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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Thirty-Fifth Ordinary Session**  
**Geneva, October 25, 2001**

**REPORT ON THE PROGRESS OF THE WORK OF  
THE ADMINISTRATIVE AND LEGAL COMMITTEE**

*Document prepared by the Office of the Union*

1. Since the thirty-fourth session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "Committee") has held one session, its forty-third, on April 5, 2001.
2. The Committee examined the following matters:
  - (a) The Notion of Breeder and Common Knowledge (document CAJ/43/2): The Committee made a small number of suggestions for improvements to the position paper. Among other issues, the aims of the UPOV Convention, the nullity and cancellation mechanisms as remedies to errors or omissions that could be made during the process of granting of breeder's rights, and the need to make reference to the General Introduction to the Assessment of Distinctness, Uniformity and Stability in New Varieties of Plants (General Introduction), were discussed. The resulting proposals, along with some adjustments to be made by the Office of the Union, would be incorporated in a revised version of the position paper to be presented at the next session of the Committee to be held in October 2001. The final version would be presented to the Council for adoption and then published as a UPOV position paper to be taken into consideration in various fora concerned with plant genetic resource issues.

(b) Terms of Reference of an *ad hoc* Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (document CAJ/43/3): The Committee discussed the terms of reference for an *ad hoc* subgroup of technical and legal experts established to consider matters arising from the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT). The Committee approved the terms of reference of the *ad hoc* subgroup without changes and decided to include the item of plant variety identification on the agenda of the Committee for future consideration.

(c) New General Introduction to the Assessment of Distinctness, Uniformity and Stability in New Varieties of Plants (documents CAJ/43/4 and TC/37/5): The Committee took note of the history of the process of the revision to the General Introduction, the structure of the document and the outcome of the discussions in the Technical Committee. The revised version of the document would be circulated for comments. Depending on the nature of the comments, it would be submitted for adoption by the Council either in October 2001 or in 2002.

(d) Publication of Variety Descriptions (document CAJ/43/5): At its forty-second session, the Committee considered the need for the publication of variety descriptions. It was agreed that a possible approach for the publication of variety descriptions should be developed by the Office of the Union, with the help of an *ad hoc* working group. As a first step, the Office of the Union prepared a document identifying the issues which it considered necessary to address in the development of such an approach. This document was presented at the forty-third session where the Committee provided additional comments which included the need for an assessment of the impact on workload and costs of such a project. It was also proposed to introduce a model study on a small group of species and to consider the legal aspects, such as rights that might exist in the already published variety descriptions. It was agreed that the document prepared by the Office of the Union, in conjunction with the additional comments presented at the session, formed an appropriate basis on which the Office of the Union, together with the help of the *ad hoc* working group, should proceed.

(e) Review of Information Databases and Services: The Committee agreed to the proposal of linking the working group on databases and the working group on publication of plant variety descriptions.

(f) Novelty of Parent Lines (document CAJ/43/6): The Committee considered the issue of novelty of parental lines of hybrid varieties. This issue had been introduced in response to a request from the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL). Different points of views were expressed during the discussions. The Chairman summed up that it was not necessary to change the interpretation agreed on by the Committee at its forty-first session, held on April 6, 2000, which considered that this matter should be decided at the national level.

(g) Recent Changes in the Practice of the U.S. Patent and Trademark Office Relevant to Plant Varieties (document CAJ/43/7):

(i) The Vice Secretary-General introduced a document which provided information about a recent change in the United States Patent and Trademark Office (USPTO) in the interpretation and application of the United States Patent Law. This interpretation concerned a prior foreign grant of plant variety protection being equivalent to a grant of a patent for purposes of determining whether a plant variety, for which a plant patent

had been applied, met the statutory novelty requirements (Section 102(d) of Title 35, United States Code). A communication also informed that the USPTO might consider seeking legislation that would further clarify the status of certificates of plant variety protection as prior art.

(ii) The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA) advised that its members had been informed of the above-mentioned situation and had taken legal action against the rejections.

(iii) The Delegation of the United States of America informed the Committee that the USPTO was aware of the problems created by the interpretation of 35 U.S.C. § 102 (d) and that the rejections were going to be reviewed. To change that interpretation, by letting the judicial process of an appeal run its course, would take too much time. It was for that reason that the USPTO would try to see what could be done legislatively to remedy the situation to ensure that the industry, which should be helped by intellectual property protection, would not actually be damaged. The Delegation concluded that the whole situation affected both domestic and foreign breeders in the same way.

3. The forty-fourth session of the Committee will be held on October 22 and 23, 2001. In addition to the matters described in items (a), (b), (d), and (f) of the preceding paragraph, the Committee will deal with the terms of reference of an *ad hoc* working group on variety denominations, the issue of inclusion of patented methods in UPOV Test Guidelines and the status of information included in the Technical Questionnaire of Test Guidelines.

*4. The Council is invited to note and approve this report.*

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