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UPOV

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

TECHNICAL COMMITTEE

Twentieth Session
Geneva, November 6 and 7, 1984

ADDITIONAL TESTS TO COMPLETE TEST RESULTS OBTAINED
IN ANOTHER MEMBER STATE

Document prepared by the Office of the Union

1. During its seventeenth ordinary session held from October 12 to 14, 1983, the Council of UPOV noted a special problem faced by the authorities in Israel due to the fact that, because of climatic conditions prevailing in Israel, descriptions of varieties established in the countries of Northern Europe and those established in Israel contained differences in several characteristics. As a result of the discussions following this information (for the full report of these discussions see the Annex to this document), the Administrative and Legal Committee also studied this question during its twelfth session on November 7 and 8, 1983. It came to the conclusion that "the problems raised in the Council session also existed within one and the same country, in the case of species cultivated both in the open and under glass, where the examination was carried out in one of those environments only, even for the varieties to be cultivated in the other." Therefore, it was felt that the problem should first be examined by the Technical Committee before being rediscussed by the Administrative and Legal Committee at its fourteenth session in autumn 1984.

2. The same question had already been presented to the Technical Committee during its eighteenth session in November 1982, but at that time the Technical Committee had only noted the information given by the experts from Israel without entering into further detail on the problem (see document TC/XVIII/13, paragraph 55, and document TC/XVIII/6 Add., paragraph 4).

3. At the request of the Council and the Administrative and Legal Committee, the Technical Committee is invited to rediscuss the above-mentioned question and to report to the fourteenth session of the Administrative and Legal Committee to be held the day immediately following the twentieth session of the Technical Committee.

[Annex follows]

COOPERATION IN EXAMINATION BETWEEN STATES
ENJOYING VERY DIFFERENT CLIMATIC CONDITIONS

Extract from the Detailed Report
on the Seventeenth Ordinary Session of the Council
(Document C/XVII/15)

"51. As far as cooperation in examination was concerned, Israel faced the problem of its climatic conditions, mainly that of high luminosity and high temperatures. Indeed, the descriptions of varieties, carnation or rose for example, established in the countries of northern Europe and those established in Israel contained differences affecting characteristics such as the color of the flower, the length of the stem or the number of petals, and those differences were such that one would be inclined to conclude that they concerned different varieties. In that respect, certain colors seemed to be more subject than others to variations resulting from the intensity of the light. In view of that problem, the Israeli authorities had decided to make use of tests carried out in other member States for determining distinctness, homogeneity and stability and then to carry out additional growing trials and an examination to draw up a description that corresponded to local climatic conditions. That practice had at least the advantage of dispensing with the--costly--upkeep of a reference collection.

"52. The comments reported in the above paragraph gave rise to an exchange of views. The representative of New Zealand pointed out, in concluding his statement, that his country also had similar, or even greater, reservations to make as regards the usefulness of the descriptions drawn up in other countries. Indeed, his country enjoyed a climate characterized by an unusual combination of high luminosity and low temperatures. When comparing the description of a variety drawn up, for example, in Europe and drawn up in New Zealand, it was sometimes very difficult to convince oneself that they were descriptions of the same variety. Additionally, it sometimes happened that two varieties that had proved to be distinct in another country could not be distinguished in New Zealand or again that a variety had proved homogeneous in another country but was not so in New Zealand. Finally, for some species such as wheat, the assortment of varieties grown in New Zealand, was characteristic of the country and unknown in the other member States, thus making it necessary to examine varieties for which protection had been requested, at national level, in comparison with that assortment. It was to a great extent because of those problems that New Zealand did not participate in the cooperation arrangements instituted within UPOV.

"53. The representative of France felt that it had been clearly shown that the principles governing variety examination had to be adapted to each climatic zone and, notably, the lists of characteristics and the levels of expression used in the examination could not be harmonized in detail if the effect of the environment was ignored. Indeed, even at the level of a single country such as France, it could also be observed that the behavior of a variety, particularly as regards its distinctness in relation to another variety and also its homogeneity, varied depending on the environment in which it was studied. Knowledge of the various environments in which examinations were carried out and their effect on the behavior of the varieties would, however, enable variety descriptions to be drawn up that had practical significance for users. On the other hand, a description drawn up by a breeder in a specific environment was not necessarily comparable to those drawn up in the official testing locations.

"54. The representative of the Federal Republic of Germany considered that the solution adopted by Israel, which was not unreasonable, raised a problem insofar as it was not included in the various recommendations made by UPOV in respect of cooperation. He therefore proposed that the matter be referred to the Administrative and Legal Committee which should examine whether the solution could be incorporated in the cooperation arrangements currently in force. Such an examination was all the more necessary since, as had been shown by the comments of the representative of New Zealand, the difficulties referred to by

the representative of Israel also arose in a good number of other countries and UPOV indeed had a universal vocation. He further remarked that the problem was in fact even more complex. He noted, for instance, that a breeder to whom a title of protection had been issued in the Federal Republic of Germany for a variety of saintpaulia was required to furnish in the United States of America, in connection with an application for a plant patent, a description whose content did not correspond to that drawn up in the Federal Republic of Germany despite the fact that saintpaulia was a species cultivated under glass and that glasshouse growing conditions were very similar in both States. In his view, account should also be taken of that fact in order to further improve the cooperation arrangements."

Note When it adopted the program of future work of the Administrative and Legal Committee, the Council noted that the questions reported upon above might also need to be examined in the Technical Committee (see paragraph 113 of document C/XVII/15)

[End of Annex and of document]