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

GENEVA

COMMITTEE OF EXPERTS ON  
INTERNATIONAL COOPERATION IN EXAMINATION

Second Session

Geneva, January 15 to 17, 1975

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The second session of the Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee") was held in Geneva at the headquarters of UPOV from January 15 to 17, 1975. The six member States of UPOV were represented. Of the non-member States invited, Finland was represented by an observer. The list of participants is attached to the present report (Annex I).

Adoption of the Agenda

3. The Committee adopted the agenda as appearing in document ICE/II/1.

Adoption of the Report on the First Session

4. The Committee unanimously adopted the report on the first session as appearing in document ICE/I/5.

Draft Model Bilateral Agreement for International Cooperation in the Testing of Varieties

5. The discussions were based on Annex IV of document ICE/II/3, and, later, on a draft prepared by a Drafting Committee which met in the evening of January 15.

6. After a thorough and detailed discussion, the Committee agreed on a Draft UPOV Model Bilateral Agreement for International Cooperation in the Testing of Varieties. Its text is attached as Annex II to this document.

7. It was noted that although the Draft UPOV Model Bilateral Agreement had been prepared in a form which provides for its conclusion by the examining authority-- Authority A--and another authority--Authority B--it was always possible that several authorities wishing to use the services of Authority A might sign the Agreement. In such a case, there would be several parties on the "B-side" (B1, B2, B3, etc.).

Consideration of Demands and Offers for the Exchange of Test Results

8. The discussions were based on document ICE/II/4.
9. The Committee considered the list indicating the demands and offers for the exchange of test results as the basis for the Draft Model Bilateral Agreement mentioned in paragraph 6, above.
10. The Committee agreed that the offers mentioned in that list were meant to be offers to undertake tests for all present member States of UPOV. Since the list would, in any case, be revised each year, the offering authorities were in a position to decide whether they could maintain their offers in the case of ratification of or accession to the Convention by new member States.
11. The Office of the Union was requested to prepare the revised version of the list on the basis of the comments of several member States that were still pending.

Possible Ways of Achieving Multilateral Cooperation in Examination

12. Discussions were based on document ICE/II/2, which is a memorandum of the Office of the Union (hereinafter referred to as "the Memorandum").
13. It was agreed that, in paragraph 1 of the Memorandum, no reference should be made to field and glasshouse testing since there were other methods of testing as well.
14. It was agreed that the agreement referred to in paragraph 2 of the Memorandum could be a "special agreement" under the UPOV Convention, an "administrative agreement" concluded between national Offices or a decision by the Council.
15. It was agreed that, whenever the nature of the multilateral agreement so permitted, it should follow the same principles as those which were incorporated in the Draft Model Bilateral Agreement mentioned in paragraph 6, above.
16. In connection with the three principles set forth in paragraphs 3 to 21 of the Memorandum, the following changes were agreed upon or suggested for further study:

As to Principle No. 1

- (i) The announcement should be made to the Secretary-General, who would draw the attention of the announcing State to any defect in its announcement, whereupon the State could, if it so desired, change the said announcement. The Secretary-General would report to the Council on the announcements received.
- (ii) The announcement could also state that the national Office, in addition to its readiness to examine certain species, was ready to transmit the test reports it already had available to the national Office of any other member State.
- (iii) It should be understood that the readiness of the declaring national Office related to those States which were members of UPOV at the time the announcement was made.
- (iv) It should be understood that the fee that the declaring Office must receive from the Office using the test results was the same as the testing fee of the declaring Office. However, the question of a reduction in the case of more than a certain number of requests (three?) should be studied.
- (v) The request for the test results must come from a national Office (not the applicant). Where the request was for examination (rather than the transmittal of existing test results), the material to be tested must be transmitted to the testing national Office by the requesting national Office or according to the directions of the latter Office (that is, it cannot be transmitted by the applicant himself except if so directed by the latter Office).

(vi) The interim reports must be transmitted "without undue delay" after each testing period. The same would apply to the transmittal of the final examination report.

(vii) The final examination report must be accompanied by the description of the variety.

As to Principle No. 2

(viii) The Council would "note" (rather than "accept") the announcements. However, before noting any announcement, the Council may draw the attention of the announcing Office to certain facts and that Office may then, if it so wishes, modify its announcement.

As to Principle No. 3

(ix) The information should indicate in what species (examined by which national Offices) the informing national Office was interested. It should further indicate whether that Office was interested in receiving only the test reports (and the description) or also an expression of opinion on the question whether the variety is distinctive, homogenous and stable (such opinion would probably be of interest only to States which would rely, as far as these technical questions are concerned, on the foreign examination report without wishing to reserve to themselves the possibility of drawing their own technical conclusions by considering the test results, or by checking or completing them).

(x) The maximum legal effect referred to in paragraph 18(i) of the Memorandum should be limited to the acceptance of the technical opinion (as described at the end of the preceding item), since other requirements (whether the fees have been paid, whether the applicant has the nationality or domicile which entitles him to protection, etc.) would always be a matter for independent decision by each national Office.

(xi) The language requirements for the test reports and description should be specified.

(xii) The agreement should not contemplate (as did paragraph 18(iii) of the Memorandum) the possibility of the production by the applicant of the test results of an examination carried out abroad. Where the production of such test results was permitted before the national Office of a State, that Office should obtain them direct from the Office of the foreign State.

17. Finally, it was agreed that, in preparing a revised version of the Memorandum for the April or November session of the Committee of Experts, the Office should also consider covering the following points:

(i) the usability in the granting procedure of plant breeders' rights of tests carried out for the purposes of the national list or catalogue of varieties allowed to be put on the market in the State concerned,

(ii) the situation where applications for the grant of plant breeders' rights are simultaneously pending before the national Offices of several States,

(iii) the possibility of using the test results carried out abroad (for example, of the first period only or mainly of the first period) together with the test results obtained in the State concerned (for example, of the second period only or mainly of the second period).

Proposal by the Plant Variety Rights Office of the United Kingdom

18. The Committee discussed the possibility of closer cooperation for major crops for which centralized testing could not yet be foreseen since the member States were not in a position to give up their own testing facilities. In this connection, the proposal of the United Kingdom, as reproduced in document ICE/I/3, was rediscussed.

19. The procedure envisaged in that proposal and described by the Delegation of the United Kingdom is as follows. The applicant, when filing his application, would be asked to state in which countries he wished to obtain protection and would have to indicate the country in which he was primarily interested. In the first growing season, only the authority in the latter country would undertake the tests for distinctness, homogeneity and stability, and the Offices in the other member States in which protection is sought would depend mainly on the results of those tests. These Offices could, in the second growing season, conduct a limited test to ensure that the variety was distinct under the particular conditions existing in their countries. Great savings could be expected under a system of this kind since tests for applications which were withdrawn after the first growing season would be made only in one member State. To emphasize the amount of savings, it was pointed out that, for cereals in the United Kingdom in 1973, the number of applications rejected on grounds of non-homogeneity after the first growing season amounted to 37% of the total number of applications for cereals.

20. During the discussion of this proposal, the importance of further harmonization of testing methods before achieving any system of cooperation of the kind mentioned above was strongly endorsed. It was pointed out that it was necessary to establish test guidelines for all major crops, to improve the existing test guidelines, to standardize the reference collections used in the Offices and to harmonize the parameters for the evaluation of test results.

21. It was also stressed that the main aim of the British proposal, to ensure that member States would take over test results--either in whole or in part--which were already obtained in other member States, could in a great number of cases be achieved under Article 12 of the Draft Model Bilateral Agreement mentioned in paragraph 6, above.

22. With respect to the remark that no use could be made of the possibilities offered in Article 12 of the Draft Model Bilateral Agreement in the case of simultaneous applications in several member States, it was pointed out that, according to present experience, breeders normally filed the first application years ahead of subsequent applications in other member States. One of the reasons for this was the shortage of seeds or other propagating material in the first years after the variety had been developed. It was also mentioned that it was possible under the UPOV Convention to file subsequent applications within the priority year and to furnish the seeds or other propagating material to the Offices within four years after the expiration of the priority period. In all those cases, the Offices in the countries of the subsequent filings could well use the results of tests performed in the country of the first application.

23. Attention was also drawn to the connection between the protection of plant breeders' rights and the entry of varieties in the national lists. Breeders often started with applications for registration of the variety in the national lists and, if they were interested in marketing the variety in more than one State, they filed applications for registration in several States simultaneously. In such cases, simultaneous testing in two or more States was not avoided under the British proposal.

24. The opinion was expressed that, instead of taking over the results obtained in one Office in the first growing season, it was preferable to take over the results of the whole tests. That would, however, be possible only if both States were situated in the same climatical zone.

25. No advantage was seen by the Committee in centralizing the application, i.e., giving breeders the possibility of filing one application in one place--for instance, a national Office in a member State--which would also have effect in other member States designated by the applicant. It was noted that this part of the proposal of the United Kingdom could only be achieved through a revision of the Convention or by a special agreement. The Office of the Union pointed out that such central filing might be of advantage for the breeders.

26. The Committee discussed the practical possibilities of informing member States of tests already conducted or in the process of being conducted in other

member States. It was pointed out that the applicants could be required, as was already done in some member States, to indicate in their applications whether they had filed applications for the protection of their varieties or for the entry of the varieties in the national lists in other States.

27. On the question how to inform the public of the species for which test results obtained in one member State were accepted by the Offices of other member States, it was stated that two possibilities existed: either the establishment of a list indicating the species for which each Office was ready to take over test results obtained in Offices of certain other expressly mentioned member States, or the publication of general statements by States to the effect that they would take over test results obtained in other member States. As to the first alternative, some experts feared that it would be difficult to state in public--by omission--that test results in some member States were not accepted. In the second alternative, each Office not wanting to take over test results originating in a certain member State would have to justify its decision in each individual case.

#### Program for the Next Session

28. The Committee agreed to convene a restricted group of experts from among its members, consisting of one expert from each member State, to discuss on the basis of a revised list of offers and demands for the exchange of test results those species which could be the subject of centralized testing. The meeting would take place on April 14, at 1 p.m. No interpretation would be necessary.

29. The Committee agreed to hold its third session on April 15 and 16, and a joint session with the Technical Steering Committee on April 17. The meeting would start at 9.30 a.m. on April 15. Four professional organizations--AIPH, ASSINSEL, CIOFORA, FIS--should be invited by the Secretary-General to send up to three observers each for the discussion on April 15 of the UPOV Model Bilateral Agreement and plans for a multilateral system for cooperation in the examination of varieties of the species they consider important for testing under bilateral or multilateral agreements--on the basis of a list, to be prepared by the Office of the Union, of species protected in one or more member States--and of any additional proposals for cooperation in examination they might wish to make.

30. On April 16, the Committee should consider the outcome of the discussions on April 15 with the professional organizations as well as the results of the meeting of the restricted group on April 14. The question of the harmonization of fees should also be dealt with. In a joint meeting with the Technical Steering Committee on April 17, the question should be examined how the test reports and the application forms and technical questionnaires could be harmonized. Another item for future discussion in the Committee of Experts would be the establishment of a list of major crops for which countries, though wishing to keep their own testing facilities, were willing to accept test results already obtained in other member States.

31. The Committee decided that experts should send to the Office of the Union their laws and regulations concerning fees. On the basis of that material, the Office of the Union would prepare a questionnaire to be filled in by the member States. In that questionnaire, member States would be asked to supply information on the amount of fees to be paid at present for applications for plant breeders' rights, and for the inclusion of varieties in the national lists. There should also be an indication of the date from which those fees were applicable, and whether an increase was proposed or expected in the near future. If special taxes had to be paid on fees which could not be demanded from foreign applicants, this ought to be indicated. Where different fees were charged for different species, the fact should also be mentioned.

32. The questionnaire concerning fees should also be sent to those States which participated in the second session of the Committee, as well as to Belgium and Switzerland.

33. With respect to the harmonization of the technical reports and testing, the Committee agreed that Dr. Böringer (Federal Republic of Germany) would establish a list of varieties of garden peas, roses and wheat which, according to his knowledge, had been tested in more than one member State. He would circulate that list to the other participants and to the Office of the Union. The other Offices would check the list and send test reports and descriptions concerning those varieties to the Office of the Union, which would then compile the information and distribute it to the member States for discussion during the next meeting of the Committee, as well as to the members of the Technical Steering Committee.

34. The Committee decided that the Office of the Union would receive a copy of the report on the meeting which took place between representatives of Denmark, the Federal Republic of Germany and the Netherlands with regard to the establishment of test reports for EUPHORBIA.

#### Other Matters

35. It was agreed that the exchange of lists of names of varieties in reference collections in the different member States should be encouraged. It was also stated that it would be useful to make systematic exchanges of lists of varieties which were in the process of testing. Finally, it was stressed that it would be desirable if breeders used the same reference number in all member States.

36. The Committee was informed that the Secretary-General and the Vice Secretary-General would informally meet, at the Office of the Union in Geneva on February 6, with representatives of three professional organizations (ASSINSEL, CIOPORA and FIS). Questions of interest to those professional organizations would be discussed.

[Annexes follow]

## ANNEX I

## LIST OF PARTICIPANTS

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VI. OFFICE OF UPOV

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Dr. H. MAST, Vice Secretary-General  
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Mr. A. HEITZ, Administrative and Technical Officer

[Annex II follows]

## ANNEX II

## DRAFT

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

Testing shall be conducted according to the Guidelines for the Conduct of Tests adopted by the Council of UPOV. Where such Guidelines do not exist, 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 these methods.

Article 4

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

(2) In submitting its final report, Authority A will state whether in its opinion the variety may be regarded as distinct, homogenous and stable. If the opinion is that the variety is distinct, homogeneous and stable, the variety description shall 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 is 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 also for the purposes of an authority other than Authority B, access shall be permissible also where the rules applicable by such other authority so require.

Article 7

Authority A undertakes to maintain a reference collection of varieties of the species listed in the Annex or to procure material of those varieties useful for purposes of comparison.

Article 8

Authority A shall not furnish to third persons any propagating material provided under this Agreement by Authority B or pursuant to the instructions of Authority B except with the specific authorization of Authority B. The provision also applies to the furnishing of material derived from the said material.

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, 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

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 or a description are already available or under preparation.

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 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.

[End of Annex II and of document]