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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON
INTERNATIONAL COOPERATION IN EXAMINATION

Third Session

Geneva, April 15 to 17, 1975

DRAFT REPORT

prepared by the Office of the Union

1. The third 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 April 15 to 17, 1975. The meeting on April 15, 1975, was mainly devoted to discussions with four international non-governmental organizations working in the field of plant breeding and the seed trade, which had been invited to be represented by observers during that part of the session (paragraphs 4 to 27 of this report). On April 17, 1975, a joint session of the Committee and the Technical Steering Committee was held (paragraphs 36 to 38 and Annex II of this report).
2. All six member States of UPOV were represented throughout the whole session. Of the non-member States invited, Finland, Italy and Spain were represented by observers throughout the whole session. During the meeting on April 15, 1975 (except for the part of it which was concerned with the adoption of the agenda and the report of the second session), the following international non-governmental organizations were represented by observers: International Association of Horticultural Producers (AIPH); International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL); International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA); International Federation of the Seed Trade (FIS). The list of participants is attached as Annex I to this report.
3. The Committee, after the opening of the session by its Chairman, Mr. Butler, adopted the agenda as appearing in document ICE/III/1 Rev and the report on the second session as appearing in document ICE/II/6.

DISCUSSION WITH OBSERVERS OF INTERNATIONAL ORGANIZATIONS

(April 15, 1975)

Cooperation in examination

4. The Chairman expressed his appreciation of the fact that the four organizations in the field of plant breeding and the seed trade had accepted the invitation from UPOV to discuss the question how cooperation between offices of member States could be organized. He explained that the aim of such cooperation was to ensure that the results of the technical examinations of new plant varieties on distinctness, homogeneity and stability (hereinafter referred to as "testing") which had been carried out in the office of one member State would also be used, in so far as was at present possible, by the offices of other member States in which the same variety was filed for the purposes of protection. He drew the attention of the Committee to the two drafts presented to it on this matter: the draft of a UPOV Model Agreement for International Cooperation in the Testing of Varieties (Annex II to document ICE/II/6) and a Draft Decision of the Council (Annex to document ICE/III/7).

5. Introducing the Draft UPOV Model Agreement (Annex II to document ICE/II/6), the Chairman pointed out that its aim was to achieve two main purposes. In Articles 1 to 11, it was envisaged that for certain species the competent authority in one member State would carry out the tests also on behalf of the other authority party to the agreement, while Article 12 provided for the exchange between both authorities of any test results which were already available or under preparation in either of the authorities. He added that though the draft UPOV Model Agreement had been prepared in a form which provided for its conclusion by two authorities, i.e., on a bilateral basis, the aim of the Committee was to achieve among the member States a multilateral system of cooperation with the aid of the necessary number of agreements, between different authorities, based on the Draft UPOV Model Agreement. Therefore, it was actually misleading to refer to this approach as a bilateral one.

6. Document ICE/III/7 containing in its Annex the Draft Council Decision on a multilateral system of cooperation in examination was introduced by the Secretary-General, who pointed out that the proposal was drafted in the form of a decision by the Council as that was the least binding of the three possible forms (decision by the Council, special agreement, administrative agreement). The Council decision could enter into force more rapidly and could be more easily changed than a formal agreement. However, it would not be difficult to transform the proposal contained in the Annex into an administrative agreement or special agreement, if preferred. The basic ideas were the same as those embodied in the UPOV Draft Model Agreement. However, the following differences existed:

(i) The participating States would announce the effect they were to give to any results that they received from the authority of another member State, and, if a State desired to do so, it could even declare the automatic grant of a plant breeder's right where it had received a positive test report from that authority.

(ii) The offers of States to conduct the testing of varieties of certain species for other States would be published, which would provide not only necessary information for the breeders, but would also be a helpful indication for States considering the possibility of joining UPOV.

7. The Secretary-General went on to explain that Article 1(1) of the Draft Decision of the Council dealt with the case in which one authority carried out tests at the request of another authority, whereas Article 1(2) dealt with the exchange of test results already available.

8. In the ensuing discussion, the international organizations declared that they greatly appreciated the initiative taken by UPOV in the field of cooperation and hoped that it would be rapidly achieved, no matter on what basis. As to the two possible ways outlined by the Chairman and by the Secretary-General, they repeatedly expressed a strong preference for an agreement concluded on a multilateral basis as they feared that, at least in the course of time, bilateral agreements might differ from each other, thus causing insecurity for the breeders. In addition, a multilateral agreement would make it easier for States willing to accede to the Convention to enter the system quickly.

9. Several experts took the view that the concern of the international organizations was not justified. The conclusion of bilateral agreements would be the fastest way to start with the introduction of cooperation between member States. It was the intention of the member States not to deviate from the provisions of the Draft UPOV Model Agreement so that all bilateral agreements would contain the same clauses. The conclusion of bilateral agreements would furthermore not hinder--on the contrary it would facilitate--the later conclusion of a multilateral agreement, particularly since the basic principles were the same. Moreover, the cooperation in testing would normally start between two States anyhow and would then be extended to other States.

10. One expert pointed out that the international cooperation within UPOV should be achieved on a step-by-step basis. It described the individual steps as follows:

(i) harmonization of the methods and criteria for testing; this kind of work had already been started by adopting test guidelines for a certain number of species;

(ii) centralization of testing in one office under bilateral agreements or possibly--later--a multilateral scheme for an increasing number of species;

(iii) harmonization of the lists of species eligible for protection in each member State; this kind of work was facilitated by the centralization of testing, which enabled member States to extend the protection to further species without having to establish testing facilities in their own countries;

(iv) study of the question whether the system of bilateral agreements could be extended so as to provide further facilities for States considering the possibility of joining UPOV;

(v) study of the possibilities of introducing a system under which plant variety rights would be granted--either by an international body or by national authorities--with effect for more than one member State; this objective could only be achieved by either concluding a special agreement or basically revising the Convention.

11. Some of the observers of the international organizations expressed the wish that, in addition to working vigorously on the implementation of the first steps--preferably on a multilateral basis--the possibility of introducing a system of granting plant breeders' rights with effect for more than one member State should be studied as early as possible. They referred to developments in the field of patents, where systems of international cooperation were already about to be implemented. One observer expressed his appreciation of the proposal of the Delegation of the United Kingdom for the adoption of a system of centralized testing of the major crops in the first growing season and regretted that the discussion of that proposal had apparently been abandoned for the time being. Though it had to be admitted that no such system could probably be achieved in the near future, it was necessary to start the discussions now.

12. The experts stated that it was not their intention to restrict the activity of the Committee to cooperation between authorities on a bilateral basis and completely neglect more far-reaching proposals. They only wanted to do first things first and concentrate, for the time being, on the type of cooperation that could--and had to be--introduced now. Once this kind of cooperation between the testing authorities was under way, more ambitious plans could be studied. However, they pointed out that any cooperation which required a revision of the Convention came within the competence of another Committee of Experts of UPOV, the Committee of Experts for the Interpretation and Revision of the Convention, which had just started its work. They pointed out that it had already been proposed in that Committee to study as a long-term project the question of a system of central filing of applications and central grant of plant breeders' rights. The four organizations would be given the opportunity to discuss the activities of that Committee in a session to be held on February 17 to 20, 1976.

13. The experts further emphasized the need to arrive at rapid solutions with regard to cooperation between offices. Such cooperation had already been started and it was necessary to create a legal and administrative basis for it. This could, for the time being, only be accomplished by means of bilateral agreements. It was therefore necessary to adopt the Draft UPOV Model Agreement as soon as possible.

14. After this general discussion, the Draft UPOV Model Agreement was examined Article by Article. The observers of some international organizations expressed the wish that a preamble should be added to the Draft UPOV Model Agreement, outlining the aim of the Agreement, namely, the recognition of the results of tests performed in other member States, the reduction of the fees and the extension of the Convention to other States and--within the member States--to a greater number of species.

15. The Secretary-General recalled that, in the case of the conclusion of a bilateral agreement on the basis of the Draft UPOV Model Agreement, the legal effects, if any, to be given to the results of the tests carried out under such an agreement would not be indicated in the Agreement or otherwise. In the proposed multilateral system each member State would have to indicate in advance what legal effects, if any, it would attach to the test results.

16. Proposals by the expert of one member State to the effect that the meaning of Article 6 should be clarified and the testing authority in Article 8 should be obliged to inform the other authority or authorities of cases where a mutation had occurred during the testing period were withdrawn in the course of the discussions in order to avoid any delay in the adoption of the Draft UPOV Model Agreement by the Council. The observer of CIOPORA asked to be given the possibility of participating in the discussion on this question if and when it should be taken up again.

17. The observers of the international organizations proposed that the conclusion of any bilateral agreement on the basis of the Draft UPOV Model Agreement as well as any declaration made under the Draft Council Decision be announced in a UPOV Bulletin to be established for that purpose.

18. In reply to a question by one observer from an international organization concerning the fees in the case of testing under a bilateral agreement, the Chairman referred to a resolution by the Council of UPOV adopted in 1973 (document UPOV/C/VII/23) according to which the applicant was required to pay the testing fee only once.

19. One observer from ASSINSEL expressed some concern about the fact that in certain member States testing was assigned to government institutes which, at the same time, undertook breeding work. He asked whether it was possible to prevent confidential information obtained by government institutes in the course of testing procedures from being made available to services of the same institute that were concerned with plant breeding. Several experts from member States assured the observer that the necessary safeguards existed and that no difficulties had arisen to date. Experts competent for testing were obliged to keep confidential matters secret, even within the same institute. It was added that the same situation existed in States where representatives of private firms formed part of panels which participated in examination proceedings.

20. The observers of ASSINSEL said that they were pleased to note that the envisaged cooperation would not be restricted to tests performed for the purpose of obtaining plant breeders' rights but would also be extended to the sector of national listing. They stressed the point that in many States the same tests were undertaken by the same experts, both for plant variety protection and for national listing. Concern was voiced in this connection about the fact that the guidelines of the European Economic Community and the more recent UPOV test guidelines showed some differences and the hope was expressed that both sets of guidelines would be harmonized in the future.

21. The Chairman thanked the observers of the international organizations for their statements and proposals, which would be considered in further discussions during the present and future sessions of the Committee.

List of species which might be subject to testing under bilateral or multilateral arrangements

22. The Chairman introduced document ICE/III/3 containing a list of genera and species eligible for protection in at least one member State. He reported that on April 14, 1975, the representatives of the technical offices of the member States had met to discuss, on the basis of a similar list, which of these species offices of member States were ready to test at the request of other offices (centralized testing). Final or provisional offers had been made to conduct such centralized testing for a great number of species, whereas in the case of other species the representatives had been of the opinion that, at least in the near future, member States would want to continue testing in their own offices. In the case of some species, such as potatoes, the representatives had considered that centralized testing should be conducted by the offices of two member States. The Chairman concluded by saying that, since most of the offers had been made subject to further examination or approval by the competent authorities in the respective country, it was premature to distribute the list containing the various offers to the observers of the international organizations.

23. The observers of the international organizations welcomed the great progress which had obviously been made in initiating international cooperation. They expressed the hope that the same cooperation would be achieved for important crops. The experts said in reply that for those species for which no centralized testing could be agreed upon at present it was envisaged that offices could request and

use test results already existing or in course of preparation. The observers of the international organizations mentioned, however, that it was sometimes difficult to cope with the breeders' fear that their variety might not be treated confidentially by the authority of a foreign State.

24. The observers of the international organizations announced that they would inform the Office of the Union about those species for which breeders would welcome centralized testing, those for which they would prefer testing in the State of application and those which they wished to be made eligible for protection in all member States.

Additional proposals by the international organizations

25. Some observers of the international organizations proposed the introduction of a period of grace of one year during which the variety could be commercialized without prejudice to its novelty. They also mentioned that the examinations carried out in the United States of America were based on data obtained in field tests which were undertaken on the breeder's premises and proposed a study of the question whether, in order to reduce costs, a similar system could be introduced in UPOV member States for varieties of smaller species, especially vegetables and ornamentals. They underlined the necessity to accelerate the introduction of new varieties and referred to Article 102 of the US Plant Varieties Protection Act. The experts from the member States pointed out that those questions were already under consideration by the Committee of Experts on the Interpretation and Revision of the Convention and would be discussed in the presence of observers of international non-governmental organizations during the third session of that Committee, to be held from February 17 to 20, 1976. They also informed the observers that a delegation of UPOV would visit the United States of America in September 1975 to study some of these-- and other--items on the spot.

26. The observers of the international organizations also stressed the need for harmonizing the application forms and technical questionnaires and for indicating the reference varieties in the test guidelines very soon, especially for characteristics with Notes from 1 to 9.

27. The observers of the international organizations expressed their gratitude for having been given the opportunity to take part in the discussions of the projects under consideration and the hope that such close cooperation between UPOV and the professional organizations would be continued in the future. The Chairman thanked the observers for their valuable contributions and their positive acceptance of the work accomplished so far by UPOV.

CONTINUATION OF THE DISCUSSION BETWEEN GOVERNMENT EXPERTS

(April 16, 1975)

Harmonization of fees

28. The discussion was based on document ICE/III/4, which was completed by figures concerning Denmark furnished by the expert of that country.

29. The Committee thoroughly discussed the possibility of harmonizing the fees charged in the member States, especially for the testing of new plant varieties. It pointed out that such harmonization was necessary in order to organize the envisaged technical cooperation on a broad scale. Several experts announced that considerable increases were planned in the fees charged in their countries, sometimes up to 200%.

30. It was noted that the fees charged for the testing of varieties differed greatly according to the different criteria applied by member States to determine those fees. While in some member States the protection of plant varieties must be self-supporting, i.e. completely financed by the fees paid by applicants for plant variety protection, other member States thought it appropriate that part of the costs of plant variety protection should be borne by the State in view of the value

of such protection for the development of agriculture. Further differences could be explained by the fact that some member States charged a testing fee corresponding to the actual costs of testing, whereas other member States charged a testing fee covering only part of those costs and expected that the remainder would be financed from the income they would receive from the annual renewal fees. Finally, it was noted that the basis for calculating the cost of plant variety protection, and especially of testing varieties, also differed considerably from State to State, particularly as far as the inclusion or non-inclusion of overhead costs was concerned. It was therefore not possible to reach agreement on a testing fee acceptable to all member States. A proposal to fix the testing fee for wheat varieties at an amount ranging from 1,500 Swiss francs to 2,000 Swiss francs for a period of two years of tests was not approved by all experts since such a fee appeared to be too high for some of them and too low for others, even if the possibility of compensating for any differences by changing the annual renewal fee system was taken into account. The Chairman expressed hope, however, that the experts could agree to those figures in the coming session.

31. The Committee also noted that most countries charged different fees for different species or groups of species, whereas in the Netherlands no distinction of such a kind was made. It was furthermore noted that in some States no testing fee was charged during the sowing year for certain crops for which no observations were made in the first year, while in others at least a reduced fee was charged. Finally, it was noted that normally testing fees were charged for two testing years or testing periods.

32. In view of the fact that no agreement on a harmonized fee for the testing of new plant varieties could be reached during the present session, various procedural proposals were discussed as to how a solution could be arrived at. Some experts mentioned the possibility of convening the Fee Harmonization Working Party, while others pointed out that, at the present stage of the discussion, that Working Party could not be expected to come to a final conclusion either. It was further proposed that the Council's attention should be drawn to the importance of the fee question for the envisaged cooperation. Finally, it was agreed that no progress was to be expected without having clear figures on the costs of testing in each member State, based on the same calculations. The Committee therefore asked the experts from each member State to furnish the Office of the Union, with a view to the preparation of a document--possibly by June 1, 1975, but in any case no later than August 1, 1975--with detailed information on the costs of testing in that State and the calculation basis used. The information should include in particular the following details:

- (i) the direct cost to offices of administering the plant breeder's right scheme;
- (ii) the direct cost to offices of testing, including the cost of maintaining the necessary reference collections;
- (iii) the overhead costs of offices;
- (iv) the income from application fees and testing fees, and the percentage of the coverage by the fees of administrative costs up to the grant of the title of protection and of testing costs;
- (v) the total number of applications, withdrawals and rejections per annum.

33. The Office of the Union was also asked to distribute as quickly as possible a revised edition of document ICE/III/4. That document should also indicate the total costs to be borne by the breeder in the case of a withdrawal or rejection of the application two years after completion of testing. It was pointed out that those figures were as important as the sum of the fees to be paid within the first five or ten years after the date of application.

34. The observers from Italy and Spain promised to inform the Office of the Union as soon as possible about the fees charged in their States, while the observer from Finland declared that no fees existed in his country since the system of plant breeders' rights had not yet been established; it was intended, however, that, in the events of the introduction of the said system, the full cost had to be covered by fees.

Elaboration of a list of species for testing under bilateral and multilateral arrangements

35. The experts from the member States promised to examine whether the offers made provisionally for the performance of centralized testing in the informal meeting on April 14, 1975, can be upheld.

JOINT MEETING OF THE COMMITTEE WITH THE TECHNICAL STEERING COMMITTEE

(April 17, 1975)

Harmonization of application forms

36. The discussions were based on document ICE/III/5, and especially on document ICE/III/5 Add. containing the draft of a harmonized application form. It was agreed that the Office of the Union would distribute a new draft, taking into account the outcome of the discussions, as soon as possible in order to enable the representatives of member States to examine the draft well in advance of the renewed discussion during the next session.

Harmonization of technical questionnaires and test reports

37. The discussions were based on document ST/VI/2 and ST/VI/3. The paragraphs of the draft report on the sixth session of the Technical Steering Committee dealing with these discussions (paragraphs 8 to 10 of document ST/VI/8) are reproduced in Annex II of this report.

Cooperation in examination

38. After having discussed this item again, the Committee agreed that the Draft UPOV Model Agreement (Annex II of document ICE/II/6) should be transmitted to the Council for approval, while the Memorandum on Possible Ways of Achieving Multilateral Cooperation in Examination (document ICE/III/7) should be discussed again in the next session of the Committee before presenting it to the Council. The Committee recommended the Council to ask member States to use the UPOV Model Agreement without changes when concluding bilateral agreements. It also was agreed to base any bilateral agreement of cooperation to be concluded between offices pending the decision of the Council on that Model Agreement and to apply the Resolution on Fee Questions (document UPOV/C/VII/23) to such cooperation.

PROGRAM FOR THE NEXT SESSION

39. The Committee decided that the next session would be held on November 4 and 5, 1975. It was agreed that during that session the Memorandum on Possible Ways of Achieving Multilateral Cooperation in Examination (document ICE/III/7) and the questions of harmonization of fees and of harmonization of application forms would be discussed again. It was further agreed to reconsider in that session the list of offers for centralized testing.

40. It was decided that no joint session with the Technical Steering Committee would be envisaged for November. While the present Committee was to continue discussing the harmonization of application forms, it could be left to the Technical Steering Committee to discuss the harmonization of technical questionnaires and test reports.

41. The Committee decided not to invite the professional organizations to the next session.

42. Since the fourth session of the Committee would last only two days and a number of difficult questions would have to be discussed, it was decided that the report on the work of that session should be prepared for and adopted at the fifth session of the Committee.

43. It was agreed that an informal meeting of representatives of the technical offices of the member States would meet at 1.30 p.m. on Monday, November 3, 1975

at the headquarters of UPOV to study further the list of offers for centralized testing.

ADOPTION OF THE REPORT

44. The Committee agreed that the draft report on the work of its present session should be submitted to its fourth session on November 4 and 5, 1975.

[Annexes follow]

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(1) On April 17, 1975, only.
(2) On April 15, 1975, only.

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IV. INTERNATIONAL ORGANIZATIONS/ORGANISATIONS INTERNATIONALES/INTERNATIONALE ORGANISATIONEN 2)

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(1) On April 17, 1975, only.

(2) On April 15, 1975, only.

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Dr. H. MAST, Vice Secretary-General

Dr. M.-H. THIELE-WITTIG, Administrative and Technical Officer

Mr. A. HEITZ, Administrative and Technical Officer

-
- (1) On April 17, 1975, only.
(2) On April 15, 1975, only.

[Annex II follows]

Extract of document ST/VI/8

TECHNICAL STEERING COMMITTEE

Sixth Session

April 17 to 18, 1975

DRAFT REPORT

prepared by the Office of the Union

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Harmonization of forms for technical questionnaires

8. The discussion was based on document ST/VI/2, and especially on its Annex I. The Committee finally agreed on a new draft for a technical questionnaire, which is reproduced in Annex II to this report. The main changes agreed upon were the following:

(i) Under item 3 of Annex I to document ST/VI/2, "Species or Subspecies," it was agreed that the common name as well as the Latin name should be indicated.

(ii) Under item 4 of Annex I to document ST/VI/2 (item 5 of Annex II to this document), the heading would have to be altered to read thus: "Characteristics of the variety to be indicated." This alteration would allow the Technical Working Parties to include under item 4 not only characteristics which were essential for the grouping of the variety, but also a few other characteristics which might be helpful in the comparison of the variety with others. However, it was stressed that the number of characteristics should not be too high. In addition, it was agreed that the characteristics mentioned under item 4, and especially their states, should be expressed in terms which could be easily understood by the applicant. This could be done either by adding reference varieties, or by comparing the variety with other varieties, or again by indicating measurements in centimeters, grams, etc. In addition, it was decided that only those characteristics should be included for which there existed a precise testing method that could be applied by the breeder without difficulty. In general the breeder should be asked to indicate only such characteristics as he himself would be able to evaluate. Therefore, characteristics, not fulfilling these conditions, for example the resistance of a variety to diseases, should not normally be used in the technical questionnaire.

(iii) With respect to item 6 of Annex I to document ST/VI/2 (item 5 of Annex II to this document), the Committee agreed that three different questions should be listed. The first question should ask the applicant to add information on specific points in connection with the species or subspecies concerned. The Technical Working Party would have to indicate what additional information would be required. In his reply to the second question, the applicant would have the possibility of adding any information he considered useful for characterizing the new variety. A third question, which would best be inserted between items 3 and 4 of Annex I to document ST/VI/2, should ask the applicant for any information on the origin, maintenance or reproduction of the new variety. During the discussion of this item, the question was raised whether it was legally permissible to demand such information of the breeder.

9. The Committee agreed that the Technical Working Parties would have to redraft the various technical questionnaires in the light of the results of its discussion. The Chairmen were asked to prepare new drafts and circulate them by mail to their members before the next session of their respective Working Parties. By this procedure it was hoped that only a short discussion of this item would be necessary at the next meetings of the Technical Working Parties.

10. The Committee agreed, after discussion, that both the content and the layout of the technical questionnaire should, if possible, be identical in the different member States. In addition, technical questionnaires should be drafted in such a way that they might be evaluated by computer.

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Reference Number ...
(not to be filled in by the applicant)

Technical Questionnaire to be Completed and Filed with the
Application for Plant Breeders' Rights

1.	Applicant (Name and address)		
2.	Proposed denomination or breeders reference:		
3.	Species or subspecies		
4.	Any information on origin, maintenance or reproduction of the new variety		
5.	Characteristics of the variety to be indicated (to be filled in by the Technical Working Parties)		
6.	Similar varieties and differences from these varieties: <table border="0" style="width: 100%;"><tr><td style="text-align: center;"><u>denomination of varieties</u></td><td style="text-align: center;"><u>differences</u></td></tr></table>	<u>denomination of varieties</u>	<u>differences</u>
<u>denomination of varieties</u>	<u>differences</u>		
7.	Additional information requested (to be filled in by the Technical Working Parties)		
8.	Additional information (information considered useful for characterizing the new variety)		

[End of Annex II
and of document]