



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

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

EXTRACT FROM DRAFT REPORT

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).

[Annex II follows]

DRAFT

UPOV MODEL AGREEMENT
FOR INTERNATIONAL COOPERATION
IN THE TESTING OF VARIETIESArticle 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.