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

GENEVA

COMMITTEE OF EXPERTS ON  
INTERNATIONAL COOPERATION IN EXAMINATION

Seventh Session

Geneva, May 17, 1977

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The seventh session of the Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee") was held in Geneva on May 17, 1977, jointly with the tenth session of the Technical Steering Committee. The list of participants is attached as Annex I to this document.
2. The session was opened by Mr. J.I.C. Butler, Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

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

Adoption of the Report on the Sixth Session of the Committee

4. The Office of the Union drew attention to a letter from Mr. J. Rigot (Belgium), proposing that paragraph 10 of document ICE/VI/4 be amended as follows:

- (i) the name "Belgium" should be inserted before the name "Germany (Federal Republic of)" in subparagraph (v);
- (ii) the word "Belgium" should be deleted in the expression "Belgium, France and South Africa" in subparagraph (vi).

Subject to these amendments, the Committee unanimously adopted the report on its sixth session as appearing in document ICE/VI/4.

Report of the Delegations on Agreements on Cooperation in the Examination of New Varieties of Plants Already Concluded or Under Preparation

5. The experts reported that so far bilateral agreements on cooperation in examination had been concluded between (i) Denmark and Germany (Federal Republic of), (ii) France and Germany (Federal Republic of), (iii) France and the Netherlands, (iv) France and Sweden, (v) Germany (Federal Republic of) and the Netherlands and (vi) the Netherlands and the United Kingdom. Bilateral agreements between the following States were in preparation: (i) Denmark and France, (ii) Denmark and the Netherlands, (iii) France and the United Kingdom, (iv) Germany (Federal Republic of) and the United Kingdom. Bilateral agreements between (i) Germany (Federal Republic of) and Sweden and (ii) the Netherlands and Sweden were planned.

6. More specifically, the Delegation of Belgium indicated that the Belgium plant breeders' rights administration would start to function on July 1, 1977, and that in the beginning Belgium would rely on cooperation in examination with other States. Since Belgium was still examining whether it would be able to perform by itself the examination of varieties of the species eligible for protection there, it had not engaged in contacts with other member States with a view to concluding bilateral agreements.

7. The Delegation of France indicated that the lists of species attached to the bilateral agreements which that country had concluded with the Federal Republic of Germany and the Netherlands would need to be extended before long.

8. The Delegation of Sweden indicated that the bilateral agreements which that country was to conclude with the Federal Republic of Germany and with the Netherlands mainly served two purposes: first, they provided a legal basis for the cooperation in examination that was already being practised; second, they would allow Sweden to extend protection to eight further ornamental species.

9. The Delegation of the United Kingdom pointed out that its facilities for the examination of chrysanthemum varieties were now being used up to full capacity. With regard to some further species, the United Kingdom had made offers to serve as examining authority for other authorities, but in fact it had never received an application for protection at the national level, and indeed had no examination facilities available. The Delegation wondered whether its country would be able to maintain this generous attitude, and proposed that the list of offers for cooperation in examination (document C/X/6) be revised and updated. This proposal was supported by the Delegation of the Federal Republic of Germany, which emphasized that a study should be made of the question whether the workload could be distributed more equally between the member States.

10. The Delegation of Switzerland mentioned that the Office for the Protection of New Plant Varieties would open on June 1, 1977, and that contacts had been made with a view to concluding bilateral agreements with Denmark, France, Germany (Federal Republic of) and the United Kingdom.

11. The Delegation of South Africa informed the Committee that the deposit by South Africa of its instrument of accession to the UPOV Convention could be expected in the very near future. The Delegation of Spain stated that the Regulations under the Law on the Protection of New Plant Varieties were going to be promulgated very soon. Neither State had concluded any agreements on cooperation in examination.

Proposals of ASSINSEL (Vegetable Section) Concerning the List of Species for which Offers for Cooperation in Examination Have Been Made

12. Discussions were based on documents ICE/VI/4, Annex II, C/X/6 and, more particularly, ICE/VII/3.

13. After having noted with appreciation the proposals of the Vegetable Group of ASSINSEL, the Committee emphasized, in the course of the discussion, that its mandate was to study the possibility of introducing international cooperation in the examination of varieties for the purpose of plant breeders' rights. It could also, in its opinion, study the possibility of introducing such cooperation for other purposes, but only in so far as the examination was conducted according to the same principles as those adopted in the field of plant breeders' rights, in particular according to the Test Guidelines adopted by UPOV. The Delegation of the Netherlands noted that, as a consequence, the "B List" of the European Economic Community (EEC) did not come within the competence of the Committee. Moreover, the Delegation of the United Kingdom underlined that the Committee should not interfere with EEC matters.

14. Concerning the distinction that should be made--as proposed by the Vegetable Section of ASSINSEL--between different groups of varieties within one species--for instance, long-day and short-day types of onion--the Committee considered that such groups should not be allotted to different member States for examination. The Delegation of the Federal Republic of Germany, however, observed that, with the extension of UPOV and the increase of cooperation there would be a need to establish more than one center for the examination of a given species.

15. In view of the decision to revise and update the list of offers for cooperation in examination (see paragraph 9 above), the Committee agreed that the suggestions of the Vegetable Group of ASSINSEL should be examined on the occasion of that revision. As a first step, the Committee considered that peas, beans, lettuce, tomato, onion, cucumber and cauliflower were "important species" for which it would be difficult to have the examination centrally performed in one place. Several member States preferred, instead, for a number of reasons, to maintain their own examination facilities for such species, and to avoid duplication of the examination by exchanging examination reports already available or established by the authorities of other member States.

16. It was, however, remarked that--in order to determine whether the examination of a species could be centrally performed--also other aspects had to be considered, for instance the existence of varieties suited to Mediterranean climates. Moreover, a species generally considered important might not be important in one of the member States, or a member State might, despite the importance of the species, still wish to entrust another member State with the examination of varieties of that species. As a practical example, it was noted that offers for cooperation in examination had been made for potato and maize, and that the Federal Republic of Germany was examining maize varieties on behalf of Denmark under a bilateral agreement.

#### UPOV Model Form for the Request of Examination Results

17. Discussions were based on document ICE/VII/2.

18. The Committee took the following main decisions:

(i) The form under discussion should be a model form and not a standardized international form.

(ii) A proposal, which was made to facilitate the tracing and filing of completed forms, that the requesting authority and the reporting authority ought to be indicated at the top of the form, as with the UPOV Model Report on Technical Examination, was not adopted. It was said that each member State should print its letterhead on the national forms based on the model form and indicate, according to its own usages, the authority to which the forms were addressed.

(iii) The first two paragraphs, preceded by circles, should be simplified by using the same table as in item 6 of the UPOV Model Form for the Application for Plant Breeders' Rights. This would greatly facilitate clerical work, since the information contained in the application form would have only to be transcribed from that form.

(iv) The back page of the form should be redrafted and simplified.

19. The form as amended according to the Committee's decisions is attached as Annex II to this document. The Committee agreed that it should be finally adopted at its next session and that the delegations should be invited by the Office of the Union to present their comments on the draft in writing.

#### Means of Obtaining Examination Reports

20. The Delegation of the Federal Republic of Germany indicated that three possibilities existed of obtaining examination reports from the authority of another member State:

(i) the report could be presented by the breeder;

(ii) in the case of two EEC States, the report could be officially transmitted by one State to the other free of charge (EEC member States have to transmit to the other EEC member States and to the EEC Administration a short description of the registered varieties in the national list of varieties and, on request, other information);

(iii) the report could be transmitted on the basis of a bilateral agreement within UPOV, against payment of the examination fee levied in the State where the examination was performed.

21. The Delegation of the Federal Republic of Germany emphasized that, as far as plant variety protection was concerned, only the last-mentioned channel should be relied upon. This would not prevent a member State from requesting trial results free of charge, but whenever such results were used for plant breeders' rights purposes, the agreed fee should be paid.

22. The Delegation of Denmark pointed out that the present system was unsatisfactory: A State belonging to the EEC but not to UPOV would receive the information free of charge, while a member State of UPOV belonging also to the EEC would--according to the decision of the UPOV Council--have to pay a fee for comparable information. The Chairman and several delegations remarked in response to these observations that the examination criteria for the purpose of inclusion in a national list and in the Common Catalogue might be rather different from those for the purpose of the grant of plant breeders' rights. For instance, in the first case the varieties were checked against all other varieties in the list, whereas in the second case they were checked against all other varieties which were a matter of common knowledge at the date of filing of the application. The bilateral agreements, furthermore, provided not only for information but also for additional services such as guarantees in the case of full or partial denunciation of the bilateral agreement, and the availability of experts of the examining authority if needed, for instance in court proceedings. It would therefore be appropriate to follow the decisions of the Council, as emphasized by the Delegation of the Federal Republic of Germany, and to rely only on the last possibility mentioned in paragraph 20 above.

23. In this connection the Delegation of France indicated that, whenever information on varieties was transmitted by France to another State under conditions other than those agreed upon within UPOV, there would be a clause according to which the information might not be used for deciding on the registration of the varieties in a national list or on the grant of plant breeders' rights.

Date and Program for the Forthcoming Session of the Committee

24. The Committee agreed that the heads of the delegations would meet on the afternoon of Monday, November 14, 1977, to revise and update the list of offers for cooperation in examination.

25. The Committee itself would hold its eighth session on the morning of Wednesday, November 16, 1977. In addition to the questions mentioned in items 4 and 6 of document ICE/VII/1 Rev., the program would include the question of examination fees, the harmonization of the plant breeders' rights gazettes of member States (see document ICE/VI/4, paragraph 21), the revision and updating of the list of offers for cooperation in examination and the statistics on the exchange of examination reports.

[Two Annexes follow]

LIST OF PARTICIPANTS/LISTE DE PARTICIPANTS/TEILNEHMERLISTE

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Mr. J.I.C. BUTLER

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

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

Mr. A. HEITZ, Administrative and Technical Officer

[Annex II follows;  
l'annexe II suit;  
Anlage II folgt]

UPOV Model Form for the Request of Examination Results

Subject: International Cooperation in the Testing of Varieties

Species: common name :  
           Latin name :  
 Breeder's reference :  
 Proposed denomination :  
 Applicant :  
 Breeder (if different from applicant) :  
 Filing date (requesting country) :  
 Application number (requesting country):

In accordance with the bilateral agreement with your authority, we would be grateful to receive the report on the examination of the above-mentioned variety.

Information received by us:

Prior applications	Filing (State-date)	Application number	Stage	Denomination or breeder's reference
Plant breeders' rights				
Official variety list				

An application  for protection  for registration in the list of varieties has been made in our country for this variety.

The description submitted at the time of the application is included.

Please fill in the reverse side of this form and return two copies. The third copy is intended for your files.



To the requesting authority

Subject: Information on the variety mentioned on the front side

The examination of the variety

has already been completed

has been in progress since/for ..... (date/approximate time)

will be undertaken as from ..... (approximate date)

The examination report

is enclosed

will be forwarded on/in ..... (approximate date/time)

Special requirements

Remarks

[End of document]