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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fourth Session

Geneva, November 14 to 16, 1979

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The fourth session of the Administrative and Legal Committee (hereinafter referred to as "the Committee") was held in Geneva from November 14 to 16, 1979. All the member States were represented. Of the non-member States invited, Canada, Ireland, Japan, Spain and the United States of America were represented by observers. The Commission of the European Communities was represented by observers. The list of participants is attached as Annex I to this document.
2. The session was opened by Dr. D. Böringer (Federal Republic of Germany), Chairman of the Committee, who welcomed the participants.

Adoption of the Agenda

3. The Committee adopted the agenda as appearing in document CAJ/IV/1, subject to the addition of the following items:
 - (i) Recommendation on fees in relation to cooperation in examination;
 - (ii) Variety denominations;
 - (iii) Computerization at the Office of the Union of the descriptions of protected varieties;
 - (iv) Annual publication by each member State of a list of the protected varieties.

Adoption of the Report on the Committee's Third Session

4. The Committee unanimously adopted the report on its third session as appearing in document CAJ/III/9, subject to the amendment of the first sentence of paragraph 20 to read as follows:

"In spite of the reservation expressed by one delegation, the Committee adopted in principle the proposals appearing in Annex IV, subject to possible further consideration of the level of the target fees."

Development of the Union

5. Discussions were based on document CAJ/IV/2.

6. In introducing document CAJ/IV/2, the Vice Secretary-General referred to the fact that varieties were not bred for the purpose of one State only and that they had to be protected in several States. To avoid duplication of efforts--and to reduce the cost of protection--both for breeders and for plant variety protection authorities, it was necessary to introduce a system of closer cooperation. Recalling the developments in related fields of intellectual property, in particular the adoption of the Patent Cooperation Treaty (PCT) and of the Trademark Registration Treaty (TRT), the Vice Secretary-General emphasized that those treaties had been very favorably received, if not requested, by the professional circles for the same reasons, namely the need to obtain protection in several States and the prohibitively high cost of obtaining such protection through the traditional route of a series of national applications and national grants.

7. In the course of the general discussion, all speakers declared that their countries were in favor of introducing a system of the kind proposed in document CAJ/IV/2.

8. The representative of the Commission of the European Communities declared that the Commission welcomed the initiative of the Union to introduce closer cooperation and supported the objectives set forth in document CAJ/IV/2, including the principle of setting up a system with a number of optional steps. The Commission also wished to refer to the following:

(i) The member States of the European Communities would have to measure the program against the EEC Treaty; this might have consequences on the contents, on the type and on the form of the agreement. The role of the Communities as such would also have to be considered in the framework of such an agreement.

(ii) The program related directly to plant variety protection only. It was also of major importance for the admission of varieties to the seed trade (system of the lists of varieties). The Commission supposed that both systems could complement one another with a view to avoiding duplication of effort.

(iii) Questions which concerned the relationship between national rules on plant variety protection and Community rules on the free circulation of goods had been referred to the Court of Justice of the European Communities. The Commission drew attention to the fact that the results of the proceedings might influence its initiatives in the field of plant variety protection.

9. The Committee had a detailed discussion on the relationship between cooperation and harmonization of legislation. The Delegation of the Federal Republic of Germany held that the special agreement should contain substantive rules on harmonization of legislation and that priority should be given to the study of harmonization for the following reasons: with the revision of the UPOV Convention, member States were less compelled to introduce uniform rules than under the original text of the Convention; in view of the link between plant variety protection and legislation on seed production and trade, harmonization was particularly important for States that cooperated closely in the field of seeds, especially for those which had a common legal system in that field; in connection with the ratification of the Revised Text of the Convention, member States would have to update their legislation and it would be regrettable if they adopted divergent solutions and were forced to amend their legislation later on; harmonization would simplify the working of the cooperation system. This view was shared by the Delegation of Ireland.

10. Whereas it did not deny that the working of the cooperation system would be simplified if legislations were harmonized, the Delegation of Switzerland felt that work on the cooperation system and work on harmonization should be clearly distinguished. It also held that harmonization of legislation was not a prerequisite for the cooperation system, in particular because the UPOV Convention already compelled member States to introduce harmonized basic rules and was equivalent, in its requirements, to the European Patent Convention. The PCT, for its part, did not provide for any harmonization and was applicable in respect of States with very different legal systems.

11. The Secretary-General recalled that the elaboration of the PCT had been made difficult by the desire of certain States to harmonize certain aspects of national legislations through it. Such harmonization had not been possible, in particular in view of the worldwide vocation of the PCT. Since the proposed system of cooperation in plant variety protection would also have worldwide vocation, he advocated that harmonization of legislations should be the subject of a separate agreement set up for the purposes of States with the same philosophy.

12. The Vice Secretary-General pointed out that, according to his experience in other fields, harmonization was likely to be achieved only when it was required for a special aim. To this degree the draft contained, mainly in the "Common Rules" attached to it, proposals for harmonized rules. Another reason for striving for harmonization in a group of member States would be the wish to ensure that the Revised Text of the Convention, where allowing for alternative solutions, be implemented in the same way within a certain part of the world. What the Committee should avoid was work on harmonization for harmonization's sake; that would lead nowhere.

13. In response to the concern expressed by certain delegations that the proposed system would require member States to substantially amend their legislation, the Delegation of the Netherlands said that the system was very flexible and would allow each State to engage in it to the extent desired. Future work on it would enable a solution to be found for each problem. The Delegation of Switzerland saw no need to amend legislation, as far as the first steps of the system were concerned, except to provide that protection may also be granted otherwise than through the national route. In this respect, the Delegation of France emphasized again that a clear distinction should be made between cooperation and harmonization and that harmonization of legislation should be provided for in the cooperation agreement only to the extent necessary to ensure an efficient working of the cooperation system. This would not, of course, prevent the member States from working towards harmonization of legislations.

14. The Committee proceeded to a preliminary examination of the draft agreement. It asked the Office of the Union to examine mainly the following aspects when preparing a revised version of the draft agreement to be submitted to the Committee's next session:

(i) General

(a) to consider whether the examination of the proposed variety denomination should be entrusted to the International Administrative Authority, thus avoiding the appointment of a special International Variety Denomination Authority;

(b) to consider what should be the tasks of the Office of the Union and what would be the consequences of fulfilling such tasks on its staffing, its equipment, etc.;

(c) to consider whether the consent of the Assembly was necessary for the appointment of national authorities as International Testing Authorities or as other Authorities provided for under the draft agreement;

(d) to consider whether applicants should be permitted to designate further States after filing the international application; if yes, to fix a deadline for "belated" designations;

(e) to consider the inclusion of further provisions: on the control of the maintenance of the variety; on the access of third parties to the files on, and tests of, the variety.

(ii) Article 5:

(a) to check whether Article 5 provided for the supply of all information that might be indispensable for processing the international application;

(b) to consider whether the provision in paragraph (5)(v) should be made more flexible.

(iii) Article 8: to consider separating the information that was mandatory-- and that caused the international application to be refused if it was not supplied --from the information whose supply was merely desirable.

(iv) Article 18: to consider whether provision should be made under this Article for the examination of objections to the international application.

(v) Article 31: to consider the fees to be paid if the variety was examined in more than one State.

(vi) Article 32: to provide also for it to be checked whether the variety belonged to the species named in the application.

(vii) Part 4: to reconsider the usefulness of this Part at a later stage.

UPOV Model Law on Plant Variety Protection

14. Discussions were based on documents CAJ/IV/3, 5 and 6.

15. In introducing document CAJ/IV/3, the Vice Secretary-General drew attention to the fact that a model law on plant variety protection had been asked for several times and that it would, according to experience in other fields of intellectual property, be used as a guide for drafting national legislation, or simply copied, which meant that it had to be rather complete. He emphasized that it was not destined to constitute a guide for the present member States, nor a basis for the work on harmonization of legislations of member States. He further referred to the fact that the model law would be accompanied by a commentary in which the provisions of the model law would be explained and alternatives to such provisions would be shown.

16. The Committee proceeded to an examination, article by article, of the preliminary draft of a UPOV model law on plant variety protection and asked the Office of the Union to consider mainly the following questions when establishing the revised draft to be submitted to the Committee's next session:

(i) Section 1:

(a) to explain that varieties may also be protected by patents and that the protection system did not apply to microorganisms;

(b) to avoid the use of the terms "novelty" or "new" in describing the conditions for protection referred to in Sections 1(i) and 4, since those terms might be misinterpreted, in view of their different meaning in the field of patents.

(ii) Section 2:

(a) to be amended, or even deleted, in view of the great difficulty of defining the term "variety"; other proposals were: to state that a variety was characterized by a denomination to which a sample corresponded; to say that the notion of "variety" covered the existence of germ plasm, a description and a denomination;

(b) to eliminate the reference to Section 1(iv) from the second sentence since an assemblage of plants that had not been given an acceptable variety denomination might nevertheless be a variety.

(iii) Section 3(2):

(a) to delete or put between square brackets--also in Section 4(1)--the reference to harvested material, in view of the different interpretations given by the present member States to the corresponding provisions of the Convention and in view of the ambiguity of such reference;

(b) to amend the expression "publicly cultivated."

(iv) Section 4:

(a) to amend paragraph (1) in order to clarify that the one year period of grace may also be granted for certain species only;

(b) to amend or delete paragraph (4) in view of the fact that, as from the time when the variety was bred, the breeder was storing material for the obvious purpose of selling it as propagating material in the course of trade.

(v) Section 14: to include into the scope of protection import and export, without restriction, and to refer to the possibility of extending protection to the propagation of the variety with a view to producing fruit, etc.

(vi) Section 15: to add "for the variety" after "defined" in paragraph (1) and to replace "facilities" by "assistance" in paragraph (2).

(vii) Section 16: to make clear that the periods indicated corresponded to the minimum requirements of the Convention and that it was advisable to provide for longer periods.

(viii) Section 18:

(a) to refer to the fact that some member States limit the period within which a third party may file a request for annulment under paragraph (2);

(b) to delete "ab initio" from paragraph (2) and, in general, to avoid the use of Latin legal expressions;

(c) to add "for the variety" after "defined" in paragraph (3);

(d) to explain the consequences of annulment on licence agreements and other rights, in particular in relation to royalties.

(ix) Section 19: to simplify and, in particular, to delete paragraph (3).

(x) Section 20: to regroup with Sections 36 sqq.

(xi) Section 22(3): to have the required amount of propagating material fixed in all cases by the Plant Variety Rights Office.

(xii) Section 23: to add provisions similar to those contained in the Paris Convention for the Protection of Industrial Property and, in particular, to provide rules for the case where the last day of a priority period fell on a holiday.

(xiii) Section 24(2): to be amended with a view: to having the four-year period commence at the end of the priority year as provided in Article 12(3) of the UPOV Convention; to providing that four-year period as an option for the applicant instead of barring the Plant Variety Rights Office from requesting the documents and the material during that period; to fixing the period in which the applicant had to submit such documents and material where the said Office requested earlier submission.

(xiv) Section 27:

(a) to add a reference to word-letter combinations in paragraph (1);

(b) to reconsider the need for the phrase "the other variety denomination has not acquired great importance" in paragraph (3)(iii).

(xv) Section 28: to limit publication to those variety denominations that were proposed, registered or cancelled in the State concerned (rather than in any of the member States of the Union).

(xvi) Section 32: to replace "accepted" by "processed."

(xvii) Section 34(1):

(a) to replace "shall be based" by "may be based;"

(b) to provide for testing fees; in view of the differences in the cost of testing, it was not considered appropriate to include the expenses for testing in the application fee.

(xviii) Section 35:

(a) to provide for the possibility of filing oppositions to the application, i.e. before the title of protection was granted (rather than providing only for "belated" oppositions after the grant of the title) and to consider whether the Plant Variety Rights Office should announce the intention to grant a plant breeder's right;

(b) to also provide for the possibility of filing oppositions based on the fact that the applicant or the holder of the plant breeder's right was not the person entitled to protection (rather than leaving the dispute on entitlement to the civil courts).

(xix) Section 36(1): to add an item allowing appeals against the grant of a plant breeder's right, rather than providing only for belated oppositions (Section 35) and annulment (Section 18(2)).

(xx) Section 37: to add a reference to the competent tribunal (Section 40).

(xxi) Section 38: to re-examine the need for a criminal sanction for infringements and to delete the provisions on recidivism (paragraphs (3) and (4)).

(xxii) Section 39: to add a provision penalizing the use of the registered variety denomination to designate another variety of the same or of a closely related species.

(xxiii) Section 47(2): to be amended to the effect that the remark to be entered in the Register would not be specified.

(xxiv) Section 48:

(a) to indicate that compulsory licences could also be granted by a court;

(b) to indicate that a "period of sole rights"--during which no compulsory licence could be issued--might also be provided for.

(xxv) Section 50: to be phrased in more general terms rather than enumerating the subject matters for which Regulations may be established.

(xxvi) Section 51: to specify the facts which should, as a minimum, be entered in the Register.

(xxvii) Section 52: to mention the possibility of publishing the relevant information in a gazette of a general nature in view of the fact that many States would not be in a position to issue a special plant breeders' rights gazette.

UPOV Model Form for the Interim Report on the Examination of a Variety

17. Discussions were based on document CAJ/IV/4.

18. After thorough discussions, the Committee adopted the UPOV Model Form for the Interim Report on the Examination of a Variety as appearing in Annex II to this document.

Recommendation on Fees in Relation to Cooperation in Examination

19. Discussions were based on documents CC/XX/6 and CC/XX/6 Add.

20. The Committee agreed on the following main amendments to the draft recommendation appearing in Annex II to document CC/XX/6:

(i) the Resolution on Fee Questions adopted by the Council at its seventh ordinary session would be repealed by virtue of the new recommendation rather than by a separate decision of the Council;

(ii) the second subparagraph of paragraph (1) of the operative part of the recommendation was to be deleted;

(iii) paragraph (3) would provide for a target fee only for the genera and species of the greatest economic importance, since the fixing of different target fees for the various groups of crops might prejudice the financing system of those authorities which charged the same examination fee for all species.

21. The Committee agreed that the new draft appearing in Annex III to this document should form a basis for further discussions at its next session. Those discussions might also extend to the case where the application for protection was withdrawn (see the letter of the Delegation of France reproduced under item D.2 of Annex III to document CC/XX/6). It invited the member States to communicate their observations on the new draft to the Office of the Union in writing, in order to speed up discussions at the next session.

Variety Denominations

22. Discussions were based on a letter from the Delegation of Denmark, which is attached as Annex IV to this document.

23. As regards the practice of certain breeders of proposing denominations for their varieties that all started with the same syllable (the so-called "prefix"), the Delegations of Denmark and Sweden explained that they were or would be in favor of prohibiting prefixes, but were unable to enforce such a prohibition because applications for registration of variety denominations were mostly filed in their countries after the proposed denomination had already been approved in other member States. Consequently, they had to accept the denomination in order to avoid the registration of a synonym.

24. Whereas several delegations expressed the view that the present situation was not satisfactory, it was mentioned that it resulted from an earlier compromise in that breeders of ornamental plants had abandoned an immatriculation system, which had been in use before the introduction of the UPOV system. Moreover, in the United Kingdom, certain breeders had been obliged to abandon the practice of proposing variety denominations that contained, in the form of a separate word, an indication of origin. It was further mentioned that the approach to the present situation should be realistic and, in particular, that no rule on the naming of varieties would prevent such varieties from becoming known to the public under a trademark--which breeders were allowed to use as was any other person involved in commerce--or under another kind of designation. In the spirit of this realistic approach, the United Kingdom would, in the near future, amend Section 5A of the Plant Varieties and Seeds Act, 1964.

25. The response to the plea by the Delegation of Denmark that member States receiving the first application for the registration of a variety denomination should, in order to prevent abuses of the prefix system, strictly apply the rules that a denomination had to be distinguishable from the existing denominations, and easy to pronounce, was that, since protection was granted on a national basis, such States could not always reject a denomination on the ground that it was not suitable in another member State.

26. Finally, reference was made to the fact that prefixes in variety denominations were becoming, in the course of time, indications of the origin of the varieties, and that a denomination proposed by a breeder other than the "owner" of the prefix included in that denomination might have to be refused on the ground that it was misleading as regards the identity of the breeder. In this connection, the Delegation of Italy referred to the court decision by which "Starkrimson" had been refused as a trademark on the ground that its registration had not been applied for by the Stark nurseries.

27.. The Committee also considered whether--in order to avoid any delay in the grant of protection--it would be possible for a member State to approve a proposed variety denomination already approved in another member State, without publishing it beforehand in the national plant variety protection gazette, on the assumption that its nationals would have had the opportunity to object to that denomination on the basis of its publication in the gazette of that other member State. It was stated that this was a matter to be decided upon by the member State concerned. Such a procedure raised, however, a number of difficulties. In particular, a member State could not always refuse a proposed variety denomination on the ground that it was not suitable in another member State. Furthermore, a right in the designation constituting the variety denomination might arise in the State concerned between the first publication in a member State and the date on which it was proposed to take a decision on the variety denomination in the member State concerned.

Computerization at the Office of the Union of the Descriptions of Protected Varieties

28. The Committee decided that this question should first be discussed by the Technical Committee.

Annual Publication by Each Member State of a List of the Protected Varieties

29. The Committee decided to discuss this question at its next session on the basis of detailed explanations to be submitted by the Delegation of South Africa.

Program for the Fifth Session of the Committee

30. The Committee agreed to discuss the following items at its fifth session (to be held on April 17 and 18, 1980):

- (i) Development of the Union;
- (ii) UPOV model law on plant variety protection;
- (iii) Recommendation on fees in relation to cooperation in examination;
- (iv) Variety denominations;
- (v) Annual publication by each member State of a list of the protected varieties.

31. The Committee further agreed that no subgroup of the Committee should meet on April 14 and 15, 1980.

[Annexes follow]

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATENBELGIUM/BELGIQUE/BELGIEN

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- Mlle N. BUSTIN, Adjoint au Secrétaire général, Comité de la protection des obtentions végétales, 11, rue Jean Nicot, 75007 Paris
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- Mr. K.A. FIKKERT, Legal Advisor, Ministry of Agriculture and Fisheries, Bezuidenhoutseweg 73, The Hague
- Mr. A.W.A.M. VAN DER MEEREN, Board for Plant Breeders' Rights, P.B. 104, 6700 AC Wageningen
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- Mr. J.M. ELENA, Chef du Registre des variétés, Instituto Nacional de Semillas y Plantas de Vivero, General Sanjurjo, 56, Madrid (3)
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UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE/VEREINIGTE STAATEN VON AMERIKA

- Mr. S.D. SCHLOSSER, Attorney, U.S. Patent and Trademark Office, Washington, D.C.
- Mr. B.M. LEESE Jr., Commissioner, Plant Variety Protection Office, Agricultural Marketing Service, Beltsville, Md. 20705
- Mr. L.J. DONAHUE, Administrator, National Association of Plant Patent Owners, 230 Southern Building, Washington, D.C. 20005

III. INTERNATIONAL ORGANIZATION/ORGANISATION INTERNATIONALE/INTERNATIONALE ORGANISATION

- Dr. R.E.L. GRAEBER, Chef de la Division "Harmonisation des législations, produits végétaux", Commission des Communautés Européennes, 200, rue de la Loi, 1049 Bruxelles
- M. D.M.R. OBST, Administrateur principal, Commission des Communautés Européennes, 200, rue de la Loi, 1049 Bruxelles

IV. OFFICER/BUREAU/VORSITZ

- Dr. D. BÖRINGER, President

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

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

[Annex II follows/
l'annexe II suit/
Anlage 2 folgt]

UPOV MODEL FORM FOR THE INTERIM REPORT ON THE EXAMINATION OF A VARIETY
FORMULAIRE TYPE DE L'UPOV POUR LE RAPPORT INTERIMAIRE SUR L'EXAMEN D'UNE VARIETE
UPOV-MUSTERFORMBLATT FÜR ZWISCHENBERICHTE ÜBER DIE PRÜFUNG EINER SORTE

Requesting authority
Autorité qui a demandé
l'examen
Beauftragende Behörde

Application number
Numéro de la demande
Anmeldenummer

Reporting authority
Autorité qui a effectué
l'examen
Berichtende Behörde

Reference number
Numéro de référence
Bezugsnummer

1. Species (common and Latin name)
Espèce (nom commun et nom latin)
Art (landesübliche und botanische Bezeichnung)

2. Proposed denomination/Breeder's reference
Dénomination proposée/Référence de l'obtenteur
Vorgeschlagene Sortenbezeichnung/Anmeldebezeichnung

3. Testing station
Station d'examen
Prüfungsstation

4. Site(s) and year of tests
Lieu(x) et année d'examen
Prüfungsort(e) und -jahr

5. ☐ No plant material received/Pas de matériel végétal reçu/
Kein Pflanzenmaterial eingegangen
6. ☐ Requirements for plant material not met/Conditions requises pour
le matériel végétal non respectées/Pflanzenmaterial entsprach
nicht den Voraussetzungen
7. ☐ Tests failed/Les essais ont échoué/Prüfungen fehlgeschlagen

Observations/Bemerkungen:

8. Results of the examination/Résultats de l'examen/Ergebnisse der Prüfung

☐

No remarks/Pas de remarques/Keine Bemerkungen

☐

Remarks/Remarques/Bemerkungen

The final examination report will be forwarded on/in (approximate date)
Le rapport d'examen final vous sera envoyé le/dans (date approximative)
Der endgültige Prüfungsbericht wird übermittelt werden am/im (ungefährer Zeitpunkt)

Note: The above interim report does not prejudge the final report.

Note: Le rapport intérimaire ci-dessus ne préjuge pas du rapport final.

Bemerkung: Der vorstehende Zwischenbericht greift dem abschliessenden Bericht nicht vor.

Place and date/Lieu et date/Ort und Datum

Signature/Unterschrift:

[Annex III follows/
l'annexe III suit/
Anlage III folgt]

DRAFT

RECOMMENDATION ON FEES IN RELATION TO COOPERATION IN EXAMINATION

The Council of the International Union for the Protection of New Varieties of Plants,

By virtue of Article 21(h) of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention"),

Having regard to Article 30(2) of the Convention,

Having regard to the agreements on cooperation in examination already concluded between member States on the basis of the UPOV Model Agreement for International Cooperation in the Testing of Varieties,

Considering it of the utmost importance that cooperation in examination be based on a uniform and clearly defined system of fees and considerations,

Considering that the experience of cooperation in examination acquired on the basis of the aforesaid agreements makes it desirable to replace the Resolution on Fee Questions adopted during its seventh ordinary session, in October 1973 (document UPOV/C/VII/23), by the following,

Recommends to the member States of the Union that they establish or amend, as the case may be, their national plant variety protection legislation or practice, on the one hand, and the agreements on cooperation in examination, on the other hand, in accordance with the following principles.

(1) Where the authority of one member State of the Union ("Authority B") takes over an examination report established by the authority of another member State of the Union ("Authority A") for the purposes of its own procedure or of a procedure before a third authority:

(a) Authority B shall pay a fixed consideration equivalent to 300 to 400 Swiss francs to Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates

(i) shall be exempted from the examination fee, and

(ii) shall be charged an administrative fee which shall at least correspond to the consideration referred to in subparagraph (a) above.

(2) Where Authority A conducts an examination at the request of Authority B:

(a) Authority B shall pay to Authority A a consideration equal to the appropriate examination fee payable in the State of Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates shall be charged an amount which shall, as far as possible, correspond to the consideration referred to in subparagraph (a) above.

(3) Member States of the Union shall, as a target fee at least for the economically most important genera and species, fix the fee for the national examination period of two years or growing cycles at an amount corresponding to about 1350 Swiss francs unless special reasons justify the fixing of a lower fee level.

[Annex IV follows]

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ANNEX IV

EXTRACT FROM LETTER, DATED NOVEMBER 2, 1979,
FROM THE DELEGATION OF DENMARK
TO THE VICE SECRETARY-GENERAL
ON THE SUBJECT OF VARIETY DENOMINATIONS

...

1. The use of a certain prefix in the variety denomination, which usually indicates the breeder (holder) of the variety.

As you will know, some breeders use to give their varieties a name containing identical prefixes, indicating from which breeder the variety comes. As an example we can state:

Bar-, Kor-, Mei- and Tan-names.

The Danish denomination committee was and still is of the opinion that the systematic use of a certain prefix might lead to the result that it will be very difficult to distinguish these names from each other.

Therefore our denomination committee has refused to accept such names proposed by Danish applicants, but the Danish legislation for variety denomination makes it possible to give an additional name. As you will know, this possibility is also given in art. 13 (8) in the text of the revised convention of 1978.

As an example of this practice we can state the Barley varieties 'Lofa' Abed and 'Tron' Sejet and the African Violet variety 'Anna' Rokoko, where the names Abed, Sejet and Rokoko are additional names.

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In the same way our denomination committee has objected to proposed names for foreign applications with a certain prefix, when these are applied in Denmark. As a rule the result of these objections is that the applicant later informs us that the name in the meantime has been approved in another UPOV member state. After this our denomination committee normally has approved the name to avoid synonyms.

However proposed names of this kind seem to increase, which means that the names - at least in Danish - seem to be more difficult to distinguish and even more difficult to pronounce - and therefore also to remember. In fact our experience is that these names in general are not known on the market, whereas the varieties normally are commercialized under a suitable national trade mark. This does not mean that the variety denominations are not indicated also on e.g. labels.

The remaining problem is whether the denomination committees in the various UPOV member states still have to accept this procedure or you will depart from the desire to avoid synonyms in the future. The latter case means that we ought to point out the various names of the same variety to the consumers in our gazette.

To illustrate the problem I enclose denomination proposals from the following gazettes*:

The French gazette, no 1 - 1978

The French gazette, no 4 - 1978

The French gazette, no 5 - 1978

The French gazette, no 6 - 1978

The gazette of the Fed. Rep. of Germany, September 1979

* The annexes to this letter are not reproduced.

Furthermore we state parts of the text from 'Guidelines for Variety Denominations', doc. UPOV/C/VII/22, dated October 12, 1973:

Art. 1 (2): If a variety has already been submitted for registration or registered in a member state of the Union, only the denomination under which the variety has been registered in that state can be accepted in the other member states unless the authority which has to decide on the new application considers the denomination unsuitable for linguistic or other reasons.

Art. 2: The denomination must make it possible to identify the new variety without risk of confusing a purchaser of average attentiveness.

Art.5 (4): The denomination must in particular not be unsuitable for linguistic reasons.

2. The first publishing of a denomination proposal shall be valid for a later application in another country.

After the cooperation of the technical examination has become more common, and the authorities often receive the examination report shortly after the application, I think it would be useful to discuss the possibility of taking advantage of a previous publishing of a denomination proposed in another UPOV member state.

At present each state publish the application of a denomination proposal, after which the other UPOV member states can object to the denomination proposal within 3 months. This practice is also used if another country has published the name as a proposal or even as an approved name.

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For the states with gazettes, which are not published so often this procedure might cause an unnecessary delay, as only national reservations will be able to prevent the approval of a name that already is approved in another country.

If the publishing of a denomination proposal have to be valid for later application in other countries it must of course be on condition that the name is published as approved, or that the variety has been granted Plant Breeders' Rights under the given name.

Concerning the information which later might be missing in some gazettes for a variety, if the name is approved according to the above-mentioned principle, it should perhaps be considered, whether it would be appropriate to state that the checking of the name has been based on the principle mentioned.

The information missing can e.g. be proposed and approved name.

Hoping that the above-mentioned introduction is sufficient for the understanding of these problems I look forward to a further discussion in Geneva.

[End of Annex IV
and of document]