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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Ninth Session
Geneva, April 2, 2009

REPORT

adopted by the Administrative and Legal Committee

Opening of the session

- * 1. The Administrative and Legal Committee (CAJ) held its fifty-ninth session in Geneva on April 2, 2009, 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.
- *4. The Chair informed the CAJ that Georgia and Costa Rica had become members of the Union on November 29, 2008 and on January 12, 2009, respectively.
- *5. The CAJ adopted the report of the fifty-eighth session of the CAJ (document CAJ/58/7) with the following change in the last sentence of paragraph 100 (in revision mode): "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 applications forms of members of the Union would imply substantial human and financial resources. ~~It favored the possibility to convert the existing UPOV Model Application Form into electronic format, even as a MS Word document.~~ Therefore, it emphasized the relative simplicity of making an

* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Conclusions (document CAJ/59/7).

application form in a protected word document available on line, as the Intellectual Property Office of Belgium had recently developed for patents.”

Adoption of the Agenda

*6. The CAJ adopted the agenda, as presented in document CAJ/59/1 with the addition of document CAJ/59/2 Add. under agenda item 4 and document CAJ/59/6 Add. under agenda item 8.

Oral report on developments in the Technical Committee

7. The Chair invited Mr. Chris Barnaby (New Zealand), Chair of the Technical Committee (TC), to make an oral report on the forty-fifth session of the TC, which was held in Geneva from March 30 to April 1, 2009. Mr. Barnaby explained that he would only report on those matters of particular relevance to the CAJ. He reported that the TC had:

(a) agreed to propose to the CAJ that a document be developed to provide guidance on matters concerning distinctness, uniformity, stability and novelty that are brought to the attention of an authority after the grant of a breeder's right;

(b) agreed that document TGP/12 “Special Characteristics”, as amended by the TC and subject to approval by the CAJ, should be put forward for adoption by the Council at its forty-third ordinary session;

(c) agreed that document TGP/13 “Guidance for New Types and Species”, as amended by the TC and subject to approval by the CAJ, should be put forward for adoption by the Council at its forty-third ordinary session;

(d) noted the proposals for improvements to the UPOV-ROM Plant Variety Database and plans for future development;

(e) approved the “UPOV Guidelines for DNA-profiling: molecular marker selection and database construction” (BMT Guidelines), and noted that they would be considered by the CAJ in October 2009;

(f) noted that the approach presented in documents BMT/10/14 and BMT-TWA/Maize/2/11 “Possible use of molecular techniques in DUS testing on maize: how to integrate a new tool to serve the effectiveness of protection offered under the UPOV system”, prepared by experts from France, had been put forward for consideration by the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group) at its meeting on April 1, 2009 and that a report on that meeting would be made to the CAJ;

(g) agreed an approach for the revision of documents TC/38/14-CAJ/45/5 “*Ad Hoc* Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (‘The BMT Review Group’)” and TC/38/14 Add.-CAJ/45/5 Add. “Recommendations of the BMT Review Group and Opinion of the Technical Committee and the Administrative and Legal Committee Concerning Molecular Techniques”;

(h) recommended to the CAJ, subject to the endorsement of the Technical Working Party for Agricultural Crops (TWA), that consideration be given to amending the “Explanatory Notes on Variety Denominations under the UPOV Convention” (UPOV/INF/12/1) to revise Class 211 “Edible Mushrooms” and Class 202 “Panicum, Setaria”;

(i) replaced the agenda item “Publication of Variety Descriptions” with a new agenda item that would be known as “Variety Description Databases”; and

(j) commented on two proposals regarding electronic application systems and noted that the matter would be considered by the CAJ at its fifty-ninth session.

8. The CAJ took note of the report made by the Chair of the TC on the forty-fifth session of the TC.

TGP documents

*9. The CAJ considered documents CAJ/59/2 Corr. and CAJ/59/2 Add. Document CAJ/59/2 Add. contained the proposals made by the TC at its forty-fifth session held in Geneva from March 30 to April 1, 2009, in relation to documents TGP/12/1 Draft 7 “Special Characteristics” and TGP/13/1 Draft 14 “Guidance for New Types and Species”.

TGP/12: Special Characteristics (document TGP/12/1 Draft 7)

*10. The CAJ proposed the adoption of document TGP/12/1 by the Council, on the basis of document TGP/12/1 Draft 7 amended in accordance with the TC proposals as follows:

Title	to read “Guidance on certain physiological characteristics”
1.1.2	first sentence to read “...(e.g. herbicide [resistance tolerance] characteristics).”
1.2.2.1	to move the section on tolerance above the section on susceptibility and to read as follows: “Tolerance: is the ability of a plant to limit the negative effects of a specified pest or pathogen. Effects could be related to aspects such as yield reduction. ^[footnote] ” ^[footnote] “In many instances, for DUS purposes, tolerance may not be a suitable characteristic because the method required to establish different levels of tolerance requires a method of examination beyond the usual scope of a DUS test in one place in a limited number of replicates.”
1.2.2.2	Definitions of Tolerance and Sensitivity to read “growth, appearance or yield”
2.2.2	to read “Repeated tests and ring tests have shown that, subject to the use of an appropriate protocol (see Section I, 2.2.4.4 [cross ref.]), the consistency and repeatability of the expression of disease resistance for a particular pathotype can be very good.”

2.2.3	third sentence to read “Guidance on the description of qualitative and quantitative disease resistance characteristics is provided in Section I, 2.3 [cross ref.]”
2.2.5	to read “The development of inoculated plants is influenced by the environment and the quality of the inoculum. The inoculation method and the state of development of the plant may cause variation in symptoms developing in the plants within the trial. Such variation should not be assumed to be the result of a lack of uniformity of the variety (see document TGP/10/1, Section 4.6 [cross ref.]”
4.2.1	to read “When herbicide tolerant varieties are treated with herbicide, their level of “tolerance” is manifested by some phenotypic expression(s). Subject to the fulfillment of the requirements for a characteristic to be used in DUS testing (TG/1/3 Section 4.2) these characteristics can be useful in assessing distinctness.”
4.2.2.2	to read “In addition to situations where the glyphosate tolerance relates to the “whole plant”, situations can arise where only particular organs express tolerance. For example, a trait has been developed to allow the pollen of otherwise glyphosate-sensitive cotton varieties to remain viable following the application of the herbicide. The following characteristic is an example of a characteristic developed on the basis of that trait:

	English	français	Deutsch	español	Example Varieties	Note
(+)	Pollen: viability after glyphosate application					
QL	absent				[...]	1
	present				[...]	9”

4.3.1	to be deleted
4.3.2	to be deleted
4.3.3	to read “...Section I, 1.1.2 and 1.1.4 are met...”
Section II	to add: “4. Examples of protein characteristics derived by using electrophoresis can be found in the Test Guidelines for Barley (document TG/19/10), for Maize (document TG/2/7) and for Wheat (document TG/3/11 + Corr.)”

*11. The CAJ agreed that document TGP/12/1 Draft 7, as amended above, should be put forward for adoption by the Council at its forty-third ordinary session, to be held in Geneva on October 22, 2009. It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/12/1 to the Council.

*12. The CAJ agreed to refer consideration of the status of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add. to the Consultative Committee.

TGP/13: Guidance for New Types and Species

*13. The CAJ proposed the adoption of document TGP/13/1 by the Council, on the basis of document TGP/13/1 Draft 14 amended in accordance with the TC proposals as follows:

1.2	to read “As a result of advances in plant breeding, new types of varieties and novel interspecific or intergeneric hybrids continue to be developed.”
2.4.2	first sentence to read “It may be useful to consider information on the breeding origin of the candidate variety to gain further background knowledge about the new species.”
2.4.3	to be deleted
2.6, 3.6, 4.6	to read “Guidance on testing stability is provided in the General Introduction (document TG/1/3).”
3.7	Sentence in square brackets to be deleted
4.5.6	to read “The uniformity standards for hybrids depend on the hybrid system, the type of the hybrid and the genetic variation in the parental lines. It is important to obtain as much information as possible from the breeder about the new type in order to choose the adequate standards.”

*14. The CAJ agreed that document TGP/13/1 Draft 14, as amended above, should be put forward for adoption by the Council at its forty third-ordinary session, to be held in Geneva on October 22, 2009. It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/13/1 to the Council.

TGP/0 “List of TGP Documents and Latest Issue Dates”

*15. The CAJ agreed to propose that document TGP/0 be revised (to become document TGP/0/2) in conjunction with the scheduled adoption of document TGP/12 and TGP/13 by the Council at its forty-third ordinary session, to be held in Geneva on October 22, 2009.

Program for the development of TGP Documents

*16. The CAJ agreed the program for the development of TGP documents, as set out in the Annex to document CAJ/59/2 Corr.

Development of information materials concerning the UPOV Convention

*17. The CAJ considered documents CAJ/59/3 and CAJ-AG/08/3/4.

*18. The CAJ noted the work of the Administrative and Legal Committee Advisory Group (CAJ-AG) at its third session and considered the conclusions of the CAJ-AG at its third

session, as set out in paragraphs 7 to 22 of document CAJ/59/3, in relation to the work program for the fourth session of the CAJ-AG (see paragraph [36]).

19. In relation to the letter of CIOPORA, of March 27, 2009, which was circulated to the CAJ, requesting the use of all available information in the development of information materials concerning essentially derived varieties, the Vice Secretary-General referred to paragraph 9 of document CAJ/59/3, which explained that a document would be prepared for the CAJ-AG with such information.

20. The Delegation of the European Community requested the representative of CIOPORA to inform the CAJ of specific documents and information which CIOPORA would like to be used in the development of information materials concerning essentially derived varieties.

21. The representative of CIOPORA referred to published documents concerning essentially derived varieties, the Records of the Diplomatic Conference of 1991 and to an IOM document of 1992. He added that he was not in a position to provide the specific references and information at the CAJ session, but would do so in a written communication to the Office of the Union and the CAJ.

*22. The CAJ agreed that CIOPORA and ISF should be invited to participate at part of the fourth session of the CAJ-AG in order to present their comments and views on relevant matters.

Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (document UPOV/INF/6/1 Draft 2)

*23. The CAJ considered document UPOV/INF/6/1 Draft 2.

*24. The CAJ noted that document UPOV/INF/6/1 Draft 2 was available in the UPOV languages and since April 1, 2009, was also available in Arabic, Chinese and Russian.

25. The Delegation of the United States of America noted that Article 11 of Part I of document UPOV/INF/6/1 Draft 2 reflected the wording of the UPOV Convention, but proposed that document UPOV/INF/6/1 Draft 2 be amended to enable an option for the right of priority to be extended beyond members of the Union, in order to facilitate bilateral and multilateral agreements.

26. The Delegation of Australia noted that the UPOV Convention provided for minimum standards and that it was a matter for each country, based on reciprocity or other international obligations, to decide to extend relevant provisions, such as the right of priority, beyond members of the Union. The Delegation was of the view that, although there was nothing in the UPOV Convention that precluded that possibility, an explanation in document UPOV/INF/6/1 Draft 2 would be beneficial.

27. The Delegation of the Netherlands noted that any text or explanation concerning the extension of relevant provisions of the UPOV Convention, such as the right of priority, beyond members of the Union, should clarify the optional nature of such an extension.

*28. The CAJ proposed that document UPOV/INF/6/1 Draft 2 be amended to enable an option for relevant provisions, such as the right of priority, to be extended beyond members of

the Union. It was noted that specific changes would be approved by the CAJ by correspondence.

*29. The CAJ agreed that document UPOV/INF/6/1 Draft 2, amended as above, incorporating the amendments to document UPOV/EXN/ENF/Draft 2 agreed at its fifty-ninth session and the text of explanatory notes approved by the CAJ by correspondence (see Section C of document CAJ/59/3 and paragraph 27 of this report), be proposed for adoption by the Council at its forty-third ordinary session, to be held in Geneva on October 22, 2009.

30. The Chair explained that document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”, once adopted by the Council, would replace the “Model Law on the Protection of New Varieties of Plants” (UPOV Publication No. 842).

*Explanatory Notes on the Enforcement of Breeders’ Rights under the UPOV Convention
(document UPOV/EXN/ENF Draft 2)*

*31. The CAJ considered document UPOV/EXN/ENF Draft 2.

*32. The CAJ approved document UPOV/EXN/ENF Draft 2, subject to Section II reading as follows:

SECTION II:
SOME POSSIBLE MEASURES FOR THE ENFORCEMENT
OF BREEDERS’ RIGHTS

While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders’ rights, it is a matter for breeders to enforce their rights.

The following non-exhaustive list of enforcement measures might be considered, as appropriate:

(a) Civil measures

(i) provisional measures, pending the outcome of a civil action, to prevent or stop an infringement of the breeder’s right, and/or to preserve evidence (e.g. collect samples of infringing material from greenhouses);

(ii) measures to allow a civil action to prohibit the committing, or continuation of the committing, of an infringement of the breeder’s right;

(iii) measures to provide adequate damages to compensate the loss suffered by the holder of the breeder’s right and to constitute a deterrent to further infringements;

(iv) measures to allow destruction or disposal of infringing material;

(v) measures to provide payment by the infringer of the expenses of the holder of the breeder's right (e.g. attorney's fees);

(vi) measures to require an infringer to provide information to the holder of the breeder's right on third persons involved in the production and distribution of infringing material.

(b) Customs measures

Importation

(i) measures to allow suspension by the customs authorities of the release into free circulation, forfeiture, seizure or destruction of material which has been produced in contravention of the breeder's right;

Exportation

(ii) measures to allow the suspension by the customs authorities of the release of the infringing material destined for exportation.

(c) Administrative measures

(i) provisional measures to prevent or stop an infringement of the breeder's right, and/or to preserve evidence (e.g. collect samples of infringing material from greenhouses);

(ii) measures to prohibit the committing, or continuation of the committing, of an infringement of the breeder's right;

(iii) measures to allow destruction or disposal of infringing material;

(iv) measures to require an infringer to provide information to the holder of the breeder's right on third persons involved in the production and distribution of infringing material;

(v) measures to allow the forfeiture or seizure of material which has been produced in contravention of the breeder's right;

(vi) measures for authorities responsible for the testing and certification of propagating material to provide information to the holder of the breeder's right regarding propagating material of his varieties;

(vii) administrative sanctions or fines in the case of a breach of the legislation on breeders' rights or of a non-compliance with provisions on, or misuse of, variety denominations.

(d) Criminal measures

Criminal actions and penalties in cases of [wilful] violation of the breeder's right [on a commercial scale].

(e) Measures resulting from alternative dispute settlement mechanisms

Civil measures (see above (a)) obtained as a result of alternative dispute settlement mechanisms (e.g. arbitration).

(f) Specialized courts

The establishment of specialized courts for matters concerning breeders' rights.

*33. The CAJ noted that an explanation would be provided on the meaning of the square brackets ([]) under Section II(d) "Criminal measures".

Documents to be considered by the CAJ by correspondence

*34. The CAJ noted that the following documents would be considered by the CAJ by correspondence in May 2009:

(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 three weeks in advance);

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

*35. The CAJ further noted that the above documents would be posted on the first restricted area of the UPOV website in May 2009 and the CAJ members and observers would be notified accordingly. In the absence of major concerns with those draft explanatory notes, the materials would be brought into use by the Office of the Union. A report on any comments received would be made at the sixtieth session of the CAJ on October 19 and 20, 2009.

Work program for the fourth session of the CAJ-AG

*36. The CAJ approved the following work program for the fourth session of the CAJ-AG to be held on October 23, 2009:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention
4. Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention
5. Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization
6. Explanatory Notes on Acts in Respect of Harvested Material under the UPOV Convention
7. Explanatory Notes on Essentially Derived Varieties under the UPOV Convention (possible revision)
8. Matters referred to the CAJ-AG by the CAJ
9. Date and program for the fifth session
10. Closing of the session

*37. The CAJ noted that the CAJ-AG documents would be posted on the first restricted area of the UPOV website and the CAJ members and observers would be notified accordingly. It further noted that a new draft of document UPOV/EXN/HRV (draft 3) would be circulated to the CAJ for comments. On the basis of the comments received, the Office of the Union would prepare a further draft (draft 4) for consideration by the CAJ-AG at its fourth session.

*38. The Chair of the CAJ informed CIOPORA and ISF that the relevant parts of the session of the CAJ-AG to which CIOPORA and ISF were invited to attend would start at 1.30 p.m. on October 23, 2009.

Adoption of Information Materials by the Council

*39. The CAJ proposed for adoption by the Council, at its forty-third ordinary session, to be held in Geneva on October 22, 2009, the following explanatory notes on the basis of the drafts as indicated:

- (a) approved by the CAJ by correspondence on October 24, 2008 (see document CAJ/58/6)
- Explanatory Notes on the Right of Priority under the UPOV Convention (document UPOV/EXN/PRI Draft 1)
 - Explanatory Notes on Provisional Protection under the UPOV Convention (document UPOV/EXN/PRP Draft 1)
 - Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (document UPOV/EXN/NUL Draft 1)
 - Explanatory Notes on the Cancellation of the Breeder's Right under the UPOV Convention (document UPOV/EXN/CAN Draft 1)
- (b) approved by the CAJ at its fifty-eighth session on October 27 and 28, 2008 (see document CAJ/58/6) on the basis of documents
- 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).

Molecular techniques

*40. The CAJ considered document CAJ/59/4 and an oral report by the Vice Secretary-General on the conclusions of the meeting of April 1, 2009, of the Ad hoc Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group).

UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)

*41. The CAJ noted an oral report by the Technical Director that the TC, at its forty-fifth session, had agreed that no changes were required to document BMT Guidelines (proj.14). It also noted that the draft BMT Guidelines would be presented for consideration by the CAJ at its sixtieth session, to be held in Geneva on October 19 and 20, 2009. The CAJ agreed that, on the basis of the conclusions of the TC and CAJ at their sessions in 2009, a draft of the BMT Guidelines should be prepared for approval by the TC and CAJ in March 2010, in anticipation of adoption of the BMT Guidelines by the Council in 2010.

Proposals for the utilization of biochemical and molecular techniques in the examination of Distinctness, Uniformity and Stability to be considered by the Ad hoc Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group)

*42. As requested by the TC at its forty-fourth session and the CAJ at its fifty-seventh session, the CAJ noted that the approach presented in documents BMT/10/14 and BMT-TWA/Maize/2/11 “Possible use of molecular techniques in DUS testing on maize: how to integrate a new tool to serve the effectiveness of protection offered under the UPOV system”, prepared by experts from France, had been put forward for consideration by the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group) at its meeting on April 1, 2009.

*43. The CAJ noted the oral report of the Vice Secretary-General that the BMT Review Group had concluded that the proposal in the Annex to document BMT-RG/Apr09/2 “System for combining phenotypic and molecular distances in the management of variety collections” was acceptable within the terms of the UPOV Convention and would not undermine the effectiveness of protection offered under the UPOV system.

*44. The CAJ noted that the assessment of the BMT Review Group would be presented for consideration by the CAJ at its sixtieth session, to be held in Geneva on October 19 and 20, 2009, and by the TC at its forty-sixth session, in 2010. The CAJ also noted that, in the meantime, the report of the BMT Review Group would be posted on the first-restricted area of the UPOV website and that a report on the conclusions of the BMT Review Group would be made to the Technical Working Parties at their sessions in 2009.

Revision of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add.

*45. The CAJ noted that the TC, at its forty-second session, held in Geneva, from April 3 to 5, 2006, had “reaffirmed its support for the presentation of the situation, set out in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add., which presented the proposals developed in the *Ad hoc* Crop Subgroups, the recommendations of the BMT Review Group concerning those proposals and the opinion of the TC and the CAJ regarding the recommendations of the BMT Review Group. [...]”. Therefore, the TC did not consider that it would be appropriate to make major changes to the structure and form of the information provided in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add. However, to assist the Office of the Union in the preparation of the revision of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add., with the aim of developing a document for adoption by the Council, the CAJ agreed with the following conclusions of the TC:

- (a) to consolidate document TC/38/14-CAJ/45/5, paragraphs 9 and 10 and the Annex, and document TC/38/14 Add.-CAJ/45/5 Add., paragraphs 3 to 7, into a single document;
- (b) subject to a positive assessment by the BMT Review Group of the approach presented in documents BMT/10/14 and BMT-TWA/Maize/2/11 and endorsement by the TC and CAJ, to add a section concerning the approach presented in documents BMT/10/14 and BMT-TWA/Maize/2/11; and
- (c) to emphasize the importance of the assumptions to be met in each of the options and proposals and to clarify that it is a matter for the relevant authority to consider if the

relevant assumptions set out in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add. are met.

*46. The CAJ agreed that a first draft of the revised version of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add. should be prepared for consideration by the TC at its forty-sixth session and by the CAJ at its sixty-first session, both in March 2010. On that basis, the CAJ noted that a document could be presented for adoption by the Council in 2010, in conjunction with the BMT Guidelines.

Electronic application systems

47. The CAJ considered document CAJ/59/5.

48. The Vice Secretary-General reported that the following comments had been made at the forty-fifth session of the TC on the proposals concerning electronic application systems: the Delegation of New Zealand had commented that Proposal 1 “Standardized reference by authorities to the UPOV Model Application Form, UPOV Model TQ and/or UPOV Test Guidelines TQ” would be a reasonable option for implementation in New Zealand; the Delegation of the European Community and the representative of ISF had expressed a preference for Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)”; and the Delegation of the United States of America had expressed concerns about the limited interest of members to make use of the form and the resource implications and had sought further information with respect to the proposals before it could express a view.

49. The Delegation of the European Community noted that, at the forty-fifth session of the TC, it had expressed a preference for Proposal 2. However, taking into consideration the interventions made by other delegations at the forty-fifth session of the TC and, in particular, the resource and administrative implications of Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)”, it considered that both proposals should be maintained. The Delegation suggested that each member could express a preference for Proposal 1 or 2.

50. The Chair clarified that Proposals 1 and 2 were not mutually exclusive.

51. The Delegation of the Netherlands noted that the practical difficulty with Proposal 2 was how to ensure that both sets of information could be combined in a reliable way to form a single application. While both proposals followed a similar structure, from a practical point of view, the Delegation expressed a preference for Proposal 1.

52. The representative of ISF noted that, in many countries, several forms needed to be provided by the applicant for a single application, for instance the technical questionnaire and the variety denomination form. He suggested that authorities were used to handling more than one form in relation to an application and that the variety denomination was the common point of reference. Therefore, he considered that an additional electronic or paper form should not present a major obstacle to the acceptability of Proposal 2.

53. The Delegation of the Netherlands acknowledged that the practical problems might not be prohibitive. The Delegation believed that the starting point for both proposals was to reach

agreement on the global advantage for breeders if the application forms used standard references for their questions.

54. The Delegation of the United States of America could envisage the possibility to prepare a downloadable plant variety protection application form in pdf format that the applicant could download from the website, complete and save on their computer and thereafter send to the PVP Office. Under that approach, it noted that the downloadable form could have fields that would match the UPOV fields under Proposal 1.

55. The Chair noted that there appeared to be support for the preparation of a document with a set of detailed references for the document TGP/5 “Experience and Cooperation in DUS Testing”, Section 2/2: “UPOV Model Form for the Application for Plant Breeders’ Rights” for consideration at the sixtieth session of the CAJ. Furthermore, the Chair noted the request for additional information on the resource implications of Proposals 1 and 2 for the consideration of the CAJ at its sixtieth session.

*56. The CAJ agreed that the Office of the Union should prepare a set of detailed references for the document TGP/5 “Experience and Cooperation in DUS Testing”, Section 2/2: “UPOV Model Form for the Application for Plant Breeders’ Rights” for consideration at the sixtieth session of the CAJ. In addition, it requested the Office of the Union to provide information on the resource implications of Proposals 1 and 2 for the consideration of the CAJ at its sixtieth session.

UPOV-ROM Plant Variety Database

*57. The CAJ considered documents CAJ/59/6, CAJ/59/6Add. and the oral report of the comments made by the TC at its forty-fifth session held in Geneva from March 30 to April 1, 2009.

Proposals for improvements to the Plant Variety Database

58. The CAJ heard that the TC, at its forty-fifth session, had noted the proposals concerning the program for improvements to the UPOV-ROM Plant Variety Database, as set out in paragraph 21 of document CAJ/59/6. The CAJ noted that the TC had proposed that further consideration should be given to whether to add any new fields to the UPOV-ROM Plant Variety Database and, at the same time, consideration should be given to whether any of the existing fields should be removed.

59. In response to a comment made by the Delegation of Brazil on the difficulties to enter the data corresponding to “TAG <000>”, the Technical Director explained that, in the program for improvements to the UPOV-ROM Plant Variety Database, the facility to calculate the record status would be developed in order for the TAG <000> to be mandatory.

60. The Delegation of Chile expressed its support for the creation of an item in the UPOV-ROM Plant Variety Database to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories. It also agreed to the proposed disclaimer, as set out in document CAJ/59/6, paragraph 21, section 3.4.2.

61. The Delegation of the European Community recalled the agreement, in principle, at the fifty-eighth session of the CAJ, 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 fields being optional. The Delegation questioned the interest of those fields if the information provided might not be complete and accurate. It noted that Brazil proposed that a new field (item) be included in the UPOV-ROM Plant Variety Database, for the country of residence of the applicant and of the title holder to be provided. In that regard, the Delegation requested consideration of the technical and resource implications of including new fields. Furthermore, the Delegation was of the view that there should be a review of whether fields in the UPOV-ROM Plant Variety Database that are not used to a significant extent should be deleted.

62. The Delegation of Mexico considered that it would be useful to introduce optional fields in the UPOV-ROM Plant Variety Database to provide information on commercialization dates, in particular if applications had been filed in different members of the Union for the same variety. It was of the opinion that the disclaimer (see document CAJ/59/6, paragraph 21, section 3.4.2.) would raise awareness that the information provided might not be complete.

63. The Delegation of Ecuador considered that it would be useful to provide information on commercialization dates in the UPOV-ROM Plant Variety Database, in particular if applications for the same variety had been filed in other members of the Union.

64. The Delegation of Colombia shared the view expressed by the Delegation of Ecuador and was of the opinion that the introduction of information of commercialization dates in the UPOV-ROM Plant Variety Database was very important. It reported on cases where the applicant had changed the dates of the first commercialization in a subsequent application.

65. The Delegation of Brazil confirmed that it was in favor of the introduction of optional fields in the UPOV-ROM Plant Variety Database to provide information on commercialization dates for the reasons expressed by previous delegations. It considered that it was possible for authorities to provide an explanation that the data was based on the declaration provided by the breeder at the time of the application.

66. The Delegation of the Netherlands noted that the information on dates on which a variety was commercialized for the first time in the territory of application and other territories was based on a declaration by the breeder, and the breeder would have to make a similar declaration when applying for the same variety in other members of the Union. It further noted that, in most cases, at the time of the application, and sometimes prior to the grant of breeder's right, the variety had not been commercialized. Due to the difficulties for the authority to provide complete information, subject to the fields being optional, the Delegation could accept the provision of this information.

67. The Delegation of Argentina expressed its support for the introduction of optional 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. It reported that, in the case of Argentina, the source of information on the dates of commercialization was the applicant.

68. The Delegation of Germany understood the concern expressed by some delegations and why the information on commercialization in the UPOV-ROM Plant Variety Database was

useful for other delegations. In that regard, it requested a clarification from the Office of the Union on the status of the data in the UPOV-ROM. The Delegation believed that the authority granting the breeder's right was responsible for ensuring that the information that provided the basis for its decisions had been checked and was reliable.

69. The Vice Secretary-General explained that the disclaimer in the UPOV-ROM clarified, in particular, that the information in the UPOV-ROM did not constitute the official publication of the authorities concerned. He recalled that the disclaimer of the UPOV-ROM provided as follows:

“GENERAL NOTICE AND DISCLAIMER

“Please note that the information concerning plant breeders' rights provided in the UPOV-ROM Plant Variety Database (UPOV-ROM) does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in the UPOV-ROM, please contact the relevant authority, contact details for which are provided on the UPOV website at http://www.upov.int/en/about/members/pvp_offices.htm or on the CD-ROM in D:\UPOVPDF\address.pdf (if D: is the CD-ROM drive).

“All contributors to the UPOV-ROM are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data for the UPOV-ROM and, for those members of the Union who supply data, it is not obligatory to supply data for all items.”

70. The Technical Director explained that the provision of information under item “dates on which a variety was commercialized for the first time in the territory of application and other territories” would not be mandatory. However, he clarified that, if the information was provided, the field for the source of information, was mandatory (see document CAJ/59/6, paragraph 21 section 3.4.1(iv)). While noting that the source of information could be the breeder, he explained that the construction of that item would allow other sources of information.

71. The Delegation of Brazil suggested to change the name of the field from “dates on which a variety was commercialized for the first time in the territory of application and other territories” to “dates on which a variety was commercialized for the first time in the territory of application and other territories declared by the applicant at the time of filing the application”. The Delegation believed that the proposed wording might address the difficulties of the authorities concerning the completeness of the information.

72. The Delegation of Mexico proposed that the name of the field be changed to “dates on which a variety was commercialized for the first time in the territory of application and other territories at the time of the filing of the application”. It expressed a preference to leave open the source of the information to allow for the provision of a source of information other than the breeder. The Delegation considered that the disclaimer provided in document CAJ/59/6 was sufficiently clear.

73. The Delegation of Chile expressed its support to the proposal made by the Delegation of Mexico.

74. The Technical Director noted that further precision in the name of the field could prevent the possibility to provide information after the time of the filing of the application.

75. The Chair noted that there was general support for the program for improvements to the UPOV-ROM Plant Variety Database, including the proposals related to the optional item “dates on which a variety was commercialized for the first time in the territory of application and other territories”. The Chair also noted that there would be a review on whether there was a need to delete fields in the UPOV-ROM Plant Variety Database that are not used.

*76. The CAJ considered the proposals concerning the program for improvements to the UPOV-ROM Plant Variety Database as set out in paragraph 21 of document CAJ/59/6 (reproduced as Annex II to this document). The CAJ agreed with those proposals subject to the following amendments:

TAG <000>	to consider the facility to calculate the record status in order for the TAG to be mandatory
TAG <220>	to be mandatory and to provide an explanation if not provided
TAG <111>	to resolve any inconsistencies concerning the status of TAG <220>

*77. In deciding to proceed on the basis of the proposals in Annex II, as amended above, the CAJ agreed that there should be a future review of whether to delete fields that are not used to a significant extent. It was agreed that this review should be based on an analysis of the use of the fields in the UPOV-ROM.

Program for the sixtieth session

*78. The CAJ agreed the following program for its sixtieth session, to be held in Geneva on October 19 and 20, 2009.

1. Opening of the session
2. Adoption of the agenda
3. TGP documents
 - (a) TGP/0 “List of TGP Documents and Latest Issue Dates” (Revision)
 - (b) TGP/7/2 “Development of Test Guidelines” (Revision)
 - (c) TGP/8/1 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”
 - (d) TGP/11/1 “Examining Stability”
 - (e) TGP/14/1 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents”
4. Development of information materials concerning the UPOV Convention
 - (a) Report concerning information materials considered by correspondence in May 2009
 - (b) Information materials for consideration

(c) New Proposals for information Materials

5. Variety denominations
6. Electronic application systems
7. UPOV-ROM Plant Variety Database
8. Molecular techniques
9. Matters arising after the grant of a breeder's right
10. Program for the sixty-first session
11. Adoption of the report on the conclusions (if time permits)
12. Closing of the session

79. The present report has been adopted by correspondence.

[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]

Proposals for improvements to the Plant Variety Database

1. *Title of the Plant Variety Database*

In recognition of the intention to develop a web-based version of the Plant Variety Database, no reference will be made to the “UPOV-ROM”. The full name of the Plant Variety Database will be the “VARDAT Plant Variety Database”, abbreviated to VARDAT, as appropriate.

2. *Provision of assistance to contributors*

2.1 The Office will continue to contact all members of the Union and contributors to the Plant Variety Database that do not provide data for the Plant Variety Database, do not provide data on a regular basis, or do not provide data with UPOV codes. In each case, they will be invited to explain the type of assistance that would enable them to provide regular and complete data for the Plant Variety Database.

2.2 In response to the needs identified by members of the Union and contributors to the Plant Variety Database in 2.1, the designated WIPO staff, in conjunction with the Office, will seek to develop solutions for each of the Plant Variety Database contributors.

2.3 An annual report on the situation will be made to the CAJ and TC.

2.4 With regard to the assistance to be provided to contributors, the UPOV-ROM “General Notice and Disclaimer” states that “[...] All contributors to the UPOV-ROM are responsible for the correctness and completeness of the data they supply. [...]”. Thus, in cases where assistance is provided to contributors, the contributor will continue to be responsible for the correctness and completeness of the data.

3. *Data to be included in the Plant Variety Database*

3.1 *Data format*

3.1.1 In particular, the following data format options to be developed for contributing data to the Plant Variety Database:

- (a) data in XML format;
- (b) data in Excel spreadsheets or Word tables;
- (c) data contribution by on-line web form;
- (d) an option for contributors to provide only new or amended data

3.1.2 To consider, as appropriate, restructuring TAG items; for example, where parts of the field are mandatory and other parts not.

3.2 *Data quality and completeness*

The following data requirements to be introduced in the Plant Variety Database

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TAG	Description of Item	Current Status	Proposed status	Database developments required
<000>	Start of record and record status	mandatory	start of record to be mandatory	facility to calculate record status (by comparison with previous data submission), if not provided
<190>	Country or organization providing information	mandatory	mandatory	data quality check: to verify against list of codes
<010>	Type of record and (variety) identifier	mandatory	both mandatory	(i) meaning of “(variety) identifier” to be clarified in relation to item <210>; (ii) to review whether to continue type of record “BIL”; (iii) data quality check: to check against list of types of record
<500>	Species--Latin name	mandatory until UPOV code provided	mandatory (even if UPOV code provided)	
<509>	Species--common name in English	mandatory if no common name in national language (<510>) is given.	not mandatory	
<510>	Species--common name in national language other than English	mandatory if no English common name (<509>) is given	not mandatory	
<511>	Species--UPOV Taxon Code	mandatory	mandatory	(i) if requested, the Office to provide assistance to the contributor for allocating UPOV codes; (ii) data quality check: to check UPOV codes against the list of UPOV codes; (iii) data quality check: to check for seemingly erroneous allocation of UPOV codes (e.g. wrong code for species)
DENOMINATIONS				
<540>	Date + denomination, proposed, first appearance or first entry in data base	mandatory if no breeder's reference (<600>) is given	(i) mandatory to have <540>, <541>, <542>, or <543 if <600> is not provided (ii) date not mandatory	(i) to clarify meaning and rename; (ii) data quality check: mandatory condition in relation to other items
<541>	Date + proposed denomination, published		see <540>	(i) to clarify meaning and rename (ii) data quality check: mandatory condition in relation to other items

TAG	Description of Item	Current Status	Proposed status	Database developments required
<542>	Date + denomination, approved	mandatory if protected or listed	see <540>	(i) to clarify meaning and rename; (ii) to allow for more than one approved denomination for a variety (i.e. where a denomination is approved but then replaced) (iii) data quality check: mandatory condition in relation to other items
<543>	Date + denomination, rejected or withdrawn		see <540>	(i) to clarify meaning and rename (ii) data quality check: mandatory condition in relation to other items
<600>	Breeder's reference	mandatory if existing	not mandatory	
<601>	Synonym of variety denomination		not mandatory	
<602>	Trade name		not mandatory	(i) to clarify meaning (ii) to allow multiple entries
<210>	Application number	mandatory if application exists	mandatory if application exists	to be considered in conjunction with <010>
<220>	Application/filing date	mandatory if application exists	not mandatory	
<400>	Publication date of data regarding the application (protection)/filing (listing)		not mandatory	
<111>	Grant number (protection)/registration number (listing)	mandatory if existing	(i) mandatory to have <111> / <151> / <610> or <620> if granted or registered (ii) date not mandatory	(i) data quality check: mandatory condition in relation to other items
<151>	Publication date of data regarding the grant (protection) / registration (listing)		see <111> (note)	data quality check: mandatory condition in relation to other items
<610>	Start date--grant (protection)/registration (listing)	mandatory if existing	see <111>	(i) data quality check: mandatory condition in relation to other items; (ii) data quality check: date cannot be earlier than <220>
<620>	Start date--renewal of registration (listing)		see <111>	(i) data quality check: mandatory condition in relation to other items: (ii) data quality check: date cannot be earlier than <610> (iii) to clarify meaning

(note) US: This data element is not currently listed as mandatory; however, the USPTO feels the publication dates of all grants should be mandatory to supply, particularly if the publication of the grant represents notice to the public of the protected plant variety. In some cases this date may be important to the examination of new US plant patent applications, because the date could establish the date as of when the document could be used as prior art.

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<u>TAG</u>	<u>Description of Item</u>	<u>Current Status</u>	<u>Proposed status</u>	<u>Database developments required</u>
<665>	Calculated future expiration date	mandatory if grant/listing	not mandatory	
<666>	Type of date followed by "End date"	mandatory if existing	not mandatory	
	PARTIES CONCERNED			
<730>	Applicant's name	mandatory if application exists	mandatory if application exists	
<731>	Breeder's name	mandatory	mandatory	to clarify meaning of "breeder" according to document TGP/5 (see <733>)
<732>	Maintainer's name	mandatory if listed	not mandatory	to be accompanied by start and end date (maintainer can change)
<733>	Title holder's name	mandatory if protected	mandatory if protected	(i) to clarify meaning of "title holder" according to document TGP/5 (see <731>) (ii) to be accompanied by start and end date (title holder can change)
<740>	Type of other party followed by party's name		not mandatory	
	INFORMATION REGARDING EQUIVALENT APPLICATIONS IN OTHER TERRITORIES			
<300>	Priority application: country, type of record, date of application, application number		not mandatory	
<310>	Other applications: country, type of record, date of application, application number		not mandatory	
<320>	Other countries: Country, denomination if different from denomination in application		not mandatory	
<330>	Other countries: Country, breeder's reference if different from breeder's reference in application		not mandatory	
<900>	Other relevant information (phrase indexed)		not mandatory	
<910>	Remarks (word indexed)		not mandatory	
<920>	Tags of items of information which have changed since last transmission (optional)		not mandatory	to develop option to generate automatically (see 2.1.1.(a))
<998>	FIG		not mandatory	
<999>	Image identifier (for future use)		not mandatory	to create possibility to provide hyperlink to image (e.g. an authority's webpage)

3.3 Mandatory “items”

3.3.1 With respect to items that are indicated as “mandatory” in Section 3.2, data will not be excluded from the Plant Variety Database if that item is absent. However, a report of the non-compliances will be provided to the contributor.

3.4.2 A summary of non-compliances will be reported to the TC and CAJ on an annual basis.

3.4 Dates of commercialization

3.4.1 An item will be created in the Plant Variety Database to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories, on the following basis:

Item <XXX>: dates on which a variety was commercialized for the first time in the territory of application and other territories (not mandatory)

	<u>Comment</u>
(i) Authority providing the [following] information	ISO two letter code
(ii) Territory of commercialization	ISO two letter code
(iii) Date on which the variety was commercialized* for the first time in the territory (* The term “commercialization” is used to cover “sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety” (Article 6(1) of the 1991 Act of the UPOV Convention) or “offered for sale or marketed, with the agreement of the breeder” (Article 6(1)(b) of the 1978 Act of the UPOV Convention), as appropriate.	according to the format YYYY[MMDD] (Year[MonthDay]): month and day will not be mandatory if not available
(iv) Source of information	mandatory for each entry in item <XXX>
(v) Status of information	mandatory for each entry in item <XXX> (to provide an explanation or a reference to where an explanation is provided (e.g. the website of the authority providing the data for this item))
<i>Note: for the same application, the authority in (i) could provide more than one entry for items (ii) to (v). In particular, it could provide information on commercialization in the “territory of application”, but also “other territories”</i>	

3.4.2 The following disclaimer would appear alongside the title of the item in the database:

“The absence of information in [item XXX] does not indicate that a variety has not been commercialized. With regard to any information provided, attention is drawn to the source and status of the information as set out in the in the fields ‘Source of information’ and ‘Status of information’. However, it should also be noted that the information provided might not be complete and accurate.”

4. *Frequency of data submission*

The Plant Variety Database will be developed in such a way as to allow updating at any frequency determined by the members of the Union. Prior to completion and publication of the web-based version of the Plant Variety Database, no change is proposed to the frequency of updating, i.e. contributors will be requested to update their data on a bimonthly basis. Once that stage is complete, the CAJ and TC will be invited to consider whether to create possibilities for data to be updated on a more frequent basis.

5. *Discontinuation of inclusion of general information documents in UPOV-ROM*

On the basis that such information is readily available on the UPOV website, the following general information documents will no longer be included in the UPOV-ROM:

- Addresses of Plant Variety Protection Offices
- List of members of the Union
- Cover with some useful information
- UPOV: What it is, what it does (“UPOV flyer”)
- List of UPOV publications

6. *Web-based version of the Plant Variety Database*

6.1 A web-based version of the Plant Variety Database will be developed. The possibility to create CD-ROM versions of the Plant Variety Database, without the need for the services of Jouve, will be developed in parallel to the web-based version of the database.

6.2 An update on the planned timetable for development of a web-based version of the Plant Variety Database will be provided at the forty-fifth session of the TC and the fifty-ninth session of the CAJ.

7. *Common search platform*

A report on developments concerning the development of a common search platform will be made to the CAJ and TC. Any proposals concerning a common search platform will be put forward for consideration by the TC and CAJ.

[End of Annex II and of document]