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

GENEVA

## COUNCIL

**Fourteenth Ordinary Session  
Geneva, October 15 to 17, 1980**PROGRESS REPORT ON THE WORK  
OF THE ADMINISTRATIVE AND LEGAL COMMITTEEprepared by the Office of the Union

1. Since the thirteenth ordinary session of the Council, the Administrative and Legal Committee (hereinafter referred to as "the Committee") has held two sessions, namely the fourth session from November 14 to 16, 1979, and the fifth session on April 17 and 18, 1980, whereas the Subgroup of the Committee held its first session on June 23 and 24, 1980.
2. The Committee concentrated mainly on the following subjects: implementation of the UPOV Model Agreement for International Cooperation in the Testing of Varieties, adopted by the Council at its ninth ordinary session, in October 1975, UPOV Model Law on Plant Variety Protection; Development of the Union.
3. The Subgroup of the Committee, for its part, examined the program of future activities of the Committee relating to the development of the Union and established a list of topics--mainly points of national plant variety protection legislation--to be discussed by the Committee and established an order of priority.

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

4. The Committee adopted at its fourth session a UPOV Model Form for the Interim Report on the Examination of a Variety, reproduced in Annex I to this document.
5. The Committee continued at both sessions its work--started at its third session--on a Recommendation on Fees in Relation to Cooperation in Examination. It reached agreement on the text reproduced in Annex II to this document and decided that the text should be submitted to the Council for adoption, in order to enable member States to take the measures necessary for the implementation of the Recommendation as soon as possible. It further decided to draw up at its next session an explanatory note to the Recommendation, which would, in particular describe the procedure to be followed in special cases, such as the withdrawal of the application for protection which had given rise to the cooperation in examination between two offices.
6. The adoption of the Recommendation entails an amendment of Article 12 of the UPOV Model Agreement for International Cooperation in the Testing of Varieties. The amended Model Agreement is reproduced in Annex III to this document.

UPOV Model Law on Plant Variety Protection

7. At both sessions, the Committee gave guidance to the Office of the Union in the drafting of a UPOV Model Law on Plant Variety Protection. At its fifth session it agreed to the Office of the Union finalizing the Model Law under its own responsibility and urged that the Model Law be published, and translated into Spanish, as soon as possible. The Office of the Union has produced the Model Law in typed form (document UPOV/INF/6) in English and it is being sent to the member States and also to all States likely to be interested; it will also be sent, on request, to any other State. The Spanish version is under preparation and will be available for the Ninth Panamerican Seed Seminar. The Junta of the Cartagena Agreement (JUNAC) is preparing, with the assistance of the Office of the Union, a regional Model Law which takes the UPOV Model Law into consideration.

Development of The Union

8. In the main, work on two activities has been initiated under this heading:

(i) First steps were taken to set up a system of closer cooperation by a special agreement. The Committee started its examination of the various possibilities open to member States for closer cooperation in the receiving and examination of applications for plant breeders' rights, including the examination of variety denominations, and in the granting of such rights. A draft agreement was submitted by the Office of the Union to the Committee at its fourth session for the purpose of drawing the Committee's attention on the main problems to be discussed in this context. This draft agreement, which was entitled "Special Agreement on International Procedure Concerning New Varieties of Plants" (PICOV), formed the basis of a first exchange of views which took place during both the fourth and the fifth sessions of the Committee. It envisaged various conceivable steps of international cooperation between all or certain member States willing to establish such links, including concepts like the filing of one application for a plant breeder's right with effect in several States, some centralization of the administrative examination of such applications, of the testing of varieties forming the subject of such applications and of the examination of the variety denomination proposed for such varieties, the central granting of plant breeders' rights and, finally, the introduction of regional plant breeders' rights. The consideration of this long-term project will be continued as soon as the Committee's work on particularly urgent activities permits.

(ii) The Committee further started its examination of whether the national legislation of all or some member States could be harmonized beyond the degree of harmonization already achieved as a result of the UPOV Convention. To facilitate discussions, the Office of the Union submitted to the Committee a document which analyzed certain aspects of the legal provisions of the member States. The Committee will continue this work, also as a long-term project.

(iii) At the Committee's fifth session and the session of its Subgroup, in particular, it emerged that a number of present member States were interested in having a thorough discussion on all items which might form the subject of legislative measures in preparation for the ratification of the revised (1978) text of the UPOV Convention. Some member States envisage updating their national plant breeders' rights legislation beyond what is strictly necessary for ratifying the revised text. This intended exchange of views should be restricted to points where the harmonization of national legislation can be expected. Merit was also seen in mutual information on the experience gained by the authorities of the various member States in the application of existing legislation and in simple information on the intentions of the member States, especially where the revised text left options to member States. It is the Committee's belief that this exchange of views deserves priority treatment in view of the necessity to ratify the revised text soon.

Program of Future Activities

9. Subject to the decisions of the Council, the Committee will continue its activities in the following order:

(i) exchange of views on legislative steps undertaken by member States in connection with the ratification of the revised (1878) text of the UPOV Convention;

(ii) long-term development of the Union, in particular examination of the possibilities of setting up a system of closer cooperation between member States by a special agreement and examination of the possibilities for a further harmonization of national legislation of member States.

10. The Committee considers the promotion of the present international cooperation in the testing of varieties on the basis of bilateral agreements as a permanent task and will discuss this topic and undertake the necessary steps as and when need arises.

11. The Council is invited:

- (i) to take note of the Committee's past work;
- (ii) to take the necessary decisions on the Committee's work, in particular with a view to ensuring the continuation of the Committee's activities;
- (iii) to adopt the proposed Recommendation on Fees in Relation to Cooperation in Examination.

[Three Annexes follow]

UPOV MODEL FORM FOR THE INTERIM REPORT ON THE EXAMINATION OF A VARIETY  
 FORMULAIRE TYPE DE L'UPOV POUR LE RAPPORT INTERIMAIRE SUR L'EXAMEN D'UNE VARIETE  
 UPOV-MUSTERFORMBLATT FÜR ZWISCHENBERICHTE ÜBER DIE PRÜFUNG EINER SORTE

Requesting authority Autorité qui a demandé l'examen Beauftragende Behörde	Application number Numéro de la demande Anmeldenummer
Reporting authority Autorité qui a effectué l'examen Berichtende Behörde	Reference number Numéro de référence Bezugsnummer

1. Species (common and Latin name)  
Espèce (nom commun et nom latin)  
Art (landesübliche und botanische Bezeichnung)

2. Proposed denomination/Breeder's reference  
Dénomination proposée/Référence de l'obtenteur  
Vorgeschlagene Sortenbezeichnung/Anmeldebezeichnung

3. Testing station Station d'examen Prüfungsstation	4. Site(s) and year of tests Lieu(x) et année d'examen Prüfungsort(e) und -jahr
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5.  No plant material received/Pas de matériel végétal reçu/  
Kein Pflanzenmaterial eingegangen

6.  Requirements for plant material not met/Conditions requises pour  
le matériel végétal non respectées/Pflanzenmaterial entsprach  
nicht den Voraussetzungen

7.  Tests failed/Les essais ont échoué/Prüfungen fehlgeschlagen

Observations/Bemerkungen:

8. Results of the examination/Résultats de l'examen/Ergebnisse der Prüfung

No remarks/Pas de remarques/Keine Bemerkungen

Remarks/Remarques/Bemerkungen

The final examination report will be forwarded on/in (approximate date)  
Le rapport d'examen final vous sera envoyé le/dans (date approximative)  
Der endgültige Prüfungsbericht wird übermittelt werden am/im (ungefährer Zeitpunkt)

Note: The above interim report does not prejudice the final report.

Note: Le rapport intérimaire ci-dessus ne préjuge pas du rapport final.

Bemerkung: Der vorstehende Zwischenbericht greift dem abschliessenden Bericht nicht vor.

Place and date/Lieu et date/Ort und Datum

Signature/Unterschrift:

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

## DRAFT

## RECOMMENDATION ON FEES IN RELATION TO COOPERATION IN EXAMINATION

The Council of the International Union for the Protection of New Varieties of Plants,

By virtue of Article 21(h) of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention"),

Having regard to Article 30(2) of the Convention,

Having regard to the agreements on cooperation in examination already concluded between member States on the basis of the UPOV Model Agreement for International Cooperation in the Testing of Varieties,

Considering it of the utmost importance that cooperation in examination be based on a uniform and clearly defined system of fees and considerations,

Considering that the experience of cooperation in examination acquired on the basis of the aforesaid agreements makes it desirable to replace the Resolution on Fee Questions adopted during its seventh ordinary session, in October 1973 (document UPOV/C/VII/23), by the following,

Recommends to the member States of the Union that they establish or amend, as the case may be, their national plant variety protection legislation or practice, on the one hand, and the agreements on cooperation in examination, on the other hand, in accordance with the following principles.

(1) Where the authority of one member State of the Union ("Authority B") takes over an examination report established by the authority of another member State of the Union ("Authority A") for the purposes of its own procedure or of a procedure before a third authority:

(a) Authority B shall pay a fixed consideration equivalent to 300 to 400 Swiss francs to Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates

(i) shall be exempted from the examination fee, and

(ii) shall be charged an administrative fee which shall at least correspond to the consideration referred to in subparagraph (a) above.

(2) Where Authority A conducts an examination at the request of Authority B:

(a) Authority B shall pay to Authority A a consideration equal to the appropriate examination fee payable in the State of Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates shall be charged an amount which shall, as far as possible, correspond to the consideration referred to in subparagraph (a) above.

(3) Member States of the Union shall, as a target fee at least for the economically most important genera and species, fix the fee for the national examination period of two years or growing cycles at an amount corresponding to about 1350 Swiss francs unless special reasons justify the fixing of a lower fee level.

## ANNEX III

UPOV MODEL AGREEMENT  
FOR INTERNATIONAL COOPERATION  
IN THE TESTING OF VARIETIES

Article 1

Authority A agrees to carry out, at the request of Authority B, the technical work associated with the testing of new varieties in respect of applications for plant breeders' rights filed with Authority B for the species listed in the Annex to this Agreement.

Article 2

By agreement between Authority A and Authority B, species may be added to those listed in the Annex.

Article 3

Where Guidelines for the conduct of tests have been adopted, by the Council of UPOV, the testing shall be conducted according to such Guidelines. Where no such Guidelines have been adopted, the two Authorities shall agree on the methods to be applied for the conduct of the tests and on any changes to be made in those methods.

Article 4

(1) For each variety, Authority A shall submit to Authority B reports after each testing period and a final examination report.

(2) On submitting its final report, Authority A will state whether in its opinion the variety may be regarded as distinct, homogeneous and stable. If the opinion is that the variety is distinct, homogeneous and stable, the variety description will also be given.

(3) Reports and descriptions shall be written in one of the three official UPOV languages--English, French and German--on the understanding that Authority A shall be entitled to choose among these languages.

Article 5

Authority A shall be entitled to seek the advice of technical experts or panels of experts.

Article 6

Authority A shall give access to the tests and to all details concerning the tests only to the applicant, his accredited agent and persons duly authorized by Authority B. Where any test was or is carried out under a similar agreement, also for the purposes of an authority other than Authority B, access shall likewise be granted in accordance with the rules applicable by such other authority.

Article 7

Authority A undertakes to maintain a reference collection of varieties of the species listed in the Annex or to procure such material of those varieties as may be required for purposes of comparison.



Article 8

Authority A shall take all reasonable steps to safeguard the propagating material provided under this Agreement by Authority B or pursuant to the instructions of Authority B and material derived therefrom. Authority A shall not furnish such propagating material or material derived therefrom to third persons except with the specific authorization of Authority B.

Article 9

Authority B shall pay to Authority A the amount of the fee payable in the State of Authority A for testing a variety for distinctness, homogeneity and stability. Payments shall become due following the receipt of test reports, whether interim or final, and will be made by Authority B within (time to be agreed upon by the two authorities) of receiving the account from Authority A.

Article 10

If apart from the normal testing and reporting arrangements the services of an expert or experts are required by Authority B, Authority A undertakes to make available such services at the expense of Authority B.

Article 11

Details arising out of this Agreement, including application forms, technical questionnaires, seed requirements and the form of reports and descriptions, shall be settled between the two Authorities.

Article 12<sup>1</sup>

With the exception of the provisions of the first sentence of Article 9, the provisions of this Agreement shall apply *mutatis mutandis* where Authority A submits to Authority B, at the latter's request, reports on and a description of a variety of a species, whether or not it is listed in the Annex, for which reports and a description are already available or in preparation. In such a case, Authority B shall pay to Authority A a consideration of (amount to be agreed upon by the two authorities in accordance with the Recommendation on Fees in Relation to Co-operation in Examination).

Article 13

The provisions of this Agreement shall apply also for purposes other than the protection of new varieties of plants in so far as the tests undertaken are comparable to those conducted for the purpose of the protection of plant breeders' rights.

Article 14

This Agreement shall enter into force on . . . . . (and shall be regarded as a memorandum for guidance for any cases dealt with, or in the course of being dealt with, before that date).

Article 15

Proposals for the amendment or revocation of this Agreement may be made by either of the Authorities. It is understood, however, that (a) neither Authority shall seek to revoke the Agreement as a whole or for a species listed in the Annex without giving two years' notice to the other Authority and that the first Authority shall enter into consultation with the other Authority before serving such notice, and that (b) if the application of the Agreement to a species listed in the Annex is revoked, the tests initiated on a variety of that species prior to the revocation shall be finalized and reported on by Authority A.

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<sup>1</sup> Amendments underlined