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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Ninth Ordinary Session
Geneva, October 7 to 10, 1975**PROGRESS REPORT ON THE WORK OF THE COMMITTEE OF EXPERTS
ON INTERNATIONAL COOPERATION IN EXAMINATIONprepared by the Office of the Union

1. The Committee of Experts on International Cooperation in Examination, hereinafter referred to as "the Committee," has held three sessions so far, the first (preparatory) on November 7, 1974, the second from January 15 to 17, 1975, and the third from April 15 to 17, 1975. The respective reports are contained in documents ICE/I/5, ICE/II/6 and ICE/III/8. In these sessions, the Committee dealt both with the possible basic concepts of cooperation between authorities of member States and with some practical aspects of that cooperation.

2. Concerning the basic concepts, the Committee studied two possibilities for introducing cooperation in examination within UPOV, namely, the conclusion of agreements between two or -- in some cases -- several Offices, and a multilateral system which could rely on a decision by the Council, on a multilateral administrative agreement or on a special agreement under Article 30 (2) of the UPOV Convention.

3. As far as the conclusion of -- normally bilateral -- agreements between Offices were concerned, the Committee established a draft UPOV Model Agreement for International Cooperation in the Testing of Varieties on the basis of a draft bilateral agreement which the competent authorities of the Netherlands and the United Kingdom were planning to conclude. This Model Agreement serves two purposes: it facilitates, by offering a set of rules for cooperation, the conclusion of agreements between offices of member States willing to cooperate, and it prevents -- at least in so far as offices do not deviate from the Model -- the existence of agreements that differ from State to State. The Model Agreement mainly provides that the two contracting national authorities shall agree to entrust, for certain species listed in the relevant agreement, the task of performing the technical examination to one of those authorities (centralized testing), and that one authority may ask, in respect of varieties of other species, for the test results already obtained by or in course of preparation in the other contracting authority (exchange of test results). The Committee, in its session held from April 15 to 17, 1975, decided to submit the Draft Model Agreement to the Council for approval, after some experts had withdrawn proposals for amending the text in order to avoid any further delay in the introduction of cooperation in examination. The Draft Model Agreement is attached as Annex to this document.

4. After the discussions that took place during the second session of the Committee, the Office of the Union prepared a proposal for a multilateral system, presented in the form of a Draft Decision by the Council. The Council Decision would lead to the same kind of cooperation between offices as that intended by the Draft Model Agreement, but it would base the cooperation on a common multilateral scheme leading to greater clarity and transparency for the interested public and making it easier for future member States of UPOV to join the system more rapidly. Because of lack of time, the Draft Decision could not be studied during the third session of the Committee. It will therefore be discussed in future sessions of the Committee and will subsequently be presented to the Council.
5. The Committee considered as premature the proposal originally made by the United Kingdom to centralize the testing of varieties of main crops during the first growing year and to finalize the examination on the national level in the various member States during the second and subsequent years. It pointed out, however, that the practical effect of that proposal could be achieved, if desired, by making use of the exchange of test results and test reports envisaged under the above-mentioned Draft Model Agreement and Draft Council Decision.
6. As to the extent of the cooperation, the Committee received a number of final and provisional offers from national authorities subject to further examination and approval by the competent higher authorities of the member States. The list of such offers will be further studied by representatives of the testing authorities of member States during informal meetings and, subsequently, by the Committee.
7. The harmonization of procedures has also been studied. The Committee stressed the necessity of undertaking the examination of new varieties on the same basis and pointed out in this connection the importance of the guidelines for the conduct of tests for distinctness, homogeneity and stability.
8. In a joint meeting with the Technical Steering Committee, the Committee examined the harmonization of application forms, notably on the basis of a draft harmonized application form presented by the Office of the Union. The debate on this question will be continued in future sessions of the Committee. In the same joint meeting, the questions whether and how the technical questionnaires could be harmonized were also examined and guidance was given to the various Technical Working Parties for further preparatory work. It was decided to leave this question, as well as the question of harmonization of test reports, to be examined in the future by the Technical Steering Committee.
9. As regards the harmonization of fees, which is also mandatory for the achievement of cooperation on a broad scale, the Committee has not been able to achieve any progress to date, especially as the differences are too great between the policies governing the determination of the fee levels fixed by the financial authorities, or even by parliaments, rather than by the authorities competent for plant breeders' rights in the member States. The Committee decided to draw the Council's attention to the importance of the harmonization of fees, especially fees for testing for the cooperation in examination, and will continue the discussion after receiving additional information on those fees and on the basis for determining their amounts in the different member States, including some future member States.

10. On April 15, 1975, the Committee held a meeting in the presence of observers from the following professional organizations: 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) and International Federation of the Seed Trade (FIS). This meeting was mainly devoted to informing the organizations on the work of the Committee and to asking them for their comments. The organizations stressed the need for cooperation, preferably introduced on the basis of a multilateral system, not only in the field of examination but also with regard to other steps of the procedure for the grant of plant breeders' rights. They complimented the Committee on the work already achieved and made some valuable proposals for forthcoming studies.

11. The Council is invited

- (i) to approve the Draft UPOV Model Agreement for International Cooperation in the Testing of Varieties (Annex);
- (ii) to take note of the past work of the Committee and approve the envisaged continuation of the activities of the Committee as described above.

[Annex follows]

DRAFT

UPOV MODEL AGREEMENT
FOR INTERNATIONAL COOPERATION
IN THE TESTING OF VARIETIESArticle 1

Authority A agrees to carry out, at the request of Authority B, the technical work associated with the testing of new varieties in respect of applications for plant breeders' rights filed with Authority B for the species listed in the Annex to this Agreement.

Article 2

By agreement between Authority A and Authority B, species may be added to those listed in the Annex.

Article 3

Testing shall be conducted according to the Guidelines for the Conduct of Tests adopted by the Council of UPOV. Where such Guidelines do not exist, the two Authorities shall agree on the methods to be applied for the conduct of the tests and on any changes to be made in these methods.

Article 4

(1) For each variety, Authority A shall submit to Authority B interim reports after each testing period and a final examination report.

(2) In submitting its final report, Authority A will state whether in its opinion the variety may be regarded as distinct, homogenous and stable. If the opinion is that the variety is distinct, homogeneous and stable, the variety description shall also be given.

(3) Reports and descriptions shall be written in one of the three official UPOV languages--English, French and German--on the understanding that Authority A is entitled to choose among these languages.

Article 5

Authority A shall be entitled to seek the advice of technical experts or panels of experts.

Article 6

Authority A shall give access to the tests and to all details concerning the tests only to the applicant, his accredited agent and persons duly authorized by Authority B. Where any test was or is carried out also for the purposes of an authority other than Authority B, access shall be permissible also where the rules applicable by such other authority so require.

Article 7

Authority A undertakes to maintain a reference collection of varieties of the species listed in the Annex or to procure material of those varieties useful for purposes of comparison.

Article 8

Authority A shall not furnish to third persons any propagating material provided under this Agreement by Authority B or pursuant to the instructions of Authority B except with the specific authorization of Authority B. The provision also applies to the furnishing of material derived from the said material.

Article 9

Authority B shall pay to Authority A the amount of the fee payable in the State of Authority A for testing a variety for distinctness, homogeneity and stability. Payments shall become due following the receipt of test reports, and will be made by Authority B within [time to be agreed upon by the two authorities] of receiving the account from Authority A.

Article 10

If apart from the normal testing and reporting arrangements the services of an expert or experts are required by Authority B, Authority A undertakes to make available such services at the expense of Authority B.

Article 11

Details arising out of this Agreement, including application forms, technical questionnaires, seed requirements and the form of reports and descriptions, shall be settled between the two Authorities.

Article 12

The provisions of this Agreement shall apply mutatis mutandis where Authority A submits to Authority B, at the latter's request, reports on and a description of a variety of a species whether or not it is listed in the Annex for which reports or a description are already available or under preparation.

Article 13

The provisions of this Agreement shall apply also for purposes other than the protection of new varieties of plants in so far as the tests undertaken are comparable to those conducted for the purpose of the protection of plant breeders' rights.

Article 14

This Agreement shall enter into force on [and shall be regarded as a memorandum for guidance for any cases dealt with, or in the course of being dealt with, before that date].

Article 15

Proposals for the amendment or revocation of this Agreement may be made by either of the Authorities. It is understood, however, that (a) neither Authority shall seek to revoke the Agreement as a whole or for a species listed in the Annex without giving two years' notice to the other Authority and that the first Authority shall enter into consultation before serving such notice, and that (b) if the application of the Agreement to a species listed in the Annex is revoked, the tests initiated on a variety of that species prior to the revocation shall be finalized and reported on by Authority A.