



C(Extr.)/21/6

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-First Extraordinary Session
Geneva, April 2, 2004

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-first extraordinary session in Geneva on April 2, 2004, 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.
4. The President extended a warm welcome to the Delegation of Lithuania, a State which had become a member of UPOV on December 10, 2003. The Declaration by the Delegation of Lithuania presented at the sixty-seventh session of the Consultative Committee is reproduced in Annex II to this document.

* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Decisions (document C(Extr.)/21/5).

Adoption of the Agenda

*5. The Council adopted the agenda, as proposed in document C(Extr.)/21/1, after adding document C(Extr.)/21/4 entitled “Examination of the conformity of the Law of the Republic of Albania on Plant Breeder’s Right with the 1991 Act of the UPOV Convention” to item 4, and with the modification of item 6, in which the election of the Chairman of the Technical Working Party for Agricultural Crops (TWA) was included due to the resignation of the present Chairman, Mr. Carlos Gómez Etchebarne (Uruguay).

Examination of the Conformity of the Law of the Republic of Armenia on the Protection of Selection Achievements with the 1991 Act of the UPOV Convention

Republic of Armenia

*6. The Senior Legal Officer introduced document C(Extr.)/21/2.

*7. The Council decided to

(a) advise the Government of Armenia that the Law, in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

(b) further advise the Government of Armenia that it may wish to amend and supplement the texts of its legislation, as recommended in document C(Extr.)/21/2, so as to avoid recourse to the general principle in Article 2 of the Law.

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

Republic of Albania

*8. The Senior Legal Officer introduced document C(Extr.)/21/4.

*9. The Council decided to

(a) advise the Government of Albania that the Law, in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

(b) further advise the Government of Albania that it may wish to amend and supplement the texts of its legislation, as recommended in document C(Extr.)/21/4, so as to avoid recourse to the general principle in Article 122 of the Constitution.

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

*10. The Council noted the oral report on the sixty-seventh session of the Consultative Committee, held on April 2, 2004, in particular:

(a) the Consultative Committee received clarifications provided by the Government of India concerning the preliminary examination of the conformity of the Protection of Plant Varieties and Farmers' Rights Act of India with the 1978 Act of the UPOV Convention. The Consultative Committee will continue this preliminary examination in October 2004;

(b) the Vice Secretary-General made an oral report on the first meeting of the Consultative Group on long-term financial issues of UPOV;

(c) the Consultative Committee received a performance assessment report for the 2002-2003 biennium;

(d) the Consultative Committee 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").

11. The Council noted the report of the President that the Consultative Committee had endorsed proposals concerning access to UPOV documents listed in the "Meeting Documents" section of the UPOV Website, which are reproduced hereunder:

"Unrestricted Area

"It is proposed that, in view of the principle that Council documents should be freely available on the UPOV Website and notwithstanding the absence of observers, the documents concerning the extraordinary sessions of the Council should be placed on the unrestricted area of the UPOV Website after the sessions have taken place. Prior to the sessions, the documents would, as now, only be available on the second restricted area, accessible only to members of the Union.

"First Restricted Area

"It is proposed that the first restricted area should continue to contain all documents concerning the CAJ, TC and TWPs and, in particular, it is proposed not to introduce separate passwords for CAJ documents, TC documents, etc. However, it is proposed that a single general rule for access to the first restricted area across all UPOV bodies be established as follows:

"(a) Access to the first restricted area shall be granted to members of the Union and to observer States or organizations invited to attend the Council, Administrative and Legal Committee, Technical Committee or Technical Working Parties.

"(b) The Office will issue the password for the first restricted area to:

"(i) the representative in the Council of each member of the Union. Where a member of the Union does not formally notify the Office of its representative in the Council of UPOV, the password will be issued to the government official(s) nominated by the government to attend the Council;

“(ii) the designated person(s) of an observer State or observer organization, in the Council. In the case of observer States, the designated person(s) is (are) taken as the person(s) nominated to attend the Council by the government. In the case of an observer organization, the designated person(s) is (are) taken as the person(s) nominated to attend the Council by the head of the organization; and

“(iii) the designated person(s) of each member of the Union, observer State or observer organization in the Administrative and Legal Committee, Technical Committee and Technical Working Parties. Such designated persons would be those notified as such by the recipient of the password as set out in (i) or (ii), as appropriate.

“(c) Individuals contacting the Office for the password will be referred to the relevant recipient of the password, as specified in (b), who will be responsible for deciding whether to disclose the password.

“Second Restricted Area

“It is proposed that there should be no change to the current arrangements for access to the second restricted area, which would contain the documents for the Consultative Committee and the documents for the extraordinary sessions of the Council prior to those sessions. Thus, the second restricted area would be accessible only by a password issued to the representative of each member of the Union in the Council. Where a member of the Union does not formally notify the Office of its representative to the Council, the password will be issued to the government official(s) nominated by the government to attend the Council.

“Temporary Password Areas

“It is further proposed that, where appropriate, temporary password areas be established as a means of distributing documents to participants in certain meetings and events where not all of the participants would have a password to the restricted area of the Website and where it would not be appropriate to make the documents available on the freely accessible area of the Website. A particular example would be the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT), being a group open to DUS experts, biochemical and molecular specialists and plant breeders, where several of the participants do not attend other UPOV TC or TWP meetings and might not receive a password for the first restricted area. A further example would be regional or national seminars. For each such meeting or event, an individual temporary password area would be created on the Website with its own individual password, which would be issued to all participants. This would allow all participants to download the necessary documents and would avoid the need for the Office to send a large number of e-mails, some of which are considerable in size and which are increasingly blocked automatically by receivers. The temporary password area would be deleted at an appropriate time after the meeting or event had taken place. In some cases, such as for the BMT, the documents would also be present on the restricted area of the Website and would be retained in these areas in the normal way.”

12. The President reported that, in cases where documents were not available in all UPOV languages at least six weeks before the relevant meeting, the Consultative Committee had endorsed the following procedure for placing meeting documents on the UPOV Website:

“It is, therefore, proposed that meeting documents for the Council, Consultative Committee, CAJ and TC should be placed on the UPOV Website in at least two UPOV languages six weeks before the meeting concerned, followed by other UPOV languages as soon as the translations are available.”

13. With regard to the collections of “Important Texts and Documents” and the collection of “Plant Variety Protection Laws and Treaties” established by UPOV, the Council noted that the Consultative Committee had endorsed the following proposal:

“In conclusion, it is proposed that the two collections of “Important Texts and Documents” and the collection of “Plant Variety Protection Laws and Treaties” established by UPOV should no longer be updated and appropriate elements of these publications should, in due course, be incorporated into documents published on the UPOV Website. It is noted that, under this proposal, the information currently contained in those publications, for which a charge has been made, other than to the representatives in the Council of members of the Union, would become freely available to all users of the UPOV Website at no charge.

14. In addition, the President reported to the Council that the Consultative Committee had agreed to:

“(a) make available to the members of the Council the content of temporary password areas;

“(b) include previous versions of adopted Test Guidelines in the first restricted area of the UPOV Website;

“(c) consider the possibility of a procedure to provide passwords to new delegates in emergency situations; and

“(d) consider the basis for changing passwords for the first and second restricted areas.”

15. The Council endorsed the report of the President on the proposals agreed by the Consultative Committee concerning access to UPOV documents, as set out in paragraphs 11 to 14, above.

Election of the Vice-Chair of the Administrative and Legal Committee (CAJ)

16. The Vice Secretary-General introduced document C(Extr.)/21/3. He reported that, on December 12, 2003, Mr. Doug Waterhouse, Registrar, Plant Breeder’s Rights, Department of Agriculture, Fisheries and Forestry of Australia, had informed the Office of the Union that he would not be able to continue to serve as Vice-Chair of the CAJ due to his election, on October 23, 2003, as Vice-President of the Council of UPOV. The Vice Secretary-General noted, therefore, that it was necessary to elect a new Vice-Chair of the CAJ for the remaining period of the term of office.

*17. According to the proposal made by the CAJ, on April 1, 2004, the Council elected unanimously Mr. Krieno Fikkert (Netherlands) as Vice-Chair of the CAJ for the remaining period of the term of office, starting on April 2, 2004, and ending after the thirty-eighth ordinary session of the Council, on October 21, 2004.

Election of the Chairman of the Technical Working Party for Agricultural Crops (TWA)

*18. The President informed the Council that, in his letter dated March 23, 2004, Mr. Carlos Gómez Etchebarne (Uruguay), had resigned as Chairman of the TWA.

*19. According to a proposal made by the Technical Committee, on March 31, 2004, the Council elected unanimously Mr. Luis Salaices (Spain) as Chairman of the TWA for the remaining term of office, starting on April 2, 2004, and ending after the thirty-ninth ordinary session of the Council in October 2005.

Retirement

20. The President noted that Mr. John Carvill (Ireland) would be retiring before the next session of the Council and thanked him, on behalf of the Council, for his service to the Union in his capacity of Chairman of the CAJ and as a national delegate.

21. The present report has been adopted by correspondence.

[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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Yolanda HUERTA (Mrs.), Senior Legal Officer

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Annex II follows/
Anlage II folgt/
Sigue el Anexo II]

ANNEX II

Declaration Made by the Delegation of Lithuania

Madam President,
Ladies and Gentlemen,

On behalf of the Government of the Republic of Lithuania, on behalf of the Ministry of Agriculture, Lithuania appreciates the warm welcome into the UPOV family. We are very honored to be a member of UPOV.

On November 10, 2003, Lithuania deposited its instrument of accession to the UPOV Convention (1991 Act). On December 10, 2003, Lithuania became the fifty-fourth member of UPOV.

On October 20, 1999, the Council of UPOV examined the conformity of the Law on the Protection of Plant Varieties and Seed Cultivation of 1997 with the provisions of the UPOV Convention. According to the recommendations of the Council of UPOV and the relevant authorities of Lithuania, the new Law on the Protection of Plant Varieties was adopted by the Parliament of the Republic of Lithuania on November 22, 2001.

Plant breeders' rights in Lithuania fall under the responsibility of the Lithuanian State Plant Varieties Testing Centre. This Centre has the appropriate legal and institutional framework for the grant of protection of plant breeders' rights. The staff received excellent training in Denmark in the field of plant breeders' rights.

Lithuania cooperates in DUS testing with Estonia and Poland. As of today, protection is available in Lithuania for 22 genera and species of agricultural plants, vegetables and fruit trees.

I would like to emphasize our gratitude for the assistance received by the Office of the Union in the legislative and accession procedures of Lithuania to the UPOV Convention.

I would like also to convey thanks to experts from Denmark, France, the Community Plant Variety Office (CPVO), and from other authorities of members of the Union for their help and cooperation.

Thank you.

[End of Annex II and of document]