

CAJ/69/12
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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS Geneva

# **ADMINISTRATIVE AND LEGAL COMMITTEE**

# Sixty-Ninth Session Geneva, April 10, 2014

#### REPORT ON THE CONCLUSIONS

## adopted by the Administrative and Legal Committee

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#### Opening of the session

- 1. The Administrative and Legal Committee (CAJ) held its sixty-ninth session in Geneva on April 10, 2014, under the chairmanship of Mr. Martin Ekvad (European Union).
- 2. The session was opened by the Chair, who welcomed the participants. The list of participants is reproduced in the Annex to this report.
- 3. The Vice Secretary-General reported that Mr. Fuminori Aihara had completed his three-year secondment to UPOV and had been replaced by Mr. Jun Koide, national of Japan.
- 4. The Chair confirmed that the report of the sixty-eighth session of the CAJ, held in Geneva on October 21, 2013 (document CAJ/68/11), had been adopted by correspondence and was available on the UPOV website.

## Adoption of the agenda

- 5. The CAJ adopted the draft agenda, as proposed in document CAJ/69/1.
- 6. The CAJ noted that document CAJ/69/11 "Report on the Conclusions of the Technical Committee at its fiftieth session on matters to be considered by the Administrative and Legal Committee" would be considered under items 3, 5, 6, 7, 8 and 9.

#### Report on developments in the Technical Committee

- 7. The CAJ considered document CAJ/69/11.
- 8. The CAJ noted the report made by Mr. Alejandro Barrientos Priego (Mexico), Chair of the Technical Committee (TC), on developments in the TC at its fiftieth session, held in Geneva from April 7 to 9, 2014. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were reported in document CAJ/69/11. It further noted that the report on the conclusions of the TC was available in document TC/50/36 "Report on the Conclusions".

#### Development of information materials concerning the UPOV Convention

Matters concerning essentially derived varieties

- The CAJ considered documents CAJ/69/2 and CAJ-AG/13/8/10 "Report".
- 10. The CAJ noted the developments concerning the publication of the Seminar on Essentially Derived Varieties, which had been held in Geneva, on October 22, 2013, as set out in document CAJ/69/2, paragraphs 6 to 8.
- 11. The CAJ noted the work of the Administrative and Legal Committee Advisory Group (CAJ-AG), at its eighth session, concerning a new draft of document UPOV/EXN/EDV/2 "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention", as set out in document CAJ/69/2, paragraphs 9 to 18.
- 12. The CAJ noted that the CAJ-AG, at its eighth session, had agreed to consider the development of guidance concerning the status of essentially derived varieties that were not granted protection in their own right, after the adoption of the revised document UPOV/EXN/EDV/2, as set out in document CAJ/69/2, paragraphs 19 and 20.
- 13. The CAJ noted that the CAJ-AG, at its eighth session, had noted that, at an appropriate future session of the CAJ-AG, the Delegations of Australia, Brazil and the European Union and other members of the Union would be invited to make presentations on their systems concerning essentially derived varieties, as set out in document CAJ/69/2, paragraph 21.
- 14. The CAJ noted that the CAJ-AG, at its eighth session, had agreed that the Office of the Union should prepare an information document for the CAJ-AG on developments on alternative dispute settlement mechanisms at International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA), the International Seed Federation (ISF) and the World Intellectual Property Organization (WIPO) and that the CAJ-AG had noted that one aspect for consideration would be the possible role of UPOV in the provision of experts on EDV matters, as set out in document CAJ/69/2, paragraph 23.
- 15. The CAJ agreed that the Office of the Union should prepare a document, for consideration by the CAJ-AG at its ninth session, to explore a possible role of authorities granting breeders' rights in matters concerning essentially derived varieties and agreed that the document would be included under item 3 of the program for the ninth session of the CAJ-AG. The CAJ welcomed the offer of the Delegation of Argentina to assist the Office of the Union in the development of the document.

Matters concerning variety descriptions

- 16. The CAJ noted the matters concerning variety descriptions to be considered by the CAJ-AG in the first instance, as set out in document CAJ/69/2, paragraph 26.
- 17. The CAJ, in accordance with the proposal by the CAJ-AG, agreed to invite the TC to consider the development of guidance on certain matters concerning variety descriptions, as set out in document CAJ/69/2, paragraphs 27 and 28.

Matters concerning observers in the CAJ-AG

Conclusions of the Consultative Committee concerning participation of observers in the CAJ-AG

18. The CAJ noted that the Consultative Committee, at its eighty-sixth session, had endorsed the current approach whereby the CAJ-AG invites, on an *ad hoc* basis, organizations that have observer status in the CAJ to present their views at the relevant part of the CAJ-AG, as it considered appropriate.

Ad hoc invitations to the relevant part of the ninth session of the CAJ-AG

19. The CAJ noted that the CAJ-AG, at its eighth session, had recalled that observers to the CAJ could send comments on relevant matters of the program of the CAJ-AG and that, in cases where written comments were received from observers to the CAJ, the CAJ-AG had agreed to invite those observers to the relevant part of the ninth session of the CAJ-AG and the Office of the Union would issue the corresponding ad hoc invitations.

20. The CAJ requested to invite the CAJ-AG, at its ninth session, to consider whether the CAJ-AG would need the possibility for some discretion in relation to *ad hoc* invitations, for observers who had made written comments, to attend the relevant part of the CAJ-AG, and if so, the mechanism for implementation in a timely manner.

Report of the work of the CAJ-AG at its eighth session

- 21. The CAJ noted the plans of the CAJ-AG concerning the:
  - development of the "Explanatory Notes on Propagation and Propagating Material under the UPOV Convention", as set out in document CAJ/69/2, paragraphs 39 to 43;
  - revision of the "Explanatory Notes on Harvested Material under the 1991 Act of the UPOV Convention", as set out in document CAJ/69/2, paragraphs 45 to 48;
  - possible revision of the "Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention", as set out in document CAJ/69/2, paragraph 51;
  - possible revision of the "Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention", as set out in document CAJ/69/2, paragraph 54;
  - possible revision of the "Explanatory Notes on Variety Denominations under the UPOV Convention", as set out in document CAJ/69/2, paragraphs 57 and 58.
- 22. The CAJ noted that other developments on variety denominations that might be relevant in the context of a possible revision of the "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/INF/12/4) were considered in documents CAJ/69/5 "Variety Denominations" and CAJ/69/9 "Possible development of a UPOV similarity search tool for variety denomination purposes".
- 23. The CAJ noted that the CAJ-AG had agreed not to consider the development of guidance on matters arising after the grant of a breeder's right in relation to the filing of applications, nor enforcement of breeders' rights.
- 24. The CAJ noted that the CAJ-AG had agreed to consider the possible revision of the "Explanatory Notes on Provisional Protection under the UPOV Convention", as set out in document CAJ/69/2, paragraph 63.
- 25. The CAJ noted the report on the work of the CAJ-AG, at its eighth session, as provided in document CAJ-AG/13/8/10 "Report".

Program for the development of information materials

Work program for the development of information materials for the ninth session of the CAJ-AG, to be held in Geneva in October 2014

- 26. The CAJ approved the work program for the development of information materials for the ninth session of the CAJ-AG, to be held in October 2014, as set out in document CAJ/69/2, paragraphs 65 and 66.
- 27. The CAJ agreed that the following new drafts of explanatory notes be provided to the CAJ-AG by May 9, 2014, and that CAJ members and observers would also be given the opportunity to provide comments:

Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (document UPOV/EXN/EDV/2 Draft 4)

Explanatory Notes on Propagation and Propagating Material under the UPOV Convention (document UPOV/EXN/PPM Draft 2)

Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV/2 Draft 1)

Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (document UPOV/EXN/CAN/2 Draft 1)

Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention (document UPOV/EXN/NUL/2 Draft 1)

Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/INF/12/5 Draft 1)

Explanatory Notes on Provisional Protection under the UPOV Convention (document UPOV/EXN/PRP/2 Draft 1)

- 28. On the basis of comments received, the CAJ noted that new drafts of the above explanatory notes would be posted by August 29, 2014 and that CAJ members and observers would be notified accordingly. The CAJ-AG would then consider those new drafts at its ninth session.
- 29. The CAJ agreed that the ninth session of the CAJ-AG be held on October 14 and 17, 2014.

Updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette"

30. The CAJ noted that the CAJ, at its sixty-eighth session, held in Geneva on October 21, 2013, had agreed to include an item for the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" in the program for the seventieth session of the CAJ, to be held in October 2014.

Revision of document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation"

31. The CAJ noted that the revision of document UPOV/INF/15 was presented in document CAJ/69/10 "Matters raised by the International Seed Federation (ISF)".

## Information and databases

- (a) UPOV information databases
- 32. The CAJ considered documents CAJ/69/6 and CAJ/69/11.

UPOV code system

33. The CAJ noted the developments concerning UPOV codes, as set out in document CAJ/69/6, paragraphs 4 and 5.

Information on type of crop

- 34. The CAJ noted that the TC had agreed to provide information on the type of crop for each UPOV code in the GENIE database, as set out in document TC/50/6, paragraph 8. It was clarified that more than one crop type could be allocated to a single UPOV Code.
- 35. The CAJ noted that the TC had noted that the proposed approach would enable the data in the PLUTO database to be analyzed with regard to applications filed, titles issued and titles having ceased to be in force by type of crop, whilst noting that the multiple crop types for some UPOV codes would result in some limitations in that regard.

#### PLUTO Database

36. The CAJ noted the developments concerning the program for improvements to the Plant Variety Database, as reported in document CAJ/69/6, paragraphs 7 to 10.

Survey of members of the Union on their use of databases and electronic application systems

37. The CAJ noted the results of the survey of members of the Union on their use of databases for plant variety protection purposes and on their use of electronic application systems.

- (b) Exchangeable software
- 38. The CAJ considered document CAJ/69/7.
  - (i) Proposal to develop a new information document
- 39. The CAJ agreed with the proposal of the TC at its fiftieth session to present document UPOV/INF/22 "Software and equipment used by members of the Union" for adoption by the Council at its forty-eighth ordinary session, to be held in Geneva on October 16, 2014.
- 40. The CAJ noted the plan, subject to adoption of document UPOV/INF/22 by the Council at its forty-eighth ordinary session, to be held in Geneva on October 16, 2014, to issue a circular to the designated persons of the members of the Union in the TC, inviting them to provide information regarding non-customized software and equipment used by members of the Union, as appropriate, as set out in document CAJ/69/7, paragraph 9.
  - (ii) Review of document UPOV/INF/16 "Exchangeable Software"

Software proposed for inclusion in document UPOV/INF/16 "Exchangeable software"

- 41. The CAJ agreed to the inclusion of SIVAVE software in document UPOV/INF/16, as set out in document CAJ/69/7, Annex II.
- 42. The CAJ agreed with the TC that a revision of document UPOV/INF/16/3 concerning the inclusion of the SIVAVE software should be presented for adoption by the Council at its forty-eighth ordinary session, to be held on October 16, 2014.
- 43. The CAJ noted that Mexico had been invited to provide further information on the SISNAVA software at the thirty-second session of the Technical Working Party on Automation and Computer Programs (TWC), to be held in Helsinki, Finland, from June 3 to 6, 2014.

Information on use by members

44. The CAJ agreed the proposed revision of document UPOV/INF/16 concerning the inclusion of information on the use of software by members of the Union as a basis for its adoption by the Council at its forty-eighth ordinary session, to be held on October 16, 2014, as provided in document CAJ/69/7, Annex III.

Translation of Software in document UPOV/INF/16/3

- 45. The CAJ noted that an expert from France would make a presentation on the AIM software at the thirty-second session of the TWC, based on the English translation of the software, as set out in document CAJ/69/7, paragraph 25.
- 46. The CAJ noted the proposal for selected screenshots in English of the software "Information System (IS) used for Test and Protection of Plant Varieties in the Russian Federation" to be presented to the TWC at its thirty-second session, in order to explain how the software works.
- (c) Electronic application systems
- 47. The CAJ considered documents CAJ/69/8 and CAJ/69/11.
- 48. The CAJ noted the developments concerning the development of a prototype electronic form as set out in document CAJ/69/8.
- 49. The CAJ received a report of the meeting on the prototype electronic form, held in Geneva on April 9, 2014. It noted that the following features had been agreed for inclusion in the prototype:
  - All the features presented in the mock-up,
  - An administration interface with a dashboard to edit, submit or delete informations,
  - A possibility to import facility and export XML information.

- 50. The CAJ noted that the following aspects would not be included in the prototype but would be included in the final version:
  - Payment authorization
  - Different languages
  - Possibility for introducing or modifying questions in the form
  - Technical aspects such as business support for applicants; routine maintenance provisions; compliance with Web Content Accessibility Guidelines (WCAG); legal aspect and disclaimer.
- 51. The CAJ noted that the following timetable had been agreed on the development of the prototype:

Participating members to send their database structure, XML format or interface	By May 30, 2014
tables (requirement for participation in the project)	
Circular to be sent, requesting input from participants (PVP Offices + Breeders)	
Analysis of databases of participating members, design of the database structure	By September 2014
and data interface tables	
Consolidation of questions (bi/multilateral communication)	By September 2014
Finalization of project brief and request for cost estimate from approved supplier	June 2014
Agreement on the database structure/ import-export option/ interface tables format	October 2014
Start of the project	October 2014
Presentation of the prototype to the CAJ and Council	October 2015

- 52. The CAJ noted the request of the Delegation of Ecuador to participate in the meetings on the development of a prototype electronic form, and to provide information on its PVP platform project, which would be launched in July 2014.
- 53. The next meeting on the prototype electronic form, will be held in Geneva on October 14, 2014, at 6.00 p.m. A report on that meeting will be provided to the CAJ at its seventy-first session.

## TGP documents

54. The CAJ considered documents CAJ/69/3 and CAJ/69/11.

TGP/0: List of TGP Documents and Latest Issue Dates

55. The CAJ noted that the Council would be invited to adopt document TGP/0/7 "List of TGP Documents and Latest Issue Dates", in order to reflect the adoption of TGP documents.

TGP/2: List of Test Guidelines Adopted by UPOV

56. The CAJ agreed the revision of document TGP/2 "List of Test Guidelines Adopted by UPOV" as set out in document CAJ/69/3, paragraph 13.

TGP/5: Experience and Cooperation in DUS Testing: Section 10: Notification of Additional Characteristics and States of Expression

57. The CAJ agreed the proposed amendment to the guidance in document TGP/5: Section 10: Notification of Additional Characteristics and States of Expression" as set out in document CAJ/69/3, paragraph 17.

TGP/7: Development of Test Guidelines

58. The CAJ agreed the revisions to document TGP/7 previously agreed by the TC, as set out in document CAJ/69/3, Annex I, as a basis for the adoption of document TGP/7/4 "Development of Test Guidelines" by the Council, at its forty-eighth ordinary session, subject to the following amendments agreed by the TC at its fiftieth session:

Annex I, ASW 0	in the German version: to amend the translation of "Subject of these Test Guidelines" to read "Gegenstand dieser Prüfungsrichtlinien"
Annex I, GN 7	last paragraph to read: "In general, in the case of <i>plants</i> required only for a single growing trial (e.g. no plants required for special tests or variety collections), the number of plants requested in Chapter 2.3 often corresponds to the number of plants specified in Chapters 3.4 "Test Design" and 4.2 "Uniformity". In that respect, it is recalled the quantity of plant material specified in Chapter 2.3 of the Test Guidelines is the minimum quantity that an authority might request of the applicant. Therefore, each authority may decide to request a larger quantity of plant material, for example to allow for potential losses during establishment (see GN 7 (a))."
Annex I, GN 28, Section 3.2.2.	to read as follows: "3.2.2 Where different sets of example varieties are provided for different types of varieties covered by the same Test Guidelines, they are placed in the Table of Characteristics in the same column as normal. The sets of example varieties (e.g. winter and spring) are separated by a semicolon, and/or indicated by a key which is provided for each set and an explanation for the option chosen should be included in the legend of Chapter 6 of the Test Guidelines."
Annex I, GN 28, Section 4.	4.1 Reference to Section 2 to be replaced by reference to Section 4.2 4.2.3 Reference to Figure 1 to be replaced by reference to Section 4.2.3 4.2.5 Reference to Figure 1 to be deleted
Annex I, GN 35, Introduction	First sentence to read: "The taking of photographs is influenced by factors, such as light conditions, quality and setting of the camera, and the background."

- 59. The CAJ agreed the proposals for revisions to document TGP/7 "Development of Test Guidelines" for adoption in 2014 as set out in Annex V of document CAJ/69/3, subject to the following amendments agreed by the TC at its fiftieth session:
  - (i) Revision of document TGP/7: Additional Standard Wording for Growing Cycle for Tropical Species

"New (after (b)): Evergreen species with indeterminate growth

"The growing cycle is considered to be the period ranging from the beginning of <u>development</u> of an individual flower or inflorescence, through fruit development and concluding with the harvesting of fruit from the corresponding individual flower or inflorescence."

(iv) Revision of document TGP/7: Presence of Leading Expert at Technical Working Party Sessions

"In order to be considered by a Technical Working Party, the Leading Expert of the draft Test Guidelines should be present at the session. Subject to approval by the Technical Working Party Chairperson, and where arranged sufficiently in advance of the session, a suitable alternative expert may act as the Leading Expert at the session, or the Leading Expert may participate by electronic means, where that enables the Test Guidelines to be considered <u>in an effective way</u>."

TGP/8: Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability

60. The CAJ agreed the revisions to document TGP/8 previously agreed by the TC, as set out in document CAJ/69/3, Annex II, as a basis for the adoption of document TGP/8/2 "Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability" by the Council, at its forty-eighth ordinary session, subject to the following amendments agreed by the TC at its fiftieth session:

Annex II, Part I, Section 2.3.3.6.2	to delete heading "The absolute zero point"
Annex II, Part I, Section 2.3.3.7.3	to correct format for case I and case II and formulas
Annex II, Part I, Sections 3.5.1 and 4.2.2	to reinsert scales to graphs and remove colors

#### Annex II, Part I, Section 5

- title to read as follows: "Cyclic planting of varieties from the variety collection to reduce trial size"
- paragraph 1.1 to read as follows: "Cyclic planting of varieties from the variety collection (established varieties) to reduce trial size is appropriate for use in trials where:"
- paragraph 1.1 to introduce a last bullet point: "three independent growing cycles are normally grown. The guidance below is for this case. However, it may also be adapted for crops where two independent growing cycles are normally grown."
- last sentence of second paragraph in 1.2 to read as follows: "If, after DUS testing, a variety is added to the variety collection it is allocated to a series and is cyclically omitted from the trial every third year."
- paragraph 1.3, sentences 5 and 6 to read as follows: "Because of a possible lag between final DUS testing and the decision on the application, candidate varieties are kept in trial for a fourth year after the three-year test period. If a positive decision is taken, they will become an established variety and will enter the cyclic planting system."
- note in paragraph 1.4, first sentence to read as follows: Note: if the DUSTNT software is used, a variety can be made to appear missing simply by removal of the variety from the "E file".
- paragraph 4.2.1, to remove extra dash in "t—test"
- 61. The CAJ agreed with the proposed revision of document TGP/8 "Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability, Section 10: Uniformity Assessment on the Basis of the Relative Variance Method" for adoption in 2014 as set out in Annex V of document CAJ/69/3.

## TGP/9: Examining Distinctness

62. The CAJ agreed to delay the revision of document TGP/9 until 2015, in accordance with the conclusions of the TC at its fiftieth session.

TGP/14: Glossary of Terms Used in UPOV Documents – Correction (Spanish)

63. The CAJ noted the correction to the Spanish version of document TGP/14: Section 2: Subsection 3: Color, paragraph 2.2.2, as set out in document CAJ/69/3, paragraph 33.

Program for the development of TGP documents

64. The CAJ agreed the program for the development of TGP documents, as set out in Annex VI of document CAJ/69/3, as amended in accordance with the conclusions on TGP documents.

#### Molecular techniques

65. The CAJ considered documents CAJ/69/4 and CAJ/69/11.

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

- 66. The CAJ noted that the fourteenth session of the BMT would be held in Seoul, the Republic of Korea, from November 10 to 13, 2014.
- 67. The CAJ noted the amended program of the fourteenth session of the BMT, as follows:
  - 1. Opening of the session
  - 2. Adoption of the agenda
  - 3. Reports on developments in UPOV concerning biochemical and molecular techniques
  - 4. Short presentations on new developments in biochemical and molecular techniques by DUS experts, biochemical and molecular specialists, plant breeders and relevant international organizations
  - 5. Report of work on molecular techniques on a crop-by-crop basis:
    - (a) vegetatively propagated crops

- (b) self-pollinated crops
- (c) cross-pollinated crops
- 6. International guidelines on molecular methodologies
- 7. Variety description databases
- 8. Methods for analysis of molecular data
- 9. The use of molecular techniques in examining essential derivation
- 10. The use of molecular techniques in variety identification
- 11. Date and place of next session
- 12. Future program
- 13. Report of the session (if time permits)
- 14. Closing of the session
- 68. The CAJ noted that a Joint Workshop with the International Seed Testing Association (ISTA), the Organization for Economic Co-operation and Development (OECD) and UPOV would be held in conjunction with the fourteenth session of the BMT, on November 12, 2014, as set out in document CAJ/69/4, paragraph 17.

Presentation of information on the situation in UPOV with regard to the use of molecular techniques to a wider audience, including breeders and the public in general

- 69. The CAJ considered the proposed explanation of the situation in UPOV with regard to the use of molecular techniques, as set out in document CAJ/69/4, paragraph 22.
- 70. The CAJ noted that the TC had recalled that, at its forty-ninth session, held in Geneva from March 18 to March 20, 2013, it had agreed that there was a need to provide suitable information on the situation in UPOV with regard to the use of molecular techniques to a wider audience, including breeders and the public in general. That information should explain the potential advantages and disadvantages of the techniques, and the relationship between genotype and phenotype, which lay behind the situation in UPOV (see document TC/49/41 "Report on the Conclusions"). In that regard, the TC had agreed that the explanation provided in document CAJ/69/4, paragraph 22, provided suitable information on the situation in UPOV with regard to the use of molecular techniques for breeders and persons with knowledge of DUS testing, subject to the following amendments:

Question: Does UPOV allow molecular techniques (DNA profiles) in the DUS examination?

Answer: "It is important to note that, in some cases, varieties may have a different DNA profile but be morphologically phenotypically identical, whilst, in other cases, varieties which have a large phenotypic difference may have the same DNA profile for a particular set of molecular markers (e.g. some mutations).

"In relation to the use of molecular markers that are not related to phenotypic differences, the concern is that it might be possible to use a limitless number of markers to find differences between varieties. In particular, differences could be found at the genetic level that are not reflected in morphological phenotypic characteristics.

"On the above basis, UPOV has agreed the following uses of molecular markers in relation to DUS examination:

"(a) Molecular markers can be used as a method of examining DUS characteristics that satisfy the criteria for characteristics set out in the General Introduction if there is a reliable link between the marker and the characteristic.

"(b) A combination of phenotypic differences and molecular distances can be used to improve the selection of varieties to be compared in the growing trial if the molecular distances are sufficiently related to phenotypic differences and the method does not create an increased risk of not selecting a variety in the variety collection which should be compared to candidate varieties in the DUS growing trial.

"The situation in UPOV is explained in documents TGP/15 'Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)' and UPOV/INF/18 'Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)'".

With regard to a wider audience, the TC had agreed that the question was not framed in an appropriate way and, therefore, it would not be appropriate to seek to develop an answer to that question. The TC had agreed that the question should be rephrased after clarification of the issues of interest to a wider audience.

#### Variety denominations

The CAJ considered documents CAJ/69/5 and CAJ/69/11.

Possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention"

- 72. The CAJ noted that the TC, at its fiftieth session, had agreed that the example "Bough" and "Bow" in document UPOV/INF/12, paragraph 2.3.3(i) should be replaced by a suitable example and further noted that the work on the possible development of a UPOV similarity search tool might be reflected in a review of document UPOV/INF/12. It also agreed that guidance on confusion for phonetic reasons should continue to be included in document UPOV/INF/12.
- 73. The CAJ considered that it would be appropriate to amend document UPOV/INF/12, paragraph 2.3.3(a)(i), as set out in document CAJ/69/5, paragraph 7.

Possible development of a UPOV similarity search tool for variety denomination purposes

74. The CAJ noted that a report concerning the possible development of a UPOV similarity search tool for variety denomination purposes was contained in document CAJ/69/9 "Possible development of a UPOV similarity search tool for variety denomination purposes".

Developments concerning potential areas for cooperation with the IUBS Commission and the ISHS Commission

75. The CAJ noted the developments concerning potential areas for cooperation between the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV, as set out in Section III of document CAJ/69/5.

#### Possible development of a UPOV similarity search tool for variety denomination purposes

- 76. The CAJ considered documents CAJ/69/9 and CAJ/6911.
- 77. The CAJ noted that the TC, at its fiftieth session, had welcomed the establishment of a working group for the development of a UPOV similarity search tool and had invited experts to contribute to its work. Furthermore, the CAJ agreed with the TC that there were some challenges concerning linguistic and alphabet aspects which should be considered by the working group when defining the objectives of its work.
- 78. The CAJ noted that the first meeting of the working group would be arranged for June/July, 2014, and a report would be made to the CAJ at its seventieth session, to be held in Geneva, on October 13 and 14, 2014.

#### Matters raised by the International Seed Federation (ISF)

- 79. The CAJ considered document CAJ/69/10.
- (i) Individual matters which the CAJ is invited to consider

Application slot

80. The CAJ endorsed the development of guidance on the time period for the filing of applications in document UPOV/INF/15.

Pedigree information

81. The CAJ agreed to the development of further guidance on requests for pedigree information.

Electronic application

- 82. The CAJ noted the existing initiatives, as set out in document CAJ/69/10, paragraph 9, concerning electronic applications.
- 83. The CAJ agreed to the development of guidance in document UPOV/INF/15 on the possibility to file applications electronically.

Correspondence

84. The CAJ noted the existing guidance in document TGP/5 Section 2 "UPOV Model Form for the Application for Plant Breeders' Rights", with regard to correspondence, and agreed not to seek to develop additional guidance for the time being.

Material

- (a) Providing parental lines for applications concerning hybrids
- 85. The CAJ noted the existing guidance with regard to parent lines in relation to applications concerning hybrids, as set out in document CAJ/69/10, paragraph 16, and agreed not to develop additional guidance for the time being.
  - (b) Availability and exchange of material
- 86. The CAJ noted the existing guidance in relation to the availability and exchange of material as set out in document CAJ/69/10, paragraph 19, and agreed not to develop additional guidance for the time being.
  - (c) Confidentiality of the applicant's material when the examination centers are breeding varieties of the same species
- 87. The CAJ noted the discussions that had taken place in the CAJ concerning the "Recommendations to Ensure the Independence of those DUS Examination Centers Which Have, or Have Links to, Breeding Activities", as set out in document CAJ/69/10, paragraph 22.
- 88. The CAJ agreed to the development of guidance in document UPOV/INF/15 on confidentiality of applicants' material when DUS examination centers have, or have links to, breeding activities.

Frequency of data submission and completeness of databases

- 89. The CAJ noted that document CAJ/69/6 "UPOV information databases" contained relevant matters on the regular provision of information to the PLUTO Plant Variety Database and that document CAJ/69/6 contained the replies from a survey of members of the Union on their use of databases for plant variety protection purposes and on their use of electronic application systems.
- 90. The CAJ agreed to the development of guidance concerning frequency of data submission and completeness of databases in conjunction with the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette", as set out in document CAJ/69/10, paragraph 26, and in document UPOV/INF/15.

#### Denomination rules

- 91. The CAJ noted that guidance on denominations was already covered under ongoing work in relation to variety denominations.
- (ii) Umbrella document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation"
- 92. The CAJ agreed to the development of document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation" into an umbrella document that would identify key issues for the operation of a plant variety protection system and provide a link to relevant detailed guidance, as set out in document CAJ/69/10, paragraph 32.
- 93. The CAJ agreed, in relation to the next steps, that the Office of the Union would prepare relevant documents on the issues concerning each of the items that the CAJ had agreed to develop further guidance and would present those issues for further consideration by the CAJ at its seventieth session. At that point, the CAJ would decide on the relevant bodies that might consider those issues.

## Program for the seventieth session

- 94. The following program was agreed for the seventieth session of the CAJ:
  - 1. Opening of the session
  - Adoption of the agenda
  - Development of information materials concerning the UPOV Convention
  - Updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette"
  - 5. Molecular techniques
  - 6. Variety denominations
  - 7. Information and databases
    - (a) UPOV information databases
    - (b) Exchangeable software
    - (c) Electronic application systems
  - 8. Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation
  - 9. Pedigree information
  - 10. Application slot
  - 11. Electronic application
  - Confidentiality of the applicant's material when the examination centers are breeding varieties of the same species
  - 13. Frequency of data submission and completeness of databases
  - Program for the seventy-first session
  - 15. Adoption of the report on the conclusions (if time permits)
  - 16. Closing of the session

- 95. The CAJ agreed to consider the possibility to modify CAJ documents in order to:
  - include an executive summary
  - make reference to previous documents in footnotes
  - use presentations
  - combine decision paragraphs relating to matters for information.
- 96. The CAJ requested the Office of the Union to develop examples for consideration by the CAJ at its seventieth session and to provide information on resource implication for the Office of the Union.
  - 97. The CAJ adopted this report at the close of its session on April 10, 2014.

[Annex follows]

#### CAJ/69/12

#### ANNEXE / ANNEX / ANLAGE / ANEXO

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

(dans l'ordre alphabétique des noms en 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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