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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Eighteenth Ordinary Session
Geneva, October 17 to 19, 1984

ANNUAL REPORT OF THE SECRETARY-GENERAL FOR 1983
(Fifteenth Year)

I. STATE OF THE UNION

1. In 1983, three States expressed their consent to be bound by the Revised Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the 1978 Act"), namely, France by the deposit, on February 17, 1983, of its instrument of ratification, Hungary by the deposit on March 16, 1983, of its instrument of accession and the United Kingdom by the deposit on August 24, 1983, of its instrument of ratification. Those three instruments brought the number of States bound by the 1978 Act at the end of 1983 to eleven.

2. Hungary, by the deposit of the said instrument of accession, became a member State of the Union (on April 16, 1983), which at the end of 1983 comprised the following 17 member States: Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America.

3. The table appearing in the Annex to this report summarizes the position of the various States vis-à-vis the various Acts of the Convention, as on July 10, 1984.

II. SESSIONS

4. During 1983, the various bodies of UPOV met as described below. Unless otherwise specified, the sessions took place in Geneva.

5. The Council held its seventeenth ordinary session from October 12 to 14, 1983, under the chairmanship of Dr. W. Gfeller (Switzerland). The session was attended by representatives from member States and by observers from a number of interested non-member States, namely: Argentina, Austria, Egypt, Panama, Poland, Yugoslavia and Zimbabwe. The Food and Agriculture Organization of the United Nations (FAO), the Commission of the European Communities (CEC), and the International Board for Plant Genetic Resources (IBPGR) were also represented by observers.

6. The first day of the session was devoted, for the fourth year running, to a symposium. The subject of the 1983 Symposium was "Nomenclature." The following lectures were given:

(i) "The De Candolle Family and the Historical Development of Botanical Nomenclature," by Mr. Hervé M. Burdet, Curator at the Botanical Garden of the City of Geneva, Switzerland;

(ii) "The International Code of Nomenclature for Cultivated Plants : The Current Position and Possible Future Developments" by Mr. Christopher D. Brickell, Director, the Royal Horticultural Society's Garden, Wisley, Woking, Surrey, United Kingdom;

(iii) "UPOV and Variety Denominations," by Mr. Henning Kunhardt, Division Head, Federal Plant Varieties Office, Hanover, Federal Republic of Germany;

(iv) "The Implications of the Use of Common Plant Names," by Ir. Willem A. Brandenburg, Research Worker, Department of Taxonomy of Cultivated Plants and Weeds, Agricultural University, Wageningen, Netherlands;

(v) "Variety Denominations and Trademarks," by Mr. René Royon, Secretary General, International Community of Breeders of Asexually Reproduced Fruit Tree and Ornamental Varieties (CIOPOVA), Mougins, France.

7. In addition to the representatives of member and non-member States and of the intergovernmental organizations (FAO, CEC and the International Seed Testing Association (ISTA)), the Symposium was attended by almost 20 representatives of international non-governmental organizations (Association of Plant Breeders of the European Economic Community (COMASSO), International Association for the Protection of Industrial Property (AIPPI), International Association of Horticultural Producers (AIPH), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Fruit Tree and Ornamental Varieties (CIOPOVA), International Federation of the Seed Trade (FIS)) and by a number of individual technical and legal experts. Mr. Frits Schneider, Head, Department for Horticultural Botany, Government Institute for Research on Varieties of Cultivated Plants, Wageningen, Netherlands, acted as 'Rapporteur' for the Symposium, which was concluded by a panel discussion. Records of the proceedings of the Symposium are reproduced in a special UPOV publication (No. 341), in English, French, German and Spanish.

8. The main decisions taken by the Council at its seventeenth ordinary session were:

(i) the report of the Secretary-General on the activities of the Union in 1982 and the first nine months of 1983, the report on his management and the financial situation of the Union in 1982, and the accounts of the Union for 1982, were approved;

(ii) the program and the budget for 1984 were established;

(iii) the reports on the progress made by the various committees and technical working parties, including their plans for future work, were approved;

(iv) the 1984 Symposium would be devoted to the theme "Industrial Patents and Plant Breeders' Rights - Their Proper Fields and Possibilities for Their Demarcation";

(v) the following officers were elected for a term of three years expiring at the end of the twentieth ordinary session of the Council (1986):

(a) Mr. J. Rigot (Belgium) was elected President of the Council,

(b) Mr. S.D. Schlosser (United States of America) was elected Vice-President of the Council,

(c) Mr. J.-M. Elena Rossello (Spain) was elected Chairman of the Technical Committee,

(d) Mr. R. Guy (Switzerland) was elected Vice-Chairman of the Technical Committee,

(e) Mr. F. Espenhain (Denmark) was elected Vice-Chairman of the Administrative and Legal Committee,

(f) Mrs. V. Silvey (United Kingdom) was elected Chairman of the Technical Working Party for Automation and Computer Programs.

9. The Consultative Committee held its twenty-seventh session on April 28, 1983, and its twenty-eighth session on October 11 and 14, 1983, both under the chairmanship of Dr. W. Gfeller (Switzerland). The twenty-seventh session was devoted mainly to:

(i) the examination of the wishes expressed by international non-governmental organizations at the Information Meeting held in November 1982;

(ii) the final preparations for the Meeting with International Organizations (subsequently held on November 9 and 10, 1983) (see paragraph 29, below);

(iii) an examination of the steps to be taken in the matter of color charts and color measurements, in view of the fact that the Royal Horticultural Society's (RHS) colour chart was out of print.

10. The twenty-eighth session was devoted mainly to the preparation of the seventeenth ordinary session of the Council (see paragraph 8, above). In addition, the Committee decided that UPOV should be represented at the Tenth Panamerican Seeds Seminar, held in Quito, Ecuador, from November 7 to 11, 1983.

11. The Administrative and Legal Committee held its eleventh session on April 26 and 27, 1983, and its twelfth session on November 7 and 8, 1983, both under the chairmanship of Mr. M. Heuver (Netherlands). Both sessions were attended by representatives from member States; in addition, observers from the CEC and the European Free Trade Association (EFTA) attended both sessions and an observer from Mexico, a signatory State of the 1978 Act, attended the twelfth session.

12. The sessions were devoted mainly to the following matters:

13. The Committee noted the latest developments regarding amendments to national plant variety protection legislation either introduced or planned by member States, particularly in relation to ratification of or accession to the 1978 Act of the UPOV Convention. It also noted that the Commission of the European Communities had officially proposed the creation of a "European/Community breeder's right" having the following essential features:

(i) an optional nature (that is to say, it would coexist with national rights),

(ii) a single application leading to a single title with uniform and immediate effect for the whole of the Community market,

(iii) as regards conditions, terms and content, it would be based on the current and future results of UPOV's work,

(iv) it would provide suitable possibilities of participation by interested European countries that were not members of the Communities.

14. In preparation for the November 1983 Meeting with International Organizations, the Committee gave a final reading to the draft set of UPOV Recommendations on Variety Denominations and noted the observations submitted by the organizations. More specifically, it examined the policy to be followed in relation to denominations intended to identify, in one way or another, the breeder. It noted that the draft Recommendations did not prevent the use of "distinctive words" in variety denominations (words common to a series of denominations) and that, depending on the circumstances of the particular case, a proposed denomination breaking into the system of denominations which identified or was supposed to identify another breeder would have to be rejected. The Committee also noted that several participants in the 1983 Symposium, including some

representatives of UPOV member States, had expressed a wish for closer relations between the plant variety protection authorities and the international registration authorities. It considered that to be a matter for the individual authorities and felt that it was for them to find the best form of cooperation.

15. The Committee took up the question of the harmonization of procedures for the examination of proposed variety denominations in respect of preexisting denominations. While complete centralization of that examination seemed to be an ideal, perhaps impossible to achieve because of the language difficulties that would have to be overcome, the Committee felt that it might be worth considering the possibility of centralizing the computer searching of preexisting denominations liable to make a proposed denomination unsuitable. There did seem to be some interest in such a system, both among States that had computer facilities at their disposal and among those that did not. Efforts were being made to set up a pilot project, and those efforts should be followed up in 1984. Furthermore, the Committee considered that a promising course of action for the time being was for authorities to be informed on software used and basic data available for exchange. Savings could be made in the constitution and permanent updating of national data bases by making them mutually compatible. The examination of those issues would be continued in future sessions of the Committee and of the Technical Working Party on Automation and Computer Programs.

16. The Committee examined a number of legal questions arising in relation with the "minimum distances between varieties" issue. The issue has recently acquired considerable importance and was placed on the agenda for the November 1983 Meeting with International Organizations. Once the results of that meeting have been evaluated, in particular by the Technical Committee, the Administrative and Legal Committee will decide whether it is necessary to give further consideration to the legal aspects of "minimum distances between varieties."

17. Finally, the Committee was presented with a series of proposals by the Delegation of France with a view to the improvement of the position of breeders of varieties of genetically unstable, vegetatively propagated species. Such species are subject to frequent spontaneous mutation, so that a competitor can bypass with relative ease the protection of a variety that has proved its worth on the market, by looking for and marketing a mutant distinguished from that variety only by a commercially unimportant characteristic. The introduction of a "right of access," in other words a right that would make the filing of an application for protection for a mutant subject to authorization by the owner of the protection of the parent variety, would call for amendment of the Convention and was considered undesirable. The introduction of variety registers and repositories determining common knowledge was regarded as a partial solution, inasmuch as it would make it possible to prevent the protection of a mutant, but without prohibiting its marketing by a third party. A further proposal consisted in the introduction of a streamlined examination, offering the advantage of reduced fees, which the breeder of the parent variety could make use of in order to secure protection for a mutant distinguishable from the parent variety by one or more characteristics entered in a limitative list. This proposal, in the view of the Committee, raised a certain number of practical problems. The Committee requested the Delegation of France that, if it introduced the streamlined examination system as an experiment, it should report to a subsequent session on whatever experience had been gained from its practical application. In the light of such a report, the Committee would consider whether there was any purpose in extending the system to other species and using it in various member States.

18. The Technical Committee held its nineteenth session on October 3 and 4, 1983, under the chairmanship of Mr. C. Hutin (France).

19. The main business of the session was as follows:

20. The Committee adopted seven Test Guidelines, submitted:

- (i) by the Technical Working Party for Agricultural Crops, for Soya Bean (TG/80/3) and for Sunflower (TG/81/3);
- (ii) by the Technical Working Party for Ornamental Plants and Forest Trees, for African Violet (TG/17/3), Carnation (TG/25/5) (both being revisions of the existing Test Guidelines), Anthurium (TG/86/2) and Narcissi (TG/87/2);
- (iii) by the Technical Working Party for Vegetables, for Leek (TG/85/3).

21. As in previous years, the Committee, supported by its five Technical Working Parties, discussed a number of questions arising from practical experience in the member States gained from the application of the principles established in the General Introduction to the Test Guidelines and the individual Test Guidelines in conducting tests for distinctness, homogeneity and uniformity. Among the questions that arose were: comparison of several color charts; ongoing investigations into electrophoretic methods; homogeneity requirements for species for which varieties can be produced vegetatively or by seed; possibilities of stabilization by ISTA of names of vegetatively propagated species; compilation of a list of standard documents and books used in connection with variety testing; improvement of Test Guidelines through the provision of more detailed information on each characteristic; criteria for inclusion of characteristics in Test Guidelines; distinctness criteria for species embracing fruit, ornamental and rootstock varieties.

22. The Committee received reports on the progress of the work of the five Technical Working Parties, gave guidance on a number of questions raised by them and instructed them on the major aspects of their future work.

23. The Technical Working Party on Automation and Computer Programs held its first session in Cambridge (United Kingdom) from May 17 to 19, 1983, under the chairmanship of Mr. C. Hutin (France). The task assigned to the Working Party is that of studying the harmonization of automation and computer programs used by the authorities of the member States in carrying out the examination of new varieties and in generally administering their plant variety protection legislation. Good progress was made at the first session with the preparation of an inventory of existing programs and methods of data processing, and with identifying areas having a high priority.

24. The Technical Working Party for Vegetables held its sixteenth session in Zaragoza (Spain) from May 30 to June 1, 1983, under the chairmanship of Mr. F. Schneider (Netherlands). In addition to its work on the Test Guidelines for one vegetable species adopted by the Technical Committee, the Working Party completed the preparation of first drafts of Test Guidelines for Broad Bean and Field Bean (in cooperation with the Technical Working Party for Agricultural Crops) and Curly Kale for submission to the professional organizations for comment.

25. The Technical Working Party for Agricultural Crops held its twelfth session in Tystofte, Skaelskør (Denmark) from June 8 to 10, 1983, under the chairmanship of Dr. G. Fuchs (Federal Republic of Germany). In addition to its work on the two Test Guidelines for agricultural crops adopted by the Technical Committee, the Working Party completed the preparation of first drafts of Test Guidelines for Cocksfoot, Meadow Fescue and Tall Fescue, Swede and Timothy for submission to the professional organizations for comment.

26. The Technical Working Party for Fruit Crops held its fourteenth session in Rome (Italy) from September 21 to 23, 1983, under the chairmanship of Dr. G.S. Bredell (South Africa). The working Party completed the preparation of first drafts of Test Guidelines for Persimmon and Strawberry (revision) for submission to the professional organizations for comment.

27. The Technical Working Party for Ornamental Plants and Forest Trees held its sixteenth session in Conthey (Switzerland) from September 27 to 29, 1983, under the chairmanship of Mrs. U. Löscher (Federal Republic of Germany). In addition to its work on the four Test Guidelines for ornamental plants adopted by the Technical Committee, the Working Party completed the preparation of first drafts of Test Guidelines for Crown of Thorns and Freesia (revision) for submission to the professional organizations for comment.

III. CONTACTS WITH STATES AND ORGANIZATIONS

28. As to the various contacts the Office of the Union had during 1983, reference is made to the report on the activities during the first nine months of 1983, which was already approved by the Council at its seventeenth ordinary session (document C/XVII/2 Add.; see also document C/XVII/15, paragraph 109). In addition, the following items deserve special mention:

(i) in November, the Secretary-General and the Vice-Secretary General were received at the Swiss Federal Department for External Affairs in Berne on the occasion of the signature of the Agreement between UPOV and the Swiss Federal Council to determine the Union's legal status in Switzerland;

(ii) in November, UPOV was represented at the sixteenth meeting of Commission II of the twenty-second session of the Conference of FAO, held at FAO headquarters in Rome;

(iii) also in November, UPOV was represented at the tenth Pan-American Seeds Seminar (PSS), held in Quito (Ecuador);

(iv) in December, UPOV was represented at the first meeting of the Technical Consultative Committee (TCC) of the European Cooperative Programme for the Conservation and Exchange of Crop Genetic Resources (ECP/GR), held at the Swiss Federal Research Station at Changins.

29. In November 1983, a Meeting with International Organizations was held at the headquarters of UPOV in Geneva. The purpose of the meeting was to provide an opportunity for international organizations interested in the activities of the Union to give their views on three subjects:

- (i) minimum distances between varieties;
- (ii) international cooperation;
- (iii) UPOV recommendations on variety denominations.

The following intergovernmental organizations were represented: CEC, EFTA, ISTA. The non-governmental organizations represented were: AIPH, AIPPI, ASSINSEL, CIOPORA, COMASSO, International Commission for the Nomenclature of Cultivated Plants, FIS. A record of the meeting is reproduced in document IOM/I/12.

IV. PUBLICATIONS

30. In 1983, the Office of the Union published the Agreement between UPOV and the Swiss Federal Council to determine the legal status in Switzerland of the Union (Headquarters Agreement) (signed in Berne on November 17, 1983), in English, French and German (UPOV publications INF/9); six issues of "Plant Variety Protection - Gazette and Newsletter of the International Union for the Protection of New Varieties of Plants"; a brochure containing the Portuguese text of the Revised Act of 1978 of the UPOV Convention (UPOV publication 295(P)); the "Records of the 1982 Symposium on Genetic Engineering and Plant Breeding," in English, French, German and Spanish (UPOV publications 340(E), (F), (G) and (S), respectively); updated versions of the UPOV General Information Brochure in English, French and German (UPOV publications 408(E), (F) and (G), respectively); an information leaflet entitled "UPOV, what It Is, What It Does," in English, French, German and Spanish (UPOV publications 437(E), (F), (G) and (S), respectively); seven Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability (for details, see paragraph 20, above); and French and German editions of the "Collection of the Texts of the UPOV Convention and Other Important Documents Established by UPOV" (UPOV publications 644(F) and (G), respectively), containing in Part II all the Test Guidelines established by UPOV (UPOV publication 645(EFG)).

Decision

31. The Committee is invited to approve this report.

[Annex follows]

ANNEX

MEMBERSHIP OF THE UNION (as of July 10, 1984)
(including signatory States that are not yet members)

State ⁴	CONVENTION OF 1961 (AND ADDITIONAL ACT OF 1972) ¹			ACT OF 1978		
	Date of Signature	Date of Deposit of Instrument ²	Date upon which State became bound	Date of Signature	Date of Deposit of Instrument ³	Date upon which State became bound
Belgium	December 2, 1961 (November 10, 1972)	November 5, 1976 (November 5, 1976)	December 5, 1976 (February 11, 1977)	October 23, 1978	-	-
<u>Canada</u>	-	-	-	October 31, 1979	-	-
Denmark	November 26, 1962 (November 10, 1972)	September 6, 1968 (February 8, 1974)	October 6, 1968 (February 11, 1977)	October 23, 1978	October 8, 1981	November 8, 1981
France	December 2, 1961 (November 10, 1972)	September 3, 1971 (January 22, 1975)	October 3, 1971 (February 11, 1977)	October 23, 1978	February 17, 1983	March 17, 1983
Germany (Federal Republic of)	December 2, 1961 (November 10, 1972)	July 11, 1968 (July 23, 1976)	August 10, 1968 (February 11, 1977)	October 23, 1978	-	-
Hungary	-	-	-	-	March 16, 1983	April 16, 1983
Ireland	-	-	-	September 27, 1979	May 19, 1981	November 8, 1981
Israel	-	November 12, 1979 (November 12, 1979)	December 12, 1979 (December 12, 1979)	-	April 12, 1984	May 12, 1984
Italy	December 2, 1961 (November 10, 1972)	June 1, 1977 (June 1, 1977)	July 1, 1977 (July 1, 1977)	October 23, 1978	-	-
Japan	-	-	-	October 17, 1979	August 3, 1982	September 3, 1982
<u>Mexico</u>	-	-	-	July 25, 1979	-	-
Netherlands	December 2, 1961 (November 10, 1972)	August 8, 1967 (January 12, 1977)	August 10, 1968 (February 11, 1977)	October 23, 1978	-	-
New Zealand	-	-	-	July 25, 1979	November 3, 1980	November 8, 1981
South Africa	-	October 7, 1977 (October 7, 1977)	November 6, 1977 (November 6, 1977)	October 23, 1978	July 21, 1981	November 8, 1981
Spain	-	April 18, 1980 (April 18, 1980)	May 18, 1980 (May 18, 1980)	-	-	-
Sweden	-	November 17, 1971 (January 11, 1973)	December 17, 1971 (February 11, 1977)	December 6, 1978	December 1, 1982	January 1, 1983
Switzerland	November 30, 1962 (November 10, 1972)	June 10, 1977 (June 10, 1977)	July 10, 1977 (July 10, 1977)	October 23, 1978	June 17, 1981	November 8, 1981
United Kingdom	November 26, 1962 (November 10, 1972)	September 17, 1965 (July 1, 1980)	August 10, 1968 (July 31, 1980)	October 23, 1978	August 24, 1983	September 24, 1983
United States of America	-	-	-	October 23, 1978	November 12, 1980	November 8, 1981

¹ the figures in brackets refer to the Additional Act of 1972² of ratification if the State has signed the Convention or the Additional Act, as the case may be; of accession if it has not done so³ of ratification, approval, acceptance or accession⁴ signatory States that are not yet members underlined

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