



CAJ/55/4

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

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Fifty-Fifth Session**  
**Geneva, March 29, 2007**

DEVELOPMENT OF INFORMATION MATERIALS  
CONCERNING THE UPOV CONVENTION

*Document prepared by the Office of the Union*

1. The purpose of this document is: to report on matters arising from the first session of Administrative and Legal Committee Advisory Group (CAJ-AG) (Part I); to consider a program for the revision of document TGP/5/1 "Experience and Cooperation in DUS Testing" and to inform the Administrative and Legal Committee (CAJ) of a proposal concerning Section 2: UPOV Model Form for the Application for Plant Breeders' Rights and Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights of document TGP/5 (Part II); and to seek the advice of the CAJ on a proposal for a revision to the calendar of meetings for the October sessions of the CAJ and CAJ-AG of 2007 (Part III).

I. Matters arising from the first session of the CAJ-AG (document CAJ-AG/06/1/3)

2. The CAJ-AG held its first session in Geneva on October 20, 2006. Discussions were based on document CAJ-AG/06/1/2 ([http://www.upov.int/restrict/en/caj-ag/index\\_caj-ag-06-1.htm](http://www.upov.int/restrict/en/caj-ag/index_caj-ag-06-1.htm)) which covered key issues concerning the list of provisions to which the CAJ had agreed that information materials on the UPOV Convention were most urgently required. The Report on the Conclusions of the CAJ-AG is reproduced in document CAJ-AG/06/1/3 which has been included for consideration under agenda item 6 of the fifty-fifth session of the CAJ ([http://www.upov.int/restrict/en/caj-ag/index\\_caj-ag-06-1.htm](http://www.upov.int/restrict/en/caj-ag/index_caj-ag-06-1.htm)). The program of work of the CAJ-AG is summarized in the table in paragraph 21 of document CAJ-AG/06/1/3.

3. Two particular matters discussed by the CAJ-AG at its first session have been identified for consideration by the CAJ.

*TGP/3 “Varieties of Common Knowledge”*

4. At its forty-first session held in Geneva from April 4 to 6, 2005, the Technical Committee (TC) considered document TGP/3/1 Draft 2 “Varieties of Common Knowledge”, which reproduced document C(Extr.)/19/2 Rev. “The Notion of Breeder and Common Knowledge in the Plant Variety Protection System Based upon the UPOV Convention”, which was adopted by the Council at its nineteenth extraordinary session, held in Geneva on April 19, 2002. The TC noted that, whilst that document had been adopted by the Council, the Enlarged Editorial Committee (TC-EDC) had wondered whether the document went beyond what was contained in the General Introduction, in terms of practical clarification in relation to varieties of common knowledge. The TC agreed that it would be better to try to elaborate a more practical and comprehensive document in respect of varieties of common knowledge in conjunction with the CAJ.

5. The General Introduction addresses in Chapters 5.1 and 5.2 the requirement for distinctness, i.e. that a variety must be clearly distinguishable from any other variety whose existence is a matter of common knowledge. It provides practical guidance on what is meant by “variety” and what might be considered to be “common knowledge”, but does not consider the term “existence”. The following text was deleted from the General Introduction at the final stage of discussions by the TC and CAJ:

“Existence of a Variety

Living plant material must be in existence for a variety to be taken into account for distinctness.”

6. The program for the development of TGP documents agreed by the TC at its forty-second session (document TC/42/5, Annex II) proposed that a draft of TGP/3 “Varieties of Common Knowledge” might be considered by the CAJ-AG in 2006. At its first session, the CAJ-AG concluded that it would be difficult to find agreement on any text which suggested that plant material needed to be in existence for a variety to be taken into account for distinctness. In particular, concern was raised with regard to a situation where a breeder reproduced a previous crossing program in order to “re-breed” an extinct variety. In that respect, the breeder might be considered to be the breeder of the “resurrected” variety and might be able to protect a previously extinct variety unless the existence of that variety was considered to be a matter of common knowledge.

7. The CAJ-AG noted that the General Introduction already provided clear guidance with respect to the term “common knowledge”.

*8. The CAJ is invited to endorse the conclusion of the CAJ-AG that the General Introduction already provided clear guidance with respect to the term “common knowledge” and that it would not be appropriate, for the time being, to pursue the development of document TGP/3 “Varieties of Common Knowledge”.*

*Relationship between an initial variety and essentially derived varieties*

9. The CAJ-AG agreed that the issues raised in document CAJ-AG/06/1/2 concerning Article 14(5) of the 1991 Act “Essentially derived and certain other varieties” should be discussed at its following session on the basis of the existing text in that document. The Office of the Union presented two versions of a scheme representing the relationship between an initial variety and essentially derived varieties. In the first version (Annex II of document CAJ-AG/06/1/3), which is the version used in the Distance Learning Course (DL-205), it was indicated that there was no requirement for an initial variety to be protected in order to be considered to be an initial variety. In the second version (Annex III of document CAJ-AG/06/1/3), it was indicated that an initial variety must be protected in order to be considered an initial variety. The CAJ-AG concluded that the version in Annex II to document CAJ-AG/06/1/3, as included in the DL-205, was an appropriate reflection of the UPOV Convention. It also noted that the version in Annex III to document CAJ-AG/06/1/3 could result in considerable confusion regarding the essential derivation status of a variety. The CAJ-AG agreed that this particular matter might be presented for consideration by the CAJ at its fifty-fifth session in March 2007.

*10. The CAJ is invited to endorse the scheme representing the relationship between an initial variety and essentially derived varieties in Annex II to document CAJ-AG/06/1/3, as an appropriate reflection of the UPOV Convention.*

II. Program for the Revision of document TGP/5/1 “Experience and Cooperation in DUS Testing” and Proposal concerning Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights and Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders’ Rights of document TGP/5

11. At its forty-first session, the TC approved document TGP/5/1 “Experience and Cooperation in DUS Testing”. The TC noted that sections 1 to 7 of document TGP/5 represented texts which were contained in the UPOV publication 644(E) “Important Texts and Documents”. It observed that some of those texts had been adopted several years ago and would benefit from updating. However, it recognized that those texts represented the adopted UPOV position and also noted that UPOV publication 644(E) was no longer available and that many new members of the Union did not have easy access to those texts. Therefore, it approved Sections 1 to 7 but, in addition, agreed to develop a program for updating those sections, based on priority, in conjunction with the CAJ and Council, as appropriate.

12. Given the need for the CAJ to be involved in any revision of Sections 1 to 7, the CAJ was notified of developments in the TC in the oral report made by Ms. Julia Borys, Chair of the TC, at the fifty-first session of the CAJ, held in Geneva on April 7, 2005. The CAJ agreed that the review of document TGP/5/1 fell within the work of the CAJ-AG on the development of information materials in relation to Articles 7, 8 and 9 of the 1991 Act of the UPOV Convention. At its first session on October 20, 2006, the CAJ-AG agreed that the proposed revised Sections 1 to 7 of document TGP/5/1 should be submitted directly to the CAJ, without consideration by the CAJ-AG (paragraph 13 of document CAJ-AG/06/1/3). It is proposed that the revised Sections 1 to 7 of document TGP/5/1 be considered by the CAJ at its fifty-sixth session.

13. In addition to considering the revision of Section 2: “UPOV Model Form for the Application for Plant Breeders’ Rights” and Section 3: “Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders’ Rights” of document TGP/5, the CAJ is invited to note that the Office of the Union (Office) has been approached by the International Seed Federation (ISF) with regard to the development of an electronic version of the model application form and technical questionnaire.

14. The Office received a letter from the ISF on January 18, 2007, proposing that UPOV should consider the development of an electronic version of the model application form and technical questionnaire for use by members of the Union. It was noted that such an approach would allow a standard application form and technical questionnaire to be completed in a language of the applicant’s choice and then converted electronically to the language of the member of the Union where an application was to be made. It was suggested that the individual members of the Union could have a separate appendix containing additional questions not covered by the standard application form and technical questionnaire, although ISF suggested that such appendices should be minimized. ISF clarified that the intention was to make the forms available for use by members of the Union as they considered appropriate.

15. The Office received a letter from the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) on January 19, 2007, supporting the proposal made by ISF. It requested, in addition, that any initiative should not lead to a result that application forms which were short and simple would become more complex. The Office also received a letter from the European Seed Association (ESA) on January 30, 2007, expressing its support for the proposal made by ISF.

16. In agreement with the TC Chairperson, ISF has been invited to make a presentation on its proposal at the forty-third session of the TC.

17. In consultation with the Chair of the CAJ, the CAJ is invited to consider including a presentation by ISF on its proposal, at its fifty-sixth session in October 2007, in conjunction with the CAJ discussions on the revision of document TGP/5.

*18. The CAJ is invited to:*

*(a) agree to consider the draft revised Sections 1 to 7 of document TGP/5/1 at the fifty-sixth session of the CAJ;*

*(b) consider including a presentation by ISF on its proposal for the development of an electronic application form and technical questionnaire, at its fifty-sixth session, in conjunction with the CAJ discussions on the revision of document TGP/5 (see paragraphs 13 to 17).*

III. Proposal for a revised calendar of meetings for the October sessions of the CAJ and CAJ-AG of 2007

19. At the first session of the CAJ-AG, the Delegation of the European Community made a proposal that, whenever the CAJ agenda permitted, the October CAJ session should be reduced to one day in order to allow the session of the CAJ-AG to be held instead of the first day of the session of the CAJ. The Vice Secretary-General noted that the creation of the CAJ-AG had, as had been intended, substantially reduced the workload of the CAJ. He welcomed any proposals to make the best use of the time of the delegations and the Office of the Union. In order to take that matter forward for the October 2007 session, he explained that the matter should be agreed by the Consultative Committee and approved by the Council. It was agreed that an agenda item should be included for the seventy-third session of the Consultative Committee on March 30, 2007, to facilitate an exchange of views on the proposal.

20. In accordance with the discussions in the CAJ-AG, the document which has been prepared for the Consultative Committee explains that the CAJ, at its fifty-fifth session to be held in Geneva on March 29, 2007, would be invited under item 10 "Program for the fifty-sixth session" to give its advice on whether the CAJ session should be reduced to one day such that the second session of the CAJ-AG would take place on October 22, 2007.

21. An oral report will be made by the Chair of the CAJ in order to transmit to the Consultative Committee the advice of the CAJ on that matter. If appropriate, on the basis of the advice of the CAJ, the Consultative Committee may make a recommendation for a revised calendar of meetings, to be adopted by the Council at its twenty-fourth extraordinary session to be held in Geneva on March 30, 2007.

*22. The CAJ, when considering item 10 "Program for the fifty-sixth session", is invited to provide the Consultative Committee with its advice on holding the fifty-sixth session of the CAJ on October 23, 2007, and the second session of the CAJ-AG on October 22, 2007.*

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