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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**

REPORT

adopted by the Council

1. The ninth ordinary session of the Council of UPOV (hereinafter referred to as "the Council") was held in Geneva, at the headquarters of UPOV, from October 7 to 9, 1975. The list of participants is attached as Annex I to this report.
2. The session was opened by Mr. B. Laclavière (France), President of the Council, who welcomed the participants, especially the observers from the signatory States and the other non-member States.

Admission of new observers to the Session

3. The President recalled that Czechoslovakia and Poland had been invited for the first time to send observers to a session of the Council, following a decision taken by the Consultative Committee during its eleventh session (see document CC/XI/9, paragraph 8) and confirmed by the Council by correspondence. He welcomed the representatives of Poland and, regretting that Czechoslovakia could not participate in the session, recalled the permanent character of the invitation.

Adoption of the agenda

4. The President informed the participants that document C/IX/7, which was mentioned in the draft agenda and should have dealt with the mission undertaken by UPOV in the previous month to the United States of America and Canada, could not be prepared because of the shortness of time.
5. The agenda was adopted as appearing in document C/IX/1.

Exposés by the representatives of the different States on the present situation and on the problems arising and the progress achieved in the legislative, administrative and technical fields

6. As far as the member States are concerned, the following information was given by their Delegations:

(i) The lists of species eligible for protection had been extended: in the Federal Republic of Germany, by 26 botanical species with effect from December 31, 1974; in Denmark, by some 50 species with effect from July 24, 1975; in the Netherlands, by 15 species with effect from March 15, 1975. The extension of the protection to about 20 more species was expected by the end of 1975 in France, and the inclusion of further species was being studied in Sweden and in the United Kingdom.

(ii) As far as cooperation between national offices in the field of examination is concerned, in the Federal Republic of Germany the amended Varieties Protection Law had created a legal basis for such cooperation, and that country was now prepared, on the one hand, to accept examination reports from other member States concerning varieties of 12 species, and, on the other hand to carry out the examination of varieties at the request of other member States for 10 species; in Denmark, examination of some species newly made eligible for protection must be carried out abroad. The representative of the Netherlands reported that his country was cooperating with the Federal Republic of Germany, Denmark and the United Kingdom, and the President said that France was also relying on cooperation for the envisaged extension of the list of species.

(iii) Most member States announced that they had to revise and increase the level of their fees. The Federal Republic of Germany and Denmark were studying a revision of their fee systems. This might lead, in the Federal Republic of Germany to an increase in the fees for most crops, but possibly also to a reduction in the fees for some minor crops.

(iv) The representative of the Federal Republic of Germany said that the competent Committee of the German Parliament considered that the UPOV Guidelines for Variety Denominations went to some extent beyond the provisions of the Convention: the amended German law now permits, under certain conditions, the use of combinations of letters and figures as variety denominations. The representative of the same country also said that the ratification of the Additional Act of the UPOV Convention was being studied by the Parliament of his country and the deposit of the instrument of ratification could be expected during the first half of 1976.

(v) The President, as representative of France, said that, on the initiative of French breeders, his Government was considering new ways of testing varieties of minor crops, such as ornamentals.

(vi) In reply to a question by the representative of the Federal Republic of Germany, the representative of the Netherlands gave explanations on the history and the meaning of the limited protection resulting from the registration, under Article 18(2) of the Netherlands Law, of varieties of cross-fertilized agricultural crops. He stated that it was intended gradually to replace the limited protection by full protection for the species in question.

(vii) The representative of the United Kingdom mentioned that, for the first time in ten years, there had been an appeal against the Controller's decision, and the President asked him to send the Court's decision to the Office of UPOV for publication in the UPOV Newsletter as this should be done with court decisions in general.

7. The representatives of non-member States reported on the considerable progress made towards achieving plant variety protection, and some of them also informed the meeting of the steps being taken with a view to ratification of, or accession to, the UPOV Convention. They all underlined their country's interest in the introduction of the effective international cooperation in examination and emphasized that they counted on the help of other offices to enable them to introduce plant variety protection on a broad scale. Statements to that effect were made in particular by the representatives of Belgium, Switzerland, Austria, Ireland, South Africa and New Zealand. The following information concerns individual countries.

(i) The representative of Belgium stated that the Belgian Parliament had adopted a law on the Protection of New Plant Varieties which was promulgated by the King on May 20, 1975. The Bill for the Approval of the UPOV Convention had been approved by the Chamber of Representatives but had so far not passed before the Senate. This last step should be accomplished before November 15, 1975, and the deposit of the instrument of ratification could be expected by the beginning of 1976. The drafting of the implementing regulations was nearly completed. A technical working party was studying the list of species that would be eligible for protection.

(ii) In the absence of any representative of Italy, the President reported that the Italian law concerning plant variety protection and authorizing the Italian Government to ratify the UPOV Convention had been approved in July 1974 and published in January 1975. Recently, a Decree on the Protection of New Plant Varieties had also been adopted, which should enter into force 180 days after publication in the Official Gazette.

(iii) The representative of Switzerland said that the Swiss Federal Assembly had approved the Convention and the Additional Act on March 20, 1975, and had authorized the Federal Council to ratify them. The Law on the Protection of New Plant Varieties had also been adopted on the same date. Before that Law entered into force by decision of the Federal Council, the regulations still had to be established and some practical measures had to be taken. For all those reasons, ratification would probably take another year. Concerning the fees, the representative of Switzerland said that, as in Sweden, the entire cost had to be covered by fees.

(iv) The representative of South Africa said that his country was already applying a number of UPOV test guidelines. His Department had in principle decided in favor of South Africa's accession to the UPOV Convention. Amendments to the Plant Breeders' Rights Act had been prepared in order to bring it into line with the UPOV Convention; the amendments would be submitted to the next session of Parliament during the first quarter of 1976. He therefore hoped that South Africa would be in a position to apply for UPOV membership during 1976.

(v) The representative of Austria stated that, in his country, two different laws concerning plant varieties were in force which dated back to the years following 1945. Whereas Austrian breeders had at the beginning adopted a rather sceptical view with regard to plant variety protection, increasing interest in UPOV membership had been noted recently. The Government had been asked to prepare a plant variety protection law which would allow such membership. The adoption of that law would take several years.

(vi) The representative of Spain said that a Plant Variety Protection Law, which was in accordance with the Convention, had been approved on March 12, 1975. Spain would apply for membership in UPOV once the implementing decrees (which had to be published within a period of one year after the publication of the law, i.e., in March 1976) had been issued. It was hoped that Spain's application could be submitted in April 1976.

(vii) The representative of the United States of America recalled that his country had two laws providing for plant variety protection: the Patent Act for asexually reproduced plants (about which he had no authority to say anything) and the Plant Variety Protection Act. He stated that in 4½ years, 575 applications concerning 55 species had been filed with the Plant Variety Protection Office: 50% for agricultural crops, 25% for vegetables and 25% for flowers. Two hundred and twenty certificates had been issued. He described the computer search system which was based on descriptions by the breeder. It was to be hoped that, soon, only three to six months would be needed for issuing a certificate on a properly filed application. With regard to fees, he indicated that the full cost would have to be covered by them in the future; at the moment, however, coverage amounted to only 25%.

(viii) The representative of Finland said that membership in UPOV was at present being prepared in a Committee. That Committee had, amongst other things, contacted foreign plant breeders in order to profit from their experience. It was necessary to adopt a system which was practicable under Finish conditions. It was thought that the Committee would present its conclusions next year.

(ix) The representative of Hungary emphasized that his country was greatly interested in the work of UPOV since it had a protection law in conformity with the UPOV Convention. He drew attention to the fact that Hungary granted protection to foreigners, including nationals of UPOV member States and accepted the examination results of those States. This had proved to be an advantage for both breeders and agriculture in Hungary. He further said that the Delegation of Hungary was authorized by the Minister of Agriculture and the President of the National Office of Inventions to inform the Council that both were about to propose to the Government that Hungary should accede to the UPOV Convention.

(x) The representatives of Ireland reported that there was a strong demand for the introduction of plant variety protection and subsequently for accession to the UPOV Convention. The facilities, such as personnel and premises, needed for the introduction of a system of protection were available, and a Bill was in course of preparation.

(xi) The representative of Israel said that a plant breeder's rights law had entered into force in 1973. Until now, 97 applications had been filed. Israel was at present not in a position to ask for accession to the UPOV Convention.

(xii) The representative of Japan reported that his country was working on the elaboration of a new system of protection. He enumerated the reasons underlying the proposed new system, the problems which had to be solved and the incompatibilities between the proposed system and the UPOV Convention. He further proposed some amendments to that Convention which related to three points: examination, list of species and denomination. (In the same connection, the representative of the Federal Republic of Germany said that experience had shown in his country that the descriptions furnished by the breeders were very often not sufficient and that official descriptions were a better basis for protection; he also said that maintaining reference collections was a much heavier burden for the breeder than for the State.)

(xiii) The representative of Norway said that a proposal for a law on the protection of new plant varieties and seed certification was in course of preparation but was not yet before Parliament. With regard to examination, Norway would have to rely to a great extent on the technical facilities offered by other member States. Concerning royalties for foreign varieties, bilateral agreements had already been concluded.

(xiv) The representative of New Zealand stressed the great impact made by the meeting of member and non-member States in October 1974. He said that his country was starting to accumulate experience in plant variety protection since the protection scheme for roses had been applied on May 1, 1975. The scheme for barley was being studied and it would probably be introduced within 12 months. Instructions had been given by the Minister of Agriculture for the preparation of regulations for lucerne, peas, potatoes and rye-grass. The representative of New Zealand finally thanked the United Kingdom and UPOV for their help in the preparation of the law and the regulations. He assured the Council of his country's continued interest in accession to the UPOV Convention.

(xv) The representative of Poland recalled that the competent authorities of his country were contemplating accession by Poland to the UPOV Convention. A Bill had, therefore, been prepared within the framework of the Agricultural Code. It was hoped that, after preliminary acceptance by the Government, the Code would be presented to the Chamber of Deputies in 1976. The implementing regulations would then have to be prepared before accession to the UPOV Convention could be sought. Under the present law, the protection of new plant varieties was ensured within the framework of bilateral agreements with the competent authorities of interested States or through commercial contracts.

Report by the President on the work of the eleventh and twelfth sessions of the Consultative Committee

8. The President gave an exhaustive survey on the work of the 11th and 12th sessions of the Consultative Committee. As to the 11th session, he reported on the decisions taken with regard to the invitation of Poland and Czechoslovakia to the Council sessions; on the competence of the Chairmen of the Technical Working Parties to invite experts from non-member States which had previously been invited to Council sessions; on the invitation of non-member States and professional organizations to be represented by observers in the third session of the Committee of Experts on the Interpretation and Revision of the Convention; on the preparations made by the Consultative Committee for the mission of a UPOV delegation to the United States of America and Canada in September 1975; on the study of the possibility of protecting micro-organisms under the UPOV Convention; and on the problem of indicating reference varieties in the test guidelines by trademarks.

9. As to the 12th session of the Consultative Committee (the first day of which was October 6, 1975), the President reported that it was devoted to preliminary discussions on the budget. He also said that the Consultative Committee had again studied the problem of the use of trademarks in test guidelines.

Report by the Secretary-General on the activities of the Union in 1974

10. The Secretary-General introduced document C/IX/2.
11. He said that he considered the last 12 months had been particularly active and promising for the future of UPOV. The members of the Council had acted extremely quickly and energetically on the basis of the conclusions drawn from last year's meeting of member and non-member States and interested organizations. In addition to the continuing activities on test guidelines--which were of great practical significance--they had initiated the work, in special Committees, on the interpretation and possible revision of the UPOV Convention and on cooperation in examination. The former should facilitate accession by States not yet members; the latter should reduce the cost of examination both for governments and breeders. Such reduction, in turn, should also have a favorable influence on the position of States which contemplated joining the Union.
12. The Secretary-General said that he followed actively the work of both those committees and tried and would continue to try to contribute intellectually to their search for practical solutions.
13. He said that, consequently, the work-load of the Secretary-General had increased. Apart from his responsibility for the administrative services provided by WIPO for UPOV, he had become more and more interested in the work of the Council and the various Committees of UPOV and in their tasks of expanding the Union and intensifying cooperation between member States.

Report of the Secretary-General on his management, on the financial situation of the Union in 1974 and on the report of the Federal Audit Service

14. Discussions were based on document C/IX/3. The representatives of the Federal Republic of Germany said that in the future a list of the missions effected, showing their purpose and the name of the person effecting them, should be furnished by the Office of the Union.
15. The report on the management of the Secretary-General and the financial situation of the Union in 1974 and the report of the Federal Audit Service were unanimously approved as appearing in document C/IX/3.

Progress report on the work of the Committee of Experts on International Cooperation in Examination

16. Discussions were based on document C/IX/5, which was introduced by the Chairman of the Committee of Experts on International Cooperation in Examination. He said that the main work of his Committee was to study the agreements to be concluded between national Offices, the extent of cooperation between such Offices and the financial implications, particularly the harmonization of testing fees. He stated that such cooperation had to be introduced step by step and that the first step was the conclusion of bilateral agreements. He emphasized the importance of the UPOV Draft Model Agreement for Cooperation in the Testing of Varieties. Because of the priority given to that draft, the Committee had not yet been in a position to discuss in detail a plan for a multinational system which had been prepared by the Office of the Union. The Draft UPOV Model Agreement provided for two possibilities of cooperation. The first one consisted in one Office carrying out the examination at the request of another Office, even where there was no corresponding application filed with the first Office. Many offers for such cooperation had already been made, but only on a preliminary basis. The second possibility consisted of an exchange of test results which could be achieved with all the other crops not falling under the first possibility. The aim of the bilateral agreements was to facilitate the accession of new member States and to reduce the cost of protection, as testing was the most expensive part of the protection procedure. Harmonization of national application forms, technical questionnaires and test reports was also studied.
17. The Draft for a UPOV Model Agreement for International Cooperation in the Testing of Varieties was then discussed article by article, and several proposals for amendment were made. The Model Agreement as approved is attached in Annex II of this document. As to Article 15, it was understood that "prior to the revocation" meant prior to the date on which such revocation became effective.

18. The Council agreed that national Offices should refuse to accept copies of test reports from the applicants themselves. Such copies should be obtained direct from the Office which had made the reports.

19. The Council approved the continuation of the work of the Committee of Experts as envisaged and the invitation of Ireland and South Africa, as observers, to meetings in which other non-member States were generally invited to be represented by observers.

Progress of the work of the Committee of Experts on the Interpretation and Revision of the Convention

20. In the absence of Mr. H. Skov, Chairman of the Committee of Experts on the Interpretation and Revision of the Convention, the Vice Secretary-General introduced document C/IX/6 giving a short report on the work of that Committee of Experts during the period that had elapsed since the last Council session.

21. The Council took note of the past work of that Committee of Experts and approved the envisaged continuation of the activities as described in document C/IX/6. With respect to the third session of the Committee, to be held in February 1976, the Council agreed to invite also South Africa and Ireland to be represented as observers during that session.

22. It further agreed that the professional organizations should not be asked to present their views in writing on the items listed in the Annex to document C/IX/6 before the said session. The professional organizations--and also the non-member States--invited to the session should, however, be asked to inform the Office of the Union about further proposals, if any, for amending the Convention. Care should be taken, however, to avoid, on that and on other occasions, giving the impression that the intention was to re-examine the basic principles of the Convention.

23. The Council also noted that a revision conference could be held at the earliest in 1977.

Progress of the work of the Technical Steering Committee

24. The Chairman of the Technical Steering Committee, Mr. Bustarret, reported on the technical work performed since the last session on the Council. The Technical Steering Committee had met twice, whereas only four of the Technical Working Parties had met once each, as a result of the economies agreed upon by the Council at its eighth session. In order to promote the work, first drafts of test guidelines had in some cases been elaborated by correspondence, while in other cases informal meetings between members of the Technical Working Parties had taken place for that purpose. For the coming year, Mr. Bustarret recommended the holding of at least one session of each Technical Working Party.

25. The Technical Steering Committee studied the problem of the protectability of hybrid varieties, and especially the final drafts of the test guidelines elaborated by the Technical Working Parties. In the past year, the final adoption of test guidelines had been delayed as a result of the change to a new system, under which the international professional organizations were consulted.

26. The Technical Steering Committee also studied the question to what extent stability had to be checked in the course of examination. While it had agreed that stability, as stated in Article 6 of the UPOV Convention, was one of the basic conditions for the protection of a new variety, it realized that its existence could not always be checked in full in an examination of normally two years' duration.

27. As the term of Mr. Bustarret's chairmanship was expiring, the President thanked him, in the name of the members of the Council, for the work accomplished. He reminded the Council that, during its eighth ordinary session, it had agreed that Dr. Böringer would take over the chairmanship for the coming three years.

Report by the President on the UPOV mission to the United States of America and Canada

28. The President gave a short report on the UPOV mission to the United States of America and Canada. The aim of the mission to the United States of America had been to study in detail the protection of plant breeders' rights in that country, especially the different examination systems: the examination of asexually repro-

duced plants by the US Patent and Trademark Office and the examination of sexually reproduced plants by the US Plant Variety Protection Office. The aim of the visit to Canada had been to discuss with the Canadian Department of Agriculture and Canadian professional organizations protection under the UPOV Convention with a view to the intended introduction of a system of the protection of plant breeders' rights in Canada. In addition to making a visit to the government authorities, the UPOV delegation was also invited by various breeding firms in the United States of America to learn about the work of plant breeders and their activities in preparing the filing of applications for plant variety protection. The President expressed his appreciation for the excellent organization of the mission by the Office of the Union and by the Governments and private circles in both countries, and for the hospitable reception given to the UPOV delegation.

Exchange of views on the UPOV Newsletter

29. The President informed the Council that, in accordance with a decision by the Council at its eighth ordinary session, the Office of the Union had started to publish the "UPOV Newsletter." The Council congratulated the Office of the Union on its new activity and approved the distribution of the Newsletter as described in detail by the Vice Secretary-General. It appreciated the generous assistance rendered by four professional organizations (AIPH, ASSINSEL, CIOPORA and FIS) in that distribution. It asked the Office of the Union to give the Newsletter the broadest distribution possible. It was agreed that the Governments should inform the Office of the Union of the number of copies required and should offer their help in transmitting the Newsletter to interested bodies and persons, either by their own means or by furnishing the Office with lists of addresses.

30. With respect to the content of the Newsletter, the Council agreed that it should mainly contain items of information; occasionally it could also include articles on legal or technical questions which were of interest to the member States and breeders. The President urged the participants in the Council session to furnish the Office of the Union with material to be published in the Newsletter, in particular court decisions.

Program and budget for 1976

31. The President introduced the draft program and budget for 1976 (document C/IX/4) with the modifications recommended by the Consultative Committee.

32. The said modifications and the reasons for them are the following:

(i) The Consultative Committee was extremely anxious to reduce the expenses and, consequently, the contributions of the member States, in view of the difficult financial situation in which the Governments of the member States were at present and expected also to be in 1976.

(ii) The amount provided for Conferences was reduced from 61,000 francs to 43,000 francs (the corresponding amount in the 1975 budget is 44,000 francs). The details of the reductions are as follows: the Council will meet for two to three days, instead of the proposed three to four days (economy: 3,000 francs); the Consultative Committee will meet for twice two days, instead of a total of five days (economy: 3,000 francs); the Committee of Experts for International Cooperation in Examination will meet without interpreters (economy: 12,000 francs).

(iii) The amount provided for Missions was reduced from 31,000 francs to 27,000 francs (that is, to the same amount as that which is budgeted for 1975). The reduction is 2,000 francs in connection with the Technical Working Parties since it was decided that, also in order to save the travel and subsistence costs of delegates, such Working Parties should meet only once in 1976, but that, if absolutely necessary, one or two of the five Working Parties might meet twice. The reduction is also 2,000 francs in connection with the program item, Contacts with Governments, Intergovernmental and Non-Governmental Organizations.

(iv) The amount provided for Common Expenses was reduced by 8,000 francs. The reduction was proposed by the Secretary-General in view of the decrease in activities resulting from the economies referred to under the preceding items.

(v) The figure of 453,000 francs for expenditure on Personnel was reduced by 20,000 francs but in view of a possible change in the salary of the Secretary-General it was agreed to include an addition of 8,000 francs in the figure provided for unforeseen circumstances. The Council noted that the budget for 1976 included provision for paying a salary on D/2 level to the Vice Secretary-General and decided that the question of granting this level to him would be examined in March 1976 sessions of the Consultative Committee and Council.

(vi) In view of the fact that the cuts referred to in points (ii) to (iv) make the provision very tight and in view of the reasons stated in the preceding point, the amount of Unforeseen was increased by (2,000 + 8,000 =) 10,000 francs.

33. In view of the modifications referred to in the preceding paragraphs, the total of the expenses budgeted for 1976 amounts to 832,000 francs, which will be covered to the extent of 774,000 francs by contributions, 16,000 francs by miscellaneous income and 42,000 francs from the Reserve Fund. Consequently, the amount of each contribution unit has been fixed at 38,700 francs and the share of each of the six member States will be as follows:

<u>Country</u>	<u>No. of units</u>	<u>Swiss francs</u>
Denmark	1½	58,050
France	5	193,500
Germany (Fed. Rep. of)	5	193,500
Netherlands	2	77,400
Sweden	1½	58,050
United Kingdom	5	193,500

34. With the modifications indicated above, the Council adopted the program and budget for 1976 as appearing in document C/IX/4.

Harmonization of the list of species eligible for protection

35. The Council took note of the list of genera and species eligible for protection in one or more member States as indicated in documents C/IX/8 and C/IX/8 Add. It agreed to inform the Office of the Union of any amendments thought to be necessary with respect to common names, if possible before the next session of the Committee of Experts on International Cooperation in Examination. With respect to discrepancies in the Latin names, the Council was reminded of an earlier recommendation that, whenever a Latin name had been stabilized by the International Seed Testing Association (ISTA), the stabilized name should be used in the national laws. Mr. Rollin, in his capacity of President of ISTA, promised to have the Office of the Union informed on cases where names indicated in the list did not conform to the names stabilized by ISTA. He mentioned that Dr. Marschall (Zürich) was at the moment Chairman of the Nomenclature Committee of ISTA and could be asked for information in case of doubt. The Council realized that a complete solution to the problems of Latin names could not be reached because in a great number of cases it was not clear whether two Latin names were synonyms or whether they designated different plants.

Admission of observers to the sessions of the Council and the meetings of other bodies of UPOV

36. On the recommendation of the Consultative Committee, the Council agreed to ask the Office of the Union to invite in future Algeria and the African and Malagasy Industrial Property Office (OAMPI) to send observers to the Council sessions.

Calendar of meetings in 1976

37. The Council accepted the calendar of meetings as appearing in document C/IX/9 Rev., except that it decided not to convene in 1976 the proposed Fee Harmonization Working Party as the items which would have to be discussed by that Working Party would be taken care of by the Committee of Experts on International Cooperation in Examination.

Election of a new Vice-President of the Council

38. The outgoing Vice-President of the Council, Professor Esbo, proposed to the Council that it elect Mr. Skov as the new Vice-President. The Council then elected Mr. Skov as Vice-President on the understanding that he would be appointed the representative of Denmark in the Council.

Election of new Chairmen in the Technical Working Parties

39. The new Chairman of the Technical Steering Committee, Dr. Böringer, informed the Council that the Technical Steering Committee proposed to elect the following Chairmen for the different Technical Working Parties:

<u>Technical Working Party</u>	<u>Chairman</u>
Agricultural Crops	Mr. Kelly (United Kingdom)
Ornamental Plants	Mr. Schneider (Netherlands)
Vegetables	Mr. Webster (United Kingdom)
Fruit Crops	Mr. Brossier (France)
Forest Trees	Mr. Bischoff (Federal Republic of Germany)

40. The Council unanimously approved the proposal of the Technical Steering Committee, and elected the Chairmen for the different Technical Working Parties as mentioned in the previous paragraph.

41. This report was unanimously adopted by the Council in its meeting held on October 9, 1975.

[Annex I follows]

00650

C/IX/12

ANNEX I/ANNEXE I/ANLAGE I

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATEN

DENMARK/DANEMARK/DÄNEMARK

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

C/IX/12
ANNEX II

UPOV MODEL AGREEMENT
FOR INTERNATIONAL COOPERATION
IN THE TESTING OF VARIETIES

Article 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

Where Guidelines for the conduct of tests have been adopted, by the Council of UPOV, the testing shall be conducted according to such Guidelines. Where no such Guidelines have been adopted, 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 those methods.

Article 4

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

(2) On submitting its final report, Authority A will state whether in its opinion the variety may be regarded as distinct, homogeneous and stable. If the opinion is that the variety is distinct, homogeneous and stable, the variety description will 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 shall be 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 under a similar agreement, also for the purposes of an authority other than Authority B, access shall likewise be granted in accordance with the rules applicable by such other authority.

Article 7

Authority A undertakes to maintain a reference collection of varieties of the species listed in the Annex or to procure such material of those varieties as may be required for purposes of comparison.

Article 8

Authority A shall take all reasonable steps to safeguard the propagating material provided under this Agreement by Authority B or pursuant to the instructions of Authority B and material derived therefrom. Authority A shall not furnish such propagating material or material derived therefrom to third persons except with the specific authorization of Authority B.

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, whether interim or final, 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 and 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 with the other Authority 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.