



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

---

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

---

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

---

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON  
INTERNATIONAL COOPERATION IN EXAMINATION

Extract of document ICE/III/8

Third Session

Geneva, April 15 to 17, 1975

DRAFT REPORT

prepared by the Office of the Union

1. The third session of the Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee"), was held in Geneva at the headquarters of UPOV from April 15 to 17, 1975. The meeting on April 15, 1975, was mainly devoted to discussions with four international non-governmental organizations working in the field of plant breeding and the seed trade, which had been invited to be represented by observers during that part of the session (paragraphs 4 to 27 of this report). .....

2. All six member States of UPOV were represented throughout the whole session. Of the non-member States invited, Finland, Italy and Spain were represented by observers throughout the whole session. During the meeting on April 15, 1975 (except for the part of it which was concerned with the adoption of the agenda and the report of the second session), the following international non-governmental organizations were represented by observers: 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); International Federation of the Seed Trade (FIS). The list of participants is attached as Annex to this report.

3. ....

## DISCUSSION WITH OBSERVERS OF INTERNATIONAL ORGANIZATIONS

(April 15, 1975)

Cooperation in examination

4. The Chairman expressed his appreciation of the fact that the four organizations in the field of plant breeding and the seed trade had accepted the invitation from UPOV to discuss the question how cooperation between offices of member States could be organized. He explained that the aim of such cooperation was to ensure that the results of the technical examinations of new plant varieties on distinctness, homogeneity and stability (hereinafter referred to as "testing") which had been carried out in the office of one member State would also be used, in so far as was at present possible, by the offices of other member States in which the same variety was filed for the purposes of protection. He drew the attention of the Committee to the two drafts presented to it on this matter: the draft of a UPOV Model Agreement for International Cooperation in the Testing of Varieties (Annex II to document ICE/II/6) and a Draft Decision of the Council (Annex to document ICE/III/7).

5. Introducing the Draft UPOV Model Agreement (Annex II to document ICE/II/6), the Chairman pointed out that its aim was to achieve two main purposes. In Articles 1 to 11, it was envisaged that for certain species the competent authority in one member State would carry out the tests also on behalf of the other authority party to the agreement, while Article 12 provided for the exchange between both authorities of any test results which were already available or under preparation in either of the authorities. He added that though the draft UPOV Model Agreement had been prepared in a form which provided for its conclusion by two authorities, i.e., on a bilateral basis, the aim of the Committee was to achieve among the member States a multilateral system of cooperation with the aid of the necessary number of agreements, between different authorities, based on the Draft UPOV Model Agreement. Therefore, it was actually misleading to refer to this approach as a bilateral one.

6. Document ICE/III/7 containing in its Annex the Draft Council Decision on a multilateral system of cooperation in examination was introduced by the Secretary-General, who pointed out that the proposal was drafted in the form of a decision by the Council as that was the least binding of the three possible forms (decision by the Council, special agreement, administrative agreement). The Council decision could enter into force more rapidly and could be more easily changed than a formal agreement. However, it would not be difficult to transform the proposal contained in the Annex into an administrative agreement or special agreement, if preferred. The basic ideas were the same as those embodied in the UPOV Draft Model Agreement. However, the following differences existed:

(i) The participating States would announce the effect they were to give to any results that they received from the authority of another member State, and, if a State desired to do so, it could even declare the automatic grant of a plant breeder's right where it had received a positive test report from that authority.

(ii) The offers of States to conduct the testing of varieties of certain species for other States would be published, which would provide not only necessary information for the breeders, but would also be a helpful indication for States considering the possibility of joining UPOV.

7. The Secretary-General went on to explain that Article 1(1) of the Draft Decision of the Council dealt with the case in which one authority carried out tests at the request of another authority, whereas Article 1(2) dealt with the exchange of test results already available.

8. In the ensuing discussion, the international organizations declared that they greatly appreciated the initiative taken by UPOV in the field of cooperation and hoped that it would be rapidly achieved, no matter on what basis. As to the two possible ways outlined by the Chairman and by the Secretary-General, they repeatedly expressed a strong preference for an agreement concluded on a multilateral basis as they feared that, at least in the course of time, bilateral agreements might differ from each other, thus causing insecurity for the breeders. In addition, a multilateral agreement would make it easier for States willing to accede to the Convention to enter the system quickly.

9. Several experts took the view that the concern of the international organizations was not justified. The conclusion of bilateral agreements would be the fastest way to start with the introduction of cooperation between member States. It was the intention of the member States not to deviate from the provisions of the Draft UPOV Model Agreement so that all bilateral agreements would contain the same clauses. The conclusion of bilateral agreements would furthermore not hinder--on the contrary it would facilitate--the later conclusion of a multilateral agreement, particularly since the basic principles were the same. Moreover, the cooperation in testing would normally start between two States anyhow and would then be extended to other States.

10. One expert pointed out that the international cooperation within UPOV should be achieved on a step-by-step basis. It described the individual steps as follows:

(i) harmonization of the methods and criteria for testing; this kind of work had already been started by adopting test guidelines for a certain number of species;

(ii) centralization of testing in one office under bilateral agreements or possibly--later--a multilateral scheme for an increasing number of species;

(iii) harmonization of the lists of species eligible for protection in each member State; this kind of work was facilitated by the centralization of testing, which enabled member States to extend the protection to further species without having to establish testing facilities in their own countries;

(iv) study of the question whether the system of bilateral agreements could be extended so as to provide further facilities for States considering the possibility of joining UPOV;

(v) study of the possibilities of introducing a system under which plant variety rights would be granted--either by an international body or by national authorities--with effect for more than one member State; this objective could only be achieved by either concluding a special agreement or basically revising the Convention.

11. Some of the observers of the international organizations expressed the wish that, in addition to working vigorously on the implementation of the first steps--preferably on a multilateral basis--the possibility of introducing a system of granting plant breeders' rights with effect for more than one member State should be studied as early as possible. They referred to developments in the field of patents, where systems of international cooperation were already about to be implemented. One observer expressed his appreciation of the proposal of the Delegation of the United Kingdom for the adoption of a system of centralized testing of the major crops in the first growing season and regretted that the discussion of that proposal had apparently been abandoned for the time being. Though it had to be admitted that no such system could probably be achieved in the near future, it was necessary to start the discussions now.

12. The experts stated that it was not their intention to restrict the activity of the Committee to cooperation between authorities on a bilateral basis and completely neglect more far-reaching proposals. They only wanted to do first things first and concentrate, for the time being, on the type of cooperation that could--and had to be--introduced now. Once this kind of cooperation between the testing authorities was under way, more ambitious plans could be studied. However, they pointed out that any cooperation which required a revision of the Convention came within the competence of another Committee of Experts of UPOV, the Committee of Experts for the Interpretation and Revision of the Convention, which had just started its work. They pointed out that it had already been proposed in that Committee to study as a long-term project the question of a system of central filing of applications and central grant of plant breeders' rights. The four organizations would be given the opportunity to discuss the activities of that Committee in a session to be held on February 17 to 20, 1976.

13. The experts further emphasized the need to arrive at rapid solutions with regard to cooperation between offices. Such cooperation had already been started and it was necessary to create a legal and administrative basis for it. This could, for the time being, only be accomplished by means of bilateral agreements. It was therefore necessary to adopt the Draft UPOV Model Agreement as soon as possible.

14. After this general discussion, the Draft UPOV Model Agreement was examined Article by Article. The observers of some international organizations expressed the wish that a preamble should be added to the Draft UPOV Model Agreement, outlining the aim of the Agreement, namely, the recognition of the results of tests performed in other member States, the reduction of the fees and the extension of the Convention to other States and--within the member States--to a greater number of species.

15. The Secretary-General recalled that, in the case of the conclusion of a bilateral agreement on the basis of the Draft UPOV Model Agreement, the legal effects, if any, to be given to the results of the tests carried out under such an agreement would not be indicated in the Agreement or otherwise. In the proposed multilateral system each member State would have to indicate in advance what legal effects, if any, it would attach to the test results.

16. Proposals by the expert of one member State to the effect that the meaning of Article 6 should be clarified and the testing authority in Article 8 should be obliged to inform the other authority or authorities of cases where a mutation had occurred during the testing period were withdrawn in the course of the discussions in order to avoid any delay in the adoption of the Draft UPOV Model Agreement by the Council. The observer of CIOPORA asked to be given the possibility of participating in the discussion on this question if and when it should be taken up again.

17. The observers of the international organizations proposed that the conclusion of any bilateral agreement on the basis of the Draft UPOV Model Agreement as well as any declaration made under the Draft Council Decision be announced in a UPOV Bulletin to be established for that purpose.

18. In reply to a question by one observer from an international organization concerning the fees in the case of testing under a bilateral agreement, the Chairman referred to a resolution by the Council of UPOV adopted in 1973 (document UPOV/C/VII/23) according to which the applicant was required to pay the testing fee only once.

19. One observer from ASSINSEL expressed some concern about the fact that in certain member States testing was assigned to government institutes which, at the same time, undertook breeding work. He asked whether it was possible to prevent confidential information obtained by government institutes in the course of testing procedures from being made available to services of the same institute that were concerned with plant breeding. Several experts from member States assured the observer that the necessary safeguards existed and that no difficulties had arisen to date. Experts competent for testing were obliged to keep confidential matters secret, even within the same institute. It was added that the same situation existed in States where representatives of private firms formed part of panels which participated in examination proceedings.

20. The observers of ASSINSEL said that they were pleased to note that the envisaged cooperation would not be restricted to tests performed for the purpose of obtaining plant breeders' rights but would also be extended to the sector of national listing. They stressed the point that in many States the same tests were undertaken by the same experts, both for plant variety protection and for national listing. Concern was voiced in this connection about the fact that the guidelines of the European Economic Community and the more recent UPOV test guidelines showed some differences and the hope was expressed that both sets of guidelines would be harmonized in the future.

21. The Chairman thanked the observers of the international organizations for their statements and proposals, which would be considered in further discussions during the present and future sessions of the Committee.

#### List of species which might be subject to testing under bilateral or multilateral arrangements

22. The Chairman introduced document ICE/III/3 containing a list of genera and species eligible for protection in at least one member State. He reported that on April 14, 1975, the representatives of the technical offices of the member States had met to discuss, on the basis of a similar list, which of these species offices of member States were ready to test at the request of other offices (centralized testing). Final or provisional offers had been made to conduct such centralized testing for a great number of species, whereas in the case of other species the representatives had been of the opinion that, at least in the near future, member States would want to continue testing in their own offices. In the case of some species, such as potatoes, the representatives had considered that centralized testing should be conducted by the offices of two member States. The Chairman concluded by saying that, since most of the offers had been made subject to further examination or approval by the competent authorities in the respective country, it was premature to distribute the list containing the various offers to the observers of the international organizations.

23. The observers of the international organizations welcomed the great progress which had obviously been made in initiating international cooperation. They expressed the hope that the same cooperation would be achieved for important crops. The experts said in reply that for those species for which no centralized testing could be agreed upon at present it was envisaged that offices could request and

use test results already existing or in course of preparation. The observers of the international organizations mentioned, however, that it was sometimes difficult to cope with the breeders' fear that their variety might not be treated confidentially be the authority of a foreign State.

24. The observers of the international organizations announced that they would inform the Office of the Union about those species for which breeders would welcome centralized testing, those for which they would prefer testing in the State of application and those which they wished to be made eligible for protection in all member States.

#### Additional proposals by the international organizations

25. Some observers of the international organizations proposed the introduction of a period of grace of one year during which the variety could be commercialized without prejudice to its novelty. They also mentioned that the examinations carried out in the United States of America were based on data obtained in field tests which were undertaken on the breeder's premises and proposed a study of the question whether, in order to reduce costs, a similar system could be introduced in UPOV member States for varieties of smaller species, especially vegetables and ornamentals. They underlined the necessity to accelerate the introduction of new varieties and referred to Article 102 of the US Plant Varieties Protection Act. The experts from the member States pointed out that those questions were already under consideration by the Committee of Experts on the Interpretation and Revision of the Convention and would be discussed in the presence of observers of international non-governmental organizations during the third session of that Committee, to be held from February 17 to 20, 1976. They also informed the observers that a delegation of UPOV would visit the United States of America in September 1975 to study some of these-- and other--items on the spot.

26. The observers of the international organizations also stressed the need for harmonizing the application forms and technical questionnaires and for indicating the reference varieties in the test guidelines very soon, especially for characteristics with Notes from 1 to 9.

27. The observers of the international organizations expressed their gratitude for having been given the opportunity to take part in the discussions of the projects under consideration and the hope that such close cooperation between UPOV and the professional organizations would be continued in the future. The Chairman thanked the observers for their valuable contributions and their positive acceptance of the work accomplished so far by UPOV.

.....

[Annex follows]

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATEN

DENMARK/DANEMARK/DÄNEMARK

Mr. E. Henning JENSEN, Kontorchef, Statens planteavlskontor, Kongevejen 79,  
2800 Lyngby

Mr. F. RASMUSSEN, Plantenyhedsnaevnet, Tystofte, 4230 Skaelskør

FRANCE/FRANKREICH

M. B. LACLAVIERE, Secrétaire général du Comité de la protection des obtentions  
végétales, 11 Rue Jean Nicot, 75007 Paris

M. C. HUTIN, Directeur de Recherches, G.E.V.E.S., Institut national de la  
Recherche agronomique, La Minière, 78000 Versailles

M. H.G. BUSTARRET, Directeur général honoraire de l'INRA, 2, rue Léon Gatin,  
78000 Versailles 1)

GERMANY (FED. REP. OF)/ALLEMAGNE (REP. FED. D')/DEUTSCHLAND (BUNDESREPUBLIK)

Dr. D. BÖRINGER, Präsident, Bundessortenamt, Rathausplatz 1, 3 Hannover 72

Dr. A. ROUY, Chairman of the Technical Working Party for Vegetables,  
Bundessortenamt, Rathausplatz 1, 3 Hannover 72

NETHERLANDS/PAYS-BAS/NIEDERLANDE

Mr. J.I.C. BUTLER, Chairman, Board for Plant Breeders' Rights, Postbox 104,  
Wageningen

Mr. R. DUYVENDAK, Chairman of the Technical Working Party for Agricultural Crops,  
IVRO, Insituut voor Rassenonderzoek, Wageningen

Mr. W.R.J. VAN DEN HENDE, Lawyer, Ministerie van Landbouw en Visserij,  
Bezuidenhoutseweg 73, The Hague

SWEDEN/SUEDE/SCHWEDEN

Prof. H. ESBO, Chairman, National Plant Variety Board, State Seed Testing  
Station, 17173 Solna

Mr. S. MEJEGAARD, Judge of the Court of Appeal, Slättgardsvägen 46,  
12658 Hägersten

Mr. C.G. JUNBACK, Head of Section, Ministry of Agriculture, Fack,  
10320 Stockholm

UNITED KINGDOM/ROYAUME-UNI/VEREINIGTES KÖNIGREICH

Mr. H.A.S. DOUGHTY, Controller, Plant Variety Rights Office, Whitehouse Lane,  
Huntingdon Road, Cambridge CB3 0LF

Mr. A.F. KELLY, Deputy Director, National Institute of Agricultural Botany,  
Huntingdon Road, Cambridge CB3 0LF

---

(1) On April 17, 1975, only/seulement le 17 avril 1975/nur am 17. April 1975  
(2) On April 15, 1975, only/seulement le 15 avril 1975/nur am 15. April 1975

II. SIGNATORY STATES/ETATS SIGNATAIRES/UNTERZEICHNERSTAATEN

ITALY/ITALIE/ITALIEN

Mr. A. BIANCHI, Director, Experiment Institute for Cereal Research,  
 Via Cassia 176, 00191 Rome

M. L. ZANGARA, Directeur de l'Institut de la Registration des Variétés,  
 Via Bolzano 1b, Rome

III. OTHER INTERESTED STATES/AUTRES ETATS INTERESSES/ANDERE INTERESSIERTE STAATEN

FINLAND/FINLANDE/FINNLAND

Prof. R. MANNER, Agricultural Research Center, Department of Plant Breeding,  
 31600 Jokioinen

SPAIN/ESPAGNE/SPANIEN

M. R. LOPEZ DE HARO, Ingénieur agronome, Instituto Nacional de Semillas y  
 Plantas de Vivero, Ministère de l'Agriculture, Ciudad Universitaria,  
 Madrid 3

IV. INTERNATIONAL ORGANIZATIONS/ORGANISATIONS INTERNATIONALES/INTERNATIONALE ORGANISATIONEN 2)

AIPH (International Association of Horticultural Producers/Association internationale des producteurs de l'horticulture/Internationaler Verband des Erwerbsgartenbaues)

Mr. M.O. SLOCOCK, Slocock Nurseries, Goldsworth, Woking, Surrey, United Kingdom

Mr. R. TROOST, Secretary, Neederlandse Vereeniging voor de Teelt van en de  
 Handel in Tuinbouwzaden, 30 Jan van Nassastraat, The Hague, Netherlands

ASSINSEL (International Association of Plant Breeders for the Protection of Plant Varieties/Association internationale des sélectionneurs pour la protection des obtentions végétales/Internationaler Verband der Pflanzenzüchter für den Schutz von Pflanzenzüchtungen)

M. V. DESPREZ, Président de la section céréales de l'ASSINSEL, Vice Président de l'ASSINSEL, 59242 Cappelle en Pèvele, Templeuve, France

Mr. E. GRUNDLER, ASSINSEL, D-8441 Steinach, Deutschland (Bundesrepublik)

M. R. PETIT, Directeur, C.G.L.V. (Caisse de gestion des licences végétales),  
 7, rue Coq-Heron, 75001 Paris, France

Mr. J.E. VELDHUYZEN VAN ZANTEN, Director of Research, Sluis & Groot B.V.,  
 P.O. Box 13, Enkhuizen, Netherlands

Mr. A.J.F. WHEELER, Director and Chief Executive Officer, ASSINSEL, The Plant  
 Royalty Bureau Ltd. Woolpack Chambers, Ely, Cambridgeshire CB7 4ND,  
 United Kingdom

---

(1) On April 17, 1975, only/seulement le 17 avril 1975/nur am 17. April 1975  
 (2) On April 15, 1975, only/seulement le 15 avril 1975/nur am 15. April 1975

CIOPORA (International Community of Breeders of Asexually Reproduced Ornamentals/  
Communauté internationale des obtenteurs de plantes ornementales de reproduction  
asexuée/Internationale Gemeinschaft der Züchter vegetativ vermehrbarer Zierpflanzen)

Mr. R. KORDES, Président, CIOPORA, 2201 Sparrieshoop bei Elmshörn, Deutschland (Bundesrepublik)

M. R. ROYON, Secrétaire général, CIOPORA, 4, Place Neuve, 1204 Genève, Suisse

M. P. FAVRE, Secrétaire administratif, CIOPORA, 4, Place Neuve, 1204 Genève, Suisse

FIS (International Federation of the Seed Trade/Fédération internationale du commerce  
des semences/Internationale Vereinigung des Saatenhandels)

Mr. H.H. LEENDERS, Secretary General, FIS, Leidsekade 88, Amsterdam, Netherlands

Mr. S.J. SLUIS, President, FIS, c/o Royal Sluis, P.O. Box 22, Enkhuizen, Netherlands

V. OFFICER/BUREAU/VORSITZ

Mr. J.C. BUTLER, Chairman

VI. 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, Administrative and Technical Officer

Mr. A. HEITZ, Administrative and Technical Officer

- 
- (1) On April 17, 1975, only/seulement le 17 avril 1975/nur am 17. April 1975  
(2) On April 15, 1975, only/seulement le 15 avril 1975/nur am 15. April 1975

[End of document/fin de document/Ende des Dokuments]