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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Sixteenth Ordinary Session
Geneva, October 13 to 15, 1982**

DETAILED REPORT

adopted by the CouncilOpening of the Session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its sixteenth ordinary session in Geneva from October 13 to 15, 1982.
2. The session was presided over by the President of the Council, Dr. W. Gfeller (Switzerland).

After having welcomed the participants, the President observed that Japan had deposited its instrument of acceptance of the Revised Act of October 23, 1978, of the UPOV Convention, which had entered into force in respect of Japan on September 3, 1982. Japan was therefore participating for the first time in a Council session in a capacity of member.

3. The list of participants is attached as Annex I to this document.
4. The indented paragraphs are taken from the Report on the Decisions of the Council, which the latter adopted at its meeting on October 15, 1982 (document C/XVI/17).

Adoption of the Agenda

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

Lectures and Discussions on "Genetic Engineering and Plant Breeding"

6. The Council devoted its meeting of October 13 to lectures and discussions on "Genetic Engineering and Plant Breeding." The proceedings of this symposium will form the subject of a special publication and will also be published in "Plant Variety Protection."

Present situation, problems arising and progress achieved in the legislative, administrative and technical fields

a. Statements by the representatives

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

The following main information was supplied under this agenda item.

7.01 South Africa. - Negotiations with Israel and the Netherlands for the establishment of agreements on cooperation in examination of varieties had been finalized. However, it had not been possible to sign the agreements due to a shortcoming in the South African legislation, which was to be amended by Parliament in the first half of 1983. In addition, the examination results for an apple variety had recently been acquired from the French authorities.

7.02 No addition had been made to the list of protected genera and species but there was growing interest in development of varieties of various indigenous ornamental species, which were promising and had great potential with the public at large, and breeders wished to obtain protection for those varieties in as many countries as possible.

7.03 During the year which closed on September 30, 1982, 34 applications for protection had been received (12 varieties of agricultural plants, 2 varieties of vegetable plants, 3 varieties of fruit plants and 17 varieties of ornamental plants) and 26 titles had been granted (7 varieties of agricultural plants, 3 varieties of vegetable plants, 1 variety of fruit plants and 15 varieties of ornamental plants). In numbers of titles already granted, the first place was taken by roses, and in the case of agricultural plants, by soya beans.

7.04 Federal Republic of Germany. - The drafts of the law authorizing ratification of the 1978 Revised Act of the Convention and the law amending the Plant Variety Protection Law had reached an advanced stage and were soon to be submitted to Parliament. Pending entry into force of the new legislative provisions, the Federal Republic of Germany was preparing a declaration to the effect that the States that had become members of UPOV on the basis of the Revised Act would enjoy the same treatment as the other member States.

7.05 Protection had been extended, last December, to *Abies Mill.*, *Euphorbia lathyris L.*, *Ilex L.* and *Pinus L.* Further extension--to *Achimenes Pers.*, *Aechmea Ruiz et Pav.*, *Chrysanthemum frutescens L.*, *Prunus L.*, *Rhipsalidopsis Britt. et Rose*, *Schlumbergera-Hybridi*, *Trifolium subterraneum L.*, *Ulmus L.* and *Vaccinium vitis-idaea L.*--was being prepared. Furthermore, the bilateral agreements with Belgium, France, the United Kingdom and Switzerland had been extended to further species.

7.06 During the year ending on June 30, 1982, 603 applications for protection had been received.

7.07 Belgium. - A draft law approving the 1978 Revised Act of the Convention and amending the Law of May 20, 1975, on the protection of new plant varieties had been submitted to the Ministry of Foreign Affairs and should be before Parliament during 1983.

7.08 The list of genera and species protected in Belgium contained 75 entries (unchanged since the last ordinary session of Council), a total that had been reached following a number of extensions to the initial list, particularly in response to requests by the breeders. However, the breeders' interest in protection did not seem to have been reflected in the number of requests for certificates since such had been received for only 29 of those entries. Detailed statistics on this are given at Annex III to this document.

7.09 It was intended to extend protection in the near future to various vegetables, *Agrostis L.*, *Begonia X tuberhybrida*, *B. elatior*, *Cymbidium*, *Gerbera*, *Gladiolus*, *Iris*, *Lilium*, *Salix*, *X Triticale* and *Tulipa*. Examination of *Begonia X tuberhybrida* was to be carried out in Belgium. For all the other species, it was intended to continue cooperating with the other member States or to use the results of examinations carried out by the Committee for the Elaboration of the National Catalogue of Varieties of Species of Agricultural Plants.

7.10 Denmark. - Since the Board for Plant Novelties had been taken up with other tasks involved in the national lists, revision of the plant breeders' rights legislation could not be put in hand as had been envisaged for the current year. An ordinance on "the possibility for foreign breeders to obtain protection of plant breeders' rights, etc." was issued on March 26, 1982, and took effect retroactively on November 8, 1981, which was the date of entry into force in respect of Denmark of the 1978 Revised Act of the Convention. That ordinance enabled Denmark to give full and complete effect to the Act on the territory on which it was applicable. It also set out that, where priority was claimed on the basis of an earlier application filed in another member State of the Union, there were no "retroactive" effects, where applicable, until the date of extension of protection to the species or genus concerned.

7.11 The situation as regards cooperation in examination had remained unchanged. Nevertheless, negotiations had been held with the authorities of the Federal Republic of Germany, the Netherlands, Switzerland and the United Kingdom and it was hoped that they would soon be finalized. In most cases, it was a matter of incorporating in bilateral agreements cooperation which was already taking place on a non-contractual basis. In this context, the Delegation of Denmark emphasized the wish of the breeders that when protection was extended to a new species in a member State, the other member States should rapidly do likewise, particularly where the species was covered by an offer of cooperation, since protection of a variety in one member State only was generally of but limited interest.

7.12 The Gazette was now published with a new presentation and also contained information on matters of national lists.

7.13 In 1981, 93 applications for protection had been filed (43 varieties of agricultural plants, 1 variety of vegetable plant, 2 varieties of fruit plants and 47 varieties of ornamental plants), that is to say a number smaller than the average for the six preceding years, which was 126. During the same period, 130 titles of protection had been granted (42 varieties of agricultural plants, 5 varieties of vegetable plants, 1 variety of fruit plant and 82 varieties of ornamental plants). From January 1 to October 11, 1982, 96 applications for protection had been filed and 46 titles of protection had been granted.

7.14 Spain. - Revision of the law and regulations on the protection of new plant varieties was in hand and it was hoped that the drafts would be submitted to the Government, and subsequently to the Parliament, during the forthcoming year. The main aim of revision was to adapt the texts to the 1978 Revised Act of the Convention. It was also proposed to increase the fees.

7.15 Since the last ordinary session of Council, protection had been extended to broad bean, French bean, grapefruit, lemon, mandarine, orange, pea, peach, sunflower and common vetch. Examination of varieties of these species was carried out at national level, but the possible conclusion of bilateral cooperation agreements was being studied.

7.16 Last year, 143 requests for protection were filed (70 varieties of agricultural plants, 18 varieties of vegetable plants, 2 varieties of fruit plants and 53 varieties of ornamental plants) and 111 titles of protection were granted (33 varieties of agricultural plants--including 13 of wheat, 8 of barley, 7 of potatoe and 5 of rice--and 78 varieties of ornamental plants--including 49 of carnation and 25 of rose).

7.17 United States of America. - At the present time, the major event was the finalization of variety denomination rules. They were to be published in the very near future to enable those interested to make comments, following which they would be given final adoption. The rules basically provided that submission of a denomination constituted a formal requirement for granting a patent, that the acceptability of a proposed denomination for registration would be judged--in accordance with the principles set out in the International Code of Nomenclature for Cultivated Plants and on the principle that a genus constituted a class for the purpose of variety denomination--by the plant patent examiner together with the trademark experts from the Patent and Trademark Office, and that the proposed denominations would be published in the Trademarks Gazette in order to inform trademark owners and enable them to submit comments.

7.18 As regards the Plant Variety Protection Act--applicable to varieties reproduced by seed--it was intended to make the necessary amendments to the Regulations so that adherence of the United States of America to UPOV could very soon cover the whole range of varieties. As part of these amendments, it was also intended to afford to nationals of UPOV member States the same treatment as that afforded to nationals of the United States of America.

7.19 France. - A draft law submitted by the Government, authorizing ratification of the 1978 Revised Act of the Convention, had been approved by the Senate on June 1, 1982. It had been examined by the National Assembly in committee and was likely to be voted on before the end of the year. France should therefore be able to deposit its instrument of ratification at the end of 1982 or the beginning of 1983.

7.20 The implementing instruments to Law No. 70-489 of June 11, 1970, on the Protection of New Plant Varieties required only a few minor amendments to bring the French legislation into line with the Revised Act. A draft decree amending Decree No. 71-764 of September 9, 1971, concerning New Plant Variety Certificates and the Issue and Renewal Thereof that was to introduce the six-year period laid down in Article 6(1)(b) of the Revised Act, had been submitted and was soon to be signed by the ministers concerned. Finally, a new order concerning variety denominations had been issued to satisfy the new rules and new practices referred to in Article 13 of the Revised Act. It had been published in the Official Journal on September 23, 1982, and was to enter into force on the date on which the Revised Act entered into force in respect of France.

7.21 By decree of March 12, 1982, protection had been extended to alstroemeria, red clover, (cultivated) lucerne, pelargonium and ryegrass. A further extension--to cypress, holly, kalanchoë, streptocarpus and tulip--was planned and could be introduced by the end of the year.

7.22 A number of bilateral agreements on cooperation in examination had been extended to other species or were in the process of being extended. Moreover, most of them had been adapted to the Recommendation on Fees Relating to Cooperation in Examination and therefore stipulated a tariff of 350 Swiss francs for the purchase or sale of examination results. The Recommendation had been taken into account in the national scale of fees laid down by ministerial order of August 24, 1981. The fees required for examination carried out in France had been increased by 10% by an order of February 24, 1982.

7.23 As regards use of the system of new plant variety protection by breeders, the trend is shown in the table below

	1979	1980	1981	1982 (9 months)
Applications filed	381	454	426	349
Applications withdrawn	94	89	121	79
Applications rejected	3	18	8	3
Certificates granted	126	206	454	225
Certificates in force at the end of the period	842	963	1291	1461

7.24 The Delegation of France followed attentively the work on "minimum distances between varieties." It considered that the fact of being able to distinguish one variety from the existing varieties did not necessarily lead to recognizing its status as a genuine new variety and assessment of what constituted a sufficiently large difference appeared as fundamental as the definition of what constituted an important characteristic. In that context, it observed that in forums other than UPOV the assessment, on the basis of the observed characteristics, of the "originality" of the variety for which protection has been requested had been spoken of. A species-by-species approach therefore seemed indispensable.

7.25 Ireland. - The system of protection for new plant varieties had been operational since January 22, 1981, and applied to six species. It was to be extended to other species in accordance with the requirements of the Convention and of needs.

7.26 To date, 147 applications had been filed of which 4 had been rejected and 16 had already led to the granting of a title of protection. The 143 validly filed applications were broken down as follows: potato - 78; perennial ryegrass - 23; barley - 21; wheat - 15; oats - 6. No application had as yet been made for white clover. Most of the applications concerned varieties already protected in other member States, particularly in the Netherlands and the United Kingdom. In those cases, the results of examinations made by those countries had been purchased, thus reducing the workload and the time required for procedures. Once the flow of applications had slowed down, following exhaustion of the possibilities offered by the transitional limitation of the novelty requirement, it might well be possible to establish variety examination at national level.

7.27 The arrangements were working well and, surprisingly, there had not as yet been criticism or objections. However, it was too early to rejoice since it was not at all unlikely that one or other of the seed merchants might complain once a greater number of protected varieties had gained a place on the market. Nevertheless, that was a small price to pay for the wide range of high performance varieties that were beginning to become available in Ireland. This was already putting a strain on the variety testing facilities, but this again was more a reason to be happy than to complain. For the moment, protection had not yet affected the national plant breeding programs but it was to be hoped that the private sector would become more involved in time. On balance, the story of new plant variety protection in Ireland was uneventful and no spectacular results had been obtained one way or the other, but satisfactory progress had been made.

7.28 Israel. - Although it had been agreed to reduce to a minimum the amendments to be made to the domestic legislation, the work involved in accession to the 1978 Revised Act of the Convention had gone forward slowly, but it was still hoped that it could be completed next year.

7.29 In 1981 and 1982, protection had been extended to four new taxa and the law was now applicable to 67 genera comprising 77 species. This year, 12 titles of protection had been granted (1 variety of vegetable plants, 1 variety of fruit plants and 10 varieties of ornamental plants, 5 of which were varieties bred abroad). Three titles of protection were surrendered and the number currently in force amounted to 150.

7.30 In addition to the agreement concluded with the Netherlands, which entered into force on September 25, 1981, an agreement was also concluded with the United Kingdom. However, it had proved essential that verification tests be carried out in Israel for all the varieties of foreign origin.

7.31 Italy. - The law authorizing ratification of the 1978 Revised Act of the Convention was to be submitted in the near future for Parliament's approval.

7.32 Ministerial decree of June 8, 1982 (Official Gazette No. 161 of June 14, 1982) had extended protection to lettuce and strawberry.

7.33 In 1982, 102 patent applications were filed for plant varieties (against 120 in 1981). The Consultative Commission set up to enable the Ministry of Agriculture and Forestry to give its opinion on the granting of patents for new varieties held its third meeting in June 1982 at which it pronounced in favor of granting 83 patents, broken down as follows: common wheat - 6, durum wheat - 4, rice - 12, barley - 2, lucerne - 1, poplar - 6, carnation - 58, rose - 4. Together with the 26 patents already granted (wheat - 11, barley - 7, rice - 7, poplar - 1), the total would rise to 109.

7.34 Japan. - In April of this year, Parliament approved the 1978 Revised Act of the Convention and, in July, the draft law amending the Seeds and Seedlings Law in respect of availability to foreigners of protection and priority rights. Following that preparatory work, the Government of Japan deposited its instrument of acceptance on August 3 and became a member of the Union on September 3.

7.35 Since the entry into force of the law--on December 28, 1978--644 applications for protection had been filed, of which 248 were in 1981 (80% more than in the preceding year) and 175 during the first nine months of the current year. 286 titles had been granted, of which 124 in 1981 and 92 during the first nine months of the current year. 74 applications and 5 granted titles concerned foreign varieties.

7.36 From the administrative and technical point of view, the service had a staff of 10 examiners. Examination of each application comprised a visit to the breeder's facilities in order, mainly, to confirm that he was the breeder and the way in which the variety had been bred and comprised also, where necessary, official growing tests. At present, the tests were carried out for all varieties but in future the possibility would be examined of restricting them to the doubtful cases only, for example where necessary to establish distinctness. Test guidelines had been adopted for 116 species and 16 others were to be adopted by the end of next March. Computer programs for retrieval of information on varieties were being developed and were to be fully operational in the spring of 1985. The Japan Mycological Culture Collection, under the authority of the Seeds and Seedlings Division of the Ministry of Agriculture, Forestry and Fisheries, was currently undergoing testing. Its main function was to be to keep sample spawn of edible fungi varieties for which protection was requested and of those which were to constitute the reference collection.

7.37 Finally, in view of the fact that the RHS Color Chart was exhausted and that such a color chart was necessary to examine varieties, the Government of Japan had funded a project to draw up a new type of chart. The project was put in hand in 1980 at the Japan Color Research Institute and was to be continued until next April.

7.38 New Zealand. - The Law relating to plant variety rights dating from 1973, which had been amended for the last time in 1979 in order to adapt it to the 1978 Revised Act of the Convention, was under review as a result of the trade having asked for a number of amendments and three years of application practice having revealed a number of shortcomings and ambiguities. The Bill amending and consolidating the Law was soon to be submitted to Parliament.

7.39 As regards use made of the system of protection for new varieties of plants, extended to the entire plant kingdom--except however fungi, algae and bacteria--by breeders during the one-year period ending on September 30, 1982, statistics are given at Annex IV to this report.

7.40 Until recently, there had been virtually no serious opposition to the concept of plant variety protection. On the contrary, it had enjoyed support from the two major political parties, State and private breeders and their agents, commercial growers and amateur garden societies. However, a number of somewhat critical articles had been published in the press since July and the breeders, farmers organizations and the Plant Varieties Office were taking the necessary steps to refute those criticisms in the most appropriate way. In that respect, it was interesting to note that between the beginning of 1977 and the end of 1981 the price of seed had risen by approximately 72% in the case of cereals and 85% in the case of legumes. As a comparison, diesel fuel had increased by 153%, premium grade petrol by 100%, fertilizers by 125%, herbicide by 60% and labor by 60%. The price for a ton of second generation wheat seed was as follows in July 1982 for the main varieties (in New Zealand dollars): Rongotea and Oroua (protected): 459, Kopara (non-protected), 424, Arawa (non-protected): 415, Hilgendorf (non-protected): 475. It was therefore the seed of a non-protected variety that was the most expensive.

7.41 Netherlands. - The draft law on the approval of the 1978 Revised Act of the Convention had been submitted to Parliament during last summer. As long as the Netherlands were not formally bound by that Act, all the necessary measures would be taken to meet the spirit and intentions of the Act. In that connection, particular note was to be taken of the amendment to the ministerial decision on reciprocity that had placed nationals of the "new" member States on the same footing as nationals of the "old" member States.

7.42 Extension of protection to Chrysanthemum (only the species morifolium was currently protected), Cotoneaster, Dianthus (only the species caryophyllus was currently protected), Euonymus, Eryngium, Mahonia, Potentilla and Zygocactus was being prepared as was the extension to X Triticale of the protection arrangements under Article 85 of the Seeds and Planting Materials Act.

7.43 Examination fees had been increased as of October 1, 1982, from 900 to 1,000 guilders for the first year of examination, from 400 to 430 for the second and from 250 to 265 for the third. The fee payable where an examination report was purchased had been increased from 400 to 500 guilders. In addition, a fundamental review of the scale of fees was being studied. It would probably mean that the fees would come closer to the real cost and may also lead to a differentiation between groups of plants as was the case in many other member States.

7.44 For legal reasons deriving from the legislation of South Africa, the bilateral agreement on cooperation in examination could not be concluded with that country. On the other hand, bilateral agreements concluded with France and Switzerland had been extended, in the first case to tulip and in the second to carnation, gerbera and lettuce, whereby all those species were examined in the Netherlands. Finally, for those genera to which protection was to be extended, the Netherlands would have to resort for some of them to cooperation with other member States.

7.45 In view of developments in genetic engineering, a working group comprising experts in the patent system and experts in the field of plant breeders rights had been given the task of studying the respective scope of the two systems. It was, for example, to examine the following questions:

(i) Was there a clean cut between inventions protectable by patent and those protectable by plant breeders' rights?

(ii) Could such a clean cut be blurred by genetic engineering?

(iii) If there was a clean cut, was it rightly placed or should it be shifted to one or the other side?

(iv) If there were areas which were covered by both systems or by neither of them, where should the clean cut be placed?

7.46 During the preceding year, 661 applications for protection had been filed, including 368 for ornamental varieties.

7.47 United Kingdom. - The authorities had every hope that the legislative instruments needed to ratify the 1978 Revised Act of the Convention would be presented to Parliament and adopted during the current session despite its already heavy workload.

7.48 During 1982, protection had been extended to elatior begonia, fodder kale, white, brown and black mustard, swede, triticale, African violet and to raspberry X blackberry hybrids. Further extension to blackberry, nerine, poinsettia, and seed reproduced annual and biennial ornamental plants was being considered and could take place in 1983. In the case of triticale, elatior begonia and African violet, testing would be carried out by the service of the Federal Republic of Germany, for whose assistance and cooperation the United Kingdom authorities were most grateful.

7.49 During the preceding year, the United Kingdom had concluded or extended bilateral agreements with a number of member States. It welcomed that extension of cooperation, both in its own respect and in general, since such cooperation--added to the implementation of the UPOV Recommendation on Fees in Relation to Cooperation in Examination--enabled the cost of protection to be kept at the lowest practicable level and to accelerate procedure.

7.50 Since the entry into force of the protection arrangements in 1965, 4,179 applications had been filed, 1,196 had been withdrawn, 126 rejected and 2,147 had led to the granting of a title of protection. The number of varieties under examination was 710 (404 varieties of agricultural plants, 57 varieties of vegetable plants, 18 varieties of fruit plants and 231 varieties of ornamental plants, including 148 varieties of chrysanthemum examined on behalf of other member States).

7.51 Finally, a statement was read out that had been made by the representative of the Guernsey Growers Association on September 27, 1982, at the 34th Congress of the International Association of Horticultural Producers (AIPH):

"The horticultural industry of Guernsey has accepted the principle of the application to Guernsey of plant breeders' rights subject to the condition that this is achieved by the introduction of local legislation and not by the extension of the United Kingdom Act to the Island.

"The Government Committee responsible, in principle, supported this approach to the problem. It has been discussed with the Law Officers of the Crown and a report to the States of Guernsey recommending the enactment of appropriate legislation was drafted and submitted to the Law Officers of the Crown for comment in 1981. A copy of this draft was sent to the Plant Variety Rights Office [of the United Kingdom] and preliminary comments were received in April, 1981. Final comments on certain aspects of the draft, which had been referred to the Legal Advisor of the Plant Variety Rights Office are still awaited."

7.52 Sweden. - A draft law to approve the 1978 Revised Act of the Convention and to amend the plant variety protection law had been submitted to the current year's spring session of Parliament. It had been adjourned to the ongoing autumn session. It was hoped that Sweden would be in a position to deposit its instrument of ratification at the beginning of 1983.

7.53 Since the last ordinary session of Council, the only change that had occurred in the national legislation was an increase in the scale of fees.

7.54 Over the eleven years that the plant variety protection system had been in operation, 566 applications had been filed (including 50 last year). Currently, 180 titles of protection were in force, that is to say five more than last year.

7.55 Switzerland. - As a result of cooperation in examination with the Federal Republic of Germany, France, the Netherlands and the United Kingdom, the list of protected species would be supplemented, probably in 1983, by the following genera and species: *Allium cepa* (long day varieties), *Begonia elatior*, *Chrysanthemum*, *Daucus carota*, *Dianthus* (vegetatively propagated varieties), *Euphorbia pulcherrima*, *Gerbera* (vegetatively propagated varieties), *Helianthus annuus* (except ornamentals), *Lactuca sativa*, *Phaseolus vulgaris*, *Pisum sativum sensu lato*, *Prunus* (cherry and plum, except ornamentals, but including rootstocks), *Rhododendron*, *Ribes* (currants and gooseberry, except ornamentals), *Rubus* (raspberry and blackberry, except ornamentals), *Secale cereale*, *Streptocarpus*, *Trifolium repens*, *Valerianella locusta* and *eriocarpa*. Once the extension had been carried out, protection would be afforded to 44 genera and species.

7.56 Between November 1981 and October 1982, the Varieties Protection Office had received 29 applications, of which one had been rejected. 24 varieties had also been protected during that period. Altogether, 130 varieties had been registered and 69 titles were currently in force.

7.57 Austria. - As reported already at preceding ordinary sessions of Council, there existed seed and variety provisions in Austria that were not in conformity with the UPOV Convention. The draft of a new law on the protection of new plant varieties had been drawn up some years ago already but had met with difficulties of demarcation in view of the respective competence of the Patent Office and the Ministry of Agriculture. However, during the preceding year, those problems had been resolved for the most part and it could therefore now be hoped that the expert procedure, including submission to the UPOV Council for its opinion, could begin next year.

7.58 Brazil. - The question of adopting plant variety protection arrangements was under discussion. In fact, agriculture had progressed enormously in Brazil during the last fifteen years and had led to the adoption of new varieties that were better adapted, particularly to the new areas won for agriculture, and to an increase in the demand for quality seed. That tendency had also been reflected in a significant increase in agricultural investments, particularly in the seed industry.

7.59 For the moment, private investment in the plant breeding did not seem inhibited by the absence of a plant variety protection system and it was therefore not possible to say whether and to what extent such a system could encourage private research and investment. On the other hand, fears had been expressed that such a system could restrict the availability of seed for agriculture and, even if its implications were positive in the long run due to the stimulation of private research and investment, it could slow down the progress of agriculture. In that context, the results achieved and experience gained by the member States of UPOV--particularly the reports made by their

representatives to the present session--would be taken into account by Brazil when deciding whether to accede to UPOV. In that respect, sight should not be lost of the fact that legal aspects were involved and, unfortunately, the establishment and implementation of new legal arrangements took a lot of time. However that may be, the 1978 Revised Act of the Convention, which had made the original text much more flexible, was being studied in Brazil.

7.60 Canada. - There had been no progress in the introduction of plant breeders' rights legislation. The Bill tabled in Parliament in 1980 had not as yet been debated as a result of greater priority having been afforded to more urgent matters and would therefore die at the end of the current session, that is to say at the end of the month. However, Parliament was to start a new session immediately afterwards, with a new schedule, and it was intended to reintroduce the Bill.

7.61 The Bill had strong support from those sectors of agriculture and horticulture most directly affected. Furthermore, a number of individuals and organizations have endeavored to throw light on the validity of theories that have been put forward in Canada to the effect that the introduction of plant breeders' rights would lead to a disaster. In that respect, the Delegation of Canada wished to express its appreciation to the member States and to the Office of the Union for having supplied factual information demonstrating that reality was far removed from those theories.

7.62 Ivory Coast. - At the present time, practically all plant breeding work was carried out within State research institutes and the Ministry of Agriculture was responsible for disseminating the varieties bred by those institutes, which checked and certified the seed thus produced. In the case of rice, certification was in accordance with international standards. There was not as yet a system of plant breeders' rights since, as things stood, the State would be the sole judge and the sole party. However, it was expected that the private sector would develop and the legislation could be amended as a result, basing on what had been done in the UPOV member States.

7.63 Egypt. - The situation--and consequently the prospects for introducing a system of plant breeders' rights--was the same in Egypt as in other developing countries, particularly those of Africa: plant breeding was almost entirely carried out by Government institutes (the private sector representing in Egypt but 1% approximately) and production of seed was entrusted to undertakings belonging to the Ministry of Agriculture.

7.64 Hungary. - Last February, the President of the National Office of Inventions and the Minister of Agriculture and Food had addressed a joint request to the Council of UPOV that the latter give its advice on the conformity of Hungarian legislation on the protection of varieties with the 1978 Revised Act of the Convention as provided for in Article 32 of that Act. The Council had taken a decision giving a positive advice at its fifth extraordinary session on April 29, 1982. Since then, the National Office of Inventions had put in hand, in accordance with Hungarian constitutional rules, the procedure leading to the deposit of an instrument of accession. It was forecast that accession could take place by the close of the current year.

7.65 Iran. - Although Iran had been engaged for two years in a war imposed upon it, it had not forgotten to strive to develop its agriculture and had drawn up a large scale program for self-sufficiency in agricultural produce. To achieve that objective, it was not sufficient to increase the surface of cultivated land, it was also necessary to increase the yield of all crops, which was not possible unless the necessary research had been made. Plant breeding was playing an ever growing part in agricultural research. Its importance had been recognized in Iran for years.

7.66 The Plant Improvement Institute, responsible for research, was located close to Teheran and possessed throughout the country more than 70 research stations having large experimental fields and the various laboratories that were needed. Its staff comprised more than 200 engineers and 230 technicians. The institute comprised 7 sections, each drawing up and conducting research programs at the stations. Thus plant improvement research covered all fields.

7.67 The methods used were hybridization and selection. The breeding programs were carried out each year among populations of Iranian and foreign plants. As a result of efficient collaboration with various international

research institutes, such as the International Center for Maize and Wheat Improvement (CIMMYT), the International Rice Research Institute (IRRI) and the International Center for Agricultural Research in the Dry Areas (ICARDA), and with the French Research Institute for Cotton and Exotic Textiles (IRCT), Iran had been able to receive a great number of lines and new plant varieties from those institutes in order to experiment them and to check their suitability for the very varied climates found in the different regions of Iran. The features that were important to Iran included yield, resistance to disease, earliness and quality.

7.68 The wheat section possessed a germplasm collection of more than 21,000 samples and made use of this gene bank for the crossbreeding carried out each year. Thus, 22 varieties of wheat, that is to say one variety for each region of Iran, had been created. Those varieties had very good yield and were tolerant to certain diseases. Last year, four varieties of wheat (Azadi, that is to say "liberty," Kaveh (the name of the researcher), Darab (the name of the research station) and Bistun (drought tolerant and suitable for rain-fed growing) and one variety of barley had been registered.

7.69 Two research stations located in the north of the country, on the shores of the Caspian, were specialized in rice which constituted a very important crop in Iran (more than 300,000 hectares). Those stations had rice collections comprising 400 Iranian varieties and 700 foreign varieties that were sown every year in order to keep the collections active. Each year, 100 hybrids were produced; over 4,000 hybrids were currently under trial. Last year, two new varieties of rice with an extremely high yield and a fairly favorable quality had been developed. Those two varieties, Amol 2 and Amol 3 (from the name of the research station) were the result of numerous years of breeding in populations received from IRRI. The first variety was early and the other somewhat late. The latter had produced 6,000 kilos of rice in a farmer's field with a surface of half a hectare, that is to say 12 metric tons per hectare.

7.70 Cotton covered an area of 250,000 hectares. Iran had been working on that species for years and had benefitted from collaboration with IRCT. From hybridization between the varieties Upland "C100W X 539" resulted a variety which was given the name "Varamin" (name of the central cotton experimentation station) and showed a high yield, good quality and early growth. A further cross between C100W and 349, a variety that was resistant to Verticillium, had given the variety Sahel that was quite tolerant to that disease that had been destroying almost 80% of the cotton crop in the North of Iran. Recommended varieties had also been created for the hot regions in the South after a number of years of breeding. Research was currently in hand to create very early varieties for regions where autumn was early by making use of varieties of Russian and Bulgarian origin that were in the collection. At the same time, attempts were being made to find glandless varieties with a high yield.

7.71 In the case of maize, which was not a very well known crop in Iran, hybrids with very high yield and also lines that were resistant to drought and heat had just been developed.

7.72 There existed no special establishment for multiplying the improved varieties. As yet, it was still the Plant Improvement Institute that multiplied the varieties and produced the basic seed and elite seed, but with the increase in demand, it would be necessary to set up an organization for producing seed. For that purpose, a law was in the process of drafting for submission to Parliament. That law provided for giving certain advantages to members of the staff and to the undertakings that created new plant varieties by means of hybridization, selection or mutation.

7.73 Norway. - The Ministry of Agriculture was to propose shortly to Parliament an addition to the current legislation on seed so as to enable a system of fees on trade in seed and seedlings to be introduced. The fees were to be returned to the breeders as a function of the quantities of seed and seedlings marketed. The system would be similar to that used in Finland and, to a certain extent, in Sweden as well. Royalties had already been paid to foreign breeders for some years, in fact, but on a contractual basis.

7.74 The Ministry of Agriculture was well aware that the system would not permit Norway to have direct links with UPOV but it was nevertheless interested in being associated in the work of UPOV.

7.75 Panama. - The country was interested in protection for plant varieties and the presence of a delegation at the Council session was a manifestation of that interest. For the moment, it was the Agricultural Research Institute that carried out plant breeding work, particularly as regards maize and legumes.

7.76 Poland. - The Legislative Council of the Council of Ministers had examined the draft law on plant breeding, protection of new plant varieties and seed matters, together with the draft implementing regulations. It had approved the principle of adapting the instruments to the provisions of the UPOV Convention. Moreover, in order to avoid uselessly multiplying the number of laws, it had requested that a chapter on the protection of crops against pests, diseases and weeds be added to the draft. Presently, the Ministry of Agriculture and Food Economy was completing the drafting of that new chapter, following which the amended draft would be submitted once more to the Legislative Council of the Council of Ministers. It was expected that the draft could then be submitted to Parliament in 1983.

7.77 Soviet Union. - Great importance was attached to the creation of new varieties and the improvement of existing varieties. Under the current legislation, that is to say the Ordinance on Discoveries, Inventions and Rationalization Proposals issued in 1973 and amended in 1978, new varieties of plants were assimilated to inventions as regards their legal protection. Article 22 of the Ordinance stipulated that new varieties were to be protected by means of inventors' certificates and improved varieties by means of certificates. Both categories of titles were issued by the Ministry of Agriculture of the USSR, author's certificates after registration of the results of inventive activity with the USSR State Committee for Inventions and Discoveries. The USSR Ministry of Agriculture determined, in accordance with prescribed procedure, the novelty and usefulness of the results of inventive activity and examined objections and appeals in respect of the granting of inventors' certificates and certificates, regulated problems of exploitation of the results of inventive activity, calculated the remuneration and paid it out from a special fund laid aside for the purpose.

7.78 Concluding its statement, the Delegation of the Soviet Union expressed its conviction that the exchange of information and the communication of experience that took place at meetings such as that of the UPOV Council contributed greatly to developing and improving the protection of new plant varieties in the interests both of the breeders and of society as a whole.

7.79 Food and Agriculture Organization of the United Nations (FAO). - A computerized seed information system was being developed, presently covering some 90 States, organized as self-contained subsystems providing information on the situation within countries in respect of seed, particularly variety development and release, and seed production, quality control, marketing and promotion. FAO was currently establishing a cultivar data bank which put particular emphasis on the reaction of varieties to various agro-ecological conditions. Finally, FAO was managing a seed and planting material exchange service through which some 50,000 samples were supplied each year for experimentation purposes.

b. Discussion

7.80 Referring to the report on developments in Guernsey (see paragraph 7.51 above), the Vice Secretary-General explained that the absence of protection on that island was of more concern to breeders than the absence of protection in Jersey due to the very differing economic orientation of the two islands. But, if the map of Europe was taken, one would find still more countries that were without protection and that could raise special problems within the framework of the European Communities as a result of the principle of free movement of goods within the Communities once they had been lawfully put on the market. A special case was that of Luxembourg. On a number of occasions, particularly at the Conference for the revision of the Convention in 1978, the Delegation of that country had announced that Luxembourg was aware of the need to introduce a system of protection for new plant varieties but that it was faced with a number of problems that could not be overcome except through administrative and technical cooperation with one of its neighboring countries or by the institution of a multilateral system, for example within the European Communities. In view of that situation, the Vice Secretary-General

suggested that it might be judicious for the Office of the Union, Belgium and Luxembourg to form a working party to look for a solution to the problems of Luxembourg. A similar solution could also be envisaged in respect of Liechtenstein, which had already concluded an agreement with Switzerland for the protection of industrial property.

7.81 The President closed the discussion on that agenda item and emphasized the importance of the statements made by the representatives of the States and of the organizations as regards the current situation, the problems arising and the progress achieved in the legislative, administrative and technical fields, in that they reflected the history of plant variety protection both at national and international level. He also pointed out that, as in the past, the statements would be given broad distribution, particularly through "Plant Variety Protection."

c. Documents prepared by the Office of the Union

8. The Council also noted the contents of documents C/XVI/5, 6, 7 and 8. The Delegation of Denmark having questioned the usefulness of the said documents, the Council agreed to refer the matter to the Consultative Committee for discussion, after having noted that some delegations, in particular the Delegation of Japan, were very interested in receiving as much information as possible.

Report by the President on the Work of the Twenty-Fifth and Twenty-Sixth Sessions of the Consultative Committee

9. The Council noted the report on the work of the twenty-fifth session of the Consultative Committee as appearing in paragraph 2 of document C/XVI/2 Add., and also the oral report by the President on the work of the twenty-sixth session, where the following decisions had been taken, in particular: the discussions on the theme of the next symposium and on the usefulness of holding symposia in connection with ordinary sessions of the Council were deferred until the closing of the symposium held in connection with the present session¹; some amendments were proposed to the Agreements, Regulations and Rules under the 1978 Text of the UPOV Convention (to be dealt with by the Council under item 11 of the agenda); the Association of Plant Breeders of the European Economic Community (COMASSO) was to be invited to all meetings to which professional organizations were usually invited, while the National Association of Plant Patent Owners (NAPPO) was to be invited to the information meeting with international non-governmental organizations to be held on November 15, 1982.

Report by the Secretary-General on the Activities of the Union in 1981 and in the First Nine Months of 1982

10. The Council unanimously approved the report by the Secretary-General as contained in document C/XVI/2 and in its supplement (document C/XVI/2 Add.). In introducing these documents, the Vice Secretary-General drew attention to the increasing interest shown by the legal profession in plant variety protection.

10.1 Referring to paragraph 26 of document C/XVI/2, the Delegation of Japan pointed out that the Japan Association for the Protection and Development of Plant Varieties (JAPDPV) was an association under private law and that other associations also existed with the same aims.

Report by the Secretary-General on his Management and the Financial Situation of the Union in 1981

11. The Council unanimously approved the report by the Secretary-General contained in document C/XVI/3 and congratulated him on his cost-effective management.

¹ See paragraphs 27 et seq. below.

of Council was drawn to the fact that a comparison between the accounts for 1981 showed an excess of revenue amounting to 10,000 francs and also savings of 10,000 francs in the expenditure on the budget as adopted for the financial year concerned.

of the Report Concerning the Auditing of the Accounts for 1981

Council noted the report contained in document C/XVI/3, Annex B, and approved the accounts of the Union for the year 1981.

Assess of the Work of the Administrative and Legal Committee

13. The Council unanimously approved the report on the progress of the work of the Administrative and Legal Committee as contained in document C/XVI/9 and asked the Delegation of the United Kingdom to convey its gratitude to Mr. P.W. Murphy, who had chaired that Committee since the fourteenth ordinary session of the Council (1980) and had now taken over other functions at the national level. The Council unanimously elected Mr. M. Heuver (Netherlands) as Chairman of the Committee for a term of three years, expiring at the end of the nineteenth ordinary session of the Council, in 1985.
14. It further noted with approval the plans for the future work of that Committee as indicated in document C/XVI/9, subject to the following:
 - (i) A joint meeting with the Technical Committee would be held on the afternoon of November 17, 1982, to discuss the questions of "Minimum Distances Between Varieties" and of the "List of Classes for Variety Denomination Purposes" (and would replace the meeting of a subgroup of the Technical Committee which was to discuss the latter topic);
 - (ii) The Consultative Committee would decide whether the "Recommendations for the Selection of Variety Denominations by Applicants for Plant Breeders' Rights, for the Decision by the Authorities on the Registrability of Variety Denominations and for the Administrative Procedure" would be the second subject of discussions at the hearing of the international non-governmental organizations scheduled to be held on November 9 and 10, 1983.

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

15. The Council unanimously approved the report on the progress of the work of the Technical Committee and of the Technical Working Parties as contained in document C/XVI/10 and in its supplement (document C/XVI/10 Add.), and expressed its gratitude to the chairmen of those bodies.
16. It noted with approval the plans for their future work as indicated in the above-mentioned documents. It further noted that Denmark, the Federal Republic of Germany and Japan were involved in various programs relating to colorimetry and color charts and that the Technical Committee would serve as the forum for coordinating experience acquired in that area as soon as tangible results had been obtained.

Agreements, Regulations and Rules under the 1978 Text of the UPOV Convention

17. Discussions were based on documents C/XVI/11, 13 and 14.
18. Draft Agreement between WIPO and UPOV: The Council approved the text as appearing in the Annex to document C/XVI/11, subject to the replacement in the English text of Article 8(2) of "Selection Committee" by "Appointment and Promotion Board" and of "Joint Consultative Committee of WIPO" by "Joint Advisory Committee of WIPO." It also approved the proposals made in paragraph 4 of that document concerning the procedure for conclusion of the Agreement with WIPO.

19. The Council finally noted that the entry into force of the present Rules of Procedure for the Union for the Protection and Administrative Cooperation between the World Intellectual Property Organization, as approved by the Government of the Swiss Confederation (document UPOV/INF/4, Part I), as well as other rules based on them, such as the Administrative Regulations (document UPOV/INF/4, Part IV). It agreed, however, that related decisions taken under the present Rules would remain effective.

20. Rules of Procedure of the Council: The Council unanimously approved its new Rules of Procedure as contained in the Annex to document C/XVI/13 (which were to replace the Rules reproduced in Part II of document UPOV/INF/4), subject to the amendment of Rule 8 to read as follows:

"The Vice Secretary-General of UPOV, or a staff member of the UPOV Office designated by the Vice Secretary-General, shall act as secretary of the Council."

It was also understood that the Office of the Union would make every effort to ensure that, in particular, the document containing the draft program and budget was to be transmitted two months in advance of the starting date of the session of the Council at which it was to be considered.

21. Headquarters Agreement: The Council responded positively, by unanimous decision, to the invitations appearing in paragraphs 4 and 5 of document C/XVI/14.

Examination and Approval of the Program and Budget of the Union for 1983

22. Discussions were based on document C/XVI/4 and on the amended extracts thereof appearing in Annex II to this document.

23. The Council unanimously approved the budget of the Union for 1983 and the annual contributions of member States as appearing in Annex II to this document.

24. Concerning the program of the Union for 1983, the Council decided the following:

(i) in the Introduction, paragraph 2(vii) (Program) was amended to read: "to cooperate with national governments and international organizations in explaining the protection of plant breeders' rights";

(ii) in paragraphs 7.A(v) and (vi) (Salaries and Common Staff Costs), the word "possible" was introduced before both "increase" and "increases";

(iii) the end of paragraph 7.B(b) (Travel on Official Business - Third Party Travel) was amended to read: "and to the provision for the possible attendance of a Council member at the Panamerican Seed Seminar (6,000 francs)" (item UV.01 being amended accordingly);

(iv) in paragraph 7.C(a) (Contractual Services - Conferences), provision was made for one meeting of the Technical Committee instead of two (item UV.03 being amended accordingly);

(v) in paragraph 7.F (Furniture and Equipment), provision was made for the rental rather than the purchase of an additional word processing workstation;

(vi) in Chapter II (Program and Expenses), item UV.04 (Technical Working Parties) would also provide for a possible meeting of statisticians and experts to develop anticipated discussions on the possibilities for harmonizing the application of electronic data processing by the testing authorities of member States;

(vii) in item UV.05 bis (Hearing of Non-Governmental Organizations), provision was made for two meeting days instead of three.

25. Changes in the figures appearing in the Introduction and in Chapter II of the Draft Program and Budget for 1983 (document C/XVI/4) are not recorded in detail in this report as they can be deduced from the tables appearing in Annex II to this document.

Calendar of Meetings in 1983

26. The Council approved the calendar of meetings for 1983 as appearing in document C/XVI/12 Rev.

1983 Symposium

27. The Council decided that a symposium should be held on the opening day of the seventeenth ordinary session of the Council and should be devoted to lectures and discussion on the theme "Nomenclature."

27.1 As regards the general question of whether symposiums should be held in connection with ordinary sessions of Council, all those delegations that spoke were in favor of them being held. However, the topics should be interesting and attractive and of a level accessible to the largest possible audience. Moreover, the Delegation of New Zealand felt that other forms could also be adopted, for instance a general paper followed by debates in committee and then brought together in a full meeting. Among the arguments put forward in favor of symposiums, it may be noted that they enhanced the prestige of UPOV, that they permitted discussion on special aspects of plant variety protection and on related matters, that they permitted certain audiences to be reached and that they made it easier for some of the delegations to participate at the session of Council.

27.2 In that respect, the Delegation of Brazil congratulated UPOV on having chosen the topic of genetic engineering and plant breeding and announced that it would inform its Government of UPOV's position on varieties produced by means of genetic engineering since that constituted an aspect that could not be neglected by a State that was envisaging accession to UPOV.

International Agricultural Research Centers (IARC)

28. Discussions were based on Circular U 731, reproduced at Annex V.

29. Introducing the circular, the Delegation of the Netherlands summarized the facts of the problem. Certain circles feared that breeders could obtain for their own benefit protection of varieties they had obtained by a small amount of finishing work on plant material produced by an IARC, considered as a variety by the latter, but which did not meet the standards, particularly those regarding homogeneity, applicable in the UPOV member States in respect of protection of new plant varieties (and, indeed, also for entry in national catalogues and seed certification). Two possibilities were open to plant variety protection offices: to have confidence in breeders and to do nothing or to hold that the case could arise and therefore to do something, for example to stock IARC material as reference material.

30. As regards the initial assumption, it was emphasized that it applied also to material circulated by the national research institutes, the universities and private breeders, some of whom in fact intentionally distributed their unfinished material in order that it be developed. That was why it seemed difficult to some of the delegations that a special policy be adopted in respect of the IARC's quasi-varieties and that protection be refused for materials which differed from the initial material. According to those delegations, it was basically up to the IARCs to take the necessary steps to protect their interests, e.g. by making their material common knowledge or by concluding appropriate contracts with the people to whom they entrusted the material for its development; if they did not apply for protection, which they had no intention of doing. In this respect, reference was made to the statement made by Mr. Klatt at the end of his letter reproduced at Annex V ("... we could do little except try to make certain they never receive CIMMYT germplasm again"). In addition, such a special policy would bar the true breeders from

a certain number of research and development orientations and would therefore also have implications for other fields of plant improvement, which raised problems within the framework of plant variety protection, such as research and systematic exploitation of mutants within protected ornamental varieties.

31. In that context, the Vice Secretary-General pointed out that a similar problem had arisen in respect of patents where certain inventors who did not wish to take a patent had proposed a procedure under which the patent office published their inventions to ensure that they lost their novelty with the result that third parties could no longer obtain patents for those inventions. The patent offices had refused that solution since it would have entailed a considerable workload which, in addition, would have not been remunerated. The description of plant material was even more complicated, however, than that of inventions and to maintain a collection of such material was even more costly than storing descriptions of inventions. There was every reason therefore to consider that the solution under discussion, which was to collect material and make it public, would constitute an almost impossible task for the plant variety protection offices. In any event, those offices had the possibility of taking action in the case of abuse and could, in particular, annul the title of protection; the problem being to obtain the necessary evidence in each individual case.

32. As regards the case in point of material from CIMMYT--where the problem arose much more acutely since it concerned cereals with an extremely large growing zone that also covered the member States of UPOV where protection was available--it would seem that the cases of abuse were few in number and poorly documented.

33. In view of the facts set out in the preceding paragraphs, the conclusions reached by the Council may be summarized as follows:

(i) There was a problem of general concern not limited only to IARC material;

(ii) Even if the problem only seemed to arise on occasion, it should be taken seriously by the offices of the member States, who should do their utmost to avoid abuse occurring and being approved by the granting of titles of protection. The services were willing to do so, but that meant that those concerned would have to supply the necessary information;

(iii) Both the Convention and the domestic legislation contained provisions that enabled abuse to be avoided or suppressed in that they stipulated that the right to protection belonged to the breeder or his successor in title to the exclusion of any other person and that a title of protection granted to another person was to be cancelled or transferred to the legitimate owner. Implementation of those provisions presumed however that the legal situation of those concerned was clear;

(iv) It was necessary to discuss the matter with the professional organizations with a view to drawing up a code of conduct, the most that those organizations could do, since they could not enter into a commitment in the name of every individual involved in the plant variety process;

(v) As regards the IARCs in particular, the Council understood and shared their main concern which was to prevent abuse deriving from the free exchange of germplasm deriving from their work which was financed by States and donors. It further expressed its great appreciation of the activities of the IARCs, particularly their policy of free exchange of germplasm and production of germplasm rather than varieties in order to involve the developing countries in plant improvement.

34. The Delegation of Egypt stated that the usefulness and need for plant variety protection was recognized, but that the rights also implied obligations. UPOV was also a Union of States that were a part of the worldwide community and, as developed countries, had a commitment to aid the developing countries. The latter countries had an imperative need for improved varieties, particularly of cereals, but could not share in remunerating the breeder's work. The Delegation therefore suggested that UPOV should examine whether it could not bear that remuneration and thus exempt the developing countries therefrom.

Retirements and Transfers

35. Mr. H. Skov (Denmark) announced that Mr. A.F. Kelly was participating for the last time in a Council session. He recalled that Mr. Kelly had worked for plant variety protection for a long number of years and had participated, in particular, in the work leading up to the entry into force of the 1961 Convention and had made a capital contribution to the technical work of the Union, particularly in his capacity as Chairman of the Technical Committee. In the name of the Council, he thanked Mr. Kelly for the activity he had undertaken on behalf of plant variety protection and for his spirit of cooperation and wished him a long and happy retirement.

36. Mr. Kelly thanked Mr. Skov for his kind words.

37. Mr. Skov, speaking in the name of the Council, begged the Delegation of the United Kingdom to convey to Miss E.V. Thornton and Mr. P.W. Murphy the Council's gratitude for the work they had done and for their spirit of cooperation, together with its best wishes for a long and happy retirement for Miss Thornton and for satisfaction and success in his new functions for Mr. Murphy.

38. Mr. H. Mast (Vice Secretary General) announced that Mr. J. Mullin (Ireland) was also participating for the last time in a Council session. Although his presence in UPOV was much more recent, he had nevertheless contributed in taking and implementing decisions of great importance and, at national level, he had been in charge of plant variety protection at the most difficult period. In the name of the Council, the President joined in with those words and thanked Mr. Mullin; he wished him satisfaction and success in the new functions he would soon be taking up.

39. Mr. Mullin thanked the President and Mr. Mast for their kind words and emphasized that the success obtained in Ireland was due for a great part to the assistance and cooperation of the members of the Council and of the Office of the Union and he thanked them.

40. The indented paragraphs of this report were adopted by the Council at its meeting of October 15, 1982, and the remaining paragraphs have been adopted by correspondence.

[Annexes follow]

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NORWAY/NORVEGE/NORWEGEN

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Moerveien 12, 1430 Ås

PANAMA

Mrs. C. DE VASQUEZ, Scientific Advisor, Permanent Mission of Panama, 63, rue de
Lausanne, 1202 Geneva, Switzerland

POLAND/POLOGNE/POLEN

M. J. VIRION, Chef-expert, Ministerstwo Rolnictwa i Gospodarki Żywnościowej,
ul. Wspólna 30, Warszawa

SOVIET UNION/UNION SOVIETIQUE/SOWJETUNION

Mr. Y. GYRDYMOV, Deputy Director, External Relations Department, USSR State
Committee for Inventions and Discoveries, M. Cherkassky per. 2/6, Moscow
(Centre)

III. INTERGOVERNMENTAL ORGANIZATIONS/ORGANISATIONS INTERGOUVERNEMENTALES/
ZWISCHENSTAATLICHE ORGANISATIONEN

EUROPEAN ECONOMIC COMMUNITY (EEC)/COMMUNAUTE ECONOMIQUE EUROPEENNE (CEE)/
EUROPÄISCHE WIRTSCHAFTSGEMEINSCHAFT (EWG)

M. D.M.R. OBST, Administrateur principal, Commission des Communautés
Européennes, 200, rue de la Loi (Loi 84-7/9), 1049 Bruxelles, Belgique

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)/ORGANISATION DES
NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)/ERNÄHRUNGS- UND LAND-
WIRTSCHAFTSORGANISATION DER VEREINTEN NATIONEN (FAO)

Dr. W.P. FEISTRITZER, Chief, Seed Service, Plant Production and Protection
Division, Via delle Terme di Caracalla, 00100 Rome, Italy

IV. OFFICERS/BUREAU/VORSITZ

Dr. W. GFELLER, President
Mr. J. RIGOT, Vice-President

V. 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 Counsellor
Mr. A. WHEELER, Senior Officer
Mr. A. HEITZ, Senior Officer

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

EXTRACT FROM DOCUMENT C/XVI/18 (page 7)

CHAPTER I - SUMMARY OF BUDGET AND COMPARISONS
(expressed in thousands of francs)

1981 Actual	1982 Adopted Budget		1983 Budget
INCOME			
1,228	1,390	Contributions	1,504 (a)
		Other Income	
3	5	- Publications	5
25	20	- Miscellaneous	26
7	-	Utilization of Reserve Fund	-
<u>1,263</u>	<u>1,415</u>		<u>1,535</u>
=====	=====		=====
EXPENDITURE			
725	807	UV.09 <u>Staff:</u> Salaries and Common Staff Costs	933
		<u>Travel on Official Business:</u>	
		- <u>Missions [Staff]</u>	
		UV.04 - Technical Working Parties	8
		UV.08 - Contacts with Governments and Organizations	25
23	33	- Sub-total	33
		- <u>Third Party Travel [non-staff]</u>	
		UV.01 - Council : members	6
		: Symposium speakers	8
6	4	- Sub-total	14
		<u>Contractual Services:</u>	
		- <u>Conferences</u>	
		UV.01 - Council	10
		UV.02 - Consultative Committee	9
		UV.03 - Technical Committee	7
		UV.04 - Technical Working Parties	1
		UV.05 - Administrative and Legal Committee	15
		UV.05 bis - Hearing	6
41	43	- Sub-total	48
68	74	UV.06 - <u>Printing:</u> Information and Documentation	66
-	4	UV.06 - <u>Other:</u> Information and Documentation	4
30	32	UV.10 <u>General Operating Expenses:</u> Rental of Premises	37
2	4	UV.10 <u>Supplies and Materials</u>	2
8	2	UV.10 <u>Furniture and Equipment</u>	5
1	26	UV.10 <u>Other Expenses</u>	11
<u>904</u>	<u>1,029</u>	Sub-total: EXPENSES PROPER TO UPOV	<u>1,153</u>
359	386	*UV.11 Common Expenses	382
<u>1,263</u>	<u>1,415</u>	TOTAL EXPENSES	<u>1,535</u>
=====	=====		=====

(a) The value of the contribution unit is 1,504,000 divided by 40 1/4 units = 37,366

* Exclusive of UPOV's share in the WIPO common income which is included under "Other Income - Miscellaneous," above.

YEARLY CONTRIBUTIONS OF MEMBER STATES

(expressed in Swiss francs)

<u>1981</u> <u>Actual</u>	<u>1982</u> <u>Actual</u>	<u>Member States</u>	<u>Number</u> <u>of Units</u> <u>(1983)</u>	<u>1983</u> <u>Budget</u>
64,650	58,732	Belgium	1.5	56,050
64,650	58,732	Denmark	1.25	46,710
215,500	195,775	France	5.0	186,832
215,500	195,775	Germany, Federal Republic of	5.0	186,832
-	39,155	Ireland	1.0	37,366
21,550	19,577	Israel	0.5	18,683
86,200	78,310	Italy	2.0	74,733
-	-	Japan	5.0	186,832
129,300	117,465	Netherlands	3.0	112,100
-	39,155	New Zealand	1.0	37,366
43,100	39,155	South Africa	1.0	37,366
43,100	39,155	Spain	1.0	37,366
64,650	58,732	Sweden	1.5	56,050
64,650	58,732	Switzerland	1.5	56,050
215,500	195,775	United Kingdom	5.0	186,832
-	195,775	United States of America	5.0	186,832
<u>1,228,350</u>	<u>1,390,000</u>		<u>40.25</u>	<u>1,504,000</u>
=====	=====		=====	=====

[Annex III follows]

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

	1977	1978	1979	1980	1981	1982**	total
<u>Agricultural Crops</u>							
Barley	-	17	1	2	2	3	25
	-	-	15	2	2	2	21
White Clover	-	-	-	1	-	-	1
	-	-	-	1	-	-	1
Meadow Fescue	-	-	-	2	1	-	3
	-	-	-	2	-	-	2
Red Fescue	-	-	-	7	-	-	7
	-	-	-	7	-	-	7
Flax, Linseed	-	-	2	6	2	-	10
	-	-	-	7	-	-	7
Smooth Stalked Meadow-grass	-	-	-	4	-	-	4
	-	-	-	4	-	-	4
Oat	-	10	2	-	2	2	16
	-	-	11	-	2	2	15
Potato	-	-	-	33	-	-	33
	-	-	-	29	3	1	33
Rye	-	1	1	-	-	-	2
	-	-	2	-	-	-	2
Hybrid Ryegrass	1	1	-	-	-	-	2
	-	-	1	1	-	-	2
Italian Ryegrass	-	4	-	-	-	-	4
	-	-	4	-	-	-	4
Perennial Ryegrass	1	6	3	3	-	1	14
	-	-	7	-	1	2	10
Spelt	-	1	-	1	-	1	3
	-	-	1	-	1	-	2
Turnip	-	-	-	1	-	-	1
	-	-	-	-	-	-	-
Bread Wheat	1	20	4	3	2	1	31
	-	1	20	4	2	2	29
<u>Fruit Crops</u>							
Apple	-	1	1	1	1	2	6
	-	1	-	1	-	1	3
Plum	-	-	-	1	-	-	1
	-	-	-	1	-	-	1
Strawberry	-	8	2	-	3	1	14
	-	8	-	2	-	-	10

* First line: applications filed; second line: titles of protection issued
** Until September 30, 1982

	1977	1978	1979	1980	1981	1982**	total
<u>Vegetables</u>							
French Bean	-	13	1	-	2	-	16
	-	5	3	4	-	-	12
Cauliflower	-	-	-	-	1	-	1
	-	-	-	-	-	-	-
Lettuce	-	-	2	1	1	-	4
	-	-	-	2	-	-	2
Pea	-	17	2	-	-	1	20
	-	6	7	2	2	-	17
Black Salsify	-	-	-	2	-	1	3
	-	-	-	1	-	-	1
<u>Ornamental Species</u>							
Azalea	-	4	1	3	3	-	11
	-	-	2	3	5	-	10
Bromeliaceae	-	-	-	-	-	2	2
	-	-	-	-	-	-	-
Carnation	-	-	4	-	2	-	6
	-	-	-	4	2	-	6
Chrysanthemum	-	-	-	-	-	2	2
	-	-	-	-	-	-	-
Rose	-	40	8	17	21	8	94
	-	-	19	9	26	24	78
<u>Forest Trees</u>							
Poplar	-	13	-	-	-	-	13
	-	-	-	13	-	-	13
TOTAL	3	156	34	88	43	25	349
	-	21	92	99	46	34	292

[Annex IV follows]

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

From October 1, 1981, to September 30, 1982

	Applications received	Titles issued	Titles in force
<u>Agricultural Crops</u>			
Barley	8	5	16
Brassica	2	2	2
Cocksfoot	1	-	-
Flax, Linseed	-	-	1
Lucerne	1	-	2
Oat	-	-	2
Pea	1	-	17
Phacelia	-	1	1
Potato	2	1	2
Ryegrass	-	-	1
Soya Bean	1	-	-
Wheat	2	4	7
Total	18	13	51
<u>Ornamental Plants</u>			
Akeake (Dodonea)	1	1	1
Birch	1	-	-
Cypress	1	-	-
Lemon	-	1	1
Rose	13	19	79
Schefflera	1	-	-
Total	17	21	81
<u>Fruit Plants</u>			
Almond	1	-	-
Apple	21	1	1
Apricot	1	-	-
Cherry	1	-	-
Feijoa sellowiana	2	1	1
Macadamia	1	-	-
Peach	1	-	-
Pepino (Solanum muricatum)	1	3	3
Plum	1	-	-
Plumcot (Plum X Apricot)	1	-	-
Strawberry	4	-	-
Total	35	5	5
TOTAL	70	39	137

[Annex V follows]

September 1, 1982

Circular No. U 731

-08

Madam/Sir,

The President of the Council has agreed to propose to the Consultative Committee that the following additional item be treated under the agenda item "Any other business" at its twenty-sixth session due to take place on October 12, 1982.

The Delegation of the Netherlands has requested that there should be a further discussion on the question of plant breeders' rights on breeding material developed by international agricultural research centers. The report made by Mr. Heuver (Netherlands) at the last session of the Consultative Committee is recorded in paragraph 34 of document CC/XXV/11 and reads as follows:

34. International Breeding Centers

"Mr. Heuver (Netherlands) reported that he and a few experts from the member States of UPOV had participated in a meeting of a workshop organized by the Technical Advisory Committee of the Consultative Group on International Agricultural Research (CGIAR) (sponsored by the World Bank, the United Nations Development Programme and the Food and Agriculture Organization of the United Nations) which had taken place in Rome from January 26 to 28, 1982. The topic of that meeting had been the policy of the international agricultural research centers (IARCs)

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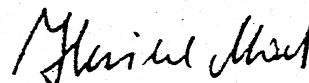
Distribution: Members of the Consultative Committee

Circular No. U 731-08 to the Members of the Consultative Committee - September 1, 1982

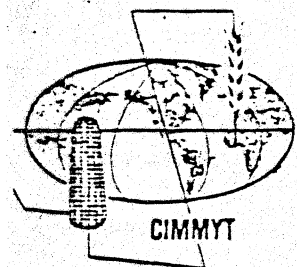
with regard to plant breeders' rights. There had been general agreement that the IARCs would not themselves apply for plant breeders' rights. They would leave that possibility open for cooperating national programs. There had been some discussion on how to prevent varieties or near-varieties developed by IARCs from being appropriated by others and made the subject of applications for plant breeders' rights. In that context it had been discussed whether the IARCs should send documentation and/or the material released by them to the plant variety protection authorities. Mr. Heuver mentioned a follow-up meeting in the Philippines and indicated that discussions on the above questions might need to be continued. He expressed the view that the matter was more a problem for the individual member States of UPOV than for the Union itself."

./.
Copies of a paper prepared by Mr. Heuver and of a letter addressed to him by CIMMYT are attached.

Sincerely yours,



Heribert Mast
Vice Secretary-General



CENTRO INTERNACIONAL DE MEJORAMIENTO DE MAIZ Y TRIGO

INTERNATIONAL MAIZE AND WHEAT IMPROVEMENT CENTER

Londres 40, México 6, D. F.
Apdo. Postal 6-641
Cable: CENCIMMYT
Tel. 514-46-30

May 31, 1982

Mr. M. Heuver
Raad Voor Het Kwekersrecht
Postbus 104
6700 AC Wageningen
The Netherlands

Dear Mr. Heuver:

Thank you for your letter of 10 May regarding questions about "nearly finished varieties". The international nurseries containing these lines are distributed to more than 100 countries around the world, both developed and developing countries. Generally before inclusion in any of these nurseries, the lines are yield tested for one year in Cd. Obregon. All lines in yield trials are also planted in a small multiplication plot (PC) for roguing purposes. If the line yields well, and if its resistance to prevalent diseases is good, the PC is harvested and this seed is used in preparing the international nurseries. These lines would be sufficiently homogeneous to be released in most developing countries and some developed countries, but probably would not meet UPOV standards for homogeneity. However, limited refinement would be required to meet DUS standards.

When the lines are distributed, the complete cross and pedigree are given, but no description of the line is included. In fact, CIMMYT does not record any information for identification since CIMMYT does not release varieties. We would only note maturity, height, disease information, and grain color. These might be useful in the case of a claim but I suspect they would be of very limited value. In any case, if a breeder wants to patent CIMMYT material directly, I think there is little CIMMYT or UPOV could do in a legal sense. Let's just hope most private breeders in UPOV countries are honest and will respect the origin of the material. If they don't, we could do little except try to make certain they never receive CIMMYT germplasm again.

Thanks for your comments and I look forward to seeing you again in the near future.

Sincerely yours,

Arthur Klatt
Associate Director
Wheat Program

AK:ygl

Plant Breeders' Rights on breeding material developed by International
Agricultural Research Centres

During the twenty-fifth meeting of the Consultative Committee the undersigned gave a short report about a discussion paper 'Plant Breeders' Rights and International Agricultural Research Centres' prepared by Hardon, Heuver and Fikkert. The Committee also was informed about a workshop organized by the Technical Advisory Committee (TAC) of the Consultative Group on International Agricultural Research (CGIAR) in relation with this topic in which also Böringer and Kelly took part.

Plant Breeders' Rights (PBR) are under discussion, especially the implications of PBR for developing countries. The above mentioned paper and the discussion during the workshop with representatives of developing countries and the International Centres have contributed to a better understanding of PBR.

It is obvious that the Centres themselves will not apply for plant breeders' rights. They were established and will continue to give support to agricultural development in the Third World. In plant breeding this means support in the form of varieties and basic breeding material in general to organisations in developing countries. They also send some material to government and some private breeding organisations in developed countries.

The Centres are concerned about the granting of rights by authorities on varieties developed by the Centres. Quite often they distribute material from which still various varieties can be selected. In that case the Centres can accept that under the present rules varieties so developed satisfying DUS criteria are granted rights.

However varieties, developed by the Centres which satisfy DUS criteria or nearly finished varieties which with minor selection work satisfy DUS criteria, can or should not receive protection.

The following questions are relevant:

1. Should a UPOV country grant plant breeders' rights for a variety, obtained from a nearly finished variety developed by a Centre while the applicant is not the successor in title as far as the breeding work of the Centre in relation to that nearly finished variety is concerned?
2. If not, do we have or, if not, how can we collect sufficient information on varieties or nearly finished varieties developed (and distributed) by the Centres to prevent such granting.

It is clear that the Centres themselves do not record any information for identification (See annex: letter, May 31, 1982 from CIMMYT).

3. Is the issue of granting rights to third persons for varieties which were developed fully or for a major part by the Centres so important, also taking anti-PRB-discussion into consideration, that UPOV countries should take special measures to collect information about Centres material ?

To include nearly finished varieties from Centres in the reference collections or to record relevant information for identification seems unfeasible.

In the discussion paper we made the following proposal:

The Centres' material in later stages of development (finished or nearly finished varieties) could be distributed to some authorities in UPOV countries for storage. If a protected variety is suspected to be a Centres' variety or a refinement of a nearly finished Centres' variety, the stored seed can be used as reference material to investigate the claim. A positive result of that investigation should lead to annulment of the right concerned.

The possibility of doing this might work as a serious deterrence to improper protection of Centres varieties or varieties obtained from nearly finished Centres' varieties.

Wageningen, augustus 1982

ir.M. Heuver

[End of document]

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