



CAJ/58/6

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Eighth Session
Geneva, October 27 and 28, 2008

REPORT ON THE CONCLUSIONS

adopted by the Administrative and Legal Committee

Opening of the session

1. The Administrative and Legal Committee (CAJ) held its fifty-eighth session in Geneva on October 27 and 28, 2008, under the Chairmanship of Mrs. Carmen Gianni (Argentina).
2. The list of participants is reproduced in Annex I to this report.
3. The session was opened by the Chair, who welcomed the participants and the Acting Secretary-General of UPOV.
4. A summary of the speech of the Acting Secretary-General is presented in Annex II to this report.
5. The CAJ paid tribute to Mrs. Valerie Sisson, former delegate of Canada to UPOV meetings, who had passed away in recent months.
6. The Chair informed the CAJ that Switzerland had ratified the 1991 Act of the UPOV Convention on September 1, 2008.
7. The Chair confirmed that the report of the fifty-seventh session of the CAJ (document CAJ/57/7) had been adopted by correspondence and was available on the UPOV website.

Adoption of the Agenda

8. The CAJ adopted the agenda, as presented in document CAJ/58/1 Rev., with the inclusion of a new item “Adoption of the report on the conclusions” after item 7.

TGP Documents

9. The CAJ considered document CAJ/58/2.

TGP/11/1 “Examining Stability”

10. The CAJ considered document TGP/11/1 Draft 5 “Examining Stability”, in conjunction with document CAJ/58/2.

11. The CAJ agreed that document TGP/11 should consider only the examination of stability in the context of the DUS examination and that a separate document should be developed to provide guidance on matters concerning distinctness, uniformity, stability and novelty which are brought to the attention of an authority after the grant of a breeder’s right.

TGP/12/1 “Special Characteristics”

12. The CAJ considered document TGP/12/1 Draft 5 “Special Characteristics” and commented as follows:

Title	The CAJ agreed that the new title, proposed by the Technical Working Party for Agricultural Crops (TWA), “Characteristics based on a response to an external factor and characteristics for chemical constituents: protein electrophoresis” was too long and proposed that a shorter, clearer title should be found.
1.2.2.1	The CAJ noted that the International Seed Federation (ISF) had concerns about the sentence “Effects should be related to yield reduction” and agreed that the ISF concerns should be reported to the expert responsible for drafting that text, in order that an amended wording might be developed for consideration by the Technical Committee.
2.	The CAJ noted the proposals of the Technical Working Party for Vegetables (TWV), concerning nomenclature of disease resistance, as set out in document CAJ/58/2, paragraphs 15 and 16. It noted that the proposals would be considered for inclusion in document TGP/12 or TGP/7 and noted that consideration of the proposals would not delay the adoption of TGP/12.
5.	The CAJ noted that it had been proposed that the section on “Frost tolerance” be deleted.
Section III	The CAJ noted that it had been proposed that the Section III “Examination of characteristics using image analysis” should be moved to document TGP/8 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”

TGP/13/1 “Guidance for New Types and Species”

13. The CAJ considered document TGP/13/1 Draft 12 “Guidance for New Types and Species”.

14. In relation to section 2.4.2. of document TGP/13/1 Draft 12, the CAJ agreed that the explanation in section 2.4.2. of document TGP/13/1 Draft 12 should be retained unchanged.

Program for the development of TGP documents

15. The CAJ approved the program for the development of TGP documents, as set out in the Annex to document CAJ/58/2.

UPOV-ROM Plant Variety Database

16. The CAJ considered document CAJ/58/3.

Collation of data for the UPOV-ROM Plant Variety Database

17. The CAJ was informed by the Acting Secretary General, in his capacity as Director General of WIPO, that the Draft Program and Budget of WIPO for 2009 contained relevant human and financial resources proposals for the program set out in the Annex to document CAJ/58/3.

18. The CAJ agreed the program for delivering improvements to the UPOV Plant Variety Database, as set out in the Annex to document CAJ/58/3, subject to approval by the Consultative Committee of an arrangement between UPOV and WIPO, concerning the UPOV Plant Variety Database, as set out in paragraph 6 of document CAJ/58/3.

Dates of commercialization

19. The CAJ agreed, in principle, to the introduction of fields in the UPOV-ROM Plant Variety Database to provide information on dates on which a variety was commercialized for the first time in the territory of application and other territories, subject to the following:

(a) the fields would be optional;

(b) an explanation of the status and source of the information, or how to obtain an explanation of the status (e.g. a link to an authority website); and

(c) an explanation and disclaimer concerning the accuracy and completeness of the information, including an explanation that the absence of information would not imply that the variety had not been commercialized.

20. The CAJ agreed to proceed with that approach on the basis that it would be invited to consider specific proposals before those were introduced into the UPOV-ROM Plant Variety Database.

Development of information materials concerning the UPOV Convention

21. The CAJ considered document CAJ/58/4 in conjunction with the following draft explanatory notes.

Explanatory Notes on Essentially Derived Varieties under the UPOV Convention

22. The CAJ considered document UPOV/EXN/EDV Draft 2.

23. The CAJ agreed that, in paragraph 8 of the Spanish version of document UPOV/EXN/EDV Draft 2, the word “implicaciones” should be replaced by “consecuencias”.

24. On the basis of the change to paragraph 8 of the Spanish version, the CAJ approved document UPOV/EXN/EDV Draft 2.

25. The CAJ requested the CAJ-AG to consider the comments received from CIOPORA and ISF on document UPOV/EXN/EDV Draft 2, as set out in document CAJ/58/4, Annexes I and II, respectively, with a view to proposing revisions of the explanatory notes on essentially derived varieties, as considered appropriate. As a first step, it was agreed that CIOPORA and ISF should be invited to participate at the third session of the CAJ-AG, in order to discuss how to proceed with that process in a timely and effective way.

26. In particular, it was noted that the following aspects would be considered by the CAJ-AG:

(a) the proposal of CIOPORA to use the term “breeder” or “holder of a breeder’s right” in a consistent way;

(b) the proposal of CIOPORA to explain that all of the varieties belonging to one of the examples in Article 14(5)(c) of the 1991 Act (e.g. mutants) might be essentially derived varieties;

(c) the request of CIOPORA to clarify the relationship between Article 14(5)(b)(i) and (iii) of the 1991 Act;

(d) the proposal of CIOPORA to divide paragraph 9 of document UPOV/EXN/EDV Draft 2 into three paragraphs;

(e) the request of ISF to amend paragraph 11 (third sentence) of document UPOV/EXN/EDV Draft 2 and to include a variety “D” in figures 3 and 4 of document UPOV/EXN/EDV Draft 2.

Explanatory Notes on Exceptions to the Breeder’s Right under the UPOV Convention

27. The CAJ approved document UPOV/EXN/EXC Draft 3, subject to the following amendments:

Title	to change the title as follows: “Explanatory Notes on Exceptions to the Breeder’s Right under the <u>1991 Act</u> of the UPOV Convention”
paragraphs 2 and 3	to delete the reference to Article 5(3) of the 1978 Act
Section I (a)	to delete the box with the provisions of Article 5(3) of the 1978 Act
paragraph 5	to delete the sentence “In that respect, a party providing propagating material of a protected variety to another party might be considered not to be engaged in a private act, regardless of whether there is any form of payment for the material and, therefore, not to be covered by the exception.”
paragraph 6	to delete “for example, if he subsequently commercialized harvested material of the variety.”

28. The CAJ requested the CAJ-AG to consider the comments received from ISF on document UPOV/EXN/EXC Draft 2, as set out in Annex II of document CAJ/58/4, and the comments of CIOPORA on document UPOV/EXN/EXC Draft 3, with a view to proposing revisions of the explanatory notes on exceptions to the breeder’s right, as considered appropriate. In particular, it was noted that the following aspects would be considered:

(a) the request of ISF to provide an explanation on “holding” (document CAJ/58/4, Annex II, page 2 of the English version); and

(b) the request of CIOPORA to provide an explanation of “safeguarding of the legitimate interests of the breeder” in paragraph 17 of document UPOV/EXN/EXC Draft 3 which would not allow the application of Article 15(2) of the 1991 Act to asexually reproduced ornamental and fruit varieties.

29. As a first step, it was agreed that CIOPORA and ISF should be invited to participate at the third session of the CAJ-AG, in order to discuss how to proceed with that process in a timely and effective way.

Explanatory Notes on Novelty under the UPOV Convention

30. The CAJ approved document UPOV/EXN/NOV Draft 2, subject to the following amendments:

paragraph 6(iv)	to read “sale or disposal of to others that forms part of an agreement under which a person multiplies propagating material of a variety on behalf of the breeder where that agreement requires that the property in the multiplied material of the variety reverts to the breeder;”
paragraph 6(vi)	to change “biological security” to “biosafety”

31. The CAJ requested the CAJ-AG to consider the comments received from ISF on document UPOV/EXN/NOV Draft 2, as set out in document CAJ/58/4, Annex II, with a view

to proposing revisions of the explanatory notes on novelty, as considered appropriate. In particular, it was noted that the following aspects would be considered:

(a) varieties of recent creation under Article 6(2) of the 1991 Act in relation to the time at which the plant breeders' rights system becomes operational (see document CAJ/58/4, Annex II, page 3 of the English version); and

(b) the request for further explanations of "for purposes of exploitation" and "or otherwise disposed of" of Article 6(1) of the 1991 Act (document CAJ/58/4, Annex II, page 2 of the English version).

32. As a first step, it was agreed that ISF should be invited to participate at the third session of the CAJ-AG, in order to discuss how to proceed with that process in a timely and effective way.

Documents to be considered by the CAJ by correspondence

33. The CAJ noted that the following explanatory notes had been approved by the CAJ by correspondence:

- (a) Explanatory Notes on the Right of Priority under the UPOV Convention (document UPOV/EXN/PRI Draft 1);
- (b) Explanatory Notes on Provisional Protection under the UPOV Convention (document UPOV/EXN/PRP Draft 1);
- (c) Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (document UPOV/EXN/NUL Draft 1); and
- (d) Explanatory Notes on the Cancellation of the Breeder's Right under the UPOV Convention (document UPOV/EXN/CAN Draft 1)

34. The CAJ noted that the explanatory notes above, approved at its fifty-eighth session or by correspondence, would be brought into use by the Office of the Union, for example in Part II of the Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (document UPOV/INF/6/1 Draft 1)

Documents to be considered at the third session of the CAJ-AG

35. The CAJ noted that the following documents would be considered at the third session of the CAJ-AG:

- (a) Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention (documents CAJ-AG/08/3/3 and UPOV/INF/6/1 Draft 1)
- (b) Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material; and on Acts in Respect of Harvested Material under the UPOV Convention (document UPOV/EXN/HRV Draft 2);

- (c) Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 1);
- (d) Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR Draft 1);
- (e) Enforcement of Plant Breeders' Rights (document UPOV/EXN/ENF Draft 1).

36. In relation to the Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (document UPOV/INF/6/1 Draft 1), in recognizing the practical value of such a document, the CAJ noted that the Office of the Union had the intention to use a similar document as far as the text of the Convention and the agreed text of the explanatory notes allowed. It was also noted that the Office of the Union would arrange for that document to be translated into Arabic, Chinese, French, German, Russian and Spanish.

New Proposals for Information Materials

37. The CAJ noted that, during the preparation of Part II of the guidance document for the preparation of laws (document UPOV/INF/6/1 Draft 1), the Office of the Union had identified the need to develop explanatory notes, or additional text, on the following:

(a) Explanatory notes

(i) Article 3 "Genera and Species to be Protected" (additional guidance concerning the specification of "plant genera and species");

(ii) Article 4 of the 1991 Act "National Treatment";

(iii) Article 6(2) of the 1991 Act "Varieties of recent creation" (example provision(s), based on the available explanatory notes);

(iv) Article 17 of the 1991 Act "Restrictions on the Exercise of the Breeder's Right";

(v) Article 13 of the 1991 Act "Provisional Protection" (example provision(s), based on the available explanatory notes).

(b) Based on existing information materials, a guidance document for each of these procedures, in particular:

(i) how to become a member of UPOV and accede to the 1991 Act of the UPOV Convention (e.g. request for examination of laws 3 weeks in advance);

(ii) how to ratify, or accede to, the 1991 Act of the UPOV Convention (for members of UPOV only).

38. The CAJ agreed to the development of the above information materials for consideration by the CAJ by correspondence.

Electronic application systems

39. The CAJ considered document CAJ/58/5.

40. The CAJ agreed that an item should be included on the agenda of its fifty-ninth session to be held on April 2, 2009, and a document prepared by the Office of the Union on the basis of the agreed UPOV Model Application Form and further inputs from delegations and consultations thereof.

Program for the fifty-ninth session

41. The CAJ agreed the following program for its fifty-ninth session, to be held in Geneva on April 2, 2009, and anticipated that a full day would be necessary to cover the program:

1. Opening of the session
2. Adoption of the agenda
3. Report on developments in the Technical Committee
4. TGP documents
 - (a) TGP/12 “Special Characteristics”
 - (b) TGP/13 “Guidance for New Types and Species”
5. Development of information materials concerning the UPOV Convention
 - (a) Report of the work of the CAJ-AG at its third session
 - (b) Information materials for consideration/approval
 - (c) New Proposals for information Materials
6. Molecular techniques
7. Electronic application systems
8. Program for the sixtieth session
9. Adoption of the report on the conclusions (if time permits)
10. Closing of the session

42. This report was adopted by the Administrative and Legal Committee at the close of its session on October 28, 2008.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
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(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
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[Annex II follows]

Intervention by Mr. Francis Gurry, Acting Secretary-General of UPOV

**58th Session of the Administrative and Legal Committee (CAJ)
October 27, 2008**

Madame Chairperson,
Distinguished Delegates,

Thank you, Madame Chairperson, for the warm words of welcome.

I am particularly pleased that it is UPOV's Administrative and Legal Committee which offers me the first opportunity, in my capacity as your Acting Secretary-General, to meet officially with delegations of UPOV members and observers. It is my pleasure to welcome you all at the outset of this week of intensive work, which for many of you will end on Saturday evening with a session of the CAJ Advisory Group.

The International Convention for the Protection of New Varieties of Plants (UPOV Convention) sets out an important and successful concept of intellectual property rights protection in the specific field of plant breeding. Against the background of global challenges such as climate change, desertification, food security, preservation of biodiversity, shortage of energy and the need for economic development of rural areas, there can be no doubt that plant breeding needs to be encouraged and intensified.

The UPOV Study on the Impact of Plant Variety Protection provides convincing evidence that plant variety protection according to the UPOV Convention and membership of UPOV are most effective elements in such a strategy. The steady growth of UPOV in terms of membership from all continents and in terms of numbers of applications for plant breeders' rights and titles of protection granted by UPOV members shows that this view is increasingly shared.

The UPOV Convention continues to provide the only internationally harmonized *sui generis* system of plant variety protection. The shared understanding among UPOV members of the objectives and principles of plant variety protection is the basis for consensus, in the UPOV Council, which has been evident, even with regard to matters which are of political sensitivity. The internationally harmonized technical procedures for plant variety protection, based on 40 years of experience and expertise, are a foundation for the quality and effectiveness of protection.

UPOV's expertise is widely recognized and used, even in areas beyond plant variety protection. Examples are seen in the international trade of seed according to the Organisation for Economic Co-operation and Development (OECD) schemes, and the national or regional registration systems of admitting varieties to the market.

A great deal of this most beneficial work is done here in the CAJ and I am extremely grateful for your dedication and cooperation.

The agenda items at this session are again of particular relevance:

- the TGP documents under consideration will provide further important guidance to UPOV members on the operation of the UPOV system;
- with regard to improvements of the UPOV Plant Variety Database, I have encouraged my colleagues in the Office of UPOV and in WIPO to examine possibilities for intensified cooperation between both organizations;
- in respect of information materials concerning the UPOV Convention, you are expected to consider important guidance documents which have been prepared by the CAJ Advisory Group; and finally, you are expected
- to consider further the potential role of electronic application systems for plant breeders' rights.

The ultimate objective is, in all four cases, to provide services to UPOV members and potential future members.

I wish all of you a successful meeting and I am looking forward to seeing most of you again the course of the coming days.

[End of Annex II and of document]