protection of intellectual property remain a problem and are being explored further. It should be noted, however, that experiments have started already at company and some Government levels.
- Which species should be tested at the beginning? Maize, soya bean, cotton, and rape seed are obvious candidates, but we have not yet obtained an agreement on the range of the experiment.
- Which transgenic events should be covered? The range of approved events varies very much from country to country, as do both approval procedures and tolerances with vis-a-vis domestically unauthorized events. A compromise seems to be underway towards a limiting scope of the events to enter the experiment, but we cannot be more specific at this stage.
- Then there is the famous threshold level issue – should tolerances be 0.5%, 1% or 0% or any other? This has been discussed at length. There are still strong disagreements but a number of countries have decided to start exploring this problem and we hope, through a technical approach, to make progress on this issue.
- Last but not least, we have the issue of Institutional Framework to extend this introduction of the GM seed issues - should it remain fully official or could it also enter into the accreditation experiments that I talked about before. This would mean that some parts of the testing and certifying activities could be shared with the industry under an official monitoring scheme.

These are a few points which we have addressed and I would like to mention in fine another recent meeting organized by another OECD Group near Lausanne the subject of which was the "unique identification" of transgenic events. The seed schemes participated in this activity as well.

Mr. President, let me finish now by thanking your new Vice Secretary-General, who invited the OECD to have its annual session in Hanover, where Dr. Jördens was in his former capacity. We had great help from him and his successor and our meeting was a great success.

[Annex III follows]

ANNEX III

Speech by Mr. Barry Greengrass, former Vice Secretary-General of UPOV

Mr. Chairman,
Distinguished members of the Council of UPOV,
Distinguished delegates from Observer States and Organizations,
Ladies and Gentlemen,

Many thanks for your kind words.

I have had the opportunity over recent days to express my thanks to the Union, the Council, the Secretary-General and my colleagues.

Many kind words have been directed at me personally, but aside from the warmth and friendship which I greatly appreciate, I regard myself as a representative of the Office of the Union and through the Office as a representative of the Union itself. Accordingly many of the compliments addressed to me should, in truth, be redirected to the Union. This is indeed a time when the Union can, justifiably, take stock of itself with pride. It is perhaps a time for some self-congratulation and celebration. Quite soon, I believe, the Union will have in excess of 50 member States and the great majority of the world's population will live in States with systems of protection founded on the UPOV Convention. How has this come about?

First, of course, the underlying rationale for systems of protection to encourage plant breeding activity is fundamentally sound and addresses needs that exist in all countries.

Secondly, however, the talented people, who in the late 1950s began the work that culminated in the UPOV Convention in 1961, got it right. They drafted an intellectual property Convention based on new principles, but new principles that have now stood the test of time and, even more important, have been shown to be capable of application in an ever widening range of circumstances.

The DUS and Novelty concepts have been successfully applied and will, I am confident, be strengthened by the future application of new technologies. The scope of protection has also been shown to be appropriate for an industry, agriculture, where throughout the world production is concentrated in what are essentially family units. The optional so-called farmers' privilege to sow seed has been shown to be flexible and adaptable to the agricultural conditions of all countries, while the exception from the breeder's right of all acts done for private and non-commercial purposes will have wide application to small scale and subsistence farmers throughout the world. The breeder or research exemption is also seen as a provision of great wisdom and great relevance in today's world.

In the 1980s, plant variety protection was criticized in some intellectual property circles as providing inadequate protection. The 1991 revision, and in particular the essential derivation provision, has largely stilled this criticism. I have said that the scope of protection was appropriate. There is one respect, however, in which the scope of protection is especially apt for the circumstances of classical plant breeding. The effect of the patent system in many instances is that if the R&D of two organizations competing in a field of technology, results in a similar invention, the first to file takes all. The second to file may lose all irrespective of the excellence of its research team and the potential benefits of its particular version of the

invention which may never be tried in practice. Under the UPOV system, breeders working and competing in the same field can be confident that they will have an opportunity of bringing their varieties to market since, provided they have worked independently, it is most unlikely in practice that they can be blocked by the similar varieties developed by others. Their R&D will not be wasted. They will remain in business and be able to continue to compete to the great benefit of the public. Under the plant variety protection system, success is based upon the success of one's product in the market place and not upon the happenstance of being first to file.

I believe that UPOV member States should be proud of the protection system of which they are the custodians and can and should vigorously promote their national system and UPOV, their Union, in all fora where questions concerning plant variety protection now arise. I will watch the future progress of the Union with great interest and some pride. I extend to you all my best wishes for the future.

[End of Annex III and of document]