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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON THE INTERPRETATION AND REVISION OF THE CONVENTION

Second Session

Geneva, December 2 to 5, 1975

REPORT

adopted by the Committee

Opening of the session

1. The second session of the Committee of Experts on the Interpretation and Revision of the Convention (hereinafter referred to as "the Committee") was held in Geneva from December 2 to 5, 1975.

2. The six member States of UPOV and the three signatory non-member States, Belgium, Italy and Switzerland, had been invited to the session. All member States were represented; of the signatory States, Switzerland was represented. The list of participants is attached as Annex I to this report.

3. The session was opened by Mr. H. Skov (Denmark), Chairman of the Committee.

Adoption of the agenda

4. The agenda was adopted as appearing in document IRC/II/1.

Report and discussion on the mission of the UPOV delegation to Canada and the United States of America

5. The Vice Secretary-General pointed out that the report on the mission of the UPOV delegation to North America (UPOV/INF/3) had been distributed in preparation for this session instead of document IRC/II/2, indicated under item 2 of the agenda. The Committee discussed the outcome of the mission as reflected in the conclusions of its members prepared at Niagara Falls on September 14, 1975. These conclusions, to which slight amendments were made, are reproduced in Annex II to this report. The Committee agreed that the conclusions should be added to the report of the mission and that the report would then be distributed to member States only, with the mention "limited distribution." For the Committee's third session, no written report would be prepared but the President of the Council would give an oral report during this session.

Discussion of the question of the interpretation or revision of certain provisions of the Convention

6. The discussions were based on document IRC/II/3 prepared by the Office of the Union and containing the collection of proposals that had so far been made for the interpretation or revision of the Convention and the state of the discussions.

Article 2(1)

7. It was recalled that in the United States of America two different systems for protecting plant varieties existed: one system under the Patent Law, and the other system under the Plant Variety Protection Act. The scope of protection of the two systems differed. The scope of protection of plant patents granted by the Patent and Trademark Office for normally asexually reproduced plants would not cover the propagation of the variety by seeds, while the scope of protection of certificates granted by the Plant Variety Protection Office for generally sexually reproduced plants would cover the progagation of the variety by seeds as well as by vegetative means. It was reported that so far there was only one case--that of Poa pratensis--in which protection under both systems was sought. In future, however, it might be possible and was foreseeable that protection could be sought for varieties of ornamentals under both systems.

8. The Committee expressed the view that the Convention should not allow the protection of varieties of a given species under two different systems in a member State.

Article 2(2)

9. The Committee recalled that, contrary to the situation in the UPOV member States, protection of controlled hybrids of sexually propagated crops was not possible in the United States of America. It considered that reference to hybrids should be maintained but agreed to discuss the question during the third session.

Article 4(3) to (5) and the Annex to the Convention

10. The Committee decided to maintain an obligation for member States to protect a minimum number of genera and species but confirmed its former decision to amend the present system. It discussed whether it was preferable to increase the number of species to be mentioned in the Annex to the Convention and request that a certain percentage of the species mentioned would have to be protected, or to delete the Annex completely. It finally agreed to propose the deletion of the Annex to the Convention.

11. The Committee furthermore agreed to replace in Article 4(3) the word "genera" by the words "genera and species." With respect to the number of genera and species which would have to be made eligible for protection within specified time limits, the Committee agreed that a decision should be taken after discussion during its third session. In any case, the Council should be authorized to reduce that number under exceptional circumstances. Reference was made in the same connection to a comparable provision in Article 26(5) as amended by Article II of the Additional Act.

12. The Committee noted that the deletion of the Annex would require that Article 4(4) be amended. It was decided to abandon on this occasion the possibility, contained in the said provision, of restricting the principle of national treatment (Article 3). Consequently, the first part of Article 4(4) should be omitted, whereas the question whether the last part should be maintained or deleted was left open.

13. With respect to Article 4(5), the Committee agreed to propose the deletion of this paragraph.

Article 5

14. The Committee agreed that Article 5(1) should not be changed since Article 5(4) offered sufficient possibilities for granting more far-reaching rights to the breeder.

15. In this connection, a general discussion took place on the question what was considered to constitute the sale or marketing of propagating material of the variety reserved to the owner of the plant breeder's right. It was observed that the UPOV Convention was based on a somewhat different philosophy than most patent laws. Reference was made to the preamble of the UPOV Convention, which speaks of "limitations that the requirements of the public interest may impose on the free exercise" of the plant breeder's right.

16. It was the general view of the Committee that the far-reaching farmer's privilege provided for under the US Plant Variety Protection Act and according to which farmers were entitled to sell seed of a protected variety which they had multiplied in their own fields freely to other farmers, but not to seed dealers, was not compatible with the UPOV Convention. An amendment to the Convention allowing for such a privilege was not desirable.

17. No final agreement could be reached on the question whether the multiplication of seed of a protected variety within a cooperative and its distribution to members of the cooperative were to be regarded as sale. The same was true for the multiplication and distribution of seed of a protected variety by firms of the canning industry and for the multiplication of plants, especially ornamental plants, by public institutions for use in public gardens or forests. The Delegates of Denmark and of the United Kingdom referred to the special provisions of their laws which are reproduced in Annex I to document IRC/II/3.

Article 6(1)(a)

18. The Committee confirmed its view that the worldwide standard for determining whether the plant variety was new had to be maintained.

19. The Committee agreed that the definition of the term "important characteristic," as given in the General Introduction to the Guidelines for the Examination of Distinctness, Homogeneity and Stability of New Varieties of Plants, was sufficient. In particular, it could not approve the restriction of the term to merely functional characteristics.

Article 6(1)(b)

20. The Committee confirmed that it felt unable to agree to the introduction of a period of grace of one year during which the variety could be commmercialized without affecting its novelty.

21. As some of the reasons for the request for a grace period were to allow the breeder to test his variety and as this was already permitted under Article 6(1)(b), first sentence, some delegates proposed that the United States of America adopt, for example, a system such as that applied in the United Kingdom, where testing of the variety was permitted under a very special type of contract, as explained in the following paragraph of this report.

22. The Committee discussed the question of the circumstances under which the distribution of the variety to other persons for the purposes of testing was to be considered marketing within the meaning of Article 6(1)(b), thus destroying the novelty of the variety. The Delegates of the United Kingdom stated that in their country every transaction whereby the material passed from one person to another was to be considered marketing unless done under special contracts according to which the material remained the property of the breeder and had to be returned to him. The breeder would be allowed to sell the harvested products for consumption. This, however, was not permitted for blooms.

23. The Delegates of France and the Federal Republic of Germany reported that in their countries the testing of the variety in the market to assess the marketing value would destroy the novelty. This would not exclude the anonymous selling, for consumption purposes, of harvested material coming out of tests. The Delegate of Denmark pointed out that in his country it was decisive whether or not the material, when passed to another person, was still viable since, in the Danish view, the main aim of Article 6(1)(b) was to prevent the spread of the variety and its use by a third person in good faith so that later difficulties arose when the variety had to be protected. For the Netherlands, it was reported that the breeder could test a variety even in the market. He could, for example, sell a

certain quantity of cut flowers in an auction. If such a possibility were not given to the breeder, it would lead to the filing of a large number of applications which might later be withdrawn. At present, the question of maintaining this system was under consideration; a final decision had not yet been taken.

Article 7

24. The Committee had an exchange of views on the question whether the examination of a plant variety had to comprise official growing tests and on the conditions under which non-member States not--or not yet--performing such tests could be allowed to accede to the UPOV Convention. It was agreed to discuss this question, on the basis of the discussions in the present session, in a preparatory meeting with the observers of the United States of America invited to the Committee's third session (see paragraph 56 below) and later during that third session.

Article 8(1)

25. As in its first session, the Committee stated that it was unable to propose that the minimum period of protection be reduced to 17 years for all species, a term which apparently was desired by some circles in the United States of America. Some delegations even considered that the minimum of 18 years (now in the Convention) for vines and trees was rather short, taking into account the fact that the breeder needed several years to demonstrate the value of his variety and to introduce it on the market on a broad scale, and that the variety was used over several decades. Thus, the breeder very often could only expect remuneration at a time when the period of protection was near expiration. Nevertheless, it was agreed not to change Article 8 in this respect as the prolongation of the minimum period could cause difficulties for States wishing to accede to the Convention.

Article 8(2)

26. The Committee confirmed the decision taken during its first session not to accept the proposal to calculate the period of protection as from the date of filing the application.

Article 10(2) and (3)

27. The Delegates of the United Kingdom explained the proposal, made by them during the first session of the Committee, to ensure that whenever the variety was marketed--under the variety denomination--by the breeder or on his behalf, it had to possess the characteristics as defined when the right was granted. It was stated that a sanction was needed in cases where the breeder or other persons with his consent sold propagating material of the variety with different characteristics. After a discussion, the Committee agreed to propose the insertion of an additional provision in Article 10, along the following lines:

> "If the holder of rights in a variety makes or causes to be made sales of propagating material purporting to be of that variety, then that material must show the same characteristics of the variety as defined when the right was granted. If such material shows other characteristics, the rights may be forfeited."

28. By providing that the sales must at least be caused by the breeder and by using the words "may be forfeited," the Committee wanted to avoid an automatic forfeiture in cases where the holder of the rights was not responsible for the sales, or where only a small quantity of the propagating material offered for sale did not correspond to the protected variety.

29. The Committee felt unable to agree with the opinion expressed by one delegation that Article 10(2) was superfluous. It was explained that this paragraph provided for forfeiture when the breeder was not in a position to furnish to the competent authority material capable of producing the new variety with its characteristics as defined when the right was granted; for instance, where the variety had lost its characteristics because of lack of stability or where the breeder no longer possessed any propagating material. Article 10(3) served quite a different purpose. It contained a sanction for national offices controlling

the variety to ensure the necessary cooperation of the breeder. The authority was entitled--but not obliged--to annul the breeder's right when the owner did not provide it on demand with reproductive or propagating material. Article 10(3) was not sufficient to invalidate the right when the material presented by the owner did not possess the characteristics as defined when the right was granted.

30. In this connection, the Secretary-General drew attention to the fact that, on the occasion of a revision of the Convention, the English translation could be better adjusted to the original French text by replacing the expression "the breeder or his successor in title shall forfeit his right" by "the breeder shall be deprived of his right."

Article 10(4)

31. The Committee decided not to adopt the proposal to delete Article 10(4). It was recollected that this proposal had been made by representatives of the United States of America in order to allow member States to invalidate a plant breeder's right on grounds other than those listed in this Article. The UPOV delegation on its visit to the United States of America had been informed that that country wished to have the possibility of invalidating a plant patent if the first application had been filed abroad without the permission of the Government, such permission being generally required under the US Patent Act for security reasons. The Secretary-General expressed the opinion that, even without changing or deleting Article 10(4), the revision conference could record an understanding that measures taken by any Contracting State to protect its national security were always allowed.

Article 6(1)(b) and Article 12

32. The Committee first studied the possibilities of avoiding the accumulation of the periods provided for under Articles 6(1)(b), 12(1) and 12(3), which could lead to a difference of up to nine years between the date of first commercialization of the variety and the date of the furnishing of documents and material necessary for the examination in the country where the priority of a previous application was claimed. As far as the four-year period under Article 12(3) is concerned, it was reported that the law of the United Kingdom did not provide for such a period and that in Denmark and Sweden this period was practically never used by the applicants, while breeders in the Federal Republic of Germany and the Netherlands did avail themselves of this possibility. For France, it was reported that the breeders attached great importance to the four-year period but complained that its use led to considerable differences in the expiration of the periods of protection in different States.

33. The Delegates of the United Kingdom pointed out that in their country no disadvantage had been experienced because of the absence of the four-year period envisaged in Article 12(3) and that there was a danger that breeders might misuse this possibility by filing an application prematurely in one country and using the four-year period for improving the variety, thereby gaining an unjustified advantage at the expense of other applicants. They pleaded for a deletion of that period.

34. In the discussion, several advantages in upholding the four-year period in Article 12(3) were mentioned. It was stated that this period enabled the breeder who had filed applications within the priority year in several member States--thus giving him the possibility of starting commercialization in all of those States without endangering the novelty--to continue the procedure in the States of the subsequent filings only after receiving the test results from the authority of the State of the first application. In this way, too, unnecessary work on the part of the authorities was avoided in the case of withdrawals. Furthermore, the breeder could without risk assess the commercial value of his variety for up to four years in the State of the subsequent filing before having to invest time and money in continuing with the procedures there.

35. As to the concern expressed that the four-year period of Article 12(3) could be misused by a breeder to file prematurely an application and improve the variety within the four years available, the Delegate of the Netherlands stated that he would be satisfied if the office with which a subsequent application was filed was able

to require the immediate supply of the plant material whenever the first application whose priority was claimed was rejected or withdrawn. The Delegate of the United Kingdom proposed that material concerning an application whose priority was claimed for an application in another State should always be included in the reference collection even if the application was withdrawn or rejected.

36. As to the four-year period provided for in Article 6(1), the Delegates of the United Kingdom suggested considering the possibility of extending it to six years, especially in the case of fruit trees and possibly also for all trees. The majority of the delegates did not consider it possible to adopt this proposal.

37. The Delegate of France proposed that, where rights were granted in several member States, the period of protection in all those States should be computed from the date when the first title of protection was granted. This would avoid the expiration of the period of protection on different dates. The other delegations felt that, before adopting such a rule, it was necessary to harmonize the length of the periods of protection provided for in the various national laws.

38. The Committee decided to continue to discuss the question of the periods in Articles 6(1)(b), 12(1) and 12(3) in its next session, with the professional organizations.

Article 13

39. The Vice Secretary-General expressed the opinion that during the mission of the UPOV delegation to the United States of America and Canada no fundamental objections had been raised against Article 13 itself, but that it had been mainly the Guidelines for Variety Denominations that were criticized. He also felt that the main criticisms expressed by the international non-governmental organizations were directed against those Guidelines and not against Article 13. After the Chairman and others had supported this view, the Committee decided not to consider any amendment to this Article, and not to keep it on the list of items to be discussed on the initiative of UPOV during the Committee's third session.

40. The Delegates of the Netherlands asked whether Article 13(6) had to be maintained though it was at present replaced by the Provisional Rules of Procedure on the Exchange of Variety Denominations (document UPOV/C/V/33). The system which had been adopted by the Council in its fifth ordinary session was reported to be working to the satisfaction of everybody. The Chairman recalled that the aim of the procedure envisaged in the last sentence of paragraph (6) of Article 13 was to achieve recognition by the member States of the Paris Union for the Protection of Industrial Property of the character of the registered variety denomination as a generic term and the exclusion of its use as a trademark. After some delegates had expressed the desirability of applying Article 13(6) whenever the Office of the Union possessed the necessary manpower--while others thought a permanent application and possible further implementation of the provisional measures to be conceivable if not preferable--it was decided not to envisage deletion or amendment of Article 13(6) during the next revision conference.

Article 14

41. The Committee confirmed the decision, taken during its first session, not to change Article 14.

Article 25

42. It was agreed to consider in one of the Committee's future sessions a proposal made by the Delegate of France to amend Article 25 as follows:

> "In the event that the International Union for the Protection of New Varieties of Plants decides to cooperate with another Union, the procedure shall be governed by rules established by the Government of the Swiss Confederation in agreement with the Union concerned."

Article 27(2)

43. The Committee agreed that the obligation to hold a revision conference every five years should be deleted. It was noted that any change in Article 27(2) made it necessary to agree on the required majority for convening a revision conference (see Article 22 and Article I of the Additional Act). Majorities of five-sixths (as presently provided for under Article 27 for bringing forward or postponing a revision conference) and of three-quarters (as provided for under Article 22 for the adoption of the budget) or even minorities were mentioned, but no agreement was reached. It was decided to discuss this question during one of the Committee's next sessions. One delegation pointed out that the decision on this question went beyond the competence of experts on plant variety protection.

Discussion of the proposals submitted by the Delegation of the Federal Republic of Germany

44. Interpretation of Article 13 of the Convention with respect to the admissibility of letter-figure combinations as variety denominations. The Committee agreed that the law of the Federal Republic of Germany was in conformity with Article 13 of the Convention but not with Article 3(4) of the Guidelines for Variety Denominations, as adopted by the Council of UPOV on October 12, 1973 (see document C/VII/22). The German law and the said Guidelines constituted two different interpretations of Article 13, the Guidelines reflecting a more limited interpretation than the German law.

45. The Committee, observing that it only had to discuss the interpretation or revision of the Convention and not a possible change in the Guidelines for Variety Denominations, agreed to treat the last-mentioned subject in a joint meeting with the Working Group on Variety Denominations during its fourth session.

46. The Committee also considered the practical consequences of this new situation. Several delegations indicated that they would not accept letter-figure combinations in their countries. The Delegate of the Federal Republic of Germany recalled that the breeders were reluctant to use synonyms as denominations for their varieties and he asked the authorities of the other member States to send their objections to such combinations to the Federal Office of Plant Varieties, so that the latter could advise the breeder to propose another denomination.

47. The Committee considered unacceptable a request originating from the French breeders to admit denominations which contained the name of the breeder as a suffix. The Delegate of the Netherlands mentioned, however, that names of persons were used as variety denominations or as a part thereof--this happened often for ornamental varieties--and that his country would also accept the name of the breeder, but for one variety only.

48. Harmonization of the procedure for the grant of plant breeder's rights within UPOV. The discussions were based on Annex II to document IRC/II/4, which was introduced by the Delegate of the Federal Republic of Germany. He explained that the aim of the document was not to initiate the elaboration of plans now for the introduction of an international or supranational plant breeders' rights system--comparable to the systems under the Patent Cooperation Treaty or the European Patent Convention--but rather to indicate the following:

(i) It was not yet the proper time to change the Convention for this purpose.

(ii) The different activities performed inside UPOV were progressing in the right direction.

(iii) These activities could and should be intensified.

(iv) It was possible on the basis of national laws, without changing the Convention, to reach a system of cooperation which would come near to the effects that could be obtained by granting an international plant breeder's right.

49. The majority of the delegates agreed with these explanations and said that it had to be seen first how the cooperation in examination, once started, would work, before more far-reaching plans could be discussed. However, one delegate expressed the view that the breeders would expect prompt action from UPOV in starting with the work on international systems having legal effects.

50. The Secretary-General said that two approaches were possible: one--which seemed to have the preference of both the present Committee and the Committee on International Cooperation in Examination--according to which, through an exchange of tests results, a de facto cooperation should be first established on the technical level; another, according to which the legal foundations would immediately be laid for recognizing, at least to some extent, the validity of examination effected in one country by the other countries, with a view to arriving gradually at a system in which one application would have effect in several countries and certificates granted in one country would be automatically--or subject only to a relatively simple and cheap procedure--recognized in the other countries. He expressed the hope that the Committee would also tackle those questions soon since, according to some of the interested circles and some of the governments showing an interest in joining UPOV, they were urgent, and if not taken up in time by UPOV might be taken up outside UPOV.

51. The Committee agreed that, while the said questions should be examined in due course, what was important at the present time was to establish cooperation in the technical field on the basis of the Model Agreement worked out by the Committee of Experts on International Cooperation in Examination; once that cooperation was sufficiently extensive, the question of institutionalizing such cooperation and recognizing its legal effects should be examined.

Visit of a US delegation to UPOV

52. The Secretary-General informed the Committee of a letter he had recently received from the US Department of State in which the latter accepted the invitation to send a delegation of representatives of government authorities and private circles to UPOV headquarters and UPOV member States. The Committee asked the Secretary-General to offer a ten-day period between June 8 and 20, 1976, as dates for the visit of the said delegation.

Preparation of the third session of the Committee

53. The Committee gave guidance to the Office of the Union on the elaboration of the final list of items to be discussed and on the contents of the preparatory document, both of which would be submitted to the observers of the non-member. States and the international professional organizations invited to that session.

54. The Committee adopted the agenda of its third session, to be held from February 17 to 20, 1976, based on a draft prepared by the Office of the Union and agreed that it should contain the following items:

(i) Opening of the session by the Chairman

(ii) Oral report on the mission of a UPOV delegation to Canada and the United States of America (presented by Mr. Laclavière, President of the Council of UPOV)

(iii) Discussion of questions concerning the interpretation and revision of the UPOV Convention:

(a) questions dealt with in document IRC/III/2

(b) any additional questions raised by the non-member States

(c) any additional questions raised by the professional organizations

(iv) Program for the fourth session of the Committee (restricted to members of the Committee)

(v) Adoption of the report of the session

(vi) Closing of the session by the Chairman.

55. The Committee asked the Office of the Union to invite the professional organizations and the non-member States invited to the third session of the Committee to express their views in writing, if they so desired, by January 20, 1976. The Office of the Union would present, in document form, any reply received to that invitation.

56. Finally, the Committee decided to invite the US delegation to its third session to meet with members of the Committee in a separate meeting on February 16, It asked the Secretary-General to transmit that invitation together with Annex III to the present report.

57. This report was unanimously adopted by the Committee in its meeting held on December 5, 1975.

[Annexes follow]

ANNEX I

LIST OF PARTICIPANTS

I. MEMBER STATES

DENMARK

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Mr. H. KUNHARDT, Leitender Regierungsdirektor, Bundessortenamt, Rathausplatz 1, 3 Hannover 72

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Mr. A.F. KELLY, Deputy Director, National Institute for Agricultural Botany, Huntingdon Road, Cambridge CB3 OLF

II. OBSERVERS

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III. OFFICER

Mr. H. SKOV, Chairman

IV. OFFICE OF UPOV

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

[Annex II follows]

Annex II

CONCLUSIONS OF THE MEMBERS OF THE UPOV MISSION TO THE UNITED STATES

(Niagara Falls, September 14, 1975)

To assist the discussions in the Committee of Experts on the Interpretation and Revision of the Convention which is to meet at Geneva in December 1975, the members of the UPOV Mission have attempted to summarize their impressions from the visit to the United States.

While appreciating the many points of agreement and the interest of the US authorities in the problems raised by the Mission, there remained some points of difference between the US legislation and the requirements of the Paris Convention of December 2, 1961.

(1) The list of species in the Annex to the Convention is not suitable for the US (it should be possible to find a solution to this).

(2) Variety denominations are not subject to any particular protection except for those varieties of which the seed is certified.

(3) A variety may be marketed up to one year before an application for protection is made without prejudicing the novelty.

(4) The US does not protect controlled hybrids of sexually progagated crops.

(5) The duration of the protection is limited to 17 years.

(6) Sales of seed between farmers under certain conditions do not contravene the rights of the breeder.

(7) The main differences between the US systems and that operated by all the present UPOV member States lies in the way in which the preliminary examination is made. Article 7 of the UPOV Convention requires a preliminary examination to be made. In the US the description of the variety is not directly related to the plant material during the official examination as is possible when a growing test is requested. In sexually reproduced species a deposit of seed is required, but only after protection has been granted; no steps are taken to ensure that the seed will produce plants matching the description. In asexually reproduced species no deposit is required. Thus while the Group felt that the UPOV Convention is worded in such a way that the US systems might be held to conform to Article 7, this essential difference must also be recognized and the consequence of admitting the US systems carefully considered.

(Note: Since the discussions at Niagara Falls, the Committee of Experts on the Interpretation and Revision of the Convention has met and has considered the above-mentioned points. As a result of these considerations, the conclusions have further developed, [as reflected in Annex III to this document]).

[Annex III follows]

IRC/II/6

ANNEX III

Considerations on the question of the requirements to be complied with for the examination according to Article 7 of the UPOV Convention

1. The basis of the considerations should be the function of the examination according to the UPOV Convention.

2. Article 1(1) of the Convention provides that a right shall be recognized and ensured to the breeder. This right, which is defined in detail in Article 5, refers to the new plant variety as such.

3. The recognition and ensuring of the right in the variety presupposes that the body granting the breeder's right knows the variety with its significant characteristics and fixes it in its identity.

4. Examination under Article 7, in the light of the criteria defined in Article 6, must serve the aforementioned purpose. Though it is true that Article 7 does not expressly provide for an examination by growing tests, it is hardly possible to fix the identity of a variety without such tests over two periods of vegetation, at least in the normal case.

5. This does not, however, exclude the possibility of asking the question whether, under certain circumstances, the requirements of Article 7 could not be satisfied in some other way than by growing tests performed by the competent government authority and conducted over at least two periods of vegetation. However, it might be regarded as being indispensable that such authority should satisfy itself that the variety for which an application has been filed actually exists and possesses the described characteristics. For this purpose, an official growing test for a shorter period (for instance, one period of vegetation) might suffice. Alternatively, where the introduction of official growing tests at the beginning meets with substantial difficulties and where the use of test results of other official authorities

(especially according to the UPOV Model Agreement) is not possible, the following solution could be considered:

(a) the competent government authority could require the breeder to conduct the growing test himself and to conduct it according to fixed rules;

(b) such authority could examine such test or could have it examined by another institution in the country;

(c) in order to enable the said authority to conduct the growing test itself in cases where doubts arise on the basis of the said examination, the breeder should be required to deposit, simultaneously with his application, a sample of the propagation material;

(d) the breeder should be required, whenever asked by the said authority:

(i) to enable that authority to inspect the breeder's growing test and his files on the breeding history,

(ii) to furnish to that authority samples of the propagating material and any other relevant plant material.

6. The possibilities described above for facilitating the examination measures in the case of States which cannot, from the beginning, adopt the system that is now customary within UPOV do not alter the fact that the system applied so far in all UPOV member States is the surest and most precise for achieving the aims of the Convention. In the interest of securing as much harmony as possible between the UPOV member States in the application of the Convention, the above considerations should be understood as being merely interim solutions for a limited time.

[End of Annex III and of document]