



C(Extr.)/23/5

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-Third Extraordinary Session
Geneva, April 7, 2006

REPORT

adopted by the Council

Opening of the Session

- *1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-third extraordinary session in Geneva on April 7, 2006, chaired by Miss Enriqueta Molina Macías (Mexico), President of the Council.
2. The list of participants is reproduced in Annex I to this document.
3. The session was opened by the President who welcomed the participants, in particular the delegates of observer States and the representatives of observer organizations which had been invited for the first time to the extraordinary sessions of the Council.
- *4. The President announced that Iceland would become the sixty-first member of UPOV on May 3, 2006.

* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Decisions (document C(Extr.)/23/4).

Adoption of the Agenda

*5. The Council adopted the agenda as proposed in document C(Extr.)/23/1, after the deletion of item 4 (Examination of the conformity of the legislation or proposed legislation of any State or organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention) and the addition of document C(Extr.)/23/3 “Certain Financial Matters of the Union” under item 5.

Examination of the Conformity of the Intellectual Property Law of Viet Nam with the 1991 Act of the UPOV Convention

Viet Nam

*6. The Senior Legal Officer introduced document C(Extr.)/23/2. She noted that the reference to paragraph “27” in paragraph 40 of document C(Extr.)/23/2 should be modified to read paragraph “28”.

7. The representative of the International Seed Federation (ISF) congratulated the Delegation of Viet Nam on the development of its legislation and noted the importance of that development in the South East Asian region. Noting that Article 5(3) of the Law provided that, in the case of a conflict between the Law and the 1991 Act of the UPOV Convention, the Act prevailed, he suggested that UPOV should make a specific reference to that provision.

8. In reply to the proposal made by the representative of ISF, the President explained that such a reference had been made in paragraphs 7, 40 and 41 of document C(Extr.)/23/2. Document C(Extr.)/23/2 and the present report were the official UPOV documents concerning that matter.

*9. The Council decided to

(a) take note of the information given in document C(Extr.)/23/2;

(b) take a positive decision on the conformity of the Intellectual Property Law of Viet Nam with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants. It noted that the Law required some additional provisions and clarifications, as provided in document C(Extr.)/23/2, in order to fully incorporate the provisions of the 1991 Act. However, those missing provisions and clarifications would be remedied by the general principle in Article 5 of the Law and the incorporation of those provisions in the Decree on Plant Variety Rights. Once the Law and the Decree entered into force, Viet Nam might deposit its instrument of accession to the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of Viet Nam to incorporate in the Law the amendments suggested in paragraph 40 of document C(Extr.)/23/2 at the first opportunity so as to avoid recourse to the general principle in Article 5 of the Law;

(d) authorize the Secretary-General to inform the Government of Viet Nam of that decision.

10. The Delegation of Viet Nam thanked the Council for the examination of the Law and looked forward to cooperating with the members of the Union. It noted, as explained in document C(Extr.)/23/2, that the Law still required some additional provisions and clarifications and that those matters would be remedied for the time being by the general principle in Article 5 of the Law. In accordance with the decision of the Council and with the assistance of the Office of the Union, the Law would be amended and supplemented at the first opportunity.

Report by the President on the Work of the Seventy-First Session of the Consultative Committee; Adoption of Recommendations, if any, Prepared by that Committee

*11. The Council noted the oral report on the seventy-first session of the Consultative Committee, held on April 7, 2006, in particular, the Consultative Committee:

(a) decided to grant observer status to the European Seed Association (ESA) in the Administrative and Legal Committee (CAJ);

(b) discussed existing activities of UPOV and possible future initiatives in relation to the enforcement of plant breeders' rights, including the seminar on enforcement of plant breeders' rights, organized by the Government of Japan in cooperation with UPOV, scheduled to take place in Tokyo from November 15 to 17, 2006. The Consultative Committee agreed that a new document be prepared on the "Overview of existing activities of UPOV and possible future initiatives in relation to the enforcement of plant breeders' rights" for the seventy-second session of the Consultative Committee on October 18, 2006, reflecting the deliberations of the Consultative Committee;

(c) received a performance assessment report for the 2004-2005 biennium and was informed that the third running of the UPOV Distance Learning Course DL-205 would be held in the four UPOV languages and was scheduled from September 18 to October 20, 2006;

(d) received an oral report on the development of the UPOV Assistance Database; and

(e) was informed on the meetings and activities concerning biodiversity, plant genetic resources and plant variety protection and on developments in the Council for TRIPS concerning the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").

12. In accordance with the recommendation of the Consultative Committee, the Council adopted the decisions concerning "Certain Financial Matters of the Union", as proposed in Annexes I and II to document C(Extr.)/23/3. Those decisions are reproduced in Annexes II and III to this document.

13. The representative of ISF referred to the meeting on April 6, 2006, of the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group) where it was mentioned that the proposed terms of reference of the BMT Review Group were subject to the outcome of the discussions in the Consultative Committee on the role of UPOV in matters concerning the enforcement of plant breeders' rights. He wondered if the Consultative Committee had taken any decision on that matter at its seventy-first session, on April 7, 2006.

14. In reply to the question from the representative of ISF, the President reported that the Consultative Committee would continue its deliberations on the role of UPOV in matters concerning the enforcement of plant breeders' rights at its seventy-second session on October 18, 2006.

*15. The Council decided that an invitation be made to the Food and Agriculture Organization of the United Nations (FAO) to make a presentation on the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) at the fortieth session of the Council on October 19, 2006.

16. The representative of FAO expressed her satisfaction with the invitation and informed the Council that the first meeting of the Governing Body of the ITPGRFA would be held in Madrid from June 12 to 16, 2006. The first meeting would cover important issues such as the rules of procedure and the financial rules of the Governing Body, the funding strategy of the implementation of the Treaty and the standard material transfer agreement.

*17. The Council was informed that France had enacted, on March 2, 2006, Law No. 2006-245, which authorized the ratification of the 1991 Act of the UPOV Convention.

18. The present report has been adopted by correspondence.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
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(dans l'ordre alphabétique des noms français des membres /
in the alphabetical order of the names in French of the members /
in alphabetischer Reihenfolge der französischen Namen der Mitglieder /
por orden alfabético de los nombres en francés de los miembros)

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

ANNEX II

UPOV WORKING CAPITAL FUND

1. The Working Capital Fund was established by a decision of the Council of the International Union for the Protection of New Varieties of Plants (UPOV) at its third meeting on October 9, 1969, in accordance with the provisions of the Financial Regulations of UPOV (documents CPU Doc. 11, 17, 20 and UPOV/C/IV/17 and UPOV/C/VI/12):

“Article 8

Working Capital Fund

“1. UPOV shall have a special fund hereby named the Working Capital Fund, which shall be constituted by advances made by member States. Such advances shall be entered to the credit of the members which have made them.

“2. The amount of the initial, or any subsequent, advance which each of the member States is called upon to make to the Working Capital Fund, and the procedure according to which such advances are to be made shall be fixed by the Council on the basis of proposals submitted by the Secretary General.

“3. The purposes for which the Working Capital Fund shall be utilized shall be:

“(a) to meet budgeted expenditure pending the receipt of the contributions of member States;

“(b) to meet unavoidable unforeseen expenses arising from the execution of the approved program;

“(c) to meet such other expenses as may be determined by the Council.

“4. Advances made from the Fund under paragraph (3)(a) shall be reimbursed as soon as, and to the extent that, income is available for that purpose. The amounts required for the reimbursement of advances provided for in paragraphs (3)(b) and (3)(c) shall be covered by additional budgets or by the budget for the following year. Advances provided for in paragraph 3(c) shall be subject to prior approval by the Council.

“5. Interest received on the Working Capital Fund shall be credited to the general funds of UPOV.”

2. The Council recalls its earlier decisions on the Working Capital Fund of UPOV (paragraph 57 of document C/VI/12, paragraph 42 of document C/XII/15 and paragraph 14 of document C/26/15) and the recommendation of the Consultative Committee at its seventy-first session, and decides to consolidate them as follows:

(a) to base the share of the members of the Union in the Working Capital Fund on the number of contribution units applicable to it for the purpose of the annual contributions under the UPOV Convention;¹

¹ Article 29(3) of the 1991 Act, Article 26(4) of the 1978 Act and Article II of the 1972 Act.

(b) if a member of the Union increases its number of contribution units, it would be called upon to pay, into the Working Capital Fund, an additional amount in proportion to the increase in the number of contribution units it had officially chosen;

(c) if a member of the Union decides to reduce its number of contribution units applicable to it, the participation in the Working Capital Fund of that member would not be reduced; and

(d) the contribution towards the Working Capital Fund of new members joining the Union is fixed at 8,333 Swiss francs (fixed amount) multiplied by the number of contribution units applicable to the new member.

[Annex III follows]

ANNEX III

ADJUSTMENTS OF THE NUMBER OF
CONTRIBUTION UNITS APPLICABLE TO A MEMBER OF THE UNION

At its twenty-third extraordinary session, held in Geneva on April 7, 2006, the Council decided that members of the Union should not adjust downwards their number of units of contribution without considering the implications for UPOV and considering how such a reduction would be compensated by other members of the Union. In particular, members of the Union should not reduce their number of units of contribution during a budget period approved by the Council, except under exceptional and unavoidable circumstances.

[End of Annex III and of document]