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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON
INTERNATIONAL COOPERATION IN EXAMINATION

Eighth Session

Geneva, November 16, 1977

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The eighth session of the Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee") was held in Geneva on November 16, 1977. All member States, except Italy, were represented. In addition, Spain was represented by observers. The list of participants is attached in Annex I to this document.
2. As the Chairman of the Committee, Mr. J.I.C. Butler (Netherlands), was unable to attend, the session was opened by the Vice Secretary-General.
3. At the proposal of the Delegation of the Federal Republic of Germany, the Committee unanimously elected Mr. A.F. Kelly (United Kingdom) as Acting Chairman (hereinafter referred to as "the Chairman").
4. At the proposal of both the Chairman and the Vice Secretary-General, the Committee unanimously decided that the Vice Secretary-General should send a telegram to Mr. Butler, on behalf of the Committee and the Technical Steering Committee, to wish him a speedy recovery.

Adoption of the Agenda

5. The Committee adopted the agenda as appearing in document ICE/VIII/1.

Adoption of the Report on the Seventh Session of the Committee

6. The Delegation of Belgium drew attention to its letter dated May 17, 1977, in which it had indicated that it wished to correct as follows its statement recorded in paragraph 6 of the draft report on the seventh session (document ICE/VII/4):

"6. More specifically, the Delegation of Belgium indicated that the Belgian plant breeders' rights administration would probably start to function in the course of August 1977. Belgium had undertaken to protect the species indicated at the time of deposit of its instrument of ratification of the UPOV Convention. Furthermore, it envisaged the extension of protection in the near future to further cereals, as well as to certain

fruit and ornamental species. It also wished to make use of the results of examinations already performed by the other member States. Belgium was still studying the possibilities of performing itself the technical examination of varieties as from the start of the functioning of the competent authority, but it might possibly have to rely upon other member States. The cooperation envisaged would be provisional in the case of certain species and would be based on an agreement of unlimited duration for others."

7. The Delegation of the Netherlands suggested that the last sentence of paragraph 16 of the draft report be amended to read as follows:

"As a practical example, it was noted that offers for cooperation in examination had been made for potato and that the Federal Republic of Germany was examining maize varieties on behalf of Denmark under a bilateral agreement, and France was doing likewise on behalf of the United Kingdom."

8. Subject to the above-mentioned amendments, the Committee unanimously adopted the report on its seventh session as appearing in document ICE/VII/4.

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

9. It was reported that no new bilateral agreements had been concluded since the Committee's seventh session. Great progress had been made, however, in three directions: (i) the bilateral agreements concluded between France and the Netherlands and between France and the Federal Republic of Germany, had been extended to further species and such extension was under discussion in respect of the bilateral agreement concluded between the Netherlands and the United Kingdom; (ii) those bilateral agreements which were in preparation at the time of the said session were now in a very advanced stage and some of them were on the point of being signed; (iii) further bilateral agreements between the following States were in preparation or planned: Belgium and France, Belgium and the Federal Republic of Germany, Belgium and the Netherlands, Belgium and the United Kingdom, Denmark and Sweden, Denmark and the United Kingdom, France and Switzerland, the Federal Republic of Germany and Switzerland, Switzerland and the United Kingdom.

10. To sum up, six agreements had been concluded on a bilateral basis and 16 such agreements were in preparation.

11. More specifically, the Delegation of Belgium reported on the progress made by that State in implementing the UPOV Convention. In particular, it drew attention to the royal decrees of July 22, 1977, which were published in the Moniteur belge of October 13, 1977, and to the list of species presently protected and of those to which protection would be extended in the very near future. Concerning the envisaged bilateral agreements, the Delegation of Belgium said that they would be concluded for an unlimited duration and that they might be revised once Belgium was able to perform itself the examination of some of the species covered by such agreements.

12. The Delegation of Denmark said that Denmark was already performing the examination of Red Clover on behalf of Switzerland in anticipation of a bilateral agreement with that State.

13. The Delegation of France said that, as a result of bilateral agreements, it was possible to extend protection to 21 further species, of which 16 were to be examined by either the Federal Republic of Germany or the Netherlands.

14. The Delegation of the United Kingdom said that, as a result of bilateral agreements, protection would be extended to further species, in particular to Bent, at the beginning of next year.

15. The Delegation of South Africa, referring to the fact that South Africa had become a member of UPOV just before the present session, said that no arrangements had therefore been made with respect to cooperation in examination.

16. The Delegation of Spain said that protection would be available in the case of seven species as from the beginning of next year and that the conclusion of bilateral agreements would be studied in the course of that year in connection with the consideration of the extension of protection to further species.

Joint Trial Arrangements

17. The Delegation of the United Kingdom recalled that a general agreement had been reached within UPOV to the effect that, in the case where an application for the protection of a rose variety was filed in several member States, the results of the examination performed by one of those member States would be generally accepted by the others. It asked whether those arrangements, which had been made before the introduction of bilateral agreements, were still in force and had not been superseded by the latter.

18. Several delegations referred to Article 12 of the UPOV Model Agreement for International Cooperation in the Testing of Varieties* and to the corresponding provisions of bilateral agreements concluded or in preparation and the conclusion was reached that the above-mentioned arrangements were still valid and applicable.

19. The Delegations of Denmark and the Federal Republic of Germany said that the legislation of those States had been amended so as to allow the use of foreign examination results as a basis for deciding upon the grant of protection. In the case of the Federal Republic of Germany, it was up to the applicant to inform the competent authority whether his variety was already undergoing tests in another member State. So far, however, no applicants had given such information; the Delegation of the United Kingdom therefore stated that it would propose that publicity be given to the said arrangements in its Plant Breeders' Rights Gazette.

Cooperation in Examination with Non-Member States

20. The Committee briefly discussed the question of cooperating in examination with non-member States, with particular reference to New Zealand and Hungary.

21. As far as New Zealand was concerned, the Delegation of the United Kingdom reported that the United Kingdom had undertaken--without any formal agreement having been signed, however--to provide New Zealand with examination results on rose varieties.

22. As far as Hungary was concerned, the Delegation of the Federal Republic of Germany recalled that the Hungarian patent legislation provided for the possibility of granting a patent on the basis of a decision taken abroad on the grant of protection. Breeders could thus obtain a patent in that country simply by informing the Patent Office that the variety was already protected in, for instance, the Federal Republic of Germany and by producing the title of protection with the variety description.

23. The Delegation of France said that it would impose copyright protection on the variety descriptions with the result that such descriptions could not be used without permission as the basis for a decision on granting protection or on registering the variety in the national list.

24. The Vice Secretary-General reported that the Registrar of Plant Varieties of New Zealand had paid a visit to the Office of the Union and had explained that New Zealand had a definite interest in joining UPOV. Accession was being delayed, however, since the New Zealand legislation had to be amended, but, in the meantime, New Zealand was very interested in cooperating in examination with UPOV member States.

25. The Committee reaffirmed its general policy of showing a certain restraint in agreeing to examine varieties for non-member States, but concluded that, in order to encourage non-member States seriously interested in joining UPOV, member States could agree to perform the examination for such States for a limited period and on the understanding that the cooperation might be terminated if no progress was made in the procedure for joining UPOV.

* Article 12 reads as follows:

"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 and a description are already available or under preparation."

Statistics on the Exchange of Examination Reports

26. Discussions were based on document ICE/VIII/2.

27. The Office of the Union invited the delegations present to check again the statistics they had furnished and to inform it immediately of any wish for corrections in order to allow a document to be prepared for submission to the Council in December 1977. When checking the statistics, it should be borne in mind that they should also include the figures relating to national listing and that a request which was withdrawn later on was to count as a request made. In this connection, the Office of the Union recalled that the Chairman (Mr. Butler) had indicated that it would be useful to include also the statistics on the requests withdrawn.

28. The Delegation of the Netherlands noted that many discrepancies between the statistics furnished by different member States were due to the fact that it was sometimes difficult to determine precisely the date on which the request was made or the report was furnished. The Chairman noted that the use of the UPOV Model Form for the Request of Examination Results would eliminate that difficulty.

List of Species Eligible for Protection and of Offers for Cooperation in Examination

29. Discussions were based on a draft of document C/XI/6 bearing in handwriting the amendments which had been agreed upon at an informal meeting of experts held in Geneva on Monday, November 14, 1977.

30. The Delegation of the United Kingdom explained that it had to withdraw a number of offers in respect of ornamental plants because it had not received any applications and had therefore no examination facilities available.

31. After having noted that seven States protected Lettuce and eight States protected Peas and Beans, and therefore examined the varieties of those species, the Chairman of the Technical Working Party for Vegetables urged that the excessive workload with respect to vegetables be reduced. After it had been mentioned that the Netherlands had made an offer for glasshouse Lettuce varieties, several delegations said that they would make offers in respect of vegetables in the near future.

32. The Committee approved the list of offers for cooperation in examination after having noted that the United Kingdom had made an offer for Flowering Crab during the session and that the Federal Republic of Germany had made an offer for Curly Kale during the informal meeting. The list as corrected would be submitted to the Council at its next session (document C/XI/6) and would be revised in a year's time.

UPOV Model Form for the Request of Examination Results

33. Discussions were based mainly on document ICE/VIII/3.

34. The Committee adopted the UPOV Model Form for the Request of Examination Results as appearing in document ICE/VIII/3, subject to the following changes:

(i) deletion of the dotted lines indicating where the form had to be completed, as suggested by the Delegation of Switzerland;

(ii) addition at the bottom of both sides of the form of a space for the date on which the form was completed and for the signature, as suggested by the Delegation of the Netherlands.

35. The adopted UPOV Model Form for the Request of Examination Results is attached as Annex II to this document.

Payment of Services under a Bilateral Agreement

36. In connection with the UPOV Model Form for the Request of Examination Results, the Committee discussed whether a remittance should be made by a State receiving an interim report on the examination of a variety (after a test of one year's or one growing cycle's duration) to the State having established that interim report. It examined in particular the case where the application--and therefore also the request for examination--was withdrawn in the course of the first year or first growing cycle of examination.

37. After several delegations had reported on the procedure for the payment of the examination fee by the applicant, the Committee reached agreement on the following points:

(i) There should be a date from which the fee was to be due (in some States, the date was that on which, for instance, seed of the variety was sown, or observations began in the case of perennial plants; in others, it was the expiration of the time limit for furnishing the plant material necessary for the examination).

(ii) The annual report was the justification for the payment of the fee. Consequently, if the request for examination was withdrawn after the examination had started, examination should be continued until the end of the growing cycle and a report should be established.

Harmonization of Fees

38. The Committee took note of the information contained in document ICE/VIII/4, as well as of the following amendments announced by the delegations during the session:

(i) The figures for Belgian fees should be corrected as follows: for Turnip, the figures should be "9,500 - 6,500 (a-n)" in Annex I and "1,030.40(n)" in Annex II; for Runner Beans, etc. the figure should be "1,030.40" in Annex II; for vegetables, the first figure appearing in Annex III should be "1,030.40."

(ii) In Annex II, paragraph IV.2 relating to the fee structure of Denmark should read as follows:

"2. Where a variety is the subject of both an application for protection and an application for entry in the national list of varieties, only one examination fee is charged."

(iii) The Delegation of the Federal Republic of Germany suggested that the information on offers for cooperation in examination be either amended according to the new list of offers or deleted.

39. The Delegation of Sweden said that in Sweden the rule was that the fees should cover the costs of the examination. Since most member States had now reached a level of fees which was similar to that of Sweden, from which it could be assumed that such fees covered entirely or almost entirely the costs of examination, the principle adopted for the reimbursement of the costs involved in the case of cooperation in examination made such cooperation less attractive. In the opinion of the Delegation of Sweden, it was therefore necessary to reconsider the relationship between bilateral agreements and fees.

40. The Delegation of Denmark supported the view (of the Delegation of Sweden) and said that in Denmark the breeder would be charged the examination fee, in the case where a report from abroad was used, thus deviating from the Resolution on Fee Questions adopted by the Council at its seventh session.

41. The Committee agreed that the above-mentioned Delegations should ask their representatives in the Council to submit those questions to the latter at its next session and to propose that the necessary provision be made in the program and budget for 1978.

Harmonization of Plant Breeders' Rights Gazettes

42. The discussions were based on document ICE/VIII/5.

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43. The Vice Secretary-General pointed out that some misprints should be corrected in the English version of the above-mentioned document*.

44. The Committee agreed that it was useful and highly desirable to harmonize plant breeders' rights gazettes.

45. In a preliminary discussion on the substance of the proposal made by the Office of the Union in document ICE/VIII/5, the Committee agreed to the basic principle underlying the proposals. It further agreed that the date of the proposal of the variety denomination should be added in Table III, mainly for the convenience of those States which had provided for rules on the priority of proposed denominations. It noted that there might be a need for rearranging the order of the items and for combining different items. The question should also be considered whether tables now being published by one member State only ought to be published in future by all member States.

46. The Committee eventually decided that, in order to speed up the discussions on those questions, member States should submit their comments on document ICE/VIII/5 and their proposals for the harmonization of plant breeders' rights gazettes in writing to the Office of the Union within two months from the date of the present session. If necessary, and if possible, the Office of the Union would prepare a revised document.

Program for the Next Session

47. The Committee noted that it was for the Council to decide whether it should continue its work and to define the matters it should deal with. It agreed that it would have to supply the relevant information to the Council in order to allow the latter to take the necessary decisions.

* The corrections to be made are the following:

(i) In paragraph 6, the expression "Summary Table of Proposed Varieties" should read "Summary Table of Proposed Variety Denominations."

(ii) On page 11 of the Annex, the slash following "Approved Denomination" (column 4) should be deleted and the date "7-9-1977" should be inserted under "Tatu."

(iii) On page 12 of the Annex, the reference to Table V should be replaced by a reference to Table IV in paragraph 2.

(iv) On page 13 of the Annex, the slash following "Application Number" (column 1) should be deleted and the denomination "Klim" should be inserted under "E 253."

(v) On page 14 of the Annex, the expression "the date of publication of the application for the breeder's reference" appearing in the first and second lines of paragraph 3 should be replaced by "the date of publication of the application, of the breeder's reference."

(vi) On page 16 of the Annex, the reference to Table V should be replaced by a reference to Table IV.

(vii) On page 17 of the Annex, the variety denomination "Dabo" should be inserted under "101" in column 1 and the heading of column 3 ("b: Agent") should be changed to "c: Agent."

(viii) On page 21 of the Annex, the expression "(if different from a)" should be inserted in column 2 after "b: Breeder."

48. The Committee agreed that, apart from the matters which were discussed periodically (reports on agreements on cooperation in examination already concluded or in preparation; establishment of statistics on the exchange of examination reports; updating and revision of the list of offers for cooperation in examination), two main items had to be dealt with next year: the harmonization of plant breeders' rights gazettes and the harmonization of fees including the question which fees were to be charged in cases where the examination was performed by another member State.

49. The last-mentioned item could be dealt with in the Fee Harmonization Working Party. The Committee considered that, should the Council decide to revive the Fee Harmonization Working Party, it could meet earlier than on the date proposed in document C/XI/10 ("Tentative Dates for Meetings in 1978"), for instance in the spring of 1978 in conjunction with the twelfth session of the Technical Steering Committee*.

50. The Vice Secretary-General pointed out that the implementation of bilateral agreements already concluded might show the need to prepare further UPOV Model forms. He also recalled the Committee's decision that cooperation should be introduced on a step-by-step basis and that, once enough experience had been gained on cooperation based on bilateral agreements, the preparation of a multi-lateral convention would be considered, a task that fell within the competence of the Committee.

[Two Annexes follow]

* Note of the Office of the Union: The Council, during its ordinary session from December 6 to 9, 1977, decided that the Committee of Experts on International Cooperation in Examination would cease to exist and that its tasks would be taken over by a newly created Administrative and Legal Committee, which would, in 1978, deal with these topics during its session from November 15 to 17, 1978.

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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) :

We would be grateful to receive the report on the examination of the above-mentioned variety.

Information in our possession:

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.

Date

Signature

To the requesting authority

Subject: Information on the variety mentioned on the front of this form

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)
on the basis of an application
or a request already submitted
- will be undertaken as from (approximate date)
on the basis of your request

The examination report

- is enclosed. Please make a remittance of
- will be forwarded on/in (approximate date)
The costs are expected to amount to

Special requirements:

Remarks:

Date

Signature

[End of Annex II
and of document]