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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-fifth Ordinary Session
Geneva, October 24 and 25, 1991

ADDENDUM TO THE
PROGRESS REPORT ON THE WORK OF THE TECHNICAL COMMITTEE AND
THE TECHNICAL WORKING PARTIES

prepared by the Office of the Union

TECHNICAL COMMITTEE

1. The Technical Committee (hereinafter referred to as "the Committee") held its twenty-seventh session from October 16 to 18, 1991, under the chairmanship of Dr. G. Fuchs (Germany). The detailed report on the session will appear in document TC/27/9. The main results achieved during the session are set forth below.

Test Guidelines

2. During the session, the Committee adopted for publication the Test Guidelines for the following species:

TG/59/6	Lily/Lis/Lilie (Revision)
TG/133/3	Hydrangea/Hortensia/Hortensie
TG/136/4	Parsley/Persil/Petersilie
TG/137/3	Blueberry/Myrtille/Heidelbeere
TG/138/3	Jostaberry/Caseillier/Jostabeere
TG/139/3	Lingonberry/Airelle rouge/Preiselbeere
TG/140/3	Pot Azalea/Azaléa en pot/Topfazalee

Report on the Revision of the UPOV Convention

3. The Vice Secretary-General informed the Committee of the main results of the Diplomatic Conference for the Revision of the UPOV Convention. He highlighted the definition of variety, the increased scope of protection, the mandatory application of the Convention, after certain periods, to all plant genera and species, the inclusion of an option for States to exclude farmer plant-back of harvested material from the scope of the breeder's right, the possibility for intergovernmental organizations which have their own plant breeders' rights system to become members, and the introduction of the system of essentially derived varieties. The document concerned with possible guidelines on "essentially derived varieties" (CAJ/29/2) had been prepared for the session of the Administrative and Legal Committee.

Progress Reports and Questions Submitted to the Committee by the Technical Working Parties

4. The Committee noted the usual reports on the progress of work of the Technical Working Parties, answered or addressed the various questions that individual Working Parties had submitted to it in document TC/27/3, and approved their programs for the coming year. In this respect the following items might be mentioned separately:

5. Invitation of the Commission of the European Communities to Sessions of the Technical Working Party for Fruit Crops and the Technical Working Party for Ornamental Plants and Forest Trees. The Committee approved the request from the Commission of the European Communities to be invited to send technical experts to future sessions of the Technical Working Parties for Fruit Crops (TWF) and for Ornamental Plants and Forest Trees (TWO).

6. Definition of Variety. The Committee noted the concern of the Technical Working Parties with respect to the terms "expression of characteristics" and "at least one characteristic" in the definition of variety but did not consider them to constitute a change from the present practice.

7. Use of RFLPs. Differing opinions were expressed by the Committee in reply to the question whether RFLPs indicated the expression of the genotype or the genotype itself. It was decided to follow the discussions on that question in the Administrative and Legal Committee, to collect the opinions of experts and to come back on the matter during the next session of the Committee.

8. Multi-variate Analysis. The Committee agreed on the fact that the application of the multi-variate analysis to different parameters of a complex characteristic as shape was in conformity with the wording in the definition of variety while its application to all characteristics, whether related to each other or not, was not. The question of its application to a few non-related characteristics could not be solved and will have to be rediscussed after having heard the opinion of the Administrative and Legal Committee.

9. Essentially Derived Varieties. The Committee noted the concern of the TWO and the TWF with respect to the new criterion of "essentially derived variety," especially for species where mutation breeding is very common. It would also follow the discussions in the Administrative and Legal Committee on that

question on the basis of document CAJ/29/2. It repeated earlier statements to the effect that the new criterion should not lead to a reduction of the minimum distances. In any case, the decision whether a variety was essentially derived or not was considered to be a question not for the offices for plant variety protection to decide, but for the courts, at the request of the breeder.

10. Access to Data Bases of UPOV Member States and Central Computerized Data Base. The Committee had an extensive discussion on the access to data and on a possible central computerized data base on the basis of paragraphs 21 to 30 of document TC/27/3, and documents TC/27/7 and CAJ/29/4. It underlined the need for access to machine-readable information which could be incorporated in national data bases to avoid double work. It supported the proposal of the TWO to ask the Council to include in the program for the next year a feasibility study for the establishing of a central computerized data base and to recommend to the national offices to make their gazettes available in machine-readable (electronic) form.

11. Combined Over-Years Analysis. The Committee noted the progress made in the study of the Combined Over-Years analysis for distinctness (renamed COYD) and for uniformity (renamed COYU). It regretted that only a few member States had so far introduced the new COYD criterion. It would follow further progress, especially on the exact level of probability of the COYU criterion.

New Methods, Techniques and Equipment in the Examination of Varieties

12. The Committee noted the information received from the Technical Working Parties concerning the studies on color observations, electrophoresis and other methods, as reproduced in document TC/27/3, paragraphs 75 to 88. It encouraged the Technical Working Parties and their Subgroups to continue their efforts and would await further results of their discussions, especially on electrophoresis and color observations.

Cooperation with Breeders in the Testing of Varieties

13. The Committee noted paragraphs 90 to 98 of document TC/27/3, commenting on the possible ways of involving breeders in the testing of their varieties. It noted that in the majority of cases, the Technical Working Parties emphasized the necessity of maintaining the existing reliability of the results based upon observations by the national offices, even where plants are grown on the premises of the applicant or breeder. However, it accepted that growing tests made by the breeder are equally acceptable, if properly done, and noted that an increasing number of UPOV member States used breeder testing as part of their examination procedure. In this context, it especially recalled that the Council, during its tenth session, had noted with approval (see document C/X/12, paragraph 7) that tests conducted by the applicant are in keeping with the provisions of the Convention, provided that:

"(a) the growing tests are conducted according to guidelines established by the authority, and that they continue until a decision on the application has been given;

"(b) the applicant is required to deposit in a designated place, simultaneously with his application, a sample of the propagating material representing the variety;

"(c) the applicant is required to provide access to the growing tests mentioned under (a) by persons properly authorized by the competent authority.

Since reference had been made to those conditions during the 1978 Diplomatic Conference (see No. 394 of the records), the Committee recommended that States using or planning to use applicants/breeders' tests, should adopt all three of the above-mentioned conditions. The Committee agreed to recommend to the Council that these conditions be reviewed with a view to reaffirming their appropriateness for UPOV in the years ahead.

Minimum Distances Between Varieties

14. The Committee noted the comments from the Technical Working Parties as reproduced in document TC/27/3, paragraphs 100 to 102. It agreed that it was up to the crop expert to fix the minimum distance. It would await a paper to be prepared by the Technical Working Party on Automation and Computer Programs (TWC) to clarify the meaning of minimum distance between varieties and minimum distance within a given characteristic.

Definition and Examination of Hybrid Varieties

15. The Committee took note of the system of testing of maize hybrids in France, as explained in document TC/27/3, paragraphs 104 and 105, where, in the first instance, the lines and the formula of the hybrid were studied. It also noted the classification of characteristics in (i) polygenetic and (ii) monogenetic characteristics (both easily assessable), and (iii) characteristics which are difficult to assess with precision or which show large fluctuations requiring, depending on the group, a clear difference in one, two or three of those characteristics. The Committee agreed to await the outcome of the Subgroup Meeting on Maize, scheduled to be held in France in February 1992, before reaching a conclusion.

Program for the Next Session of the Committee

16. The following business is planned for the next session of the Committee: to hear progress reports on the work of the Technical Working Parties; to discuss questions presented by the Technical Working Parties; to adopt Test Guidelines prepared by the Technical Working Parties; to continue discussions on new methods, techniques and equipment in the examination of varieties, on cooperation with breeders in the testing of varieties, on minimum distances between varieties, on the definition and examination of hybrid varieties and on essentially derived varieties.

17. The Council is invited to
(i) note and approve the above
information and the program of the
Committee;
(ii) review the conditions to be met
in the case of breeders/applicants
conducting growing tests and establish-
ing test reports with a view to their
reaffirmation;
(iii) include in the program for
1992/93 a feasibility study on the
setting up of a central computerized
data base;
(iv) recommend to the member States to
make their national gazettes available
in machine-readable (electronic) form.