



CAJ/42/7

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Forty-Second Session
Geneva, October 23 and 24, 2000

REPORT

adopted by the Committee

Opening of the Session

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its forty-second session in Geneva on October 23 and 24, 2000, under the chairmanship of Mr. John Carvill (Ireland).
2. The list of participants is given in Annex I to this report. The Chairman welcomed Estonia and Kyrgyzstan as new member States of UPOV.
3. The Secretary-General, in his opening remarks, paid tribute to Mr. Barry Greengrass who retired on June 30, 2000, and advised that the Council of UPOV would express their thanks and gratitude at the meeting on October 26. He introduced the new Vice Secretary General, Dr. Rolf Jördens, who had been in post since July 1, 2000, and the new Technical Director, Mr. Peter Button, who joined UPOV on September 1, 2000. The opening remarks of the Secretary-General are reproduced in Annex II to this document.
4. The Secretary-General noted the importance of continued breeding development for farmers and society, not least in developing countries. He noted that the Office of the Union relied on the cooperation of the members and their representatives and as a consequence the importance for it to focus discussions of the Committee on relevant issues. The meeting would address fundamental issues, such as the development of new techniques, the revision of the General Introduction to the assessment of DUS in new varieties of plants, the notion of

breeder and common knowledge, and he remarked on the link between these discussions and traditional knowledge, which was also of importance for WIPO.

Adoption of the Agenda

5. The representative of ASSINSEL advised that, although there were no objections to the record of discussions on parent lines and breeders' privilege, ASSINSEL had written to UPOV requesting an opportunity to discuss this further at a future meeting. This was noted by the Chairman.

6. The Committee adopted the agenda as given in document CAJ/42/1.

The Notion of Breeder and Common Knowledge

7. The Vice Secretary -General introduced documents CAJ/42/2 and CAJ/42/2 Add. The Chairman suggested that the session should first consider the revised individual paragraphs 14, 22 and 23 of the Annex of document CAJ/42/2 and then review the specific issues raised in document CAJ/42/2 Add.:

Document CAJ/42/2

8. *Paragraph 14* was accepted without discussion.

9. *Paragraph 22:* The Delegation from Germany supported the stated aim but noted that in Germany an application for declaration of nullity must be executed by the official authorities and could not be made by a third party. The Delegation from the United States of America noted the practical difficulties in taking account of the knowledge of relevant communities and suggested that UPOV should encourage efforts to document such knowledge. The Vice Secretary -General reported on his informal discussions with the International Plant Genetic Resources Institute (IPGRI) and plans for a meeting to discuss opportunities for harmonization of variety descriptors as a step towards addressing this need.

10. The Delegation from the Netherlands stated the importance of substantiating the previous existence of the variety where any case for nullity is made. This was supported by the representative of ASSINSEL who noted that the issue of substantiation had not yet been addressed in discussions on traditional knowledge. The Delegation from the United States of America noted that a plant invention had been successfully challenged in the United States of America and resulted in a modification of the protection, but this had required documentation to be presented. The Delegation from France elaborated further that the information must be relevant for identifying a variety and that general information on the agronomic performance or value of plant material would not adequately substantiate the existence of a particular variety for distinctness or nullity purposes. This point was supported by the Delegation of Australia. Other delegations and the representative of CIOPORA supported the need for further clarification of the text.

11. Mr. Greengrass noted that there was a clear requirement for the variety to have existed where a claim for nullity is made but that it would be a matter for the appropriate authorities to decide how to substantiate if the relevant physical material existed at the time of grant of

protection. In particular, as stated earlier in document CAJ/42/2, there would be a need for the knowledge of existence to be “credibly substantiated.”

12. The Chairman requested that the Office of the Union reword the text of paragraph 22 to take account of the views expressed.

Paragraph 23

13. The Vice Secretary - General noted that at the UPOV Convention allowed condition to be imposed prior to marketing of varieties but did not allow conditions prior to the granting of rights, other than those contained in the Convention.

14. The representative of CIOPORA noted the relevance of Article 18 of the 1991 Act of the UPOV Convention with regard to this point and, in particular, the requirement that measures regulating commerce “shall not affect the application of the provisions of this Convention.”

15. The Chairman noted the acceptance of paragraph 23.

Document CAJ/42/2 Add.:

16. The Chairman invited the session to address the issues summarized in the tables under paragraphs 3 and 5.

Paragraph 3, Third Bullet Point (Living plant material must be in existence)

17. In response to a question from the representative of ASSINSEL, the Vice Secretary - General noted that there was no requirement for other varieties to have a name in order to be considered for the purposes of distinctness (Article 7, 1991 Act of the UPOV Convention).

18. The Delegation of Australia questioned if the complete DNA profile of a variety would be sufficient to satisfy the requirement for existence of a variety. The Vice Secretary - General observed that a DNA profile was essentially another way of describing the variety and that the existence criteria would still need to be satisfied. The Technical Director also noted that it would not be possible to verify that the DNA profile was complete, or representative, without the existence of the living material.

19. The Chairman noted acceptance of this point.

Paragraph 3, Fourth Bullet Point (Specific aspects which shall be considered to establish common knowledge)

20. The Delegation of the Netherlands requested clarification of the term “marketing” and, in particular, given the wording of Article 14 of the 1991 Act of the UPOV Convention, whether it included offering for sale. A number of delegations expressed reservations about seeking to define such a term in detail in a document intended for general guidance. However, it was recognized that the term “marketing” could cause confusion if it was intended to have a different meaning to that used in the UPOV Convention. The Delegation of the United States of America, supported by the Delegations of Argentina and the

Netherlands, suggested that it may be appropriate to reword the first part of this section as follows:

“Specific aspects which shall be considered to establish common knowledge include, among others ;

“(i) commercialization of...”

21. The Chairman noted acceptance and requested the Office of the Union to reword the text accordingly.

22. The Delegation of Spain suggested that in item (i) the word “plants” should be replaced by “plant material” to make clear that this was not restricted to whole plants and would, for example, include seeds. This was supported by the Delegation of Romania. The Delegation of the United States of America expressed some concern at the use of this phrase because plant material, for example, bales of cotton, could be marketed without any knowledge of the variety.

23. After further discussion, the Chairman obtained approval for the following text:

“(i) commercialization of propagating or harvested material of the variety or publishing a detailed description.”

24. Regarding item (ii), the representative of ASSINSEL noted that in Article 7 of the 1991 Act of the UPOV Convention, filing of an application was only deemed to render a variety a matter of common knowledge if the application led to the grant of a breeder’s right or entry on an official register of varieties.

25. With the approval of the Committee, the Chairman requested that the Office of the Union reword item (ii) in accordance with Article 7 of the 1991 Act.

26. The representative of the Community Plant Variety Office (CPVO), supported by the Delegation of the United Kingdom, suggested that the use of the word existence in item (iii) was unnecessary because the previous bullet point introduced a clear requirement that living plant material be in existence. It was suggested that the word “existence” should be replaced by “inclusion.”

27. The Delegation of France expressed concern that the term “plant collections” in item (iii) was too broad and could be interpreted to include breeders’ own private breeding collections. The proposal of the Office of the Union that the collections be specified as “public” collections was not acceptable for the Delegation of France because the meaning in France was very specific and would not cover some important reference collections. The term “publicly accessible” did not have the same precise meaning and was acceptable to the Delegation of France. However, it was noted that not all reference collections are publicly accessible.

28. The Office of the Union proposed that the previous item (iii) be revised and supplemented by an additional item (iv) as follows:

“(iii) existence of living plant material in publicly accessible plant collections;

“(iv) varieties included in a collection officially used for examination of applications for plant breeders’ rights.”

29. The Chairman noted agreement to this proposal.

Paragraph 3, Second Bullet Point (A variety of common knowledge must satisfy the definition of a variety)

30. The Chairman noted that this was essentially a statement of fact and noted acceptance of this point.

Paragraph 3, Fifth Bullet Point (Common knowledge is not restricted to national or geographic borders)

31. The Chairman noted that this was essentially a statement of fact and noted acceptance of this point .

Paragraph 3, First Bullet Point (A variety of common knowledge is not restricted to those varieties for which the filing of an application for the granting of a breeder’s right or for the entering in an official register has been made)

32. The Delegation of the Netherlands proposed that, as agreed for item (ii) of bullet point 3, the wording be revised in line with Article 7 of the 1991 Act of the UPOV Convention. The Chairman noted agreement for this proposal.

Paragraph 3, Note (A further clarification is proposed which will clarify that the “variety” and “common knowledge” criteria would apply to any material)

33. The representative of ASSINSEL, supported by CIOPORA, suggested that the terms “landrace” and “traditional variety” were synonymous and the introduction of separate terms would suggest a new division.

34. The proposal of the Chairman to remove the reference to other types of traditional variety was agreed.

Paragraph 5 (Considerand advise)

35. The issues raised in this paragraph and accompanying table were summarized by the Vice Secretary-General.

36. The representative of ASSINSEL considered this to be an important issue and noted its relevance to the organization and use of reference collections. He noted that there could be some practical difficulties but advised that, in principle, ASSINSEL was in favor of a database containing the descriptions of all the varieties protected in all the UPOV member States. UPOV would have an important role in both the development of harmonized descriptions and in providing access to such a database.

37. The Delegation of France called for extreme caution before using such a database for decisions on distinctness because of the influence of environment on descriptions produced in

different locations. The need for caution was echoed by the Delegation of Mexico, which urged for further work on harmonization to ensure that protection is effective. The Delegations of Germany and the United Kingdom also shared the concerns expressed by France and the former questioned the outcome if new information called into question previous decisions on protection. The Delegation of the United Kingdom suggested a small pilot study as a means to consider the matter further.

38. The Delegation of France advised that it was in favor of publishing descriptions but noted that some countries or organizations may wish to control foreign access to their data because of agreements for cooperation in examination. In particular, consideration would need to be given to suitable arrangements for financial management.

39. The representative of ASSINSEL stated that transparency is an important consideration at this time and measures to inhibit transparency would result in difficulties. He recognized that there were certain legal difficulties, such as ownership of data, and technical aspects to be resolved but stressed his support for progress on these matters, perhaps by considering a study of a small number of species.

40. The Vice Secretary-General noted there were some technical and legal concerns but concluded that there was no opposition to the principle. He suggested that the Office of the Union prepare a summary of the legal and technical issues and formulate a possible approach for future consideration by the Committee.

41. The Delegation of France suggested an investigation into measures for handing over ownership of variety descriptions to the breeders. The Delegation of Belgium suggested publishing the variety descriptions in stages, starting with non-protected varieties. The Vice Secretary-General noted the importance of including protected varieties.

42. The Delegation of Australia provided a summary of its approach to publishing and distributing variety descriptions as an example of a current practice. The intention of publication was to elicit comments, and this had resulted in some useful comments from other Plant Variety Protection Offices in UPOV member States. It was also noted that one of the main concerns for countries joining UPOV is the lack of knowledge at start-up and, in particular, the cost of developing descriptions for all the appropriate varieties of common knowledge. The use of variety descriptions was not to establish distinctness but to select the most similar varieties of common knowledge. As a next step its plan is to launch information, including photographs, on the Internet together with a searching facility. There was no problem regarding confidentiality of data because all applicants were aware that such data would be distributed to other Plant Variety Protection Offices in UPOV member States. The Delegation of Australia confirmed its support of the approach proposed by the Vice Secretary General.

43. The Chairman noted the calls for caution but noted the generally favorable response to publication of variety descriptions and proposed that an *ad hoc* working group of those with experience be established to help in the development of a possible approach by the Office of the Union. It was agreed that this should be left to the Office to take forward.

Report on Important Questions raised in the Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular (BMT)

44. The Vice Secretary -General introduced document CAJ/42/3, which summarized discussions on certain important issues. He noted that the main aspect for the Committee to consider was the request in paragraph 5 for consideration of an *ad hoc* meeting of technical and legal experts to establish common understanding and interpretation of the matters raised by the BMT.

45. He also explained that, in order to clarify the situation on the issues raised by the BMT, the Office of the Union had prepared an extract from the thirty-sixth session of the Committee which set out the most recent position adopted by the Committee on these issues. This additional paper was circulated (document CAJ/42/3).

46. The Delegation of France noted that lack of incompatibility between the study of distinctness and the use of molecular characteristics did not necessarily mean that it would be appropriate to use these techniques at the moment.

47. The representative of ASSINSEL questioned whether the extract represented the spirit of the most recent discussions on this topic. He was of the view that it would be more appropriate to hear the conclusions of the Technical Committee before finalizing the position, preferably with overall guidance from a joint technical/legal group.

48. The Vice Secretary -General noted that, as explained in paragraph 3 of document CAJ/42/3, more recent discussions had taken place on these matters, in particular at the thirty-eighth session, but no position had been taken by the Committee. The Vice Secretary -General suggested that it might be most appropriate to take this matter forward in the form of a subgroup, as proposed by the BMT, rather than continued discussions in the Committee. The Delegation of France supported this suggestion.

49. The Chairman noted there was a consensus for the setting up of an *ad hoc* subgroup as suggested by the BMT. He advised that the terms of reference for this *ad hoc* subgroup would need to be developed by the Office of the Union and requested that the Office come forward with its proposals for consideration at the next session of the Committee.

New General Introduction to the Assessment of Distinctness, Uniformity and Stability in New Varieties of Plants.

50. The Technical Director introduced documents TC/36/9, CAJ/42/4 and CAJ/42/4 Add., explaining that document CAJ/42/4 identified the aspects of document TC/36/9 of particular relevance to the Committee and that these had been distilled further into the summary table on page 2 of document CAJ/42/4 Add.

51. The Chairman noted acceptance for the table in document CAJ/42/4 Add. to form the basis of the discussions. These were discussed in the following order:

Consider and Advise: "Supporting Evidence"

52. The Technical Director noted that supporting evidence had been introduced into certain UPOV Test Guidelines, in particular as a basis for use of electrophoresis characteristics.

However, the concept had not been included in the existing General Introduction (TG/1/2) and it was important that it be considered by the Committee before inclusion in the revised General Introduction.

53. The Delegation of France noted that Article 1(vi) of the 1991 Act of the UPOV Convention requires that a variety be distinguished by at least one characteristic. Article 7 requires varieties to be clearly distinguishable to be considered distinct, but does not refer to characteristics. Discussions in the Technical Committee identified a situation where an expert might be satisfied that two varieties are clearly distinguishable but not be able to clearly document the differences. In such a circumstance the use of additional phenotypical characteristics, not included in the UPOV Test Guidelines, would provide information which would help to identify the variety and thereby safeguard the interest of the breeder.

54. The Delegation of the United Kingdom expressed reservations about the use of supporting evidence. It seemed unlikely that a crop expert could be convinced that a variety was distinct other than through the use of characteristics according to the normal criteria. The Delegation of Japan agreed with these concerns and considered that the concept had not been developed sufficiently by the Technical Committee.

55. The Delegation of the United States of America asked the Committee to consider whether agronomic or molecular characteristics could be used for distinctness. The representative of ASSINSEL advised that its position was that agronomic characteristics were phenotypic and could be used for distinctness. The Delegation of Trinidad and Tobago noted that it could be difficult to establish distinctness from locally adapted populations without the use of characteristics, such as disease resistance.

56. The Delegation of France stated that there was nothing in Article 7 of the 1991 Act of the UPOV Convention that prevented the use of tools, such as supporting evidence, for establishing distinctness. These tools could include molecular techniques and did not preclude the use of such new tools for distinctness purposes, even if it was not accepted that they could establish distinctness in their own right. It considered that supporting evidence provided a transitional approach to allow the development of molecular characteristics. It agreed that, in principle, agronomic characteristics could be used for distinctness but in practice it was very difficult to establish sufficient reproducibility.

57. The Chairman summarized that Article 7 of the 1991 Act of the UPOV Convention did not place any restriction on the tools which can be used for distinctness, however, the definition of supporting evidence was not sufficiently clear at this stage. The Chairman and Office of the Union were uneasy about the position of the Delegation of France that supporting evidence was a transitional provision.

58. The Delegation of France suggested that the Committee should confirm, to the Technical Committee, that there were no legal obstacles to the use of new tools but that it was important that such tools should be technically reliable. The representative of ASSINSEL sought clarification of whether the term tool meant a tool for measuring phenotypic differences or whether it meant molecular characteristics. The Delegation of France advised that it was referring to new tools and confirmed that, in its view, the issue to be addressed was technical, not legal. It was whether these tools were sufficiently reliable and methods could be sufficiently harmonized to enable a decision relating to the granting of an effective right to breeders regarding distinctness.

59. The Chairman suggested that Article 7 of the 1991 Act of the UPOV Convention did not place any restriction on the tools, i.e. additional characteristics, which can be used for distinctness. However, the definition of the circumstances and conditions under which these additional characteristics could be used needed to be clarified. The representative of CIOPORA supported the call for clarification. The Delegation of France noted that it could only accept this position if it was clarified that there was no restriction on the use of tools to prove phenotypic differences, because without this qualification it would amount to complete acceptance of molecular characteristics.

60. The Office of the Union proposed the following conclusion:

The Committee does not consider that the use of additional characteristics in determining distinctness is contrary to the UPOV Convention. However, there is a need to clarify the conditions on which these additional characteristics can be used for determining distinctness. Furthermore, the use of characteristics, or way in which characteristics are used, is not acceptable if this would undermine the value of protection offered by plant breeders' rights under the 1991 Act of the UPOV Convention.

61. The representatives of ASSINSEL and CIOPORA requested that the approach should apply to all Acts of the Convention. This was supported by the Delegations of Chile, France, New Zealand, Norway and Spain.

62. The Delegation of Australia noted that the protection offered under the 1991 Act was greater than in previous Acts because of the provision for essential derivation. In addition it noted that document TC/36/9 made reference only to the 1991 Act of the UPOV Convention and, in this respect, the proposed statement was consistent with this document.

63. The representative of CIOPORA considered it would be wrong to exclude characteristics or methods and tools like molecular markers for establishing distinctness of a variety in the future. However, it should not become an opportunity to reduce the scope of protection for breeders. The 1978 Act did not have the same provisions as that in Article 14(5)(ii) of the 1991 Act, and it was essential that the position of the Committee did not rely on the provisions of the 1991 Act.

64. At the proposal of the Chairman, the following conclusion was agreed:

The Committee does not consider that the use of additional characteristics in determining distinctness is contrary to the UPOV Convention. However, there is a need to clarify the conditions on which these additional characteristics can be used for determining distinctness. Furthermore, the use of characteristics, or way in which characteristics are used, is not acceptable if this would undermine the value of protection offered by plant breeders' rights.

65. The Committee then considered the remaining points raised in the table:

Note 1: No nmorphological/nonphysiological characteristics

66. At the proposal of the Chairman, it was agreed that this issue had been covered in the previous discussion and that it should be deleted.

Note2: Multivariate Analysis

67. The Chairman noted full acceptance of this text.

Note3: Parent Formula for Distinctness in Hybrid Varieties

68. The representative of ASSINSEL considered that this was a new proposal and requested further clarification on the use of this approach but was not opposed in principle. The Technical Director noted that this concept was already included in some UPOV Test Guidelines, for the pre-selecting of varieties. The intention in bringing it to the attention of the Committee was to advise them that attempts would now be made to develop harmonized guidelines which would, of course, be subject to the normal processes of consultation and approval.

Note4: Selection of New Varieties from within Existing Varieties

69. The Delegation of New Zealand noted that paragraph 11 of document CAJ/42/4 stated that "For the assessment of distinctness no candidate can be distinguished from an existing variety solely by a characteristic that is part of the other variety but is not uniform in that variety. This principle ..." It could not accept such a general principle because it could imagine that it might inhibit a legitimate form of plant improvement. This view was shared by the Delegations of Australia, France and the United Kingdom.

70. The representative of ASSINSEL observed that Note 4 addressed both new varieties and new species and suggested these should be separated to avoid confusion.

71. A representative of ASSINSEL then went on to note that the principle being discussed already existed in UPOV Test Guidelines, in particular for electrophoretic characteristics, and that there was some jurisprudence in the Netherlands to uphold this principle. He concluded that there was enough evidence and enough basis in the Convention and in existing Test Guidelines for it to be known that it was only possible to have distinctness between two varieties if both varieties are sufficiently uniform for the characteristic used.

72. The Delegation of France noted that such a principle could prevent the distinctness of new varieties from non-protected varieties of common knowledge which were not required to be uniform.

73. The proposal of the Vice Secretary-General that Note 4 could not be accepted and that the Technical Committee should be advised that the principles should be removed from all the affected paragraphs in the General Introduction was agreed.

New General Introduction to the Assessment of Distinctness, Uniformity and Stability in New Varieties of Plants (document TC/36/9)

74. The Chairman noted that document CAJ/42/4 was intended to highlight legal and administrative issues of importance but invited comments on any other matters contained in document TC/36/9.

75. The Delegation of Australia congratulated the enlarged Editorial Committee on document TC/36/9 which it had developed. It had a number of non-substantive comments

which did not need to be made to this Committee but it did wish to seek consideration of the requirement for *proof of Distinctness, Uniformity and Stability* as stated in paragraph 6 of document TC/36/9. In particular, it noted that paragraph 143 indicated that the examination of stability did not lead to the same level of certainty as for Distinctness and Uniformity. However, it accepted the advice of the Office that this approach had already been discussed and accepted for TG/1/2.

76. The Delegation of France observed that the General Introduction was intended to address the examination of Distinctness, Uniformity and Stability and was not intended to consider essential derivation.

77. On the basis of this suggestion it was agreed that considerations of essential derivation, for example section 6.2.2, should be removed from the document.

78. A number of delegations thanked the Technical Committee for the document but requested further time for consideration and suggested that any comments could be submitted to the Office of the Union in writing.

79. At the proposal of the Delegation of Belgium, it was agreed that the General Introduction and its associated documents should be reviewed to ensure consistency with all applicable Acts of the Convention.

80. It was noted that this represented a substantial task for the Office and enlarged Editorial Committee.

The List of Genera and Species of Trees and Vines for the Purposes of the Provisions on Novelty and Duration of Protection.

81. The Vice Secretary -General introduced document CAJ/42/5 indicating that Annex I was intended to produce a list of species which might be considered by member States as a guideline to which species could be considered to be trees. He recalled that the situation was somewhat different for Annex II because the French text of the Convention refers specifically to “*lavigne*,” whereas the English version refers less clearly to “vines.”

82. The Vice Secretary -General invited other States to contribute to the information in Annex I if they had not already done so.

83. The Delegation of Belgium requested the criteria used for classification in Annex I. The Office of the Union explained that there was no clear definition of trees and shrubs. The Office of the Union had considered the Royal Horticultural Society “Dictionary of Gardening” to be the most authoritative source of information but this did not provide a definition of trees and shrubs. It had concluded that the most satisfactory means of progress would be to develop a core list of species and genera considered to be trees by all member States, without seeking to establish clear criteria.

84. The Delegation of Japan noted its appreciation of the work done by the Office of the Union and agreed with the proposed approach. It also noted that it would contribute information for Annex I.

Guidelines on the Suitability of Variety Denominations in the European Community and the UPOV Recommendation on Variety Denominations

85. The Vice Secretary -General introduced document CAJ/42/6, noting that in the view of the Office of the Union, there were no major areas of conflict between the UPOV and European Community Regulations on variety denomination. However, he noted that the European Community Regulations were more detailed and specific.

86. The Vice Secretary -General invited the Committee to consider if the UPOV guidelines on variety denomination should be updated, in an administrative sense only, for example to make reference to the 1991 Act of the UPOV Convention, or whether a more extensive review should be undertaken to provide more detailed guidance.

87. The Delegation of Germany was in favor of a full revision of the UPOV guidelines based on the European Community Regulations. This was supported by the Delegations of Argentina and Spain which sought greater clarity in this area. However, the Delegation of the Netherlands questioned the need for a full review and noted that the European Community Regulations were very severe and may not be appropriate for the rest of the world.

88. The view of the Delegation of France was that the European Community Regulations diverged from the UPOV guidelines because, although they were detailed, they precluded less than the UPOV provisions. In its view, the UPOV guidelines were almost unusable and were constantly violated, and the European Community Regulations should be examined as a basis for developing more acceptable guidelines.

89. In response to suggestions from some member States that the European Community Regulations only applied to agricultural and vegetable species, the Delegation of the Community Plant Variety Office (CPVO) clarified that the European Community Regulations were contained in provisions for agricultural and vegetable crops under Council Directives 70/457/EEC and 70/458/EEC, respectively, but were also used as a guideline for plant breeders' rights purposes for all species under Council Regulation (EC) 2100/94. However, he noted that CPVO was not sure how well these guidelines would work in practice until their monitoring, which had just begun, produced some feedback. It suggested that UPOV should await the result of this review before undertaking changes to their guidelines.

90. The Delegation of Japan supported the start of discussions but highlighted the need for future guidelines to address all languages and alphabets within the growing UPOV membership. This view was shared by Canada and Mexico which noted that the new guidelines would not have to be based on the European Union provisions. The Delegation of Mexico also noted that harmonization of variety denomination was important and was one of the few areas of cooperation between member States.

91. The representative of CIOPORA noted that it had opposed the European Community Regulations and considered that Article 63 of Council Regulation (EC) 2100/94 was more restrictive than the UPOV Convention. It considered that some of the provisions encroached on another field of law, namely trademarks.

92. The Vice Secretary -General stressed the importance of considering the increasing membership and number of languages used by contracting parties and noted that it would be difficult to draft a universal set of guidelines without making them broader. He proposed that UPOV should follow the advice of the Delegation from CPVO and await the outcome of the

introduction of the European Community Regulations before starting to redraft the existing guidelines.

93. The Delegations of France and of Spain advised that the UPOV guidelines were no longer being applied in their countries. The Delegation of Canada supported a review and pointed, in particular, to the need to look at aspects such as permitting wheat and barley varieties to have the same name. The Delegation of Germany, supported by the Delegation of Argentina, suggested an *ad hoc* working group to investigate a possible approach. The Delegation of Mexico urged UPOV to recognize at least the need for a review at some stage.

94. The Vice Secretary -General recognized the need for this matter to be considered and invited delegations to identify, in the form of written comments, conflicts with current UPOV guidelines and also to provide the Office of the Union with any other rules which are being applied in addition to those of the European Community. The Office, if necessary with the help of an *ad hoc* working group, would then prepare a paper as a basis for a review.

95. The Chairman noted acceptance of this proposal and set the deadline for contributions as end of December 2000.

Marking of Protected Varieties

96. The Chairman invited ASSINSEL and CIOPORA to report on their internal discussions.

97. The representative of ASSINSEL reported that its conclusion was that harmonization at international level was not necessary and could lead to confusion because:

(a) firstly, protection is granted on a territorial basis but where there is international trade, seed bearing a particular mark in a country where there is no protection could be misleading, and

(b) secondly, the current scope of protection varies according to which Act of the UPOV Convention is appropriate and, to avoid confusion, it would be necessary to have different marks or different signs on the marks.

98. He believed it was a matter for each individual national office to decide with its seed industry.

99. The representative of CIOPORA advised that the matter had not been discussed in great detail but reported its view was that breeders should be left with their present arrangements for identifying varieties, which may change from country to country.

Program for the Forty -Third Session

100. The program for the forty -third session would include the following items:

(a) Opening of the session;

(b) Adoption of the agenda;

- (c) Novelty of parent allines (ASSINSEL request);
- (d) The “Notion of Breeder” and “Common Knowledge” (Review of document after revision by UPOV Office);
- (e) Publication of variety descriptions (Office of the Union, with advice of an ad hoc subgroup, to prepare paper identifying legal and technical considerations and containing possible approaches to this situation);
- (f) Terms of reference for an ad hoc joint Technical Committee/Administrative and Legal Committee Subgroup on Molecular Techniques (Draft to be prepared by Office of the Union);
- (g) UPOV Guidelines for Variety Denomination (Office of the Union to prepare a paper on the basis for a review);
- (h) Program for the forty -fourth session;
- (i) Closing of the session.

Retirement

101. The Committee noted the forthcoming retirement of Mr. Evan Westerlind, Head of Office, National Plant Variety Board (Sweden), and extended to him its best wishes for the future.

102. The present report has been adopted by correspondence.

[Annex I follows]

ANNEXEI/ANNEXI/ANLAGEI/ANEXO I

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

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names
in French of the States/in alphabetischer Reihenfolge der französischen Namen der Staaten/
por orden alfabético de los nombres en francés de los Estados)

I. ÉTATS MEMBRES/MEMBER STATES/VERBANDSSTAATEN/
ESTADOS MIEMBROS

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Adelaida HARRIES (Sra.), Presidente, Instituto Nacional de Semillas, Secretaría de
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[L'annexeII suit/
AnnexII follows/
AnlageII folgt/
Sigueel AnexoII]

ANNEXII

Speech of Dr. Kamil Idris, Secretary -General of UPOV, on October 23, 2000,
on the occasion of the Forty -Second Session of the
Administrative and Legal Committee

Mr. Chairman,
Distinguished members of the Administrative and Legal Committee of UPOV,
Distinguished delegates from Observer States and Organizations,
Dear Friends,

The series of UPOV meetings scheduled for this week marks a transition, which is all the more obvious in the changes here on the podium. Barry Greengrass whom you have been used to seeing here, ceded his place as Vice Secretary-General on July 1, 2000 to Rolf Jördens.

Representatives at the UPOV Council, on Thursday, will have the opportunity to officially express their thanks and gratitude for the outstanding services he rendered the organization during his twelve years on duty.

Today, however, I would like to introduce to you, UPOV's new Vice Secretary General, Rolf Jördens. He was appointed by the Council at its Seventeenth Extraordinary Session on April 7, 2000. Most of you know Rolf Jördens thanks to years of previous professional cooperation with him.

He has solid academic background as an agronomist acquired at Universities in Germany and France, and can reflect on more than 20 years of professional experience with the German Federal Government. Before joining the UPOV Office, he was President of the German Federal Office of Plant Varieties in Hanover, well known to many of you as the focal point of variety protection in Germany.

At the same time, I also have the pleasure to introduce to you the new Technical Director of UPOV, Peter Button, well known again to many of you. Peter Button worked at the British Ministry of Agriculture, Food and Fisheries with the seed administration and participated actively in the technical activities of UPOV before joining the Office of UPOV in September.

I should like to welcome the new Vice Secretary -General and the Technical Director and to wish them success and good luck in the work of the Union and in its endeavors to enhance plant breeding for the benefit of both farmers and society, not least in developing countries. The Office of the Union has to accomplish a service function. What matters is the view of the member of the Union. The new Vice Secretary -General and his Technical Director, therefore, rely on cooperation with the members of the Union and their individual representatives. The UPOV Office has to focus the exchange of views among the members States on relevant issues and to prepare the necessary basis for discussion.

The agenda of your meeting and the pertaining documents are of particular importance. You will be dealing with fundamental issues concerning possible new approaches to the identification of plant varieties by means of molecular techniques and will discuss important elements of a new General Introduction to the Test Guidelines for variety protection. And you have an agenda item before you concerning "The notion of breeder and common knowledge."

These issues impact directly on the conditions under which varieties are protectable. You are all more than aware of the direct link to the "Traditional Knowledge" issue - a matter of broad discussion and concern, also in the context of WIPO.

I wish you successful deliberations and, once again, best wishes to Rolf Jördens and Peter Button.

[End of Annex II and of document]

CAJ/42/7

ANNEXII