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UPOV

ICE/ I/5

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON
INTERNATIONAL COOPERATION IN EXAMINATION

First Session

Geneva, November 7, 1974

DRAFT REPORT

prepared by the Office of UPOV

1. The Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee") held its first (preparatory) session in Geneva on November 7, 1974.
2. The six member States of UPOV were invited to the session. France, Germany (Federal Republic of), the Netherlands, Sweden and the United Kingdom were represented. Denmark was not represented. The list of participants is attached to this report (Annex II).
3. The meetings were presided over by Mr J.I.C. Butler (Netherlands), Chairman of the Committee.
4. The agenda was adopted as appearing in document ICE/I/1.
5. The discussions were based on documents ICE/I/2, ICE/I/3 and C/VIII/6.Add, as well as on the draft of an agreement "on mutual utilisation of the services for testing of varieties on distinctness, homogeneity and stability" between, on the one hand, the UK Minister of Agriculture, Fisheries and Food and the UK Controller of the Plant Variety Rights Office and, on the other hand, the Netherlands Minister of Agriculture and Fisheries and the Netherlands Board for Plant Breeders' Rights (hereinafter referred to as "the draft bilateral agreement between the United Kingdom and the Netherlands"). The text of that draft was distributed during the meeting; a copy of it is annexed to this report (Annex I).
6. It was generally recognized that, with the possible exception of certain species, it was desirable that the results of the examination performed in one member State should be usable and used in other member States too, in order to achieve economy for the national administrations or offices whose duty is to decide upon applications for the grant of plant breeders' rights (hereinafter referred to as "the national offices") and for the breeders who apply for such rights in more than one member State, and to enable member States to increase the number of species eligible for protection. It was noted that arrangements among the various national Offices for offering and accepting such results may be envisaged in the form of bilateral agreements or of a multilateral agreement.

7. The advantages and disadvantages of both systems were discussed. Bilateral agreements seem to have the advantage that they can be more rapidly negotiated, put into effect, and, where necessary, changed; furthermore, they can exactly reflect the possibilities of both contracting parties. On the other hand, their number--particularly with the expected increase in UPOV's membership--must be quite high if they are supposed to cover all or most of the possible bilateral relations, and this entails correspondingly time-consuming negotiations; if the various bilateral agreements differ from each other, examination results in one member State, which, theoretically, should be acceptable in most other member States, will lose their universal validity; finally, uniform implementation of the Test Guidelines may be more difficult to achieve if such implementation is not based on some form of centralized monitoring.

8. The Committee decided that it would, in its future sessions, continue the study of both possibilities: the first, with a view to the possible drawing up of the draft of a model bilateral agreement; the second, with a view to the possible drawing up of the draft of a multilateral agreement whose form (a decision by the Council, a special agreement under the UPOV Convention or other) would still have to be decided.

9. In order to prepare the discussions on both these possibilities in its next session, the Committee:

(i) as far as bilateral agreements are concerned, invited each of its six members to communicate in writing, by December 15, 1974, to the Office of UPOV, comments and suggestions on the draft bilateral agreement between the United Kingdom and the Netherlands, and asked the Office of UPOV to assemble the said comments and suggestions in a working document for the Committee's next session,

(ii) as far as a possible multilateral agreement is concerned, invited the Office of UPOV to prepare a working document for its next session, outlining various possible solutions.

10. The comments and the working document in question may reflect various possibilities of cooperation mentioned in the discussions. These included, in addition to the proposal made by the United Kingdom and reproduced in Annex I to document ICE/I/3, the following:

(i) where it is usual to proceed with the testing of a given variety in two different places within the same State, to effect one test in one State and the other in another State, and then to exchange the test results,

(ii) before proceeding with the testing in a State in which protection is applied for in respect of a given variety, to ask all the other member States to say which of them, if any, has already proceeded or is proceeding with the testing of the same variety; if tests are already completed, to ask for their results or, if they are under way, to wait for their results; once the results are received, to use them in lieu of tests which otherwise would have to be performed in the said State or to use them for eliminating or reducing certain aspects of the tests in the said State,

(iii) to exchange, between two or more member States engaged in the testing of the same variety, the interim results of their tests,

(iv) to exchange, between two or more member States which have tested the same variety, the final results of their tests (the decision could then be based on some or all of the results received),

(v) to require applicants for the grant of plant breeders' rights in one State to indicate, in their applications, whether they have applied, in foreign States, for the inclusion of the variety (which is the subject of the application for the grant of the said rights) in the national lists or catalogues of such States, and, if so, to require them to indicate the foreign States in which they have so applied and the results of their applications.

10. In order to illustrate some of the problems and thereby facilitate its study, the expert of the Federal Republic of Germany said that he would send to the Office of UPOV copies of actual reports on examination of the kind that would be needed if the report made in one member State were to be used by the national Office of another member State.

12. In order to complete and bring up to date the survey carried out by the Office of UPOV (see documents UPOV/VIII/8 and UPOV/VIII/11), the Committee asked the latter to assemble information from the six member States in reply to the following questions:

(i) What are the species for which the member State is ready to carry out examination according to internationally agreed principles and communicate the results of its examination to other member States, as of now and in the near future?

(ii) What are the species for which the national Office of the member State now uses the results of examination carried out in another member State? For how many varieties have such results been received and used so far?

(iii) What are the species, not covered by (ii), above, for which the member State would be willing to use the results of examination carried out in another member State?

(iv) What are the species which the member State does not intend to examine itself but for which it would be ready to grant plant breeders' rights if the examination were carried out in another member State and for which the results of such an examination would be communicated to it?

13. It was noted during the discussion that the Technical Steering Committee should, as an experiment, compare, in a small number of cases already decided upon in the past, the results of the examination of the same varieties effected in more than one member State. Such a comparison should show the extent to which the internationally established guidelines for testing are uniformly applied in the different member States.

14. It was mentioned during the discussion that some Offices exchange lists showing the pending applications for the grant of certificates for new plant varieties in order to identify those varieties for which applications were filed in more than one country, and also to some extent lists showing pending applications for the entry of a variety into a national list. The Committee was of the opinion that the generalization of such an exchange of information could be useful but, recognizing the need for resolving some legal and technical questions first, decided to revert to the problem on a later occasion.

15. As to the participation, in its next session, of observers of certain States not members of UPOV, the Committee noted that the procedure decided upon by the Consultative Committee (see document UPOV/WC/X/19, paragraph 27) would be followed, but, as far as the non-governmental organizations referred to by the Consultative Committee (*ibid.*) are concerned, the Committee decided that they should not be invited to its next session--since it will still have to deal with some preliminary questions--but that during that session, which will be held from January 15 to 17, 1975, the question of inviting the said non-governmental organizations to the following session would be considered.

[Two Annexes follow]

ANNEX I

Draft Agreement
on Mutual Utilisation of the Services for Testing
of Varieties on Distinctness, Homogeneity and Stability

1. The Minister of Agriculture, Fisheries and Food in the United Kingdom and the Controller of the Plant Variety Rights Office--hereafter referred to as the Controller--on the one hand and the Minister of Agriculture and Fisheries in the Netherlands and the Board for the Plant Breeders' Rights--hereafter referred to as the Board--on the other hand, agree herewith to mutual help and cooperation in the field of variety testing on distinctness, homogeneity and stability.
2. This agreement is meant as a special agreement under section 30, paragraph 2 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961.
3. The participants to this agreement under 1 convene that the technical variety testing on all applications made in either of the countries will be done, by the Controller for the species:
 - Chrysanthemum morifolium Ram.
 - Lolium multiflorum Lam.
 - Malus Mill. (except ornamentals)
 - Medicago sativa L. and Medicago x varia Martyn
 - Rheum L.
 - Trifolium pratense L.and by the Board for the species:
 - Agrostis canina L.
 - Agrostis gigantea Roth.
 - Agrostis stolonifera L.
 - Agrostis tenuis Sibth.
 - Altroemeria L.
 - Dianthus caryophyllus L. (in glasshouses)
 - Freesia Klatt
 - Hyacinthus orientalis L.
 - Poa Annu L.
 - Poa compressa L.
 - Poa nemoralis L.
 - Poa palustris L.
 - Poa pratensis L.
 - Poa trivialis L.
 - Streptocarpus x hybridus Voss.
 - Tulipa L.
4. The above lists of species are open for extension on agreement by the Controller and the Board. Any extension shall be recorded in a rider to this agreement.
5. The Controller and the Board convene that the final examination reports on variety testing--when positive with description--will be sent to the party on which behalf the testing is done. As far as the Council of UPOV did adopt a guideline for the conduct of tests on one of the species mentioned under 3, the examination within this species will be carried out and the report and description will be made up according to the guideline. The description of the variety shall be made up also in accordance with those guidelines.
6. In those cases that because of an action in law or otherwise the advice of the technical expert, who actually carried out the examination of the variety, is needed in the country which entrusted the testing to the other country, it is

herewith agreed upon, that the Controller resp. the Board shall keep available the services of its expert. If any costs are involved, which are not met by the party who involved the services of said expert, the Controller and the Board take it upon themselves to meet the expenses for the services.

7. As to the payments for the examinations done by the Controller on behalf of the Controller, the recommendations in the Resolution on Fees Questions, adopted in the meeting of the Council of UPOV of October 10 to 12, 1973 (UPOV/C/VII/23) will apply.

8. When the Controller or the Board asks for the final examination report on a variety of a species not mentioned under section 3, it is herewith agreed upon that such a report shall be supplied. All data of the trials, on which the report was based, will be kept available. In those cases the above shall apply accordingly.

9. Technical details such as the application form to be used, the technical questionnaire to be filled in, the identification material needed, the time this must be available for the Controller resp. the Board, the date(s) and ways of payment of fees to each other will be settled between the Controller and the Board.

10. This agreement will become effective as from January 1, 1975. However it is understood that for the mutual help before this date, the above shall be applied as far as possible.

11. Neither party will seek to revoke this agreement without giving one year's notice to the other party. Before giving such notice, they will consult each other.

12. Notwithstanding the one year's notice, in case of denunciation of the agreement, the trials entered upon before the ending of the term of the notice will be finished and reported upon by the Controller resp. the Board.

[End of Annex I]

[Annex II follows]

ANNEX II

LIST OF PARTICIPANTS

I. MEMBER STATESFRANCE

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II. OFFICER

Mr. J.I.C. BUTLER, Chairman

III. OFFICE OF UPOV

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Dr. H. MAST, Vice Secretary-General

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