



C(Extr.)/24/5

ORIGINAL: English

DATE: August 27, 2007

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Twenty-Fourth Extraordinary Session**  
**Geneva, March 30, 2007**

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-fourth extraordinary session in Geneva on March 30, 2007, chaired by Mr. Doug Waterhouse (Australia), 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.
4. The President announced that Viet Nam had become the sixty-third member of UPOV on December 24, 2006, and that Ukraine had become a Contracting Party to the 1991 Act on January 19, 2007. The statement made by the Delegation of Viet Nam is reproduced in Annex II to this document.
5. The President informed the Council that a revised version of the report of the fortieth ordinary session held on October 19, 2006 (document C/40/19 Rev.) had been posted on the UPOV website. In paragraph 28 of the report, which contained an intervention by the

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\* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Decisions (document C(Extr.)/24/4).

Delegation of the European Community, the two references to “recommendation n° 2” were replaced by “recommendation n° 3”.

#### Adoption of the agenda

\*6. The Council adopted the agenda as proposed in document C(Extr.)/24/1, after the addition of document C(Extr.)/24/3 “Examination of the conformity of the Law of Georgia for the Protection of New Varieties of Plants with the 1991 Act of the UPOV Convention” under item 4.

#### Examination of the conformity of the Philippine Plant Variety Protection Act of 2002 with the 1991 Act of the UPOV Convention

##### *Philippines*

\*7. The Senior Legal Officer introduced document C(Extr.)/24/2.

\*8. The Council decided to

(a) take note of the information given in document C(Extr.)/24/2;

(b) advise the Government of the Philippines that the Law incorporated the majority of the provisions of the 1991 Act, but still needed some clarifications and amendments, as provided in document C(Extr.)/24/2, in order to conform with the 1991 Act; once the above clarifications and amendments were incorporated in the Law, the Government of the Philippines was invited to request the examination of the amended law as provided in Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of the Philippines in drafting the necessary clarifications and amendments to the Law; and

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

\*9. The Delegation of the Philippines thanked the Council for the examination of the Law and looked forward to cooperating with the Office of the Union in drafting the required amendments.

#### 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

##### *Georgia*

\*10. The Senior Legal Officer introduced document C(Extr.)/24/3.

11. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) expressed his appreciation that

Georgia intended to accede to the 1991 Act of the UPOV Convention. On March 20, 2007, CIOPORA had sent a letter to the Government of Georgia with a copy to the President and Vice-President of the Council and to the Office of the Union commenting on some points in the Law which, in the view of CIOPORA, did not meet the requirements of the 1991 Act of the UPOV Convention. The representative enquired whether those comments had been taken into account during the deliberations concerning document C(Extr.)/24/3.

12. The President of the Council explained the background to document C(Extr.)/24/3 and that in its analysis, a range of different views on the conformity of the Law of Georgia had been taken into consideration. He further explained that document C(Extr.)/24/3 did not make reference to the particular comments of CIOPORA; document C(Extr.)/24/3 was prepared to facilitate the assessment of whether the Law of Georgia and its legal system conformed, and how it conformed, with the 1991 Act of the UPOV Convention.

13. The representative of CIOPORA enquired about the procedure it should use in the future to address its views to the Consultative Committee on laws of future members.

14. The Vice Secretary-General recalled that the drafting of a law, in particular the Law of Georgia, was a process which took some time. During the hearings, organized by the Government of Georgia with the economic circles concerned by the Law, the stakeholders were able to make their views known. Once the Law was adopted and the examination was requested, the Consultative Committee reached its conclusion in the way reported by the President. The Vice Secretary-General explained that it was possible to interact with the Office of the Union in the analysis of a law. In that particular case, although document C(Extr.)/24/3 had already been finalized when the Office of the Union received a copy of the letter of CIOPORA, addressed to the Government of Georgia, the contents of the letter did not affect the analysis and conclusion in document C(Extr.)/24/3.

15. The Delegation of the Netherlands considered that it was important to know all the opinions on the laws of countries which applied for membership of UPOV. It suggested that it might be useful to receive a copy of any letters received, attached to the relevant document.

16. The President recalled that the copy of the letter of CIOPORA was received on March 20, 2007, and document C(Extr.)/24/3 had been finalized on March 1, 2007. He added that the letter was addressed to Mr. David Gabunia, Director General of SAKPATENTI and that there had been no request for circulation to the members of the Union. In response to the proposal made by the Delegation of the Netherlands, he suggested that if such a letter was received in due time and with a request for circulation, the letter could be attached to the relevant document.

17. The Delegation of the Netherlands expressed its appreciation of the suggestion made by the President. It clarified that the fact that it wished to know the comments made by an important stakeholder did not necessarily mean that the Delegation agreed with those comments.

18. The Senior Legal Officer explained that the Office of the Union sometimes received copies for information of letters of stakeholders addressed to governments. In that particular case, because the letter was addressed to Mr. Gabunia, the Office of the Union had given a copy to the Delegation of Georgia attending the session of the Consultative Committee. She observed that the letter also concerned optional provisions of the 1991 Act of the UPOV Convention and further developments of the Law that were not directly linked to the

conformity. In addition, the letter dealt with administrative matters such as requests for application forms and fee structure. In the absence of a request for distribution, the Office of the Union had not understood that the intention of CIOPORA was that the letter be circulated to the members of the Union. The Office of the Union was always willing to distribute such letters if a clear request was made.

19. The Delegation of the European Community noted that it would, in principle, be helpful if interested circles that wished the Office of the Union to send out information made that clear, otherwise there was a danger that letters which were sent back and forth between two parties might be distributed without the sender actually being aware of that; a situation which might cause difficulties. Therefore, the Delegation stressed that if interested circles wished members of the Union to be made aware of their positions, they should make that clear in an explicit manner.

\*20. The Council decided to

(a) take note of the information given in document C(Extr.)/24/3, in particular, that the departures of the Law from Articles 6(1) and 20(5) of the 1991 Act, would be remedied, for the time being, by the general principle in Article 6 of the Constitution;

(b) take a positive decision on the conformity of the Law of Georgia for the Protection of New Varieties of Plants with the provisions of the 1991 Act, in accordance with Article 34(3) of that Act, which allowed Georgia to deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of Georgia of that decision.

\*21. The Delegation of Georgia thanked the Council for the examination of the Law and looked forward to cooperating with the members of the Union.

Report by the President on the work of the seventy-third session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee

\*22. The Council noted the oral report by the President on the seventy-third session of the Consultative Committee, held on March 30, 2007, in particular, the Consultative Committee:

(a) had undertaken preliminary examinations concerning the conformity of the Laws of the Philippines and Georgia with the 1991 Act of the UPOV Convention;

(b) endorsed an overview of existing activities of UPOV in relation to the enforcement of plant breeders' rights;

(c) endorsed the proposal for a revised presentation of the information in document C/[40]/5 which would include information on the utilization of existing DUS reports;

(d) recommended not to pursue a UPOV triennial program and budget;

(e) confirmed the calendar of meetings for the October sessions of 2007 and noted that there was a change of location for the thirty-eighth session of the Technical Working

Party for Fruit Crops (TWF), to be held from July 9 to 13, 2007, with the preparatory workshop on July 8, 2007. The TWF and the preparatory workshop will be held in Jeju instead of Seoul (Republic of Korea);

(f) decided to include an item in the draft agenda of its seventy-fourth session, to be held on October 24, 2007, to consider the reorganization of the work and dates of the UPOV sessions;

(g) discussed a further extension of one year to the current appointment of the Vice Secretary-General and confirmed that the final decision would be taken at the twenty-fifth extraordinary session of the Council in April 2008, at the latest; and

(h) noted that information had been provided 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”).

*23. The present report has been adopted by correspondence.*

[Annexes follow]

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 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

STATEMENT BY THE DELEGATION OF VIET NAM

President,  
Ladies and Gentlemen,

On behalf of the Ministry of Agriculture and Rural Development, Viet Nam appreciates the warm welcome into the UPOV family. We are very honored to be a member of UPOV.

After more than 11 years of efforts for joining UPOV, on November 24, 2006, Viet Nam deposited its instrument of accession to the UPOV Convention (1991 Act). On December 24, 2006, Viet Nam became the sixty-third member of UPOV.

The Intellectual Property Law of Viet Nam entered into force on July 1, 2006 and the Decree No. 104/2006/ND-CP on Detailed Regulations to Implement Some Articles in the Intellectual Property Law, Chapters on Plant Variety Rights entered into force on November 2, 2006. On April 7, 2006, based on Article 5 of the Law, the Council of UPOV took a positive decision on the conformity of the Law, with the 1991 Act of the UPOV Convention.

Plant breeders' rights in Viet Nam fall under the responsibility of the Ministry of Agriculture and Rural Development (MARD). The Plant Variety Protection Office in the Department of Crop Production of MARD has the appropriate legal and institutional framework for the grant of protection of plant breeders' rights. The staff received excellent training from Denmark, Japan and the United States of America in the field of plant breeders' rights.

Viet Nam is planning to cooperate in DUS testing with members of UPOV such as Japan and the Netherlands and also with some countries of the region which are not yet members of UPOV such as Malaysia, Thailand and the Philippines. As of today, protection is available in Viet Nam for 15 species. In order to enhance the Plant Variety Protection System, the Ministry of Agriculture and Rural Development is improving its legal and institutional framework concerning plant variety protection.

I would like to emphasize our gratitude for the assistance received from the Office of the Union in the accession procedure of Viet Nam to the UPOV Convention.

I would like also to convey thanks to experts from Denmark, Japan and the United States of America, and from other authorities of the members of the Union for their assistance and cooperation.

Thank you.

[End of Annex II and of document]