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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

TECHNICAL COMMITTEE

Eighteenth Session
Geneva, November 18 and 19, 1982

REPORT

adopted by the Technical CommitteeOpening of the Session

1. The Technical Committee (hereinafter referred to as "the Committee") held its eighteenth session at the headquarters of UPOV in Geneva from November 17 to 19, 1982. In the afternoon of November 17, 1982, a joint session of the Technical Committee and the Administrative and Legal Committee took place to discuss item 8 (List of Classes for Variety Denominations) and item 11 (Minimum Distances Between Varieties) of the draft Agenda (document TC/XVIII/1). The list of participants appears in Annex I to this report.
2. The session was opened by Mr. C. Hutin, Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as appearing in document TC/XVIII/1 after having agreed to insert an item "Report on the Information Meeting with Non-Governmental Organizations" after item 2, to make "UPOV Color Chart" a separate item and to discuss under "Any Other Business" two letters presented by the expert from the United Kingdom.

Report on the Information Meeting With Non-Governmental Organizations

4. The Vice Secretary-General explained that the following organizations had been invited to send representatives to an information meeting on November 15, 1982: International Association of Horticultural Producers (AIPH), International Association for the Protection of Industrial Property (IAPIP), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Chamber of Commerce (ICC), Association of Plant Breeders of the European Economic Community (COMASSO), International Community of Breeders of Asexually Reproduced Fruit Trees and Ornamental Plants (CIOPORA), International Federation of the Seed Trade (FIS), National Association of Plant Patent Owners (NAPPO). All those organizations were represented, with the exception of IAPIP and ICC.

5. The Vice Secretary-General summarized the results of the information meeting as follows:

(i) The organizations had expressed their satisfaction at having been invited to the information meeting and hoped that other meetings of the same kind would be convened in the future, possibly with some modifications (longer duration and non-limitative agenda).

(ii) The organizations had expressed the wish to have the possibility of participating in the work--and therefore the sessions--of the Administrative and Legal Committee, the Technical Committee and the Technical Working Parties, and to be represented by observers at Council sessions. They felt that such participation would be mutually beneficial and would give UPOV the particular advantage of being able to obtain, at the most useful moment, the viewpoint of the professional circles at international level whereas at present the delegations of the member States had sometimes to compare the points of view of national circles. In addition, under the existing cooperation procedure, the organizations could not submit their comments on a draft until it had already reached an advanced stage, that is to say when it was sometimes too late for them to be taken into consideration. The organizations had remarked in that context that they participated in the work of various other international bodies, such as OECD, and that the delegations representing various of the member States in one or the other body of UPOV already comprised representatives of the national professional circles.

(iii) The organizations would have liked more UPOV documents to be made available to them.

(iv) The organizations held in high esteem the annual symposiums and were in favor of continuing the custom begun in 1980.

(v) Some of the organizations had let it be known--without meeting opposition from the other organizations--that the breeders would like an international system of protection to be established, featuring, in particular, a single application, a single examination and a single title of protection, which would be applicable for all member States or at least for a group of member States. The breeders were aware that it was a long term aim and therefore attached great importance to developing the current system of cooperation in examination. In that respect, they considered that the procedure of bilateral agreements tended to be cumbersome and could usefully be replaced by a multilateral system. In addition, some circles felt that the cost of protection was still too high despite cooperation in examination and that that factor was also creating difficulties for some member States wishing to extend protection to certain species. It had therefore been proposed that the member States should make a comparison of the various examination systems (examination carried out by an official service and examination carried out by the applicant). One organization had announced that it would be proposing a pilot project in respect of one species, for instance radish.

(vi) The wish had been expressed that protection be afforded to the largest possible number of genera and species since all breeders should be able to enjoy protection. An immediate measure would be for the member States to endeavor to extend protection to a genus or species within the shortest possible time once one of them had taken the initiative and set up examination facilities.

(vii) Some user circles were concerned at the fact that breeders concluded licenses on the basis of a plant variety protection title and of a trademark and maintained their demands based on the trademark once the plant variety protection had come to an end. In view of that situation, their organization was currently conducting a study into the implications of plant variety protection for breeders and producers, particularly a study of the national legislative provisions that corresponded to Article 5 (rights protected; scope of protection) and Article 9 (restrictions in the exercise of rights protected) of the Convention.

(viii) The organizations had been informed of the conclusions reached by the Council at its last ordinary session as regards varieties and quasi-varieties released by the International Agricultural Research Centers (IARCs) such as the International Center for the Improvement of Maize and Wheat (CIMMYT), and particularly of the Council's view that the professional organizations could draw up a code of conduct in respect of use of varieties and quasi-varieties from the IARCs by private sector breeders.

(ix) The organizations had expressed the wish that the following matters be examined or that examination of them be continued: minimum distances between varieties (including problems arising from mutation breeding); variety examination (including economic and financial aspects and the limiting effect of official growing tests on the number of protected genera and species); scope of protection (including inadequacies in the case of fruit plants and including the interpretation and application of Articles 5 and 9 of the Convention); exploitation of varieties (relations between breeders and users); implications of genetic engineering; International Agricultural Research Centers.

6. The Committee took note of the report and decided as follows:

(i) The question of participation of international non-governmental organizations in the work of the Committee would be submitted to the Consultative Committee.

(ii) As regards making available the Committee's working documents to the organizations, the current practice should be maintained, that is to say to transmit to them only those documents on which their opinion was to be obtained, taking account of the fact that the Consultative Committee's decision on the preceding question would affect the present question.

(iii) The Committee should await the announced written proposal for conducting a comparative study of the different types of examination used before taking further steps in this question.

List of Classes for Variety Denominations

7. Discussions were held in a joint meeting with the Technical Committee on the basis of documents TC/XVIII/9 and 9 Add.

8. The following basic principles for the preparation of a list of classes for variety denominations were established during the discussions:

(i) As a general rule, a genus was to constitute a class for the purpose of variety denomination (in other words, the phrase "of the same botanical species or of a closely related species" contained in the last sentence of Article 13(2) of the 1978 Revised Act of the Convention would normally cover a genus).

(ii) A number of genera could be grouped together in one class in the following cases:

- (a) where intergeneric hybridization blurred the boundaries between those genera and they together constituted a practical reference unit (examples: ornamental Bromeliaceae and Orchidaceae);
- (b) where there can be differences in view of the taxonomic position of the taxon concerned (example: tomato was generally placed in the genus *Lycopersicon*, but was also placed by some people in the genus *Solanum*);
- (c) where the genera were known under the same or similar common names and the representatives (species, subspecies, varieties, etc.) of those genera were used for the same purpose (example: *Erica* and *Calluna*);
- (d) where the representatives (species, subspecies, varieties, etc.) of the genera were marketed as a mixture (example: the Gramineae contained in lawn mixtures).

(iii) A genus could be divided into a number of classes where the representatives of such genera were very different as regards their botanical features and their use (example: the genus *Solanum* within which potato could be separated from the species propagated in practice by seed and of which the fruits were used).

From a practical point of view, the classes could also be defined by stating the relevant taxonomic unit followed by the smaller units excluded from it (example: "genus *Solanum* except *Solanum tuberosum* [potato]"). In the current list, the classes that constituted exceptions were defined in the form of limitative lists of taxa.

9. The Office of UPOV was asked to invite the representatives of the member States (including all heads of the national offices of the member States) in a Circular to send proposals to the Office of UPOV by the end of January 1983 on the basis of those basic principles. The Office of UPOV was thereafter to ask the chairmen of the Technical Working Parties for comments on those proposals. The comments of the chairmen of the Technical Working Parties were to reach the Office of UPOV by the end of March at the latest, to enable the Office of UPOV to prepare a document for the following session of the Administrative and Legal Committee, scheduled for April 26 and 27, 1983. The Consultative Committee was to be informed at its session on April 28, 1983, of the results of the discussions by the Administrative and Legal Committee and was to take the necessary decision for the relevant hearing of the international non-governmental organizations planned for November 9 and 10, 1983.

Minimum Distances Between Varieties

10. The discussions were held in a joint meeting with the Administrative and Legal Committee. They were based on document TC/XVIII/7.

11. A detailed study of the annex to document TC/XVIII/7--during which improvements were proposed from the point of view of using the annex as a basis for the hearing of international non-governmental organizations that was to be held on November 9 and 10, 1983--revealed that member States were not as yet ready to discuss with those organizations the legal matters raised by the problem of minimum distances between varieties, in view of their complexity and of their relative novelty. Consequently, it was decided as follows:

(i) The Administrative and Legal Committee would examine at its following session the legal questions raised in the annex to document TC/XVIII/7 and also the question raised during the discussions, that is to say whether the use of a line in the commercial production of a hybrid would destroy or not the novelty of the line within the meaning of Article 6(1)(b) of the Convention in those cases where the line itself had not been marketed. Examination would be based on the annex to document TC/XVIII/7 and on the member States' replies to a questionnaire to be drawn up and distributed by the Office of the Union.

(ii) Unless the progress of the work of the Administrative and Legal Committee set out in the above paragraph made it possible to act differently, the international non-governmental organizations would be heard solely on the technical aspects of minimum distances between varieties. On that assumption, the hearing would be based on a new document. It was to contain a recapitulation of the provisions of the Convention and the standards adopted by UPOV for examination, particularly of those given in the General Introduction to the Test Guidelines and also a recapitulation of the areas in which special problems had arisen (for example: mutations, conversion of lines, sophisticated examination methods).

(iii) Furthermore, the international non-governmental organizations would be asked to present in writing proposals for further general items connected with the technical parts of the overall question of minimum distances for discussion during the above-mentioned hearing.

12. After the joint meeting with the Administrative and Legal Committee, the Technical Committee enlarged the list of keywords as mentioned in paragraph 10(ii) above to comprise now:

small, large minimum distances,
conversion lines,
electrophoresis,
mutations,
propagation material,
commonly know variety
important characteristic.

The Office of UPOV was to send the above-mentioned document and the list of keywords to the professional organizations asking them to make proposals for further items. These should reach the Office of UPOV by the end of March to enable the member States to establish the definite list of items in April 1983 during the next session of the Consultative Committee.

Adoption of the Report of the Seventeenth Session

13. The Committee unanimously adopted the report on its seventeenth session as appearing in document TC/XVII/5 after having redrafted the last sentence of paragraph 11 to read: "Also it should be recommended to the Council that the Technical Working Party for Forest Trees should work only in Subgroups which would report to the Chairman of the Technical Working Party for Ornamental Plants."

Progress Reports on the Work of the Technical Working PartiesProgress Report on the Work of the Technical Working Party for Agricultural Crops (TWA)

14. Dr. G. Fuchs (Federal Republic of Germany), Chairman of the Technical Working Party for Agricultural Crops, reported on the eleventh session of his Working Party, which had taken place in Madrid (Spain) from May 19 to 21, 1982. On May 18, meetings of several Subgroups had taken place, in order to advance discussions during the session. The full report on that session had been reproduced in document TWA/XI/14. During the session of the Working Party discussions had been held on first drafts of Test Guidelines for Soya Bean and for Sunflower, on working papers on revised Test Guidelines for Potato and for Rice and on working papers on new Test Guidelines for Cotton, for Groundnut, for Safflower and for Swede. However, all those drafts or working papers would require further discussion during the coming session of the Working Party. The Working Party had therefore made a special appeal to the experts that they should prepare comments or proposals in writing on those documents so that updated drafts or working papers could be drawn up. The Working Party had also held general discussions on several general subjects and had come to the following decisions or conclusions:

(i) The contacts with gene banks were considered to have improved considerably.

(ii) The exchange of lists of varieties under test should be improved, and it should be ensured that the exchange was effected as fast as possible so that the experts actually doing the test would have the lists in their hands during the growing season.

(iii) For the harmonization of the testing of disease resistance, a Subgroup was set up which would meet under the chairmanship of Miss Jutta Rasmussen (Denmark).

(iv) A study would be made of the question of intergeneric varieties, whereby each member State would supply all information on specific cases of intergeneric or interspecific varieties, including pending cases, as far as confidential requirements permitted.

(v) With respect to the reproducibility of characteristics, a questionnaire would be drawn up asking for detailed information on the use and usefulness of all characteristics of wheat--those of the Test Guidelines as well as others--that were used by the member States.

(vi) With respect to electrophoresis, certain experts favored the possibility of using characteristics obtained by means of electrophoresis for distinguishing purposes in potatoes, where fewer problems occurred than with cereals, while others warned against creating a precedent which then might force the authorities to use the characteristics obtained by that method for other species also.

(vii) With respect to the discrepancies between the directives of the EEC and the UPOV Test Guidelines, the member States of the EEC that were at the same time members of UPOV would propose to the EEC that it decide to have the testing of varieties done according to internationally established guidelines for the testing of distinctness, homogeneity and stability, i.e. the UPOV Test Guidelines.

(viii) The Working Party took note of the fact that there was little or no information on the intention of the OECD to draw up lists of characteristics for new cultivars.

15. The Working Party would cooperate with the Technical Working Party for Vegetables in the drafting of revised Test Guidelines for Turnip and for Broad Bean and of new Test Guidelines for Swede. The Working Party's twelfth session would be held at Tystofte (Denmark) from June 8 to 10, 1983, with Subgroups meeting on June 7, 1983. Some other Subgroups would already meet, on dates still to be decided, during the period before the coming session. During the next session, the Working Party would rediscuss all working papers on the species mentioned above and would in addition start revising the Test Guidelines for Cocksfoot, for Timothy and for Meadow Fescue and Tall Fescue. It would continue discussions on the testing of resistance to disease and on intergeneric varieties and would start discussing data recording and interpretation in grasses and the reproducibility of characteristics. A Subgroup would also start revising the Test Guidelines for Bent, for Kentucky Bluegrass, for Red Clover and for White Clover.

Progress Report on the Work of the Technical Working Party for Fruit Crops (TWF)

16. In the absence of Dr. G.S. Bredell (South Africa), Chairman of the the Technical Working Party for Fruit Crops, Mr. Le Roux (South Africa) reported on the thirteenth session of that Working Party which had taken place in Faversham (United Kingdom) from September 29 to October 1, 1982. On September 28, meetings of several Subgroups had taken place in order to advance discussions during the session. The full report on that session was reproduced in document TWF/XIII/8. During that session, the Working Party had completed its work on first drafts for Test Guidelines for Citrus and for Japanese Plum prior to submission to the Technical Committee for final adoption. Furthermore it had started discussing working papers on Test Guidelines for Strawberry (revision) and for Avocado (in a Subgroup), had had a general discussion on how to draft Test Guidelines for Apple, Plum and Cherry Rootstocks and had completed discussion of the working paper on Test Guidelines for Apple (revision), for presentation to the professional organizations for comments, as soon as there had been discussion on the inclusion of the characteristics or amendments which were necessary to make the document applicable also to rootstocks and ornamental apples. The Working Party had also noted the establishing of a universal list of characteristics of the genus *Vitis* by the International Wine and Vine Office (IWO) and the comparison of the UPOV Test Guidelines for Almond with the Descriptor List for Almond prepared by the International Board for Plant Genetic Resources (IBPGR). It had expressed the wish that the contacts with other bodies doing similar work be improved.

17. The Working Party's fourteenth session would be held in Rome (Italy) from September 21 to 23, 1983, with Subgroups meeting on September 20, 1983. During that session it would rediscuss the working papers on Test Guidelines for Avocado, for Strawberry (revision), for Kiwi Fruit, for Persimmon, for Quince and for Apple Rootstocks and would start discussing a working paper on Test Guidelines for Mango.

Progress Report on the Work of the Technical Working Party for Ornamental Plants and Forest Trees (TWO)

18. Mrs. U. Löscher (Federal Republic of Germany), Chairman of the Technical Working Party for Ornamental Plants and Forest Trees, reported on the fifteenth session of her working Party, which had taken place in Cambridge (United Kingdom) from October 5 to 7, 1982. The full report on that session was reproduced in document TWO/XV/12. During the session, the Working Party completed its work on drafts for Test Guidelines for African Violet (revision), for Carnation (revision), for Anthurium and for Narcissi prior to submission to the professional organizations for comments. It also had started discussing a working paper on Test Guidelines for Chrysanthemum (revision). Time had not permitted a detailed discussion of working papers on Test Guidelines for Heather, for Christ's Thorn and for Ornamental Apples. In addition, the Working Party had discussed several general items and had come to the following conclusions:

(i) With respect to distinctness, homogeneity and stability in species containing both vegetatively propagated varieties and varieties reproduced by seed, it had confirmed that the same homogeneity requirements had to be applied to both groups of varieties. As the expression of certain characteristics of one and the same variety could differ, depending on the propagation

method, all comparisons when testing for distinctness would have to be made on vegetatively propagated plant material, even if a variety was normally reproduced by seed.

(ii) With respect to the acceptable number of different types of non-uniformity, it had agreed that in future all Test Guidelines should contain in the Technical Notes a paragraph on tolerances. It would first put this into practice for those species which were tested by one member State for all or most of the other member States.

(iii) With respect to the List of Classes for Variety Denominations, it had made proposals for amendments.

(iv) With respect to the possibility of establishing a UPOV Color Chart, it had proposed a pilot project to be financed by UPOV and to be prepared by experts from the Federal Republic of Germany. For one basic color (red) different shades of color towards black, white and grey should be prepared. A Subgroup on Color should then discuss on the basis of that example what differences between the shades of color were necessary and whether this principle of preparation of colors was the best for a UPOV Color Chart.

(v) The work on the working papers on Test Guidelines for Willow and for Norway Spruce, which had started in the Technical Working Party for Forest Trees, would be integrated into the normal program of the Working Party and new drafts for these two species would be prepared by a Subgroup which would meet in 1984 in Hanover (Federal Republic of Germany).

19. The Working Party's sixteenth session was to be held at Conthey, Switzerland, from September 27 to 29, 1983. During that session the Working Party would rediscuss the drafts for Test Guidelines for African Violet (revision), for Carnation (revision), for Anthurium and for Narcissi, taking into account the comments received from the professional organizations. It would continue its discussions on working papers on Test Guidelines for Chrysanthemum (revision), for Heather and for Christ's Thorn, would start discussing working papers on Test Guidelines for Freesia (revision), for Cactus (Rhipsalidopsis, Schlumbergera), for Iris (bulbous), for Lagerstroemia and for Juniper, and would discuss adding characteristics or making amendments to the draft Test Guidelines for Apple to make them suitable also for ornamental apple varieties. Furthermore, it would continue to discuss the establishing of a UPOV Color Chart. The Working Party's seventeenth session was planned to take place at Hanover (Federal Republic of Germany) from August 21 to 23, 1984. During that session it was planned to continue the above-mentioned work and to start discussions on working papers on Test Guidelines for Elatior Begonia (revision), for Streptocarpus (revision) and for Gladiolus.

Progress Report on the Work of the Technical Working Party for Vegetables (TWV)

20. Mr. F. Schneider (Netherlands), Chairman of the Technical Working Party for Vegetables, reported on the fifteenth session of his Working Party, which had taken place in Geneva (Switzerland) from May 11 to 13, 1982. The full report on that session was reproduced in document TWV/XV/7. During the session, the Working Party had completed its work on revised Test Guidelines for French Beans and on new Test Guidelines for Celery prior to submission to the Technical Committee for final adoption and also on new Test Guidelines for Leek prior to submission to the professional organizations for comments. It also had started revising the Test Guidelines for Broad Beans and drafting new Test Guidelines for Curly Kale. It had left the planned revision of the Test Guidelines for Turnip to the Technical Working Party for Agricultural Crops. In addition, it had discussed several general items and had come to the following conclusions:

(i) With respect to the possibilities for cooperation, especially harmonization of the methods for testing disease resistance, it saw that the sole possibility was to convey its wishes to the pathologists who were doing the tests and to hope that they would start harmonizing their methods;

(ii) With respect to the harmonization of reference collections, it would start comparing variety descriptions established in the individual member States for six selected pea varieties. As a long-term program it proposed that in future the collection of all descriptions should be fed into a centralized computer with access for every member State in order to compare new descriptions.

(iii) It had agreed on a 12-percent tolerance for inbred plants as long as those plants could be identified as inbred plants. Some experts expressed reservations on this percentage, however, for certain reasons that might not necessarily be connected with the testing itself.

(iv) A study on how tests were actually performed in the UPOV member States would be made on the basis of a questionnaire asking for information on several vegetable species.

21. The Working Party's sixteenth session was to be held at Zaragoza (Spain) from May 31 to June 2, 1983; a Subgroup might meet on May 30, 1983. During that next session the Working Party would rediscuss the draft Test Guidelines for Leek and working papers on revised Test Guidelines for Broad Bean and on new Test Guidelines for Curly Kale and would start discussing working papers on revised Test Guidelines for Turnip and for Tomato and on new Test Guidelines for Endive, for Swede, for Leaf Beet and for Melon. Furthermore, it would continue its discussions on tolerances for inbred plants, start comparing variety descriptions and studying how tests were carried out in the individual member States.

Test Guidelines

22. The Committee discussed the draft Test Guidelines mentioned in paragraph 1 of document TC/XVIII/2 Rev. and finally adopted the Test Guidelines for the following species, subject to the changes made by the Editorial Committee and reported on during the present session:

TG/12/3(proj.) - French Bean (revision)
TG/82/2(proj.) - Celery
TG/83/2(proj.) - Citrus
TG/84/2(proj.) - Japanese Plum

23. The Committee also noted the status of the Test Guidelines mentioned in paragraph 2 and in the annexes to that document. With respect to the presentation of the annexes, it proposed that in future the corresponding document should contain, in addition to the general overview of the different stages of the Test Guidelines, lists grouped according to the following order:

- (i) Numerical order of Test Guidelines
- (ii) Latin names of species in alphabetical order
- (iii) English common names of species in alphabetical order
- (iv) French common names of species in alphabetical order
- (v) German common names of species in alphabetical order

24. In addition, the column of the names arranged in alphabetical order should be moved to the beginning of the tables immediately after the document number. Revisions of Test Guidelines should always be cited next to the adopted document. The updated and amended versions are reproduced in the Annexes II to VII to this document.

25. The Committee furthermore decided that in future drafts of Test Guidelines were always to be sent to the International Board for Plant Genetic Resources (IBPGR) for comments in the same way as they were sent to the professional organizations.

Off-Type Limits

26. The discussions were based on the documents TC/XVIII/3, TC/XVIII/6 Add., paragraph 10 and TWO/XV/12, Annex III.

27. The Committee came to the final conclusion that, with the sole exception of inbred plants, there was no need to allow for special tolerances in addition to the maximum tolerances mentioned in the General Introduction to the Test Guidelines. As to the inbred plants, the Technical Working Parties were asked to establish the admissible tolerances in the individual Test Guidelines when revising them or preparing new Test Guidelines. The Committee could not agree to a statement that for agricultural crops it would be sufficient to double the figures for normal tolerances given in the table under paragraph 28 of the General Introduction to the Test Guidelines in order to cover also inbred plants. Paragraph 33 of that General Introduction clearly stated that those tolerances had to be fixed by the Technical Working Parties.

28. With respect to the question asked by the Technical Working Party for Ornamental Plants and Forest Trees and reproduced in paragraph 10 of document TC/XVIII/6 Add., the Committee decided that in the various Technical Notes there should be no mention of different tolerances for individual types of off-types.

Lists of Varieties Under Test

29. The discussions were based on documents TC/XVIII/4 and TC/XVIII/6 Add., paragraph 5.

30. The Committee did not take up the proposal of the Technical Working Parties to ask the Office of UPOV to combine the different lists into one list, nor could it agree that the distribution of the lists should be taken over by the Office of UPOV. The Office of UPOV was therefore requested to ask the various member States once more whether they were still interested in receiving the lists and to supply, on the basis of the incoming information, the individual member States with an updated list of addresses for the distribution of the above-mentioned lists. Having noted the information given in the annex to document TC/XVIII/4, the Committee asked the member States to comply as far as possible with the wishes expressed by the Technical Working Parties.

Harmonization of Automation and Computer Programs

31. The discussions were based on document TC/XVIII/5.

32. The Committee noted the information given in that document without, however, going into details. It decided to set up a Technical Working Party to study the question of harmonization of automation and computer programs. This Working Party would meet in May or June 1983 for two to three days in Cambridge (United Kingdom) under the chairmanship of Mr. Hutin (Chairman of the Technical Committee). Mr. Kelly (United Kingdom) was soon to give the exact date for that meeting to the Office of UPOV which would inform the member States accordingly. The member States would then also be asked to designate the experts who would participate in the work of that Working Party. Those experts should mainly be experts in statistics and data processing. The first task of the Working Party would be to prepare an inventory of the existing programs and methods of data processing. Thereafter it would concentrate on the following two topics:

(i) A study of the problem of codification and standardization of entries, in order to make an exchange of information compatible

(ii) The preparation of a comparative analysis of the methods used for cross fertilized plants in the testing of distinctness, homogeneity and stability and in the statistical interpretation of the data obtained and of a proposal for an improved common solution.

33. As already practiced in the other Technical Working Parties, the Technical Working Party on Automation and Computer Programs would also look at the data processing facilities in Cambridge and in time, as it was intended to convene following sessions at the offices of other UPOV member States where such facilities existed, it would obtain fair knowledge of the different facilities available in the various member States.

Questions presented by the Technical Working Parties

34. The discussions were based on documents TC/XVIII/6 and TC/XVIII/6 Add.

Applicability of Characteristics Throughout the World

35. The Committee took note of the information given in document TC/XVIII/6, paragraph 2. It finally concluded that there was general agreement that decisions on distinctness should always be based on the results obtained at a given testing station and the growing conditions prevailing there and that variety descriptions reflected those results and conditions. There was therefore no need to delete a certain characteristic from given Test Guidelines if

it proved that the expression of that characteristic would differ in different parts of the world. Differences of that kind had existed already inside in the original--European--member States and were likely to become more pronounced as UPOV became a truly worldwide organization. The attention of the Technical Working Parties would have to be drawn to the need for a careful check of whether the example varieties given had a value only for a certain region, which might result in different example varieties having to be given for different regions. Inside Europe, it was already now the case that the expression of certain example varieties, e.g. for potatoes, differed by about one to two states of expression between the testing stations in the Netherlands and those in France. This had so far not posed a problem as long as the whole order of example varieties was kept the same. Cases could, however, arise where the order of the example varieties changed. In those cases, it might be better to choose other example varieties.

Electrophoresis

36. The discussions were based on documents TC/XVIII/8 and TC/XVIII/6, paragraph 3.

37. In connection with the discussion on electrophoresis, the Committee confirmed again that, as stated in paragraph 7 of the General Introduction to the Test Guidelines (document TG/1/2), all characteristics listed in the UPOV Test Guidelines were considered to be important for distinguishing one variety from another. This meant that, if a clear difference could be found in at least one of the mentioned characteristics, it would be sufficient to enable two varieties to be distinguished from each other and would justify the granting of separate plant variety protection on the basis of that difference alone. As certain doubts had been expressed as to whether the Technical Working Parties had always kept that general rule in mind when preparing the individual Test Guidelines, the Committee asked the Technical Working Parties to be sure to apply it in their future work.

38. The Committee noted the four criteria mentioned in paragraph 3 of document TC/XVIII/6 for assessing whether a characteristic obtained by the application of electrophoretic methods could be used for establishing distinctness. It observed that the first three criteria mentioned would be applicable to any characteristic to be used for the testing of distinctness and should therefore be more broadly worded.

39. The broader wording of those three criteria would require that, before any characteristic could be used for distinctness purposes, the following had to be checked:

(i) whether the characteristic could be considered an important characteristic and whether varieties that could be identified by that characteristic could be expected to have a sufficient minimum distance from other varieties to justify the grant of plant variety protection,

(ii) whether varieties could be expected to be homogeneous in the characteristic concerned or to segregate according to a certain formula, and

(iii) whether harmonized and standardized methods existed to observe that characteristic.

40. The Technical Working Parties were to be reminded of the above three criteria and of the need to apply them, at least when preparing new Test Guidelines or when revising existing Test Guidelines. National authorities should also have regard to those criteria when preparing or revising their own domestic lists of characteristics.

41. The Committee also confirmed again its conclusion reached at its seventeenth session as, indicated in paragraphs 14 to 16 of document TC/XVII/5, that there was a difference between the criteria a characteristic had to fulfill when being used for distinguishing purposes and the criteria a characteristic had to fulfill when being used for the checking of the identity of a sample.

42. Since a distinction had now been made between characteristics used for identification purposes and those used for distinguishing purposes, it was asked whether in the UPOV Test Guidelines, in a special part or in an annex, characteristics could also be included which could not be used for distinguishing purposes but for identification purposes only. The main aim behind this inclusion would be an attempt to harmonize also these types of characteristics, especially as there was no doubt that electrophoretograms were useful characteristics for identification purposes and were already at present widely used in the various member States. The Committee did not, however, take any decision on this proposal.

43. It was further mentioned that an electrophoretogram is usually unique to a particular variety and, therefore, can be used for identification purposes without the need for detailed comparisons with other varieties in each case, as is generally required for most of the traditional characteristics. Therefore it had to be considered a different type of characteristic.

44. Several delegates expressed their concern about a statement in document TC/XVIII/6, paragraph 3, where it was reported that during the last session of the Technical Working Party for Agricultural Crops it had been said that the question of the use of characteristics obtained by means of electrophoresis would have to be solved not on a species-by-species basis but for all species together. This was considered to be unacceptable. Referring back to the three above-mentioned criteria for the acceptance of a characteristic for distinctness purposes, it was agreed that characteristics obtained by the methods of electrophoresis would have to be checked species by species to see whether they fulfilled these three criteria.

45. The Committee finally agreed to await the outcome of the following pilot project before accepting an electrophoretogram as a distinguishing characteristic. The experts from the United Kingdom and the Federal Republic of Germany were to test six selected wheat varieties by applying several specified electrophoretic methods as well as by assessing traditional characteristics of the UPOV Test Guidelines. Any other member State which would like to join that pilot project would be welcome and should address itself to Mr. Kelly (United Kingdom). As the emphasis of the project was placed on the characteristics obtained by means of electrophoresis, only a selected number of the characteristics already contained in the UPOV Test Guidelines would be tested at the same time.

46. The Office of UPOV was asked to prepare, in addition to that project, a questionnaire in which the UPOV member States would be asked to supply information on the individual electrophoretic methods used and to state whether those methods were used on a routine basis or only at an experimental level. The information to be collected by the Office of UPOV could then also be handed over to a meeting on electrophoresis planned by ISTA in Cambridge for September 1983.

Impact of Patents on Varieties, Plant Breeding and Plant Breeders' Rights

47. The Committee did not enter into discussions on this subject as it had been discussed in detail in October during the 1982 UPOV Symposium.

Place in the Test Guidelines for the Presentation of Additional Information

48. The discussion was based on paragraph 5 of document TC/XVIII/6. The Committee confirmed that it saw no need to change its present practice of presentation of information in the UPOV Test Guidelines. The experts would, however, be free to make certain changes at a national level, especially to include additional information in the Table of Characteristics rather than keeping it in the Technical Notes.

Characteristics to be Observed on Seed Sent in by the Breeder

49. The discussion was based on paragraph 6 of document TC/XVIII/6. The Committee studied the question of whether for sunflower a deviation from the position taken with respect to maize could be justified, as proposed by the Technical Working Party for Agricultural Crops. It hesitated, however, to admit the application of a principle which differed from that agreed upon with

respect to maize. It therefore referred the question back to the Technical Working Party for Agricultural Crops and its Subgroup on the Test Guidelines for Sunflower for a further check whether it was not possible to follow the same principle already agreed upon for maize.

Testing at One Place Only and from One Single Seed Sample

50. The Committee noted the information given in document TC/XVIII/6, paragraph 7. After a prolonged discussion the Committee concluded that it was possible that the testing for distinctness could be performed at one place only as well as on the basis of one single sample alone.

51. Taking into account these two conclusions, the Committee agreed to delete in the Test Guidelines, wherever it was included in the Technical Notes, the paragraph cited at the end of paragraph 7 of document TC/XVIII/6 or any paragraph of a similar wording. Only the first part of the first sentence might be maintained but should be reworded to read: "All tests should comprise at least two repetitions" (two repetitions being understood as two plots in total).

Technological Characteristics

52. The Committee took note of the question presented to it by the Technical Working Party for Agricultural Crops and reproduced in document TC/XVIII/6, paragraph 8. It answered the question by saying that technological characteristics would have to fulfill the same three criteria as mentioned above for other characteristics. With respect to the third of those criteria, it would be necessary to state clearly in the Explanations and Methods the standardized methods for each of the technological characteristics mentioned in the Table of Characteristics. The remark that, when deciding on the acceptance of a given technological characteristic, it would have also to be watched that the method to be used would not demand an unjustifiable amount of time or effort, was not shared by the majority of the Committee.

Denomination of Varieties

53. The Committee noted the information given in document TC/XVIII/6 Add., paragraph 2 and 3.

Additional Tests to Complete Test Results Obtained in Another Member State

54. The Committee noted the information given in document TC/XVIII/6 Add., paragraph 4.

UPOV Color Chart

55. The discussions were based on documents TC/XVIII/11, TC/XVIII/12 and TC/XVIII/6 Add., paragraph 6. Mrs. Löscher (Federal Republic of Germany, Chairman of the Technical Working Party for Ornamental Plants and Forest Trees) explained in detail the study made in the Federal Varieties Office since about 1970 in comparing certain color charts (e.g. the Royal Horticultural Society (RHS) Colour Chart, the DIN 6164 Color Chart, the Munsell Book of Color and the National Color System (NCS) Color Chart). During this study the need for a new color chart had become apparent since with the exception of the RHS Colour Chart, the compared charts had been developed for industrial and not for horticultural or agricultural purposes and were therefore less adequate. They were especially insufficient with respect to light bright colors. The RHS Colour Chart which had several gaps with respect to certain colors was moreover out of print with no chance of being reprinted. That would now make it more urgent for UPOV to establish its own color chart. She therefore proposed that UPOV should prepare, as a pilot project, a segment of a plant color chart, i.e. selecting one basic color out of the planned 31 colors (red) and preparing all different shades of red towards black, towards white and towards grey. On the basis of that segment, it was then for the competent UPOV organs to decide whether to prepare the whole color chart and if yes, how many colors the color circle should have, in how many steps the single color should be developed three-dimensionally and how big the distance between the single color samples should be.

56. The Japanese color chart as reproduced in document TC/XVIII/12 and of which three diagrams had been submitted to the Committee was also discussed. The Committee felt that the information on the Japanese color chart was not as yet sufficient to enable assessment whether it would meet the UPOV requirements. It therefore set up a special ad hoc Subgroup to prepare a questionnaire to be sent to the Japanese authorities for further information.

57. The Office of UPOV was finally asked to obtain in the meantime, with the help of Mrs. Löscher (Federal Republic of Germany), offers for the preparation and printing of a reduced number of copies of the pilot project for distribution to the UPOV member States. This would enable the Consultative Committee to take the necessary decisions at its coming session in April 1983

58. Following the discussions on the color chart, Mr. Espenhain (Denmark) introduced document TC/XVIII/11 giving information on the VIPDENS 501 Colorimeter. This information was supplemented by the Vice Secretary-General who reported that he had received observations on the application of the VIPDENS Colorimeter in the testing of colors on apple varieties. The observations will be translated from Italian into the working languages of UPOV and will be submitted to the UPOV member States. The Committee agreed that, in spite of the work on establishing a UPOV color chart, it would encourage the experts from Denmark to continue assessing the usefulness of the colorimeter.

59. With respect to timetable, the Committee agreed that the answers on the questionnaire from the Japanese authorities should reach the Office of UPOV by February 1983. The offers for the preparation of the pilot project should be required for the same time.

Stabilization of Latin Names

60. The Committee noted the information given in document TC/XVIII/6 Add., paragraph 7. It asked the Technical Working Parties to prepare a list of species for which they saw problems and would like to have the Latin names stabilized by ISTA. A combination of these four lists would then to be presented to the next session of the Technical Committee.

Distinctness, Homogeneity and Stability in Species Containing Both Vegetatively Propagated Varieties and Varieties Produced by Seed

61. The Committee agreed with the information given in document TC/XVIII/6 Add., paragraph 9, with respect to the testing of varieties of species containing both vegetatively propagated varieties and varieties produced by seed. With respect to the question whether, to the description of a variety which had been obtained under special growing conditions, the expression of characteristics obtained under normal growing conditions would have to be added, the Committee referred to earlier remarks made during the present session (see paragraph 35) that any test report or description prepared was always connected to the place where and the conditions under which it had been prepared. The question of further descriptions for the final use of the variety did not fall under the competence of UPOV and therefore the Committee could not take a position with respect to that question.

EEC Test Guidelines

62. The Committee noted that the Technical Working Party for Agricultural Crops had proposed that those UPOV member States which at the same time were members of the European Economic Community (EEC) should invite their countries' representatives in EEC meetings to propose that the EEC adopt the same principle as followed with respect to ISTA that variety testing work be done according to internationally established guidelines for the testing of distinctness, homogeneity and stability, having in mind the UPOV Test Guidelines without specifically mentioning them.

Any Other BusinessList of Standard Reference Documents

63. On the proposal made by Mr. Kelly in a letter addressed to the Office of UPOV and presented to the Committee, the Committee agreed that the Technical Working Parties be asked to compile a list of those standard documents and books which they normally used in connection with the testing of varieties for distinctness, homogeneity and stability. The Office of UPOV would then put together these lists of standard documents and books and present them to the Technical Committee for its coming session.

64. In connection with the proposal to collect the standard documents and books necessary or useful for the testing of distinctness, homogeneity and stability, it was mentioned that despite the importance of all this information the importance of testing practice should also not be forgotten. Experts from new UPOV member States should therefore not only rely on the printed information but also envisage the possibility of visiting testing authorities of some of the UPOV member States to gain on-the-spot information on the testing of varieties.

Rapid Change of Example Varieties

65. Mr. Kelly drew the attention of the Committee to the fact that in certain species varieties changed very fast in the trade, which would result in certain varieties completely disappearing from the market. If those varieties had been used as example varieties they would have to be replaced in the UPOV Test Guidelines by other varieties. The Committee observed that it was well aware of that fact but did not see any other solution but to recommend to the Technical Working Parties to observe the development and to replace example varieties when the above-mentioned situation arose.

Program for the Nineteenth Session

66. The Committee noted that the Council had agreed that the next session of the Committee would take place on October 3 and 4, 1983. It agreed that during that session it would:

- (i) hear the reports on the work of the Technical Working Parties, including also of the Technical Working Party on Automation and Computer Programs, and decide on the program of their work for the coming year,
- (ii) discuss any problems raised by the Technical Working Parties,
- (iii) rediscuss the question of the preparation of an UPOV Color Chart
- (iv) decide on any Test Guidelines submitted by the Technical Working Parties for final adoption,
- (v) review again the procedure for the exchange of lists of varieties under test,
- (vi) take note of the lists of Latin names to be stabilized by ISTA,
- (vii) review the list of standard documents and books useful in connection with the testing of varieties, and
- (viii) discuss the comments received from the professional organizations on the question of minimum distances between varieties.

Thanks to Three Delegates who would no longer be Participating in the Work of the Technical Committee

67. Both Mr. Gfeller (President of the Council) and Mr. Hutin (Chairman of the Technical Committee) referred to the fact that Mr. R. D'Hoogh (Belgium), Mr. J. Mullin (Ireland) and Mr. A.F. Kelly (United Kingdom) would, for different reasons, no longer be participating in the work of the Technical Committee. They thanked the three Delegates in the name of all members of the Technical Committee for their contributions made during their participation in the work of the Technical Committee and wished them all the best for their future.

68. This report was adopted by the Technical Committee at its nineteenth session on October 3, 1983.

[Seven Annexes follows]

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

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* only for items 8 and 11 of the agenda/seulement pour les points 8 et 11 de l'ordre du jour/nur für die Punkte 8 und 11 der Tagesordnung

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IV. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPOV

Dr. H. MAST, Vice Secretary-General
Dr. M.-H. THIELE-WITTIG, Senior Counsellor
Mr. A. HEITZ, Senior Officer
Mr. A. WHEELER, Senior Officer

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

Note: Annexes II to VII are not attached to this final version of the report since they are largely superseded. Updated tables are reproduced in the Annexes to document TC/XIX/2.

Remarque: Les annexes II à VII ne sont pas jointes à la présente version finale du compte rendu parce qu'elles sont largement dépassées. Des tableaux mis à jour figureront dans les annexes du document TC/XIX/2.

Anmerkung: Die Anlagen II bis VII sind diesem angenommenen Bericht nicht mehr beigefügt, da sie grösstenteils überholt sind. Auf den neuesten Stand gebrachte Tabellen sind in den Anlagen des Dokuments TC/XIX/2 wiedergegeben.

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