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

GENEVA

## COUNCIL

**Twenty-first Ordinary Session  
Geneva, October 15 and 16, 1987**

## ANNUAL REPORT OF THE SECRETARY-GENERAL FOR 1986

(Eighteenth Year)

## I. STATE OF THE UNION

1. There was no change during 1986 in the number of member States, which therefore remained at the previous year's figure of 17: 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.

2. The year was, however, noteworthy for an increase in the number of States bound by the Revised Act of October 23, 1978, of the Convention: the Federal Republic of Germany and Italy deposited their instruments of ratification of that Act on March 12 and April 28, respectively. The Act entered into force for those two States on April 12 and May 28, 1986, respectively. It is now binding on 15 of the 17 member States (Belgium and Spain have not yet ratified it).

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 at July 1, 1987.

## II. STAFF OF THE OFFICE OF THE UNION

4. Dr. Heribert Mast, Vice Secretary-General of the Union since March 1, 1974, resigned on August 11, 1986, for reasons of health. He died shortly afterwards. Dr. Walter Gfeller, Head of the Swiss Office for the Protection of New Varieties and a member of the UPOV Council since 1977, when Switzerland became a member State of UPOV, succeeded him on November 30, 1986.

## III. SESSIONS

5. During 1986, the various bodies of UPOV met as described below. Unless otherwise specified, the sessions took place in Geneva.

6. The Council held three sessions in 1986 under the chairmanship of Mr. J. Rigot (Belgium): the sixth extraordinary session on September 29, the seventh extraordinary session in Paris (France) on December 1 and the twentieth ordinary session, also in Paris, on December 2. The latter date and place were appointed for the celebration of the twenty-fifth anniversary of the UPOV Convention (signed on December 2, 1961).

7. At its sixth extraordinary session, the Council appointed a new Vice Secretary-General.

8. At its seventh extraordinary session, the Council noted the intention of the Minister of Agriculture of France to decorate the President of the Council and the Secretary-General with the insignia of Officer of the Order of Agricultural Merit.

9. Whereas the extraordinary sessions were confined strictly to delegations of member States, the twentieth ordinary session of the Council took place with the participation of observers from Argentina, Finland, Norway and Poland and also the European Economic Community (EEC) and the Food and Agriculture Organization of the United Nations (FAO).

10. At that session, the Council:

(i) approved the report of the Secretary-General on the activities of the Union in 1985 and the first nine months of 1986, the report on his management and the financial situation of the Union in 1985, and the accounts of the Union for 1985;

(ii) renewed the mandate of Switzerland as auditor of the UPOV accounts up to the end of the 1989 financial year;

(iii) approved the progress reports on the work of its various subsidiary bodies and their plans for future work;

(iv) elected Mr. S.D. Schlosser (United States of America) and Mr. W.F.S. Duffhues (Netherlands) President and Vice-President respectively of the Council for a term of three years, expiring at the end of the twenty-third ordinary session of the Council in 1989; elected Mr. J.K. Doodson (United Kingdom) and Mr. G. Fuchs (Federal Republic of Germany) Chairman and Vice-Chairman, respectively, of the Technical Committee, for the same term; and extended by one year the term of Mrs. V. Silvey (United Kingdom) at the head of the Technical Working Party on Automation and Computer Programs.

11. With regard to the work of subsidiary bodies, the Council mainly decided on the principle of a revision of the Convention for the purpose of further improving it, and even extending it to other types of living material. It also adopted the UPOV Recommendations on the Harmonization of the Lists of Protected Species. It took note of a motion by the Vegetable Seed Section of the International Federation of the Seed Trade (FIS) relating to the extension of the scope of protection pursuant to Article 5(4) of the Convention, and stressed the importance of the Recommendation on Article 5 of the Convention adopted at the 1978 Diplomatic Conference. Finally, it noted the Technical Committee's

decision to introduce a new statistical method for interpreting distinctness data for grasses (combined over-years analysis) and to look into the possibilities of using that method for other species also.

12. The twentieth ordinary session of the Council was followed, on December 2 and 3, 1986, by a Symposium commemorating the 25th anniversary of the UPOV Convention. The program consisted of three addresses, two lectures and a debate. The addresses were given by the President of the Council of UPOV, Mr. J. Rigot (Belgium), the Secretary-General of UPOV, Dr. A. Bogsch, and, on behalf of the French Minister of Agriculture, Mr. H.P. Culaud, Deputy Director of the Minister's Office. The first lecture, on the subject of "The Contribution of Plant Breeding to Food Production," was given by a breeder from the private sector, Dr. C. Mastenbroek (Netherlands), who among other offices held that of the President of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) from 1980 until the summer of 1986. The second lecture, on "Plant Breeding: A Common Undertaking for Public Laboratories, Breeding Firms and Users of Varieties," was given by a research scientist from the public sector, Mr. A. Cauderon, Director of the French Genetic Resources Office and Chairman of the Standing Technical Committee on Plant Breeding (CTPS), member of the Institut de France (Academy of Sciences) and Perpetual Secretary of the French Academy of Agriculture.

13. The Symposium was followed by visits to French plant breeding stations and bodies, both public and private, on December 4 and 5.

14. Those present at the Symposium consisted of the participants in the Council session, representatives of the International Seed Testing Association (ISTA), members of seven international non-governmental organizations (International Association of Horticultural Producers (AIPH), International Association for the Protection of Industrial Property (AIPPI), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA), Association of Plant Breeders of the European Economic Community (COMASSO), Seed Committee of the Common Market (COSEMCO), International Federation of the Seed Trade (FIS)), individual participants and a number of French personalities. The "Fathers of the Convention" and the retired former Presidents of the Council also took part in the Symposium as guests of honor.

15. The Consultative Committee held two sessions in 1986 under the chairmanship of Mr. J. Rigot (Belgium), mainly to prepare the twentieth ordinary session of the Council and the celebration of the twenty-fifth anniversary of the UPOV Convention: the thirty-third on April 15 and 18 and the thirty-fourth in Paris on December 1.

16. The Administrative and Legal Committee held two sessions in 1986 under the chairmanship of Mr. F. Espenhain (Denmark), its seventeenth on April 16 and 17 and its eighteenth on November 18 and 19. An observer from the EEC took part in each of those sessions. The Biotechnology Subgroup of the Committee also met twice, on the eve of each of the Committee sessions.

17. At its two sessions, the Committee considered a number of subjects relating to: (i) the application of the Convention to botanical genera and species (Article 4 of the Convention); (ii) the scope of protection (Article 5); (iii) minimum distances between varieties (Articles 5 and 6); (iv) variety denominations (Article 13); and (v) biotechnology and plant variety protection.

18. On the subject of the application of the Convention to botanical genera and species, the Committee noted at its eighteenth session the wishes of the international professional organizations, submitted in the form of lists of priorities. It will continue its consideration of this matter when it has received the wishes of all the organizations concerned. At the same session, the Committee was presented by the Subgroup with a recommendation that the extension of protection to all botanical genera and species should be made compulsory, and also with a proposal that, in the long term, a study be made to see whether the system embodied in the UPOV Convention should not also be extended to microorganisms (if they were not considered plants) and to animals. The Committee considered those questions only very briefly.

19. On the subject of the scope of protection, the Committee engaged in a general discussion at its seventeenth session. At its eighteenth session, it considered, without reaching a conclusion for the time being, a document drawn up by the Office of the Union containing, in the form of a recommendation, model provisions for very extensive protection. Those model provisions provided that, subject to limited exceptions and an exhaustion of rights principle adapted to the live subject matter of the protection, the beneficiary of protection would enjoy exclusive rights in the exploitation of the protected variety. The Subgroup also presented it with recommendations on the same lines. Finally, it noted a motion of the Vegetable Seed Section of FIS and forwarded it to the Council (see above).

20. On the subject of variety denominations, the Committee debated the revision of the UPOV Recommendations on Variety Denominations at both sessions with a view to adjusting them, as far as possible, to the wishes of users.

21. On the subject of biotechnology and plant variety protection, the Committee noted at its seventeenth session the results of the discussions at the second Meeting with International Organizations, held on October 15 and 16, 1985, the UPOV/WIPO information meeting on January 10, 1986, and the second session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property. In particular, the Committee noted that, according to paragraph 64 of the report on the above session, "with the exception of the Delegations of Ireland and of Japan and the representatives of several non-governmental organizations, which expressed themselves in favor of patent protection for all biotechnological inventions without exception, all other Government delegations which spoke on this matter said that the time was not yet ripe for taking a decision on the question of abolishing the exclusion of plant varieties, as well as the exclusion of animal varieties and essentially biological processes, from patenting."

22. Also at the seventeenth session, the Committee had an exchange of views on:

(i) the decision handed down in in re Hibberd by the US Board of Patent Appeals and Interferences of the United States Patent and Trademark Office (the highest administrative jurisdiction in respect of patents);

(ii) the communication by the Swiss Federal Intellectual Property Office concerning its guidelines for the examination of patent applications in the field of biotechnology.

23. The Technical Committee held its twenty-second session on November 20 and 21, 1986, under the chairmanship of Mr. J.-M. Elena Rossello (Spain). The session was attended by an observer from the Commission of the European Communities.

24. On the basis of preparatory work carried out by the Technical Working Parties, the Technical Committee adopted six Test Guidelines (for Apple, Elatior Begonia, Impatiens, Juniper, Potato and Raspberry) and examined a number of questions that had arisen from the practical experience gained by the offices of member States when conducting tests for distinctness, homogeneity and stability in the framework of their examination of new varieties.

25. As in previous years, the Committee dealt with many and various subjects. In addition to the decision recorded above in the report on the twentieth ordinary session of the Council, a mention should be made here of its work on increasing the informativeness of the Union's technical documentation. In particular, the Committee adopted a new format for the Test Guidelines and approved the publication of a bibliographic list on the testing of varieties. In addition it adopted a revised UPOV Variety Description Form, which forms part of the UPOV Model for a Report for the Examination of a Variety.

26. The Technical Working Party on Automation and Computer Programs held its fourth session in Hanover, Federal Republic of Germany, from May 21 to 23, 1986.

27. The most important subject considered by this Working Party had to do with the testing of varieties for homogeneity. For self-pollinated plants, the Working Party recommended steps for greater harmonization of the methods of interpreting data used by member States. For cross-pollinated varieties, it continued studying a new, more elaborate and statistically more reliable testing method.

28. The Technical Working Party for Agricultural Crops held its fifteenth session in Dublin, Ireland, from June 4 to 6, 1986.

29. The main task of this and the following Working Parties consists in drawing up or revising Test Guidelines, which are of great importance because, among other things, they define the variety concept for the species under consideration. In that connection, the Working Party concerned itself more especially with the documents on Lucerne, on Turnip, Turnip Rape and on Triticale. Another activity which in the long run has considerable implications for the actual variety concept, and consequently for the activities of UPOV, consists in studying the practical possibilities offered by electrophoresis for the testing of wheat varieties. The work on this subject will continue.

30. The Technical Working Party for Fruit Crops held its seventeenth session in Wädenswil, Switzerland, from September 17 to 19, 1986.

31. The Working Group mainly worked on the establishment or revision of Test Guidelines for Guava, Gooseberry, Macadamia and Mango.

32. The Technical Working Party for Ornamental Plants and Forest Trees held its nineteenth session in Wageningen, Netherlands, from July 16 to 18, 1986.

33. The Working Party concentrated on the establishment or revision of Test Guidelines for Alstroemeria, Gladiolus, Pelargonium (zonal and ivy-leaved) and Show and Fancy Pelargoniums.

34. The Technical Working Party for Vegetables held its nineteenth session in Salerno, Italy, from May 27 to 29, 1986.

35. The Working Party worked mainly on the establishment or revision of Test Guidelines for Eggplant, for Endive, for Vegetable Marrow, Pumpkin, for Melon and for Turnip, Turnip Rape.

#### IV. CONTACTS WITH STATES AND ORGANIZATIONS

36. On January 10, 1986, an information meeting was held on biotechnology and intellectual property, organized jointly by UPOV and WIPO. Representatives of plant variety protection offices, industrial property protection offices and professional circles that made use of one or other form of protection (or both) took part in the meeting.

37. In January 1986, the Vice Secretary-General took part in a meeting of the Committee for the Protection of Plant Breeders' Rights of the International Association of Horticultural Producers (AIPH), which was held in Berlin (West).

38. UPOV was represented in an observer capacity at the second session of the WIPO Committee of Experts on Biotechnological Inventions and Industrial Property, which was held from February 3 to 7, 1986.

39. In February 1986, the Vice Secretary-General took part in a Plant Breeding Symposium held in Lincoln (New Zealand), organized by the Crop Research, Grasslands, Horticulture and Processing Divisions of the New Zealand Department of Scientific and Industrial Research. He gave a lecture on plant breeders' rights and the UPOV Convention.

40. While he was in New Zealand, the Vice Secretary-General was invited to visit Australia, where he met the Minister for Primary Industry and also a number of parliamentarians and officials involved in the consideration of the introduction of plant breeders' rights in Australia.

41. On April 18, 1986, UPOV organized an Information Meeting with international organizations on variety denominations, in which representatives of AIPH, ASSINSEL, CIOPORA, COMASSO and FIS took part.

42. In May 1986, the Vice Secretary-General took part in the annual meeting of the German Plant Breeders' Association (Bundesverband Deutscher Pflanzzüchter), held in Hamelin (Federal Republic of Germany). He gave a lecture on "The Relationship Between Plant Variety Protection and Patent Protection in the Light of Developments in Biotechnology."

43. Also in May 1986, the Vice Secretary-General took part in the Congress of the International Federation of the Seed Trade (FIS) and in the Congress of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), both of which were held in San Francisco (United States of America).

44. On September 16, 1986, a staff member of the Office of the Union took part, in Rome (Italy), in a conference organized by the (Italian) National Liaison Body for Floriculture and Nurseries with the cooperation of the Società italiana brevetti, on the subject of "The Evolution of Plant Variety Protection in Italy and its Incidences on Research, Competition, Modernization and Specialization in the Field of Agriculture and Especially in the Field of Floriculture and Nurseries." He gave a lecture on the future prospects of plant variety protection at the international level.

## V. PUBLICATIONS

45. In 1986 the Office of the Union published three issues of Plant Variety Protection; the Collection of Plant Variety Protection Laws and Treaties (UPOV publication No. 651(E)) and a supplement; and two supplements to the Collection of the Texts of the UPOV Convention and Other Important Documents Established by UPOV (UPOV publication No. 644(E), (F) and (G)).

46. The Council is invited to approve this report.

[Annex follows]



MEMBERSHIP OF THE UNION (as of July 1, 1987)  
(including signatory States that are not yet members)

State <sup>4</sup>	CONVENTION OF 1961 (AND ADDITIONAL ACT OF 1972) <sup>1</sup>			ACT OF 1978		
	Date of Signature	Date of Deposit of Instrument <sup>2</sup>	Date upon which State became bound	Date of Signature	Date of Deposit of Instrument <sup>3</sup>	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	March 12, 1986	April 12, 1986
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	April 28, 1986	May 28, 1986
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	August 2, 1984	September 2, 1984
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

<sup>1</sup> the figures in brackets refer to the Additional Act of 1972<sup>2</sup> 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 so<sup>3</sup> of ratification, approval, acceptance or accession<sup>4</sup> signatory States that are not yet members underlined