



CAJ/58/7

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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

*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.

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\* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Conclusions (document CAJ/58/6).

\*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.

9. The CAJ agreed to add the item “Adoption of the report on the conclusions” in the program of future sessions of the CAJ.

#### TGP Documents

\*10. The CAJ considered document CAJ/58/2.

#### *TGP/11/1 “Examining Stability”*

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

12. With regard to the matters raised in paragraphs 5 to 11 of document CAJ/58/2, the Delegation of the European Community was in favor of the recommendation of the Enlarged Editorial Committee (TC-EDC) that practical assistance on how to address problems concerning stability which were brought to the attention of an authority after the grant of a breeder’s right should not be included in a document entitled “Examining Stability”.

13. The Delegation of Australia expressed the view that, for consistency with other TGP documents, a separate document would need to be developed to provide guidance on matters concerning stability that had been brought to the attention of an authority after the grant of a breeder’s right.

14. The Delegation of Romania preferred the development of a separate document to provide guidance on matters concerning distinctness, uniformity and stability that had been brought to the attention of an authority after the grant of a breeder’s right.

15. The Delegation of New Zealand expressed its support for the intervention made by the Delegation of Australia and noted that matters concerning stability after the grant of a breeder’s right were complex.

16. The Delegation of Argentina supported the proposal that document TGP/11 should consider only the examination of stability in the context of the DUS examination and that a separate document would need to be developed to provide guidance on matters after the grant of a breeder’s right.

17. The Delegation of Kenya was in favor of the development of a separate document to provide guidance on matters concerning distinctness, uniformity and stability that had been brought to the attention of an authority after the grant of a breeder’s right.

18. The Delegation of Brazil was in favor of the development of a separate document to provide guidance on matters that had been brought to the attention of an authority after the grant of a breeder's right, but requested that such a document should include matters concerning the verification of stability.

19. The Delegation of the European Community supported the development of two separate documents because matters before and after the grant of breeders' rights concerned two different legal situations.

20. The Delegation of India noted that it was important that the variety remained stable during the entire period of protection. In that regard, it noted the importance of the characteristics in the Test Guidelines for matters concerning stability.

\*21. 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.

22. The CAJ noted that a draft of document TGP/11, providing guidance only on stability in the context of the DUS examination, would be presented for the consideration of the Technical Committee (TC) at its forty-fifth session to be held in Geneva from March 30 to April 1, 2009, and to the CAJ at its sixtieth session on to be held in Geneva on October 19 and 20, 2009.

*TGP/12/1 "Special Characteristics"*

\*23. 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”
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*TGP/13/1 “Guidance for New Types and Species”*

\*24. The CAJ considered document TGP/13/1 Draft 12 “Guidance for New Types and Species”.

25. With regard to the explanation in section 2.4.2 of document TGP/13/1 Draft 12, the Delegation of Australia considered that the text provided practical guidance and supported the retention of the text without change. It also noted that the text was consistent with the explanation provided in document “The Notion of Breeder and Common Knowledge in the Plant Variety Protection System Based upon the UPOV Convention” (document C(Extr.)/19/2 Rev.)<sup>1</sup>.

26. The Delegation of France emphasized the need to consider the situation with regard to distinctness according to the UPOV Convention and supported the text of section 2.4.2 of document TGP/13/1 Draft 12 in that respect.

27. The Delegation of Paraguay explained that it had experience of such a situation and considered that the guidance in section 2.4.2 of document TGP/13/1 Draft 12 was relevant and useful.

28. The Delegation of Mexico considered that the guidance in section 2.4.2 of document TGP/13/1 Draft 12 was important and should be retained.

\*29. 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*

\*30. The CAJ approved the program for the development of TGP documents, as set out in the Annex to document CAJ/58/2.

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<sup>1</sup> “The Text of the 1991 Act

“16. When the Convention was revised in 1991, notwithstanding the fact that the making of selections within pre-existing variation was regarded as a standard activity for plant breeders, it was thought to be useful to include a definition of breeder in order to emphasize the fact that the UPOV Convention also provided protection for varieties that had been ‘discovered.’ At the Diplomatic Conference, delegates were conscious that discoveries were an important source of variety improvement but they also recognized that, in practice, a discovery must be evaluated and propagated before it can be exploited. This is the reason why the 1991 Act retained, in Article 1(iv), the notion of breeder as including the person who bred, or discovered and developed, a variety. The reference to the ‘origin,’ artificial or natural of the initial variation from which the variety has resulted in Article 6(1)(a) of the 1978 Act no longer appears. In the 1991 Act, ‘discovery’ describes the activity of ‘selection within natural variation’ while ‘development’ describes the process of ‘propagation and evaluation.’

“17. It has been suggested that the criterion of ‘development’ is only satisfied if the discovered plant itself is subsequently changed in some way and that the propagation of the plant unchanged would not constitute ‘development.’ This approach would require the discovered plant to be propagated sexually and for a selection to be made in the progeny in order to demonstrate development. It is suggested that this approach cannot be correct since selection in the progeny would constitute ‘breeding.’ This approach would also deny protection to most mutations, since the mutation is usually propagated unchanged.”

UPOV-ROM Plant Variety Database

\*31. The CAJ considered document CAJ/58/3.

*Collation of data for the UPOV-ROM Plant Variety Database*

32. The Delegation of the European Community welcomed the proposed arrangement between UPOV and the World Intellectual Property Organization (WIPO) that would be considered by the Consultative Committee at its seventy-sixth session on October 29, 2008, as set out in paragraph 6 of document CAJ/58/3, and sought confirmation that WIPO was in a position to finance the program for delivering improvements to the UPOV Plant Variety Database as set out in the Annex to document CAJ/58/3. The Delegation also requested information on the timetable for that program.

33. 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. He emphasized that the data in the UPOV-ROM was important for patent offices and the arrangement would be of substantial benefit for both WIPO and UPOV.

34. The Vice Secretary-General acknowledged that the necessary resources would need to be put into place, but explained that the objective was to start implementation of the program for delivering improvements to the UPOV Plant Variety Database as set out in the Annex to document CAJ/58/3 as soon as possible. In particular, he referred to the first steps in the program; investigation of (potential) contributors' needs and development of data quality checks, which would already be initiated in November 2008 (see steps (a) and (c) in the Annex of document CAJ/58/3).

35. In reply to a question by the Delegation of Pakistan on the data in the UPOV-ROM Plant Variety Database, the Chair explained that the UPOV-ROM contained data as provided by members of the Union and the Organisation for Economic Co-operation and Development (OECD).

\*36. 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*

37. The Delegation of the European Community noted that information concerning dates of commercialization was difficult to obtain and was in favor of the introduction of optional fields in the UPOV-ROM Plant Variety Database concerning that information.

38. The Delegation of Japan noted that information concerning dates of commercialization was usually provided by the breeder and when checked by the authority, was sometimes found to be incorrect. It was in favor of the fields concerning dates of commercialization being optional.

39. The Delegation of Germany noted that in Germany there was a legal obligation to verify the information provided by the breeder. It was in favor of the fields concerning dates of commercialization being optional.
40. The Delegation of the Netherlands noted that the information concerning the dates of commercialization in the application for a breeder's right was declared by the breeder and the authority in the Netherlands did not have to verify that information.
41. The Delegation of Brazil considered the information concerning dates of commercialization to be useful. It was in favor of the fields concerning that information being optional.
42. The Delegation of Paraguay noted that 98 per cent of the applications in Paraguay were filed by foreign applicants and, therefore, considered the information concerning dates of commercialization to be important.
43. The Delegation of France was in favor of the fields concerning dates of commercialization being optional. It noted that an appropriate disclaimer would need to be added to advise of the possible inaccuracy and incompleteness of the information. It emphasized that the absence of information in those fields would not imply that the variety had not been commercialized. It also noted that those fields might not reflect new information that became available after the application had been filed.
44. The Chair noted that the general view expressed by delegations was that the fields concerning dates of commercialization should be optional and that adequate explanations and disclaimers concerning the accuracy and completeness of the information would need to be provided.
45. The Delegation of Argentina was in favor of the fields concerning dates of commercialization being optional. It noted that the breeder had the knowledge of the commercialization data.
46. The Delegation of New Zealand agreed with the summary provided by the Chair. It noted that New Zealand had a significant number of foreign applications and, therefore, considered the information concerning dates of commercialization to be important.
47. The Delegation of Ecuador reported that Ecuador also received a large number of foreign applications and explained that the authority accepted, in principle, the declaration of information provided by the breeder. It noted that additional information in the UPOV-ROM concerning dates of commercialization would very useful for the authority.
48. The Delegation of Pakistan agreed with the summary provided by the Chair and wondered if a transitional mechanism could be put into place before the fields became operational.
49. The Acting Secretary-General confirmed that the approach to provide a disclaimer and an explanation of the status and source of the information could be followed. He recalled that the CAJ would be informed throughout the process of developing the necessary fields in the UPOV-ROM.

50. The Delegation of Brazil reported that, in Brazil, the information provided by the breeder concerning commercialization dates had sometimes been verified by the authority. It also noted that, in some cases, the breeder was not the only source of commercialization data.

51. The Acting Secretary-General noted that an explanation could be provided on the status and source of the information, or how to obtain an explanation of the status, for instance, a link to an authority website.

\*52. 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.

\*53. 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

54. 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 (document UPOV/EXN/EDV Draft 2); Explanatory Notes on Exceptions to the Breeder's Right under the UPOV Convention (document UPOV/EXN/EXC Draft 3); Explanatory Notes on Novelty under the UPOV Convention (document UPOV/EXN/NOV Draft 2).

55. The Chair informed the CAJ, that the CAJ would be invited to first consider document UPOV/EXN/EDV Draft 2; then, the CAJ would be invited to made comments on matters not covered in document UPOV/EXN/EDV Draft 2; and finally, the CAJ-AG would be invited to consider those comments with a view to proposing revisions of the explanatory notes on essentially derived varieties, as considered appropriate. She proposed to follow the same approach for the Explanatory Notes on Exceptions to the Breeder's Right under the UPOV Convention (document UPOV/EXN/EXC Draft 3) and the Explanatory Notes on Novelty under the UPOV Convention (document UPOV/EXN/NOV Draft 2).

#### *Explanatory Notes on Essentially Derived Varieties under the UPOV Convention*

\*56. The CAJ considered document UPOV/EXN/EDV Draft 2.

\*57. 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".

\*58. On the basis of the change to paragraph 8 of the Spanish version, the CAJ approved document UPOV/EXN/EDV Draft 2.

59. The Chair invited comments on matters not covered in document UPOV/EXN/EDV Draft 2.

60. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) presented the comments of CIOPORA, reproduced in Annex I of document CAJ/58/4. He explained that the issues raised by CIOPORA were not addressed by document UPOV/EXN/EDV Draft 2.

61. The representative of the International Seed Federation (ISF) presented the comments of ISF, reproduced in document CAJ/58/4, Annex II.

\*62. 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.

\*63. 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*

64. The CAJ considered document UPOV/EXN/EXC Draft 3.

65. The representative of ISF requested the addition of a requirement under paragraph 9 of document UPOV/EXN/EXC Draft 3 for the material of the protected variety to be accessed lawfully. The Chair explained that illegal acts would be covered by other relevant legislation.



66. The representative of CIOPORA requested the inclusion of an explanation on “safeguarding of the legitimate interests of the breeder” in paragraph 17 of document UPOV/EXN/EXC Draft 3 that would not allow the application of Article 15(2) of the 1991 Act to asexually reproduced ornamental and fruit varieties.

67. The Delegation of France noted that paragraphs 13 to 16 of document UPOV/EXN/EXC Draft 3 provided an explanation of “common practice” in relation to the recommendation of the Diplomatic Conference of 1991 on Article 15(2) of the 1991 of the UPOV Convention and noted that the explanatory notes could not be more restrictive than the UPOV Convention.

68. The representative of ISF requested the addition of an explanation of “holding” in section II (d) “Farmer’s holding” of document UPOV/EXN/EXC Draft 3 (document CAJ/58/4, Annex II, page 1 of the English version).

69. The Chair considered that the intention of the UPOV Convention was to relate to individual farmers rather than groups of farmers, but recalled the previous discussions in the CAJ and, in particular, the difficulty in developing a common definition that would be suitable for all members of the Union.

\*70. 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 <u>the 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.”

\*71. 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.

\*72. 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*

73. The CAJ considered document UPOV/EXN/NOV Draft 2.

74. In reply to a request for clarification by the Delegation of Japan, the Chair explained that “rights” in paragraph 6(iii) of document UPOV/EXN/NOV Draft 2 referred to rights in the variety and, in particular, a breeder’s right.

75. With respect to an observation by the Delegation of Paraguay concerning paragraph 6(vi) of document UPOV/EXN/NOV Draft 2, the Chair clarified that the entry of the variety in an official catalogue of varieties admitted to trade did not necessarily mean that the variety had been sold or disposed of to others for the purposes of exploitation of the variety.

\*76. 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”

\*77. 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).

\*78. 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*

\*79. 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)

\*80. 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*

\*81. 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).

\*82. 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*

\*83. 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).

\*84. The CAJ agreed to the development of the above information materials for consideration by the CAJ by correspondence.

Electronic application systems

\*85. The CAJ considered document CAJ/58/5.

86. The Delegation of the European Community explained that it did not object to the proposals set out in document CAJ/58/5, but noted that limited support had been expressed to justify the impact on human and financial resources.

87. The Chair explained that, in the context of a meeting of authorities of the Latin American region, the participants had expressed an interest to include, in the first part of an application form, core questions based upon the UPOV Model Application Form, and to add annexes for additional information required at the national level.

88. The Delegation of Ecuador expressed its agreement with the intervention made by the Chair.

89. The Delegation of Brazil supported the proposals and explained that it was willing to participate.
90. The Delegation of the Netherlands requested that the recently approved UPOV Model Application Form should not be forgotten in relation to the proposal to prepare a survey on “core” questions, as set out in paragraph 1(a) of document CAJ/58/5.
91. The Chair explained that the authorities’ application forms did not necessarily follow the same order of items as in the UPOV Model Application Form. She recalled that the objective was not to change the UPOV Model Application Form but to find a way to deal with additional information.
92. The representative of ISF welcomed the expressions of support by several members of the Union.
93. The Delegation of Spain expressed its support for the development of a model electronic application form.
94. The Chair noted that the development of a model electronic application form raised issues concerning electronic signatures.
95. The representative of the Seed Association of the Americas (SAA) expressed its support for the development of a model electronic application form.
96. The Delegation of the European Community expressed its support for the drafting of an electronic application form and confirmed that the Community Plant Variety Office (CPVO) was willing to provide its help and experience.
97. The Delegation of Argentina noted that the different order of questions in the authorities’ application forms might cause some difficulties and wondered if a survey to identify the order followed in the forms might be useful.
98. The Delegation of the Netherlands requested an explanation on the proposals which were under consideration.
99. The Chair recalled that the proposal could follow a two-step approach: a first step would be to survey applications forms of members of the Union to assess differences in order to draw up a simplified standard application form and to put into annexes the particular information required at the national/regional levels; a second step, could be the development of a corresponding electronic form, subject to the possibilities and legislation of each member of the Union.
100. The Delegation of Belgium noted that there was already an approved UPOV Model Application Form. It noted that the gathering and analysis of the information in application forms of members of the Union would imply substantial human and financial resources. Therefore, it emphasized the relative simplicity of making an application form in a protected word document available on line, as the Intellectual Property Office of Belgium had recently developed for patents.

101. The Delegation of France recalled that there was an approved UPOV Model Application Form. It was of the view that such a model form should be the basis for any electronic application form. The Delegation noted that each member of the Union had its individual needs; therefore, the proposal to send the applications forms of all members of the Union to assess differences would not justify the impact on human and financial resources. It was proposed that the application form used by the CPVO of the European Community could be sent to the Office of the Union for illustrative purposes. It further noted the non-binding nature of the UPOV Model Application Form and any UPOV electronic form that might be developed.

102. The Delegation of Paraguay expressed support for the development of a common application form and annexes.

103. The Delegation of Australia noted that it was the responsibility of each member of the Union to decide and update the required information in the annexes of its application form. While it could see the potential benefits of a common application form, it considered that it was not realistic to expect the Office of the Union to gather such information from members of the Union.

104. In relation to possibility of the Office of the Union gathering application forms and related annexes currently used by members of the Union, the CAJ concluded that such an exercise would not be feasible because of the substantial resource implications.

105. The Office of the Union noted that the comments illustrated a degree of interest to pursue discussions on electronic application systems. However, it was suggested that it might be useful to present clear options with the resource and practical implications. For example, due to the particular requirements at the national/regional level, a core electronic application form using the UPOV Model Application Form would need to be supplemented by additional information by the individual members of the Union. The Office of the Union explained that the provision of individual supplements of all members of the Union in the UPOV website would be impractical. However, it was suggested that those supplements might be made available by the individual members of the Union by means of appropriate links.

\*106. 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

\*107. 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

*108. The present report has been adopted by the CAJ at its fifty-ninth session held in Geneva on April 2, 2009.*

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /  
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(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/  
por orden alfabético de los nombres en francés de los miembros)

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[L'annexe II suit/  
Annex II follows/  
Anlage II folgt/  
Sigue el Anexo II]

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

**58<sup>th</sup> 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]