



C(Extr.)/31/6
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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

COUNCIL

Thirty-First Extraordinary Session
Geneva, April 11, 2014

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 thirty-first extraordinary session in Geneva on April 11, 2014, chaired by Ms. Kitisri Sukhapinda (United States of America), President of the Council.
- *2. The list of participants is reproduced in Annex I to this report.
- *3. The session was opened by the President, who welcomed the participants.
- *4. The Council expressed its condolences for the sad loss of Mr. François Boulineau, Chairman of the Technical Working Party for Vegetables (TWV), who had died on December 23, 2013. It was recalled that, in addition to being Chairman of the TWV, Mr. Boulineau had brought great experience and expert knowledge to UPOV's technical work and was a leading expert for a number of important UPOV Test Guidelines.
- *5. The Vice Secretary-General reported that Mr. Fuminori Aihara had completed his three-year secondment to UPOV and had been replaced by Mr. Jun Koide, national of Japan.

Adoption of the agenda

- *6. The Council adopted the revised draft agenda, as proposed in document C(Extr.)/31/1 Rev.

Examination of the conformity of the Draft African Regional Intellectual Property Organization (ARIPO) Protocol for the Protection of New Varieties of Plants with the 1991 Act of the UPOV Convention

- *7. The Council considered document C(Extr.)/31/2.
8. The representative of the Association for Plant Breeding for the Benefit of Society (APBREBES) explained that APBREBES had submitted comments and a legal opinion by Professor Thomas Cottier, World Trade Institute, a well-known expert on international law and intellectual property who had also chaired WTO dispute settlements. She reported that a key issue was whether ARIPO was eligible to become a UPOV member. She noted that Article 34 of the 1991 Act of the UPOV Convention listed the basic requirements for an Intergovernmental Organization (IGO) to become a UPOV member, in particular that the

* An asterisk next to the paragraph number indicates that the text has been reproduced from the Report on the Decisions (document C(Extr.)/31/5).

IGO was required to have legislation binding on all its member States. She noted that Article 1(viii) defined "territory", in relation to an IGO, as the territory in which the constituting treaty of that intergovernmental organization applied. The representative of APBREBES explained that, in the case of ARIPO, the constituting treaty was the Lusaka Agreement and that there were 18 countries members of the Lusaka Agreement; however, the Draft Protocol would only bind those member States that ratified the Protocol. The representative of APBREBES agreed with the conclusion of Professor Cottier that "Membership of ARIPO on the basis of the Protocol and thus selected membership is not compatible with the requirements of the UPOV Convention". She further explained that Article 30(1) listed measures that were necessary for the implementation of the Convention and that Professor Cottier had questioned the ability of ARIPO to comply with the requirements in the absence of domestic legislations: "ARIPO, comprising the territory of all its Member States, needs demonstrating that these requirements are met by all its Member States, either by domestic legislation or by granting direct effect to UPOV Convention rights. The same requirements need to be met by individual Members as a prerequisite for individual UPOV membership. They either need to prepare legislation or demonstrate that Convention rights are otherwise given domestic effect." She noted that Professor Cottier had concluded that "ARIPO as an organization therefore is not in a position to comply with the requirements of Article 30(2) of the UPOV Convention under the Draft Protocol of Accession. Basic requirements of UPOV membership are not fulfilled." The representative of APBREBES was of the opinion that decision paragraph 42 providing that Contracting States of the Draft Protocol could accede to the 1991 Act of the UPOV Convention was inconsistent with the basic requirements for UPOV membership in Article 30(2), as it could allow countries which had ratified the ARIPO Protocol to become a party of UPOV, even if they had no national laws in place, but also if they had a law for national filings which was in contradiction with UPOV. That would certainly increase the legal uncertainty. The representative of APBREBES concluded that APBREBES had raised crucial key legal issues: "Noting that the UPOV body is a rules based organization in that it requires countries joining the 1991 Act to strictly conform to the Act, APBREBES considered it to be truly puzzling and even concerning that UPOV's organs that is the Consultative Committee and the Council as well as the UPOV office failed to require compliance with the basic requirements set out in the 1991 Act." She reported that APBREBES realized that those legal issues were being raised at a very late stage, but the document had been issued on March 14, 2014, and APBREBES had only had three weeks to work on the document. She further reported that APBREBES had made a request to address the Consultative Committee on that issue and that its request had not been accepted. The representative of APBREBES noted that there were different legal views, and in order to provide all an opportunity to better understand the legal implications of the UPOV Council approving the proposed decision points, suggested that the matter be postponed to the following UPOV session.

*9. The Council noted the intervention made by the representative of the Association for Plant Breeding for the Benefit of Society (APBREBES).

10. The Delegation of Kenya did not consider that the matter of whether domestic and enforcement laws had been customized by the individual ARIPO member States was relevant for deciding if the Draft Protocol was in conformity with the 1991 Act of the UPOV Convention. The Delegation of Kenya strongly recommended that the process proceed uninterrupted.

*11. The Council noted the intervention made by the Delegation of Kenya.

*12. The Council decided to:

(a) note the analysis in this document;

(b) note that the letters "(c)" and "(d)" of Articles 11, 12(1) and (3), 19(6), in Annex II of document C(Extr.)/31/2, should read "(a)" and "(b)" and that the word "not" should be deleted from Article 27(5) in accordance with the original text of the Draft Protocol;

(c) take a positive decision on the conformity of the Draft ARIPO Protocol for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows:

(i) the Contracting States to the Protocol that are not members of the Union bound by the 1991 Act, and

(ii) ARIPO, in relation to the territories of the Contracting States bound by the Protocol,

once the Draft Protocol is adopted with no changes and the Protocol is in force, to deposit their instruments of accession to the 1991 Act; and

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

13. The representative of the African Regional Intellectual Property Organization (ARIPO) thanked the Council for the positive decision on the conformity of the Draft ARIPO Protocol for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the UPOV Convention. The representative, in the name of ARIPO and its 18 member States, indicated that ARIPO was very grateful for the support received in that process and noted that the enhancement of agricultural productivity in the African continent was very important. He explained that Africa needed mechanisms and strategies to ensure that Africa moved away from food deficit to a stage where the continent could boost food security and agricultural productivity.

Calendar of Meetings in 2014

*14. The Council considered document C/47/8 Rev.2.

*15. The Council approved the following change to the calendar of meetings in 2014:

CAJ/70 October 13 ~~and 14~~
(Administrative and Legal Committee Advisory Group: October 14 and 17)

*16. The Council approved the corresponding revision of document C/47/8 Rev. "Revised Calendar of Meetings in 2014".

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

*17. The Council adopted the answers to the frequently asked questions, as set out in the Annex to document C(Extr.)/31/3.

*18. The Council decided to create a special UPOV account to finance extra-budgetary projects agreed by the Council (Project Account) and to transfer the amount of the reserve fund exceeding 15 percent of the total income for the 2012-2013 Biennium to that account.

19. The Council expressed its appreciation to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) for the thanks the Governing Body had offered to UPOV for the practical support UPOV had provided to the ITPGRFA and the Council confirmed its continuing commitment to mutual supportiveness. In response to an invitation by the Governing Body to identify with the Secretary of the ITPGRFA and the Secretariat of the World Intellectual Property Organization (WIPO) possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV, the Council decided to explore the idea of a joint publication on interrelated issues regarding innovation and plant genetic resources and other suitable initiatives.¹

*20. The Council noted the work of the Consultative Committee, at its eighty-seventh session, as set out in document C(Extr.)/31/3.

Press release

*21. The Council considered document C(Extr.)/31/4.

*22. The Council approved the draft press release contained in the Annex to document C(Extr.)/31/4. The press release approved by the Council is reproduced in Annex II to this report.

23. *This report was adopted by correspondence.*

[Annexes follow]

¹ Text from paragraph 3 of approved press release (see Annex II to this report).

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

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

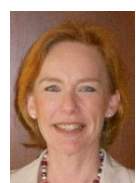
(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
por orden alfabético de los nombres en francés de los miembros)

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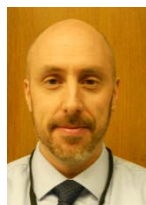
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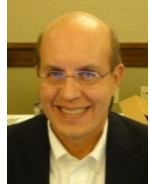


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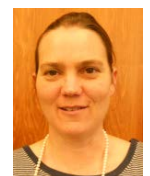
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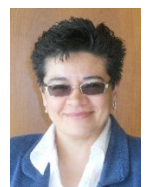
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[L'annexe II suit /
Annex II follows /
Anlage II folgt /
Sigue el Anexo II]



INTERNATIONALER
VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

GENÈVE, SCHWEIZ

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS
VÉGÉTALES

GENÈVE, SUISSE

UNIÓN INTERNACIONAL
PARA LA PROTECCIÓN
DE LAS OBTENCIONES
VEGETALES

GINEBRA, SUIZA

INTERNATIONAL UNION
FOR THE PROTECTION
OF NEW VARIETIES
OF PLANTS

GENEVA, SWITZERLAND

PRESS RELEASE

UPOV Press Release 96

Geneva, April 11, 2014

UPOV Council Holds its Thirty-First Extraordinary Session

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-first extraordinary session on April 11, 2014.

Round-up of key developments:

Positive decision on the Draft ARIPO Protocol for the Protection of New Varieties of Plants

The Council took a positive decision on the conformity of the African Regional Intellectual Property Organization (ARIPO) Draft Protocol for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The Draft Protocol, once adopted with no changes and in force, would allow the Contracting States to the Protocol and ARIPO, in relation to the territories of the Contracting States bound by the Protocol, to deposit their instruments of accession to the UPOV Convention.

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

The Council expressed its appreciation to the Governing Body of the ITPGRFA (GB) for the thanks the GB had offered to UPOV for the practical support UPOV had provided to the ITPGRFA and the Council confirmed its continuing commitment to mutual supportiveness. In response to an invitation by the GB to identify with the Secretary of the ITPGRFA and the Secretariat of the World Intellectual Property Organization (WIPO) possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV, the Council decided to explore the idea of a joint publication on interrelated issues regarding innovation and plant genetic resources and other suitable initiatives.

Frequently Asked Questions

The Council agreed the answers to the following frequently asked questions:

- Who can attend UPOV meetings?
- What is UPOV?
- What does UPOV do?
- Who can attend UPOV meetings?
- What is a plant variety?
- Why do farmers and growers need new plant varieties?
- Why is plant variety protection necessary?
- How does plant variety protection work?
- What are the requirements for protecting a new plant variety?

- Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?
- Can breeders use a protected variety in their breeding programs
- Who can protect a plant variety?
- Where do I apply for protection of a variety?
- Can I obtain protection for more than one country from a single application?
- What are the benefits of plant variety protection and UPOV membership?
- What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?
- What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
- What is the relationship between patents and plant breeders' rights
- What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?
- Can I protect an existing plant or variety that I discover?
- Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?
- Can I use plant variety protection to protect the following: - a trait (e.g. disease resistance, flower color) - a chemical or other substance (e.g. oil, DNA) - a plant breeding technology (e.g. tissue culture)?
- Can I protect a hybrid variety under the UPOV system?
- Can a farmer replant seed of a protected variety without the authorization of the breeder?
- Can a farmer sell seed of a protected variety without the authorization of the breeder?
- How do I know if a variety is protected?
- Who is responsible for enforcing plant breeders' rights?
- Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?
- Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

Launch of Advanced Distance Learning Courses

The following program was agreed for the launch of the advanced distance learning courses DL-305-1 "Administration of Plant Breeders' Rights" and DL-305-2 "DUS Examination":

February/March 2015
April/May 2015

DL-305-1 (E, F, S)
DL-305-2 (E, F, S)

More detailed information concerning the course content and on-line registration will be provided on the UPOV website: <http://www.upov.int/resource/en/training.html>).

Test Guidelines

The Council welcomed the adoption by the Technical Committee of six new Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability (Test Guidelines) and nine revised Test Guidelines. UPOV has now developed 301 Test Guidelines, all of which are freely available on the UPOV website (http://www.upov.int/test_guidelines/en/).

Experience of members of the Union in the Examination of New Plant Varieties

The Council noted that the number of genera and species for which members of the Union had indicated their practical experience in the examination of distinctness, uniformity and stability (DUS) had increased from 2,589 in 2013 to 3,305 in 2014 (+ 27.7%). The Council also noted that information on members of the Union with practical experience in DUS examination was freely accessible via the GENIE database.

Tribute to Mr. François Boulineau (France), Chairman of the Technical Working Party For Vegetables (TWV)

The Council expressed its condolences for the sad loss of Mr. François Boulineau, Chairman of the Technical Working Party for Vegetables (TWV), who had died on December 23, 2013. In addition to being Chairman of the TWV, Mr. Boulineau had brought great experience and expert knowledge to UPOV's technical work and was a leading expert for a number of important UPOV Test Guidelines. The Council expressed its appreciation for the important contribution that Mr. Boulineau had made to UPOV.

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[End of Annex II and of document]