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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twelfth Ordinary Session
Geneva, December 6 to 8, 1978

PROGRESS REPORT ON THE WORK OF THE
 ADMINISTRATIVE AND LEGAL COMMITTEE

prepared by the Office of the Union

1. Since the eleventh ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held two sessions: the first session from April 17 to 19, 1978, and the second session from November 15 to 17, 1978. The respective reports are contained in documents CAJ/I/11 and CAJ/II/8.
2. The Committee concentrated mainly on the following subjects: implementation of the UPOV Model Agreement for International Cooperation in the Testing of Varieties; future development of the Union; relationship between the law on competition and plant variety protection; harmonization of plant breeders' rights gazettes; preparation of the Diplomatic Conference on the Revision of the UPOV Convention.

Implementation of the UPOV Model Agreement for International Cooperation in the Testing of Varieties

3. At each session, reports were given, following established practice, on the state of cooperation in examination based on the UPOV Model Agreement for International Cooperation in the Testing of Varieties. Details (list of the agreements with the lists of the species concerned and statistics on the exchange of examination reports) are given in document C/XII/7.
4. The Committee had an exchange of views on the functioning of cooperation in examination. It appeared that the concepts presently underlying cooperation in examination needed reconsideration, in particular as regards the technical aspects and the principles of the payment of fees.
5. In order to improve the functioning of cooperation in examination, the Committee started work on a UPOV Model Form for the Transmittal of Examination Results and on a UPOV Model Form for the Designation of the Sample of the Variety.

Future Development of the Union

6. At its second session, the Committee had an exchange of views on the future development of the Union. It considered that, for a number of reasons, it was time to start work on the future development of the Union towards harmonization of national legislation, closer cooperation or both, possibly on the basis of special agreements under Article 29 of the Convention between a certain number of member States. The following were mentioned in particular:

(i) Agreement among at least some of the member States on one or more of the following points: list of species eligible for protection; national treatment without reciprocity; extension of the scope of protection in certain cases, for example the sale of plantlets; definition of novelty; duration of protection; variety denominations; fees (their kinds and levels); plant breeders' rights gazettes.

(ii) Establishment of a system under which one application for protection filed with one State would have the effect of an application in the other States party to the system. (Each State would continue to grant separate titles of protection).

(iii) Conclusion of a special agreement among certain member States under which the title of protection granted in one member State would be effective also in the other member States.

7. The Committee agreed that the Council should be asked that it be given the mandate to continue its work on this question, provided that, whenever technical considerations were involved, joint meetings with the Technical Committee would be held as far as necessary in order to allow the latter to participate in the discussions and to contribute to the progress of the work.

Relationship Between the Law on Competition and Plant Variety Protection

8. At both its sessions, the Committee examined the relationship between the law on competition and plant variety protection and in particular the special features of licenses for the multiplication of propagating material as compared with production licenses in the field of industrial property. It agreed on some considerations on the assessment of multiplication licenses in the light of competition law.

Harmonization of Plant Breeders' Rights Gazettes

9. At its second session, the Committee had a detailed discussion on the question of the harmonization of plant breeders' rights gazettes. It agreed on the following:

(i) The Council should be invited to issue a recommendation to the effect that those member States which already publish a gazette should draw it up in accordance with the principles outlined in the Annex to this document.

(ii) The Committee would continue its work on this matter and establish a UPOV Model Plant Breeders' Rights Gazette which, as a first step, would serve as guidance for those States starting publication of a gazette or of a new type of gazette.

Preparation of the Diplomatic Conference on the Revision of the UPOV Convention

10. At its first session, the Committee discussed the question of the revision of Article 13 of the Convention (variety denomination) and established an alternative proposal for the new text of that Article which was presented to the Diplomatic Conference as document DC/4.

Miscellaneous

11. At its first session, the Committee noted that the WIPO statistics on plant variety protection could be misleading as they were broken down according to the country of residence of the applicant whereas, from the agricultural point of view, what mattered was whether the variety was bred in the country of reference or in another country. The Committee decided that after the Diplomatic Conference it should be discussed again whether it might be worth while publishing in the UPOV Newsletter information which was more appropriate from the agricultural point of view and more detailed.

12. At its first session, the Committee decided that member States whose authorities performed a check of variety denominations against trademarks should be invited also to state the name and address of the trademark owner on the forms used to transmit objections to proposed denominations to the authorities of other member States. Such measure would enable the applicant for plant variety protection, if he were interested in doing so, to get in touch with the trademark owner with a view to obtaining the latter's permission to register the denomination.

13. It has not yet been possible to start work on the UPOV Model Law on Plant Variety Protection. The matter had to be postponed until 1979.

Program of Future Activities

14. Subject to the decisions of the Council, the Committee will continue--or take up-- the examination of the items described above, as far as work thereon has not been finalized, and examine any question the study of which has been entrusted to it by the Council or the Consultative Committee. However, reports on the state of cooperation in examination will be discontinued as member States have been invited to inform the Office of the Union directly of any new event (conclusion of a new bilateral agreement or extension of an agreement already concluded), of which the member States and the interested circles would be informed through the UPOV Newsletter. Whenever necessary, discussions would be prepared by correspondence or by meetings of experts.

15. The agenda of the Committee's next session, to be held on April 24 and 25, 1979, would include the following items: future development of the Union; UPOV Model Plant Breeders' Rights Gazette; fees paid in connection with the examination of varieties under an arrangement on cooperation (discussions to be prepared by a meeting of experts on April 23, 1979); UPOV Model Form for the Transmittal of Examination Results; UPOV Model Form for the Designation of the Sample of the Variety.

16. As far as the session to be held from November 14 to 16, 1979, is concerned, it has already been agreed that a joint meeting with the Technical Committee will take place on November 14 to examine the technical aspects of cooperation in examination.

17. The Council is invited:

(i) to take note of the Committee's past work;

(ii) to take the necessary decisions to ensure the continuation of the Committee's activities.

[Annex follows]

PLANT BREEDERS' RIGHTS GAZETTES

MAIN CHAPTERS

agreed upon by the Administrative and Legal Committee
at its second session (November 15 to 17, 1978)

The following main chapters should appear in the plant breeders' rights gazettes of all member States and their headings should, at least from time to time, be translated into the three working languages of UPOV.

I.* Applications

To contain information on the applications for protection and, where relevant, on the applications for a protective direction or for the entry in the Netherlands Register of Varieties pursuant to Article 18(2) of the [Dutch] Law.

II.* Variety Denominations

To contain information on the proposed denominations, the approved denominations (where relevant) and the changes to denominations before (where relevant) and after the grant of protection.

III.* Withdrawal of Applications

To contain information on the withdrawal of the applications of any kind referred to in Chapter I above.

IV.* Decisions

To contain information on the proposed decisions (where relevant) and on the decisions taken on the applications of any kind referred to in Chapter I above, namely:

- (i) the decisions to grant the application (i.e., grant of protection, issue of protective direction, entry in the Netherlands Register of Varieties);
- (ii) the decisions to reject the application.

V.* Changes in the Person of the Applicant or the Holder of Protection

To contain information on changes in the person of the applicant or the holder of protection and, where relevant, in the person of the agent.

VI.* Termination of Protection

To contain information on the surrender, the expiration, the forfeiture and the annulment of protection.

Further chapters would be numbered VII, VIII, etc. without reference to the note, would be referenced by some system other than Roman numerals or would be without any reference.

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*Numbering to be used in all gazettes and to be accompanied by a note drawing the attention of the readers to the fact that it has been harmonized within UPOV.