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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COUNCIL

Fifteenth Ordinary Session  
Geneva, November 10 to 12, 1981

## DRAFT DETAILED REPORT

prepared by the Office of the UnionOpening of the Session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its fifteenth ordinary session in Geneva from November 10 to 12, 1981.
2. The session was presided over by the President of the Council, Dr. W. Gfeller (Switzerland).

After having opened the session and welcomed the participants, the President recalled that the 1978 Revised Act of the Convention had entered into force on November 8, 1981, and that Ireland, New Zealand and the United States of America had become members of the Union on that date.

3. The list of participants appears in Annex I to this document.
4. The indented paragraphs are taken from the report on the decisions of the Council which was adopted by the latter at its meeting on November 12, 1981 (document C/XV/14).

Adoption of the Agenda

5. The Council adopted the agenda as appearing in document C/XV/1.

Lectures and Discussions on "Plant Breeding Activities of Government Institutes, International Centers and the Private Sector"

6. The Council devoted its meeting of November 10 to lectures and discussions on "Plant Breeding Activities of Government Institutes, International Centers and the Private Sector." The proceedings of the symposium will form the subject of a special publication and will also be published in the UPOV Newsletter.

Present Situation, Problems Arising and Progress Achieved in the Legislative, Administrative and Technical Fields

7. The Council noted the declarations made under this agenda item.

The main information provided in connection with this agenda item was as follows.

7.01 South Africa. The most noteworthy event of the past year was the deposit on July 21, 1981, of the instrument of ratification of the 1978 Revised Act of the Convention. South Africa was pleased to have been able to contribute to the entry into force of the Act and to the entry of three States into the Union.

7.02 No addition had been made to the list of protected genera and species, which therefore still contained 83 entries. As for cooperation in examination, negotiations were in progress with the Netherlands, and the possibility of entering into agreements with other States was to be considered shortly. In that connection, South Africa was well aware that the increasing cost of managing a plant variety protection system called for closer cooperation between member States to avoid duplication of effort, and that on the other hand increases in fees, even if only to keep pace with inflation, were liable eventually to paralyze the system.

7.03 In the course of the past year, 33 applications for protection had been received and 50 titles of protection granted. At present, 67 applications were under examination and 122 varieties were protected (74 ornamental varieties, 18 varieties of agricultural crops, 16 varieties of fruit crops and 14 vegetable varieties). The species heading the list of titles granted were the following: Rose in the ornamental plants group, Soya Bean in the agricultural crops group, Peach in the fruit crops group and Tomato in the vegetables group. Of the 122 protected varieties, 104 had been bred by private breeders and 18 by public breeders.

7.04 Federal Republic of Germany. Ratification of the 1978 Revised Act of the Convention called among other things for amendment of the Plant Variety Protection Law. The preparatory work on that amendment had progressed far enough for Parliament to be presented with draft legislation in 1982.

7.05 An Ordinance was currently in preparation that would extend protection to *Abies Mill.*, *Euphorbia lathyris L.*--a species from which it was hoped to derive raw materials for the chemical industry, especially fuels--*Ilex L.* and *Pinus L.* Offers of cooperation would be made for some or all of those taxa when sufficient experience of their examination had been gained. Moreover, discussions had taken place with most of the other member States with a view to intensifying cooperation in examination.

7.06 In the course of the accounting period that had ended on June 30, 1981, the number of applications for protection filed had been 565 (611 during the previous accounting period).

7.07 Belgium. A Bill approving the 1978 Revised Act of the Convention was at present being considered by the Ministry of Foreign Affairs, which would be responsible for presenting it to Parliament. The Law should be voted on in 1982. The Plant Variety Protection Law would have to undergo some amendment. The preparatory work had been carried out by the Plant Variety Protection Service.

7.08 Since the last session of the Council, Belgium had extended protection to a number of ornamental plants, in particular to certain Bromeliaceae and *Chrysanthemum*--which were of some interest in Belgium--and also to Maize and Lucerne. There were at present 74 entries in the list of protected taxa; those included the genera and species that were among the most important to Belgium, and also all genera and species whose protection was mandatory under Article 4(3) of the 1961 text of the Convention.

7.09 With regard to technical matters, as the establishment of an official institute for the examination of varieties was still under consideration by the authorities, the Plant Variety Protection Service could obtain examination results either from the National Office of Agricultural and Horticultural Outlets, or from the services of other member States under cooperation arrangements. Cooperation extended also to the examination of the varieties of the principal vegetable species for the purposes of the national list. The State ornamental plants station of Melle was at present considering the procedures for the examination of *Begonia X tuberhybrida* for the purposes of Belgium and other member States.

7.10 With regard to the use made by breeders of the plant variety protection system, detailed statistics are to be found in Annex II to this document.

7.11 Denmark. From a legislative standpoint, the past year had been characterized by three events:

(i) Denmark had deposited its instrument of ratification of the 1978 Revised Act of the Convention on October 8, 1981. The Ordinance governing the application of the Act at the national level was still under preparation. Its draft included in particular the proposal to introduce the principle of national treatment for nationals of all UPOV member States and States members of the European Communities.

(ii) The Plant Variety Protection Law had been amended on two points with effect from April 1, 1981. The duration of protection was set at 20 years for sexually reproduced plants, 25 years for Potato, 18 years for trees and rootstocks and 15 years for other vegetatively propagated plants, with the possibility of extending that duration to 20 years in the case of the last two categories of plants. Such extension had already been decided upon for five Rose varieties. Moreover, it had been made possible to accept applications for the protection of tree varieties that had already been offered for sale or commercialized, at the time of the filing of the application, for a maximum of six years. Work on a general legislative revision would be undertaken shortly.

(iii) Protection granted in 1979 to Schlumbergera Lem. and Zygocactus K. Schum. (Christmas Cactus) had been extended with effect from August 26, 1981, to Epiphyllopsis Berger, to Rhipsalidopsis Britt. et Rose and to intergeneric hybrids. An offer of cooperation was also made in respect of that group of genera.

7.12 From the point of view of cooperation in examination, no amendment had been made to the agreements since the last Council session, but it had recently been decided that Denmark would apply in principle the Recommendation on Fees in Relation to Cooperation in Examination, adopted by the Council the previous year. In view of the fact that problems had arisen in the practical application of cooperation agreements, for instance regarding the provision of reference or standard samples, three meetings had been held between Denmark, France, Germany (Federal Republic of), the Netherlands and the United Kingdom in order to find solutions to those problems, and also to improve cooperation. It was still too early to announce the results of the meetings, an additional purpose of which had been to study the possibilities of legislative harmonization with a view to facilitating closer cooperation in the future. Considering the discussions that had taken place on the same subject within the Administrative and Legal Committee, the Delegation of Denmark hoped that whatever results were achieved could also be used in relation to cooperation with other member States.

7.13 In future the Plant Breeders' Rights Gazette would also contain information on national lists matters.

7.14 In 1980, 126 applications for protection had been filed (38 varieties of agricultural crops, 5 vegetable varieties, 83 ornamental varieties), in other words a number close to the average for the last five years, and 108 titles of protection had been granted. For the first ten months of 1981 those numbers were 78 and 119 respectively.

7.15 Spain. The revision of the plant variety protection legislation was currently in preparation, the National Committee for Plant Breeders' Rights being in the process of revising the implementing regulations to accommodate the 1978 Revised Act of the Convention. Examination fees were to be increased at the same time in order to facilitate future cooperation with other UPOV member States. In that connection, Spain was interested in concluding bilateral agreements, but the species to which those agreements would relate had not yet been decided upon. The Bill amending the present Law would be ready for presentation to Parliament in the course of the coming year. It was also hoped that the necessary regulations for the extension of protection to Bean, Citrus, Peach, Pea, Sunflower and Vicia would be completed within the next two or three months.

7.16 Four issues of the Plant Breeders' Rights Gazette had been published in the course of the past year.

7.17 During the current year, 68 applications for protection had been filed, bringing to 610 the total number of applications filed since the entry into force of the protection system, and 104 titles had been granted (47 for Rose, 18 for Barley, 14 for Carnation, 12 for Wheat, 11 for Potato and 2 for Oats).

7.18 United States of America. The United States of America had deposited an instrument of acceptance of the 1978 Revised Act of the Convention on November 12, 1980. It was pleased to have become a member of UPOV, and its Delegation assured the Council that its Government would do its utmost for the development of the Union.

7.19 The Patent and Trademark Office was at present completing the system for the registration of variety denominations, which was the only missing element for full and complete application of the Revised Act to be brought about. The system would be based on the International Code of Nomenclature of Cultivated Plants, and it would take due account of trademarks belonging to third parties. The Office was also revising its fee system. There were plans in particular to introduce annual fees for the maintenance of granted patents. With regard to the Plant Variety Protection Act of December 24, 1970, the American Seed Trade Association (ASTA) had recommended to the Department of Agriculture that the reciprocity principle applied in the administration of the Act be replaced by the principle of national treatment for nationals of the other member States of UPOV, and that recommendation would be given favorable consideration.

7.20 France. The consideration of the draft Decree authorizing France to ratify the 1978 Revised Act of the Convention was continuing within the various ministries concerned. The draft should be presented to the Conseil d'Etat in the fairly near future.

7.21 A Ministerial Order dated August 24, 1981, had increased the fee for the examination of distinctness, homogeneity and stability from 600--the amount fixed in 1975--to 1,800 francs. The Order also took account of the Recommendation on Fees in Relation to Cooperation in Examination, and a number of bilateral agreements concluded by France had been adapted to the Recommendation. A decree extending protection to Alstroemeria, Lucerne, Pelargonium, Ryegrass and Red Clover was in preparation, and was expected to be issued at the beginning of 1982. Finally, France had asked the Administrative and Legal Committee to investigate on the one hand the possibilities for harmonizing national laws regarding the extension of protection in the case of ornamental plants and fruit crops, notably to the multiplication of such plants with a view to the sale of the end product, and on the other hand the limitation of protection to inbred lines and commercial varieties--excluding parent hybrids --in the case of species for which hybrid varieties were produced. It was grateful to the Committee for having complied with its request, and expressed the wish that the discussions on October 12 and 13, 1981, might lead to greater harmonization of the rules of protection between member States.

7.22 Developments in the use made by breeders of the plant variety protection system are summarized in the table below.

	1979	1980	1981 (9 months)
applications filed	381	454	313
certificates granted	126	206	258
applications withdrawn	94	89	62
applications rejected	3	18	7
certificates in force on December 31	842	963	-

7.23 Ireland. Ireland deposited its instrument of ratification of the 1978 Revised Act of the Convention on May 19, 1981, and its Delegation assured the Council that it would do its utmost to promote the Union.

7.24 In the course of the past year, the Plant Varieties (Proprietary Rights) Bill had been passed by Parliament and had acquired force of law by virtue of an Order of the Minister of Agriculture dated January 22, 1981. Since then it had become applicable to six species (Wheat, Barley, Oats, Perennial Ryegrass, White Clover and Potato), and 22 applications had been filed, for the most part concerning varieties of recent creation. The Act was in general satisfactory from the point of view of its practical application, and had not been adversely criticized. Finally, the first issue of the Plant Breeders' Rights Gazette--which for the time being was six-monthly--had been published in July 1981.

7.25 Israel. Having been unable to send a representative to the session, Israel had sent an exposé to the Office of the Union which was brought to the notice of the Council by the Vice Secretary-General.

7.26 It had been hoped that ratification of the 1978 Revised Act of the Convention would take place rapidly, before the adaptation of national law to the Act, which called for minor amendments only, but that had proved impossible to bring about until later. At the time of adaptation, administrative and procedural amendments would be made to the Law in the light of the experience acquired over eight years of application.

7.27 As protection had been extended to three new species, the Plant Variety Protection Law was at present applicable to 65 genera comprising 75 species. A total of 142 titles of protection were in force, examination was in progress for varieties of 29 species, and 92 applications were under examination. A bilateral agreement had recently been concluded with the Netherlands, while negotiations had been started with the United Kingdom and others were planned with the Federal Republic of Germany.

7.28 The Plant Breeders' Rights Gazette now appeared regularly on a six-monthly basis.

7.29 New Zealand. New Zealand had ratified the 1978 Revised Act of the Convention on November 3, 1980, and was pleased to have become a member of UPOV.

7.30 With regard to legislation, there were plans to present Parliament in 1982 with a Bill amending the Plant Varieties Act of 1973. Also, an Order extending protection to all genera and species of the plant kingdom--with the exception of fungi, algae and bacteria--would very shortly be entering into force. No real opposition to the principle of plant variety protection had been shown to date.

7.31 With regard to the use made by breeders of the plant variety protection system, detailed statistics are to be found in Annex III to this document.

7.32 Netherlands. Owing to political circumstances, the procedure for the approval of the 1978 Revised Act of the Convention had been delayed. The Bill was before the Council of Ministers and would shortly be presented to Parliament.

7.33 In 1981 protection had been extended to Dahlia, Dill and Fennel and also to six genera of Bromeliaceae. Another extension--to the genus Chrysanthemum (only *C. morifolium* was protected at present), to the genus Dianthus (only *D. caryophyllus* was protected at present), to *Ornithogalum* and to *X Triticale*--was under consideration. In addition, examination fees had been amended and adapted to the recommendations made by the Council the previous year. Special fees, corresponding to half the amount of the normal fees, had been introduced for the examination of the components of multiclonal and multi-line varieties.

7.34 The Netherlands regarded cooperation in examination as very important; that was reflected in the new agreement concluded with Israel, the negotiations with South Africa and the continual extension of existing agreements to other species. There was cause for some criticism, however. The Netherlands considered that for certain species cooperation should consist in the taking

over of test results rather than in the centralization of testing, as the latter was not compatible with the need to develop or maintain the know-how associated with those species at the national level. There was also the question of cost: it was not possible, at least for the time being, to centralize reference collections, which continued to be essential for the testing of value for cultivation and use. Moreover the high examination fees charged by certain services that carried out centralized testing was a source of difficulty for national financial authorities. Finally breeders, or at least Dutch breeders, wished to have their varieties tested in their own country. They considered that close contact with the examining service was important to their plant improvement programs and, moreover, they feared that the introduction of their varieties might be delayed where examination of the first application was entrusted to a foreign service. That did not mean that the Netherlands would withdraw all their offers of cooperation, as for one thing the criticism was not applicable to all species, and for another thing the Netherlands were fully prepared to carry out the examination of first applications on behalf of States that did not share their opinion.

7.35 During the past year the number of applications filed had remained more or less the same as in the previous two years, namely about 600, more than half of those being for ornamental plants.

7.36 United Kingdom. Consultations were still going on with a view to the ratification of the 1978 Revised Act of the Convention. It was hoped that draft legislation would be presented to Parliament at its 1982-83 session, and it seemed that an Agriculture Bill would be presented at that session. In addition to the amendments necessary for ratification, the following in particular would also be done:

(i) extension of protection to the import of end products such as cut flowers and whole ornamental plants;

(ii) extension of the minimum protection period from 15 to 20 years, and of the maximum period from 20 to 30 years, subject to the removal of the possibility of prolonging the protection of a given variety where the owner of protection had not derived sufficient remuneration during the normal period.

7.37 The list of protected species had remained unchanged in 1981, but there were plans to add to it in 1982 Begonia elatior, Fodder Kale, Swede, White, Brown and Black Mustard, African Violet and Triticale, and also Blackberry and hybrids of Raspberry and Blackberry, and in the longer term a series of seed-reproduced bedding ornamentals, including Stocks, Pansy, Petunia, Sage and Tagetes, subject to the establishment of a testing structure. The protection system would then apply to a new category of plants.

7.38 The United Kingdom attached very great importance to cooperation in examination and hoped that it would be increased, in spite of the minor problems that might arise at times. In fact, as long as national authorities had to finance examination to a large extent from fees, there would be a strong inducement to cooperate, at least in Western Europe, as that would be the only means of keeping examination costs as low as possible. In that respect, the United Kingdom proposed to apply as from September 1981 the recommendations made by the Council the previous year, and would approach in due course other member States in order to make the necessary arrangements. Moreover, on the advice of the financial authorities, the fees would not be increased in 1982, and thereafter they would be increased only in line with retail price increases.

7.39 Since 1965, 3,840 applications had been received, of which 1,037 had been withdrawn, 112 subsequently rejected and 2,013 accepted. In 1981, 792 varieties were under test (414 varieties of agricultural crops, 64 vegetable varieties, 19 fruit varieties, 295 ornamental varieties, the latter including 211 Chrysanthemum varieties examined solely on behalf of other member States).

7.40 In the course of the discussion that began as a result of the exposé by the Delegation of the United Kingdom, a delegation questioned the desirability of extending protection to the import of end products such as cut flowers and whole ornamental plants. On the one hand it feared that such a step might result in the need for legislation to provide also for means whereby the beneficiaries of that extended protection could assert their rights. On the other hand it anticipated a certain number of problems, such as that of

dealing with the case in which cut flowers produced in one member State were imported into another member State that had extended protection, and also with the case of import from a distant country followed by auctioning or wholesale marketing. It considered that it was relatively difficult in certain cases to ascertain whether the cut flowers were of a protected variety, and that, at the very least, it was difficult to produce a document attesting that fact and also the fact that royalties had been paid. The question had been discussed between authorities and producers, and the latter were entirely opposed to any extension of protection as envisaged by the United Kingdom, as they were afraid of having to mark all cut flowers delivered to salerooms.

7.41 On the first point, the Delegation of the United Kingdom replied that, in its country, civil law afforded sufficient remedies to the owners of an intellectual property right--title of protection of a new plant variety, patent or other--and that those remedies were usable in a wide variety of situations. In any event, the problems that would confront breeders in the assertion of their new rights would be little different from those that confronted them at the present time with regard to the various types of infringement, for instance the unauthorized multiplication by the producer himself of chrysanthemums or roses with a view to the sale of whole plants or cut flowers. There was no doubt that it was theoretically difficult to exercise control over activities of that kind, but practice showed that breeders had devised an effective control system through their professional organizations, which system had proved its effectiveness in particular in a spectacular case some years previously. Moreover, the members of the profession were quite familiar with the activities of their competitors, so that in fact the difficulties would be substantially less than might be feared.

7.42 With regard to import from another member State, no problem should arise in the importing country--or in international trade--as the products concerned would have been put on the market with the consent of the owner of protection in that member State, who would also, in principle, be the owner of protection in the importing country, or at least would have economic ties with the owner of protection in the importing country.

7.43 With regard to import from distant countries in which plant variety protection did not exist, the authorities of the United Kingdom were perfectly aware of the practical problems that would arise, although there too they would not be more serious than those presented, for instance, by imports of propagating material as such. The breeders' organizations were equally aware of them, but they had made the point that, under present legislation, breeders had absolutely no possibility of securing any reward for their work, or even of attempting to secure such reward, and that they wished to obtain at least that possibility of making the attempt, regardless of the problems to be overcome. In any event, it was for the breeders and not for the authorities to devise means of asserting their rights. On the other hand it was for the authority to provide the breeder with protection of adequate scope, such as might assure him of adequate remuneration--it being understood that total protection probably could never be achieved, and that breeders were aware of it--and that was all that the United Kingdom authorities intended to do with the proposal concerned.

7.44 The real problem, as the last session of the Administrative and Legal Committee had made clear, was that, in the absence of such protection, the breeders of a member State, and the State itself, lost the benefit of their plant improvement work and, moreover, the State lost its production industry. Indeed the United Kingdom had experienced that in commercial flower growing: its production of greenhouse-grown cut roses, for instance, had suffered a very serious recession. There were various causes, including in particular purely economic reasons (rising labor and energy costs). Another major cause, however, was the fact that cut flower production in the United Kingdom was subject to royalties payable on the plants used for that production, whereas cut flowers from the Channel Islands, for instance, or from more distant regions, escaped those royalties, so that national producers were suffering a sort of unfair competition. Under those circumstances, therefore, the solution that presented the fewest drawbacks had to be chosen.

7.45 Sweden. Draft legislation for the ratification of the 1978 Revised Act of the Convention and adaptation of the Plant Variety Protection Law to that Act was to be presented to Parliament the following spring, and it was hoped that ratification would occur in the course of the following summer. The only legislative amendment in 1981 had been an increase in fees.



7.46 During the ten years that the protection system had been in operation, a total of 515 applications had been filed, and 174 of those withdrawn or--albeit a tiny minority--rejected. The withdrawals mainly concerned ornamental varieties and oil-seed varieties. 175 titles of protection were in force at the present time. The number of applications filed in the course of the past year had dropped slightly compared with previous years. It was felt that the reason for this situation was to be found on the one hand in the high fees and on the other hand in the fact that, for many varieties, especially ornamental ones, the Swedish market was somewhat limited.

7.47 Switzerland. Switzerland had deposited its instrument of ratification of the 1978 Revised Act of the Convention on June 17, 1981.

7.48 At present 23 taxa were protected, and there were plans to extend protection in the near future to 25 more, to a large extent thanks to cooperation in examination. Since October 1, 1980, in other words a period of 13 months, 44 applications had been filed, bringing the total of filing to 111, and 20 titles of protection had been granted, bringing the total of protected varieties to 40. Four applications had been withdrawn, and 67 were still being examined. In general, plant variety protection was growing in importance in Switzerland.

7.49 Japan. Having signed the 1978 Revised Act of the Convention on October 17, 1979, Japan was at present concerned with the arrangements to be made for ratification, which called for approval by the Congress. It was hoped that Japan would be able to become a member of UPOV in 1982.

7.50 As a result of the interest shown in recent years in the growing of certain lesser species and in their improvement, protection had been extended to 7 new genera, 13 new species and 1 new subspecies by virtue of the Cabinet Order of October 16, 1981, that amended the Implementing Regulations of the Seeds and Seedlings Law.

7.51 With regard to the use made by breeders of the plant variety protection system, detailed statistics relating to the years from 1979 to 1981 (the revised Seeds and Seedlings Law entered into force on December 28, 1978) are to be found in Annex IV to this document. A steady increase in the number of applications filed will be noted, which reflects the public's growing interest in the system. Out of the 194 titles granted, 19 were granted in 1979, 51 in 1980 and 124 in 1981.

7.52 Mexico. Ratification of the 1978 Revised Act of the Convention called for Senate approval. The Act had already been presented to the Senate for examination in the course of the annual session that was currently taking place, and it was hoped that a ruling would be given before the end of the year.

7.53 Austria. Austria had a Law on Seed Trade and a Law on the Homologation of Varieties, both of which were already quite old, and it was concerned with drawing up a Plant Variety Protection Law that was in conformity with the UPOV Convention. Austrian plant improvement circles--an area of activity that was entirely in the hands of the private and cooperative sectors--were wholeheartedly in favor of Austria's accession to UPOV. Unfortunately, the draft legislation had encountered some very difficult jurisdictional questions, as the Delegation of Austria had already mentioned at previous Council sessions. It was hoped however that those questions would be resolved in the near future, all the more so since the recent visit of the Vice Secretary-General of UPOV and of representatives of the Federal Republic of Germany on the occasion of the centenary of the Bundesanstalt für Pflanzenbau und Samenprüfung, and the talks that those persons had had with officials of the Agriculture Ministry, seemed to have given new impetus to the work on the draft legislation.

7.54 Egypt. Towards the end of the nineteenth century and at the beginning of the twentieth century, all varieties grown in Egypt were privately bred. In fact, the Cotton varieties that had established Egypt's reputation as a producer of long and extra-long Cotton fibres had been bred in the private sector, which sold seed directly to the producers. Private breeders had also worked successfully on Wheat, Maize and Rice. The Ministry of Agriculture had been set up in 1913 and had begun plant improvement work. The Ministry's

varieties had soon come to dominate the market, although the work done by private breeders in collaboration with the Independent Agriculture Society had resulted in a number of good Wheat and Berseem Clover varieties.

7.55 At the present time, the task of producing new varieties lay with the Agricultural Research Center of the Ministry of Agriculture, by way of three institutes: the Cotton Institute, the Agricultural Crops Institute and the Horticultural Institute. In addition there were two seed enterprises belonging to the Ministry of Agriculture that were responsible for the multiplication of vegetable seeds.

7.56 The present Law on Agriculture provided for a system of registration of varieties, with prior examination by the Ministry of Agriculture. Under the Law, which established the right of private breeders to produce new varieties, private breeders had the possibility of selling their varieties to the Ministry of Agriculture after those varieties had passed the tests on value for cultivation and use, or of marketing the seed themselves in direct dealings with producers.

7.57 The Delegate of Egypt concluded his exposé by expressing his thanks for having been allowed to take part in the session, and also his hope that the detailed report he would submit to the competent authorities would provide Egypt with an incentive to accede to UPOV.

7.58 Hungary. Agriculture was a very important branch of the Hungarian economy. Hungary attached great importance to the creation and improvement of varieties. The Patent Law was the instrument governing the protection of new varieties. There were moreover legal rules on plant improvement and on the homologation of new varieties for production.

7.59 UPOV was held in high esteem and its activities had always been followed with great interest by Hungary. That country had greatly appreciated the fact that, at the invitation of the Secretary-General of UPOV, Hungarian experts had been allowed to visit the headquarters of UPOV to examine in detail the legal rules of the UPOV Convention, and also the fact that a delegation of UPOV experts had visited Hungary and presented exposés on the legal and practical aspects of plant variety protection. The authorities were carefully examining the possibilities of acceding to the UPOV Convention; they had recently expressed the wish that such accession might take place in the near future.

7.60 Iran. As Iran was represented for the first time at a Council session, its Delegation regretted that it was unable to present an exposé.

7.61 Kenya. Kenya was represented in an observer capacity at a Council session for the second time, the first time having been in 1974.

7.62 The legal basis for all matters concerning seeds and varieties was the Seeds and Plant Varieties Act 1972. The Act provided among other things for the drawing up of an "Index of Names of Plant Varieties," the effect of which was that, when it had been established for a class of varieties, only the varieties whose names appeared in it could be marketed. It also provided for plant variety protection. To be protected, a variety had to meet four conditions, namely: it had to be sufficiently distinguishable by one or more important characteristics from any other variety whose existence was a matter of common knowledge, it had to be sufficiently homogeneous and sufficiently stable, and it had to have a higher agro-ecological value, with respect to one or more characteristics, than that of existing varieties. Kenya was well aware that the latter criterion set its legislation apart from the rules laid down by the UPOV Convention.

7.63 In spite of the above differences, Kenya had never ceased to hold the activities of UPOV in very high esteem. In particular it had been using the UPOV Test Guidelines for the last four years. That use had manifested itself in the publication of official variety descriptions of six species, which were used in particular in connection with seed certification at the national level. Details are to be found in Annex V to this document.

7.64 Kenya had also concerned itself with the question of plant variety protection as a whole. In April of the current year, the Government had set

up a Committee to investigate the practical implementation of the Seed and Plant Varieties Act. With regard to plant variety protection, it had drawn up a report and submitted general recommendations to the Government, after having made a survey among farmers, seed firms, scientists, certain organizations and a number of other interested parties in Kenya's seed trade, in order to work out a consensus of those who had real influence in the country. The majority opinion that emerged was that the legislation of Kenya, although different from the plant variety protection legislation in force in other countries, was sound and in keeping with the needs of the country, and that consequently there was no reason to amend it, at least for the moment. Also, although the plant variety protection system was attractive and offered many benefits to a developing country such as Kenya, it had been said that Kenya was not in a position, owing to a number of limitations, to bring the protection system into operation in the immediate future. In that connection the Committee had considered that Kenya should not rush into accession to UPOV, but should rather maintain very close contact with UPOV at the technical and any other level, in order to keep abreast of developments in plant variety protection matters as advocated by UPOV. The Committee had also expressed the opinion that, in order to keep Kenya's agricultural system open, it was essential that agreements with those who brought varieties into Kenya be honored, which included the payment of royalties on varieties that had penetrated the Kenyan market. Those however were questions that were to be settled by agreement between the importers and exporters of plant material. Finally, the Committee had asked the Government to encourage and develop private plant improvement activities, which were a very important prerequisite for any protection system not to be cramped.

7.65 In general, however, the consensus was that the protection of plant varieties was an extremely important means of increasing agricultural productivity, that it was essential to Kenya and that Kenya had to reserve it for the future.

7.66 Norway. The Committee that had been set up to draft a Plant Variety Protection Law was at present considering the possibility of introducing a temporary system of fees levied on seed sales, owing to the fact that the introduction of such a Law would take a great deal of time.

7.67 Poland. The legislative work on plant variety protection had suffered delays owing to the fact that the Legislative Council of the Council of Ministers, which was to examine the draft law and implementing regulations prepared by the Ministry of Agriculture and Food, had had to give priority to other urgent work. However, that Ministry had just received the observations of the members of the Legislative Council, and it was expected that the draft could still be considered during the current year, with the hope that Parliament could adopt the new Law in 1982, thereby enabling Poland to accede to the Convention.

7.68 Portugal. Portugal was represented at a Council session for the first time, and the Delegate of that country thanked the Council for its invitation.

7.69 There was no specific legislation in Portugal on plant variety protection, and the legislation on the national list of varieties and the service responsible for its administration had been set up only recently. The legislation was based on the Directives of the European Economic Community, and provided among other things for the rejection of any application for an entry in the list that was not accompanied by the breeder's authorization. That was a first step towards recognition and protection of breeders' rights. For the immediate future there were plans to consolidate the list system as a matter of priority, and at the same time to consider the practical possibilities of accession to UPOV, and also the ideal schedule for the necessary work prior to that accession. Portugal was very interested in the work of UPOV and followed it very closely.

8. The Council also noted the contents of documents C/XV/5, 6 and 7. With regard to document C/XV/5, it was informed that:

- (i) the Netherlands does not offer cooperation in respect of Narcissus L. (entry No. 1 on page 15);

- (ii) in the entry "Zea mays L." (No. 8 of page 22), the indication "(GB)" appearing in column 3 was to be put on the same line as "BE."

With regard to document C/XV/6,

- (i) the Delegation of France proposed that the Office of the Union examine the possibility of replacing the sign denoting that a taxon was protected in a State by the total number of varieties that were enjoying protection in that State;
- (ii) the Council invited the member States to inform the Office of the Union of any amendments to the entries concerning them by the end of the year and recommended that the contents of the document be published as a special document to be annexed to the UPOV Newsletter.

Report by the President on the Work of the Twenty-Third and Twenty-Fourth Sessions of the Consultative Committee

- 9. The Council noted the report on the work of the twenty-third session of the Consultative Committee as appearing in paragraph 2 of document C/XV/2 Add., and also the oral report by the President on the work of the twenty-fourth session. It agreed to the recommendation of the Consultative Committee that the Symposium to be held in 1982 in connection with the sixteenth ordinary session of the Council be devoted to "the technical and legal aspects of genetic engineering and of cell, meristem and tissue cultures" and that the Office of the Union make the necessary arrangements regarding possible speakers. It further noted the decision of the Consultative Committee that UPOV should not participate in the International Horticultural Exhibition to be held in Munich (Federal Republic of Germany) in 1983, and that it would discuss at its next session the principles that would govern UPOV's participation in exhibitions.

Admission of Observers to Ordinary Sessions of the Council and to Certain Other Meetings of UPOV

- 10. Following the recommendations of the Consultative Committee, the Council decided that:
  - (i) no change should be made for the time being in the lists of States and organizations regularly invited to ordinary sessions of the Council and to annual symposia (notwithstanding the authority entrusted to the Office of the Union to invite organizations to symposia where the subject may be of special interest to them);
  - (ii) no change should be made for the time being in the list of States invited to sessions of the Administrative and Legal Committee;
  - (iii) the Office of the Union should enquire with a number of inter-governmental organizations whether they would be interested in receiving an invitation to participate in sessions of the Administrative and Legal Committee;
  - (iv) the Administrative and Legal Committee should decide, on a case by case basis, whether international non-governmental organizations whose field of competence was related to UPOV should be invited to participate in its sessions or meetings;
  - (v) no change should be made for the time being in the policy followed in relation to the Technical Committee and the Technical Working Parties;
  - (vi) an informal meeting with representatives of international non-governmental organizations whose field of competence was related to UPOV should be organized in the Autumn of 1982 to discuss matters raised by those organizations;

- (vii) the Consultative Committee should examine at its next session the possibility of holding another informal meeting with representatives of interested international non-governmental organizations to discuss the major topic referred to in paragraph 11 of document C/XV/9.

Report by the Secretary-General on the Activities of the Union in 1980 and in the First Ten Months of 1981

11. The Council unanimously approved the report by the Secretary-General as contained in document C/XV/2 and in its supplement (document C/XV/2 Add.).

In presenting his report, the Secretary-General pointed out that it reflected a dramatic growth of the Union. Over and above gross figures, the Union had just taken one further step as far as membership in Western Europe is concerned and it had gained a foothold on two additional continents, namely America and Oceania, so that it was now established on all five continents. Moreover, the exposés that had been given left the impression that further progress could be expected, and in particular the inclusion within the Union of countries belonging to geopolitical groups that were not yet represented.

Report by the Secretary-General on His Management and the Financial Situation of the Union in 1980

12. The Council unanimously approved the report by the Secretary-General contained in document C/XV/3 and congratulated him on his cost-effective management and execution of the program that had been adopted by the Council.

Presentation of the Report Concerning the Auditing of the Accounts for 1980

13. The Council noted the report contained in document C/XV/3, Annex B, and approved the accounts of the Union for the year 1980.

Activities Resulting from the Entry into Force of the Revised Act of 1978 of the Convention

14. Discussions were based on document C/XV/11.
15. Concerning the relationships between the various groups of member States, the Council noted the following:
- (i) One member State (France) had already made the declaration referred to in Article 34(2) of the 1978 Revised Act of the Convention and others intended to do the same in the near future;
  - (ii) In practice, nationals and residents from States having become a member of the Union on the basis of the 1978 Revised Act had de facto access to protection in most--if not all--member States not yet bound by that Act, on the basis of their laws in force, and vice versa.
16. Concerning administrative questions, the Council approved the proposals made in document C/XV/11 and noted that the Consultative Committee would consider at its next session the drafts for the instruments referred to in paragraphs 7 to 9 of that document.
17. Following suggestions from the Delegation of the Netherlands, the Council unanimously decided to appoint Switzerland, pursuant to Article 25 of the 1978 Revised Act and with that State's agreement, as auditor of the accounts of the Union for a period of four years and, further, to postpone, pursuant to Article 27(2) of the 1961 Text of the Convention, the revision conference which without such decision was to be held according to that Article in 1983.

Progress of the Work of the Administrative and Legal Committee

18. The Council unanimously approved the report on the progress of the work of the Administrative and Legal Committee as contained in document C/XV/8 after having been informed that Denmark had for the time being still to reserve its position regarding the agreement that combinations of letters and figures should be allowed under certain conditions as variety denominations (paragraph 5(i) of that document). It further noted with approval the plans for the future work of that Committee as indicated in document C/XV/8.

Progress of the Work of the Technical Committee and of the Technical Working Parties

19. The Council unanimously approved the report on the progress of the work of the Technical Committee and of the Technical Working Parties. It further noted with approval the plans for the future work of those bodies as indicated in document C/XV/9.

Examination and Approval of the Program and Budget of the Union for 1982

20. The proposals contained in document C/XV/4, 4 Corr. and 4 Add. were, subject to the changes indicated herein below, and with one abstention, unanimously adopted by the Council:
- (a) the item "Salaries and Common Staff Costs": reduced from 838,000 to 807,000 Swiss francs;
  - (b) the item "Travel on Official Business": reduced from 40,000 to 37,000 Swiss francs;
  - (c) the item "Conferences": reduced from 51,000 to 43,000 Swiss francs;
  - (d) the item "Printing": reduced from 94,000 to 74,000 Swiss francs;
  - (e) the item "Other Expenses": increased from 11,000 to 26,000 Swiss francs.
21. Consequently, the total of the expenditure is reduced from 1,462,000 Swiss francs to 1,415,000 Swiss francs, and the total of the contributions is reduced from 1,437,000 Swiss francs to 1,390,000 Swiss francs. The value of the contribution unit is thus fixed at 39,155 Swiss francs. In comparison to 1981, the value of the contribution unit has thus been reduced by 9.2%.
22. The Council unanimously agreed with, one abstention, to reclassify the post of the Vice Secretary-General at the same level as the posts of the Deputy Directors General of WIPO, effective January 1, 1982. With regard to the question of the reclassification of the three "P" posts, the Office of the Union was asked to report to the next session of the Consultative Committee on the decisions of the Classification Committee. The power to decide on those upgradings was delegated to the Consultative Committee.

Calendar of Meetings in 1982

23. The Council fixed the calendar of meetings for 1982 as appearing in document C/XV/10 Rev. 2.

Election of a New Vice-President of the Council

24. The Council unanimously elected Mr. J. Rigot (Belgium) as Vice-President of the Council for a term of three years, expiring at the end of the eighteenth ordinary session of the Council, in 1984.

Election of the New Chairmen of the Technical Working Parties

25. The Council unanimously elected:

- (i) Dr. G. Fuchs (Federal Republic of Germany) as Chairman of the Technical Working Party for Agricultural Crops;
- (ii) Dr. G.S. Bredell (South Africa) as Chairman of the Technical Working Party for Fruit Crops;
- (iii) Mrs. U. Löscher (Federal Republic of Germany) as Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;
- (iv) Mr. F. Schneider (Netherlands) as Chairman of the Technical Working Party for Vegetables.

[Annexes follow]

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTEI. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATENBELGIUM/BELGIQUE/BELGIEN

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VI. LECTURERS AT THE SYMPOSIUM ON NOVEMBER 10, 1981/PERSONNES AYANT FAIT DES  
EXPOSES AU SYMPOSIUM, LE 10 NOVEMBRE 1981/VORTRAGENDE IN DEM SYMPOSION VOM  
10. NOVEMBER 1981

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Dr. R.L. PALIWAL, Associate Director (Maize Program), CIMMYT,  
Apartado Postal 6-641, Londres 40, Mexico 6, D.F. \*\*

Dr. C. MASTENBROEK, President of ASSINSEL, Nederlandse Kwekersbond,  
8, Terminator, 8251 AD Dronten, Netherlands \*

Dr. G.S. KHUSH, Head, Plant Breeding Department, IRRI, P.O. Box 933, Manila,  
Philippines \*

VII. OFFICER/BUREAU/VORSITZ

Dr. W. GFELLER, President

VIII. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

Dr. A. BOGSCH, Secretary-General  
Dr. H. MAST, Vice Secretary-General  
Dr. M.-H. THIELE-WITTIG, Senior Technical Officer  
Mr. A. WHEELER, Legal Officer  
Mr. A. HEITZ, Administrative and Technical Officer

IX. OFFICE OF WIPO/BUREAU DE L'OMPI/BÜRO DER WIPO

Dr. T.A.J. KEEFER, Acting Director, Administrative Division  
Mr. M. LAGESSE, Controller

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

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\* on November 10, 1981, only/  
le 10 novembre 1981 seulement/  
nur am 10. November 1981

\*\* on November 10, and morning of November 11, 1981, only/  
le 10 novembre, et la matinée du 11 novembre 1981 seulement/  
nur am 10. November und Vormittag des 11. November 1981

\*\*\* on November 11 and 12, 1981, only/  
les 11 et 12 novembre 1981 seulement/  
nur am 11. und 12. November 1981

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## ANNEX II

USE MADE BY BREEDERS OF THE PLANT VARIETY  
PROTECTION SYSTEM IN BELGIUM\*

	1977	1978	1979	1980	1981**	Total
<u>Agricultural Crops</u>						
Oat	-	10	2	-	2	14
	-	-	11	-	1	12
Turnip	-	-	-	1	-	1
	-	-	-	-	-	-
Meadow Fescue	-	-	-	2	1	3
	-	-	-	2	-	2
Red Fescue	-	-	-	7	-	7
	-	-	-	7	-	7
Barley	-	17	1	2	2	22
	-	-	15	2	-	17
Flax, Linseed	-	-	2	6	2	10
	-	-	-	7	-	7
Hybrid Ryegrass	1	1	-	-	-	2
	-	-	1	1	-	2
Italian Ryegrass	-	4	-	-	-	4
	-	-	4	-	-	4
Perennial Ryegrass	1	6	3	3	-	13
	-	-	7	-	1	8
Smooth Stalked Meadow-grass	-	-	-	4	-	4
	-	-	-	4	-	4
Rye	-	1	1	-	-	2
	-	-	2	-	-	2
Potato	-	-	-	33	-	33
	-	-	-	29	3	32
White Clover	-	-	-	1	-	1
	-	-	-	1	-	1
Bread Wheat	1	20	4	3	1	29
	-	1	20	4	2	27
Spelt	-	1	-	1	-	2
	-	-	1	-	1	2
<u>Vegetables</u>						
Lettuce	-	-	2	1	1	4
	-	-	-	2	-	2
French Bean	-	13	1	-	2	16
	-	5	3	4	-	12
Pea	-	17	2	-	-	19
	-	6	7	2	2	17

\* First line: applications filed; second line: titles of protection issued  
 \*\* Until October 31, 1981

	1977	1978	1979	1980	1981**	Total
Black Salsify	-	-	-	2	-	2
	-	-	-	1	-	1
Cauliflower	-	-	-	-	1	1
	-	-	-	-	-	-
<u>Fruit Crops</u>						
Strawberry	-	8	2	-	2	12
	-	8	-	2	-	10
Apple	-	1	1	1	1	4
	-	1	-	1	-	2
Plum	-	-	-	1	-	1
	-	-	-	1	-	1
<u>Ornamental Species</u>						
Carnation	-	-	4	-	2	6
	-	-	-	4	-	4
Azalea	-	4	1	3	2	10
	-	-	2	3	4	9
Rose	-	40	8	17	19	84
	-	-	19	9	22	50
<u>Forest Trees</u>						
Poplar	-	13	-	-	-	13
	-	-	-	13	-	13
TOTAL	3	156	34	88	38	319
	-	21	92	99	36	248

[Annex III follows]



USE MADE BY BREEDERS OF THE PLANT VARIETY  
PROTECTION SYSTEM IN  
NEW ZEALAND

As at September 30, 1981

	Applications received	Titles issued	Titles in force
<u>Agricultural Crops</u>			
Barley	17	16	11
Brassica	3	-	-
Flax, Linseed	1	1	1
Lucerne	3	2	2
Oat	2	2	2
Pea	25	17	17
Phacelia	1	-	-
Potato	5	2	2
Wheat	5	3	3
Total	62	43	38
<u>Fodder Plants</u>			
Ryegrass	1	1	1
Total	1	1	1
<u>Ornamental Plants</u>			
Boronia megastigma	1	-	-
Cymbidium	2	-	-
Dodonaea viscosa	1	-	-
Rose	120	82	66
Total	124	82	66
<u>Fruit Crops</u>			
Apple	5	-	-
Feijoa sellowiana	1	-	-
Peach	1	-	-
Solanum muricatum	6	-	-
Total	13	-	-
TOTAL	200	126	105

USE MADE BY BREEDERS OF THE PLANT VARIETY  
PROTECTION SYSTEM IN  
JAPAN

Table 1 Applications Filed in 1979-1981, Broken down by Kind of Plant

KIND	1979	1980	1981 (10 months)	Total
Food Crops	4	14	18	36
Industrial Crops	2	1	3	6
Forage Crops	1	4	3	8
Vegetables	20	21	14	55
Fruit Trees	16	24	34	74
Flowering Plants	24	47	63	134
Ornamental Trees	7	20	59	86
Edible Mushrooms	11	8	1	20
TOTAL	85	139	195	419

Table 2 Titles of protection issued in 1979-1981, Broken down by Kind of Plant and Kind of Breeder\*

KIND	A	B	C	D	E	Total
Food Crops	0	0	0	2	6	8
Industrial Crops	1	0	0	2	0	3
Forage Crops	0	1	0	0	3	4
Vegetables	12	1	29	3	2	47
Fruit Trees	37	9	1	2	6	55
Flowering Plants	16	0	15	0	3	34
Ornamental Trees	22	0	11	0	0	33
Edible Mushrooms	0	0	10	0	0	10
TOTAL	88	11	66	9	20	194

\* Breeder or successor in title

A: Individual; B: Agricultural Cooperative; C: Seed Company; D: Other Private Company; E: Government Institute

[Annex V follows]

## OFFICIAL VARIETY DESCRIPTIONS ESTABLISHED BY KENYA

Crop	Number of descriptions		
	Commercial Varieties	New Varieties	Total
Maize	11	8	19
Potato	9	8	17
Sunflower	6	15	21
Wheat	28	12	40
Barley	3	17	20
Bean	3	11	14
Total	60	71	131

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