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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

REPORT

adopted by the Administrative and Legal Committee

Opening of the session

1. The Administrative and Legal Committee (CAJ) held its fifty-fifth session in Geneva on March 29, 2007, under the Chairmanship of Mr. Krieno Fikkert (Netherlands).
2. The list of participants is reproduced in Annex I to this report.
3. The session was opened by the Chair, who welcomed the participants.
4. The Chair informed the CAJ that Viet Nam had deposited its instrument of accession on November 24, 2006, and had become the sixty-third member of the Union on December 24, 2007.
5. The Delegation of Viet Nam expressed its appreciation for the welcome which Viet Nam had received on becoming member. The statement made by the Delegation of Viet Nam is reproduced in Annex II to this document.
6. The Chair confirmed that the report of the fifty-fourth session of the CAJ had been adopted by correspondence (document CAJ/54/7) and was available on the UPOV website.

Adoption of the Agenda

7. The CAJ adopted the agenda as presented in document CAJ/55/1.

Report on the Developments in the Technical Committee

8. The Chair invited the Chair of the Technical Committee (TC) to report on the forty-third session of the TC, which had taken place in Geneva from March 26 to 28, 2007.

9. The TC Chair reported that the TC had discussed TGP documents and, in particular, documents TGP/4 “Constitution and Maintenance of Variety Collections” and TGP/9 “Examining Distinctness”. The TC had agreed that documents TGP/4/1 Draft 9 and TGP/9/1 Draft 9, with the amendments agreed by the TC, should be the basis for adoption of documents by the Council. In relation to TGP/10 “Examining Uniformity”, the TC had agreed that a new draft of TGP/10 should be considered by the Technical Working Parties (TWPs) at their sessions in 2007.

10. The Chair of the TC reported on matters of relevance for the revision of document TGP/5 “Experience and Cooperation in DUS Testing”. The TC had made some comments on Sections 1 to 7 of document TGP/5 and had noted the invitation in document TC/43/5, paragraph 31, for members of the Union to provide examples of contracts / agreements between authorities and breeders for inclusion in a new section of TGP/5. The Delegation of the European Community had indicated that it had agreements on the transfer of material between authorities, which it would be willing to provide, if those agreements were considered to be relevant. The representative of the International Seed Federation (ISF) had offered to provide examples of contracts/agreements between breeders and authorities if that information could be included in document TGP/5. The Office of the Union had observed that such examples should have the consent of the relevant authorities. The representative of ISF had acknowledged that requirement and noted that the consent of the breeders would also be required in the case of an example agreement concerning a particular breeder.

11. The CAJ was informed that a representative of ISF had made a presentation on a proposal for the development of an electronic application form and technical questionnaire. The TC had observed that any developments should take into account the initiatives by a number of the members of the Union to develop on-line application facilities. The TC was informed that, at its fifty-fifth session, to be held in Geneva on March 29, 2007, the CAJ would be considering the possibility to invite ISF to make a similar presentation to the CAJ in October 2007.

12. The TC had also discussed other TGP documents: a draft of TGP/11 “Examining Stability” would be considered by the CAJ in October 2008 and a draft of TGP/13 “Guidance for new Types and Species” would be considered by the CAJ in 2008.

13. In relation to molecular techniques, the Chair of the TC informed the CAJ that the TC had noted the conclusion of the Consultative Committee that the role of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) enabled it to provide a forum for discussion on the use of biochemical and molecular techniques in the consideration of variety identification without a need for a change to the existing terms of reference and had also noted that an overview of the UPOV bodies involved in the consideration of biochemical and molecular techniques had been provided on the first

restricted area of the UPOV website. The TC had noted the importance of the BMT Crop Subgroups as a forum for DUS experts and molecular specialists to consider matters at a crop specific level. The TC had, furthermore, noted the importance of the TWPs in the consideration of biochemical and molecular techniques and their contact with other UPOV bodies dealing with those matters. It had noted the importance of communication between the TWPs, BMT, BMT Crop Subgroups, TC, CAJ and the Council within the existing UPOV structure. The TC had agreed to invite the Crop Subgroups to develop proposals concerning the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation.

14. In relation to the project to consider the publication of variety descriptions, the TC had agreed that no further meeting of the *Ad hoc* Working Group on the Publication of Variety Descriptions (WG-PVD) should be arranged unless or until specific proposals were developed for the consideration of the WG-PVD by the TC or by a TWP.

15. The TC had agreed that examples of specific cases concerning a single application for a plant breeder's right for a combination of different lines should be raised with the relevant TWP, where appropriate in relation to the relevant Test Guidelines. Given the importance of the matter, which related to the definition of variety in the 1991 Act of the UPOV Convention, the TC had agreed that it should be clarified that the TWPs should investigate the specific cases from a technical perspective in order to facilitate consideration of the principles by the TC and the CAJ.

16. The Chair of the TC reported that the TC had adopted 18 Test Guidelines and referred two Test Guidelines back to the relevant TWP, in order to resolve certain technical issues.

17. The TC had noted the information provided in document TC/43/4 "List of genera and species for which authorities have practical experience in the examination of Distinctness, Uniformity and Stability" and had heard that the number of genera and species for which members of the Union had practical experience had increased from 1,906 in 2006 to 2,010 in 2007.

18. The TC had noted that the chairmanship of Ms. Julia Borys (Poland) would expire with the closing of the forty-first ordinary session of the Council in October 2007. It had proposed to the Council that it elect Mrs. Françoise Blouet (France) as new Chairperson and Mr. Chris Barnaby (New Zealand) as new Vice-Chairperson of the TC for the forthcoming three-year term.

19. The Chair of the TC informed the CAJ that the proposed draft agenda for the forty-fourth session of the TC to be held in 2008 followed the same agenda as for the forty-third session.

20. The CAJ thanked the Chair of the TC for the report on developments in the TC.

TGP Documents

21. The Technical Director introduced document CAJ/55/2 and documents TGP/4/1 Draft 9 "Constitution and Management of Variety Collections" and TGP/9/1 Draft 9 "Examining Distinctness". The Technical Director referred to a handout that had been distributed to the

CAJ at its fifty-fifth session containing the amendments to documents TGP/4/1 Draft 9 and TGP/91 Draft 9 as agreed by the TC at its forty-third session on March 28, 2007.

22. The amendments agreed by the TC on document TGP/4 Draft 9, which were reported by the Technical Director, are reproduced below.

TGP/4: Constitution and Management of Variety Collections

<i>Section</i>	<i>Comment</i>
General	“[cross ref.]” and endnotes to be deleted
Title	title to read “TGP/4 Constitution and Maintenance of Variety Collections”
2.1.1.2	final sentence to read: “Consultation of plant experts may enable the completeness of the information to be improved.”
2.2.1.5	to insert space between “varieties of common knowledge in the” and “variety”
2.2.2.2	to insert space between “the” and “territory”
3.1.2.1	final sentence to read: “For the purposes of this document, maintenance of living plant material refers to the way the living plant material is maintained in storage (e.g. seed) or under cultivation (e.g. vegetatively propagated varieties).”
3.1.2.5.1	to amend “to maintain its usefulness” to “to ensure its usefulness”
3.2.2.2	to replace “variety of common knowledge” with “varieties of common knowledge”
3.2.2.2	to delete “, according to the agreement between them”

23. The Delegation of France expressed its agreement with the proposed amendments, but considered that some linguistic adjustments in the French version might be necessary, in particular with regard to the formulation of the sentence adopted in paragraph 2.1.1.2. With regard to paragraph 2.1 on page 6 of document TGP/4/1 Draft 9, “moment voulu” should be replaced with “moment opportun”. In paragraph 3.2.2.2 on page 14 of the French version of document TGP/4/1 Draft 9, the notion of “collectors” had a strong meaning in French. The Delegation of France proposed to provide the Office of the Union with all its linguistic proposals for the French version of document TGP/4/1 Draft 9, at a later date.

24. The Technical Director informed the CAJ that the French, German and Spanish versions of documents TGP/4 and TGP/9 would be reviewed by the relevant members of the Editorial Committee before their finalization for consideration by the Council.

25. The CAJ endorsed the amendments made by the TC at its forty-third session and agreed that document TGP/4/1 Draft 9, as amended, should be the basis for adoption of document TGP/4/1 by the Council.

26. The amendments agreed by the TC at its forty-third session on March 28, 2007, on document TGP/9/1 Draft 9, as reported by the Technical Director, are reproduced below.

TGP/9: *Examining Distinctness*

<i>Section</i>	<i>Comment</i>
General	“ <i>[cross ref.]</i> ” and endnotes to be deleted. To note that the Table of Contents will be updated to reflect the changes in the document.
2.3.2.1	to delete “, for which the states of expression are particularly influenced by the environment”
2.3.3	to read: <p style="text-align: center;">“2.3.3 <u>Grouping on the basis of other characteristics, or in the absence of UPOV Test Guidelines</u></p> <p style="text-align: center;">The criteria set out in Section 2.3.1.2 <i>[cross ref.]</i> can be used to identify other characteristics which may be useful for grouping.”</p>
2.3.4.2, 2.3.4.3	to keep “the states of expressions of” (to remove the square brackets around the text)
2.4.1	to delete “differences” after “known to be clear and consistent” in the penultimate sentence
2.5.2	to read “Document TGP/7 indicates that, where useful for the DUS examination, the UPOV Test Guidelines may require that a representative color photograph of the variety accompanies the information provided in the Technical Questionnaire. In such cases, it is recommended that guidance be provided by the authority to enhance the usefulness of the photograph (e.g. to include a metric scale and a color scale in the picture, to define what parts of the plant should be included, to specify the light conditions and the background color, etc). However, the use of photographs for selecting varieties for the growing trial should take into account that, despite such guidance and the best endeavors of the breeder, photographs may not always accurately reflect the characteristics of the variety.”
4.3.2.1	to replace “for most qualitative and pseudo-qualitative characteristics in cross-pollinated varieties” with “are often fulfilled for qualitative and pseudo-qualitative characteristics in cross-pollinated varieties”
4.3.2.1	last sentence to read “In the case of some quantitative characteristics in self-pollinated and vegetatively propagated varieties, it may be appropriate to obtain records for single, individual plants or parts of plants (S) (see Section 4.3.3).”
4.3.2.3	to read “The record (G) may result from an overall observation of a plot (e.g. leaf color, time of beginning of flowering) or it may result from an overall observation of parts of plants taken from a group of plants (e.g. color of lower side of leaf, hairiness of sheath of lowest leaf). [...]”
4.3.3	to change “may be used to calculate a mean value” to “may be used solely to calculate a mean value”

<i>Section</i>	<i>Comment</i>
4.3.3.1	title: to change “to calculate variety mean value” to “solely to calculate variety mean value”
4.3.3.2	Example (MS): final sentence to read: “The value of each plant is used for calculation of the mean and to estimate random variation in order to assess distinctness.”
4.3.3.2	Example (VS): final sentence to read: “The value of each plant is used for calculation of the mean and to estimate random variation in order to assess distinctness.”
5.2.1.2	first sentence to read: “The choice of approach or combination of approaches for the assessment of distinctness, which is influenced by the features of propagation of the variety and the type of expression of the characteristic, determines the method of observation and type of record (VG, MG, VS or MS).”
5.2.3.2.2.3	to read: “The following examples illustrate why deciding on the difference in the number of Notes required between varieties to establish distinctness needs particular care: [...]”
§§5.4	“5.4 Techniques for assessing distinctness based on the growing trial” to be deleted in addition to the text already shown in strikethrough

27. The Delegation of Belgium noted that an editorial change was required to the numbering in paragraph 2.4.2.2.1 with the corresponding adjustment to be made in the table of contents of document TGP/9/1 Draft 9.

28. The Chair noted the comment of the Delegation of Belgium and confirmed that the appropriate editorial adjustments would be made to the versions of the document prepared for adoption by the Council.

29. The CAJ agreed with the amendments made by the TC to document TGP/9/1 Draft 9 and agreed that TGP/9/1, as amended, should be the basis for the adoption of document TGP/9/1 by the Council.

30. The CAJ noted that any linguistic adjustments in the French, German or Spanish versions of documents TGP/4/1 and TGP/9/1 should be transmitted to the Office of the Union for consideration by the Editorial Committee in order to prepare documents TGP/4/1 and TGP/9/1 for adoption by the Council, as set out in paragraph 9 of document CAJ/55/2.

31. The CAJ took note of the program for consideration of TGP documents by the CAJ, as set out in paragraph 11 of document CAJ/55/2.

Molecular techniques

32. The Technical Director introduced document CAJ/55/3 and reported on the conclusions of the TC at its forty-third session. In particular, the TC had noted the conclusion of the Consultative Committee that the role of the BMT enabled it to provide a forum for discussion on the use of biochemical and molecular techniques in the consideration of variety

identification without a need for a change to the existing terms of reference and had also noted that an overview of the UPOV bodies involved in the consideration of biochemical and molecular techniques has been provided on the first restricted area of the UPOV website. The TC had noted the importance of the BMT Crop Subgroups as a forum for DUS experts and molecular specialists to consider matters at a crop specific level. It had also noted the importance of the TWPs in the consideration of biochemical and molecular techniques and their contact with other UPOV bodies dealing with those matters and the importance of communication between the TWPs, BMT, BMT Crop Subgroups, the TC, the CAJ and the Council within the existing UPOV structure.

33. The Delegation of Japan referred to its intervention at the forty-third session of the TC where it had explained that the Government of Japan was of the opinion that molecular techniques were very important for the enforcement of plant breeders' rights. It stressed the need for agreement that the BMT and its related groups should continue their work concerning variety identification for plant breeders' rights. The Delegation of Japan felt that that was the positive side of the decision and hoped that the BMT would actively seek progress on that matter.

34. The Chair noted that the overview of the UPOV bodies on the UPOV website was useful and agreed that modern techniques could facilitate the enforcement of plant breeders' rights. He observed that the work of the Ad hoc subgroup of technical and legal experts on Biochemical and Molecular Techniques (BMT Review Group) took that aspect into consideration such that the Delegation of Japan need not be concerned that that aspect would be forgotten.

35. The Technical Director noted that in order to enhance the role of the BMT as a forum for discussion on the use of modern technology, a specific day would be allocated during the eleventh session of the BMT in May 2008 for discussions on the use of molecular techniques in variety identification and in the consideration of essential derivation, with the aim of encouraging participation by breeders.

36. The CAJ noted the conclusion of the Consultative Committee that the role of the BMT enabled it to provide a forum for discussion on the use of molecular techniques in variety identification and in the consideration of essential derivation without a change to the existing terms of reference. It noted that an overview of the UPOV bodies involved in the consideration of biochemical and molecular techniques had been provided on the first restricted area of the UPOV website.

Development of information materials concerning the UPOV Convention

37. The Vice Secretary-General introduced documents CAJ/55/4 and CAJ-AG/06/01/3. He explained that the purpose of document CAJ/55/4 was to report on matters arising from the first session of Administrative and Legal Committee Advisory Group (CAJ-AG); to consider a program for the revision of document TGP/5/1 "Experience and Cooperation in DUS Testing"; to inform the 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; 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.

38. The Vice Secretary-General recalled that the working documents of the CAJ-AG were in English only and explained that it was proposed that the adopted report on the conclusions of the CAJ-AG should be translated into the other UPOV languages as a means of enhancing the reporting of the work of the CAJ-AG to the CAJ. The CAJ endorsed that proposal .

39. The Vice Secretary-General introduced paragraphs 4 to 8 of document CAJ/55/4 on matters arising from the first session of the CAJ-AG.

TGP/3 “Varieties of Common Knowledge”

40. The Delegation of the European Community noted that, in paragraph 6 of document CAJ/55/4, it was stated that it would be difficult to find agreement on any text which suggested that plant material needed to be in existence in order for a variety to be taken into account for distinctness. In paragraph 8 of document CAJ/55/4, it was stated that the General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants (General Introduction) already provided clear guidance with respect to common knowledge. The Delegation considered that there could be a contradiction in those two statements. The Delegation understood that it was very difficult to prove that an extinct variety was the same as a new variety. Those situations should be considered on a case-by case basis, depending on the evidence in each case. However, the Delegation did not want to open the discussion again and thought that it was good to keep the reference to the General Introduction, but with an amendment to the wording in paragraph 8 of document CAJ/55/4. It considered that there was no need to state that the General Introduction already provided clear guidance, just to conclude that it would not be appropriate, for the time being, to pursue the development of document TGP/3.

41. The Delegation of France expressed its support for the intervention made by the Delegation of the European Community. It was of the opinion that the apparent contradiction between paragraphs 6 and 8 of document CAJ/55/4 could be eliminated by concluding that that it would not be appropriate, for the time being, to pursue the development of document TGP/3.

42. The Delegation of the United States of America supported the proposal of the Delegation of the European Community.

43. The Delegation of Colombia supported the conclusion as presented in paragraph 8 of document CAJ/55/4.

44. The Chair referred to the proposal by the Delegation of the European Community and considered that it might be appropriate to avoid the word “clear” in relation to guidance if some delegations thought that in certain parts the guidance was not “clear”. He noted that that matter concerned a hypothetical situation where a breeder reproduced a previous crossing program in order to “re-breed” an extinct variety. In such a case, without living material it would not be possible to prove that the resurrected variety was the same variety.

45. The Delegations of Colombia, the European Community and France agreed to the deletion of the word “clear” in paragraph 8 of document CAJ/55/4.

46. The CAJ endorsed the conclusion of the CAJ-AG as set out in paragraph 8 of document CAJ/55/4 with the deletion of the word “clear”. The amended paragraph 8 is reproduced here for ease of reference:

“The CAJ endorsed the conclusion of the CAJ-AG that the General Introduction already provided 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

47. The Vice Secretary-General introduced paragraphs 9 and 10 of document CAJ/55/4 and paragraph 16 and Annex II of document CAJ-AG/06/1/3 concerning the relationship between an initial variety and essentially derived varieties.

48. The Delegation of Mexico, while understanding the technical aspect of the notion “initial variety”, was of the opinion that for the purpose of the 1991 Act, an essentially derived variety had to be derived from a protected initial variety.

49. The Delegation of France referred to the deliberations in the CAJ-AG and explained that Article 14(5)(b) of the 1991 Act of the UPOV Convention referred to the initial variety as a technical notion. If the initial variety was not protected, then the relationship between the initial variety and the essentially derived variety fell outside the 1991 Act. If the initial variety was protected, then there was a legal dependency between that protected initial variety and the essentially derived variety (Article 14(5)(a)(i) of the 1991 Act).

50. The Delegation of Belgium expressed its agreement with the explanation provided by the Delegation of France and the information provided in document CAJ-AG/06/1/3. In relation to the intervention made by the Delegation of Mexico, it noted that Article 14(5)(c) of the 1991 Act, which provided examples of methods to obtain essentially derived varieties, made reference to the notion of initial variety with no indication that an initial variety should be protected.

51. The Chair explained that an “initial variety” was a technical concept and that legal consequences arose if the initial variety was protected. He noted that the conclusion under paragraphs 9 and 10 of document CAJ/55/4 that “there was no requirement for an initial variety to be protected in order to be considered an initial variety” was reflected in the scheme in Annex II to document CAJ-AG/06/1/3 and was explained in paragraph 16 of document CAJ-AG/06/1/3.

52. The Delegation of Romania agreed with the explanation provided by the Chair.

53. The Vice Secretary-General explained that the scheme in Annex II to document CAJ-AG/06/1/3 was in agreement with the explanation provided by the Chair and was the basis for the explanation in the distance learning course (DL-205). He noted that it was considered helpful to provide that clarification and welcomed the endorsement by the CAJ on that important matter.

54. The CAJ endorsed the explanation in paragraph 16 of document CAJ-AG/06/1/3 that “there was no requirement for an initial variety to be protected in order to be considered an

initial variety” and the corresponding 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.

TGP/5 “Experience and Cooperation in DUS Testing”

55. The Chair referred to paragraphs 11 to 18 of document CAJ/55/4 concerning the program for the revision of document TGP/5 “Experience and Cooperation in DUS Testing” and proposals concerning Section 2: UPOV Model Form for the Application for Plant Breeder’s Rights and Section 3: Technical Questionnaire to be completed in connection with an application for plant breeder’s rights of document TGP/5.

56. The CAJ agreed to consider draft revised Sections 1 to 7 of document TGP/5/1 at the fifty-sixth session of the CAJ.

57. The representative of ISF drew attention to the new section of document TGP/5 concerning examples of contracts/agreements between authorities and breeders.

58. The Chair recalled that the CAJ had already taken note of that new section which had been included in paragraph 11 of document CAJ/55/2 “TGP Documents”. He proposed that the square brackets should be removed in the table and made reference to the deliberations in the TC as reported by the Chair of the TC (see paragraph 10 to this document).

59. In relation to the proposal under the decision paragraph 18(b) of document CAJ/55/4, to invite ISF to make a presentation on its proposal for the development of an electronic application form and technical questionnaire at the fifty-sixth session of the CAJ in conjunction with the CAJ discussions on the revision of document TGP/5, the Chair indicated that that would also provide an opportunity for members of the Union to present their initiatives on the development of on-line application facilities. The Chair suggested to reserve half a day at the fifty-sixth session of the CAJ for those presentations and invited members of the Union to indicate if they wished to make a presentation.

60. The Delegation of Germany reported that, from May 1, 2007, it would be possible to file applications for plant breeder’s rights electronically. The Delegation proposed to make a presentation on that matter at the fifty-sixth session in October 2007.

61. The Delegation of Brazil welcomed the opportunity to present the experience of Brazil on its electronic filing system which was under development.

62. The Delegation of Spain reported that Spain had started to develop a system of on-line application forms, but wondered whether there would be enough progress to make a presentation in October 2007. The Delegation considered that it would be very useful to learn about initiatives on that matter, in order to share experiences, learn from others, reduce errors and facilitate harmonization.

63. The Chair informed the CAJ that paragraphs 19 to 22 of document CAJ/55/4, concerning a proposal for a revised calendar of meetings for the October sessions of the CAJ and the CAJ-AG of 2007, would be considered under item 10 “Program for the fifty-sixth session.”

Explanatory notes on variety denominations under the UPOV Convention

64. The Vice Secretary-General introduced document CAJ/55/5 reporting on developments on variety denominations and, in particular, the establishment of a list of contacts for the exchange of information on matters concerning variety denominations. He explained that the draft list of contacts which appeared in the Annex to document CAJ/55/5 contained information received before March 2, 2007, and that since that date several members had sent contact information to the Office of the Union. The final list would be updated in accordance with the submissions received from members of the Union and would then be published on the first restricted area of the UPOV Website.

65. The Delegation of Spain requested a correction in the address of the variety denomination contact for Spain which appeared in the Annex to document CAJ/55/5.

66. The Chair requested members of the Union to inform the Office of the Union of any necessary changes to the draft list in the Annex to document CAJ/55/5.

Enforcement of plant breeders' rights

67. The Vice Secretary-General introduced document CAJ/55/6. He recalled that a report on the deliberations of the Consultative Committee, at its seventy-third session on March 30, 2007, on the enforcement of plant breeders' rights, would be made to the CAJ at its fifty-sixth session in October 2007.

68. The Delegation of Japan reported that the Workshop on the Enforcement of Plant Breeders' Rights under the UPOV Convention, organized by the Government of Japan in cooperation with UPOV, which took place in Tokyo from November 15 to 17, 2006, had been very successful, with many participants from UPOV members and observers, as well as Japanese participants. The Delegation of Japan appreciated the support, advice and participation of the Office of the Union in the Workshop. The Delegation believed that the success of the event revealed the amount of interest on enforcement issues. One of the lessons learnt from the Workshop was that authorities should provide an appropriate framework to enable breeders to enforce their rights. In that sense, the Government of Japan had proposed amendments to the Plant Variety Protection Law. The amendments included provisions for legal responsibility, enhancement of criminal penalties and simplification of civil proceedings. The Delegation stressed the importance of international cooperation and exchange of information among members of UPOV to support breeders' efforts in the exercise of their rights. In that regard, the Delegation announced a "Seminar on the International Cooperation and Harmonization in Plant Variety Protection in the Asian Region" in Tokyo, on October 4 and 5, 2007. The Delegation would appreciate the participation of the members and the Office of the Union in that Seminar.

69. The Delegation of the European Community reported that the Community Plant Variety Office (CPVO), in close cooperation with the European Seed Association (ESA) and the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), organized in February 2007 in Madrid (Spain), a seminar on enforcement of plant variety rights. The Seminar was the third in a series of seminars with previous seminars having been held in Brussels and Warsaw. The Seminar was a regional seminar aimed at the enforcement of plant variety rights in France, Portugal and Spain. The speakers and participants included breeders, farmers, officials from ministries, lawyers,

customs authorities, etc. Presentations were made on the legislation of the European Community, national legislation, case law and some of the problems which breeders faced. 170 participants took part in the Seminar. The Delegation reported that speeches from that seminar, as well as from the previous seminars, held in Brussels and Warsaw, were available on the CPVO website, under “News and Events” (www.cpvo.europa.eu).

70. The representative of CIOPORA noted that, on the website of the CPVO, there was a section which included judgments on plant variety rights cases in the European Community. The representative welcomed that development which he explained was important for breeders to be able to monitor court decisions in that field.

UPOV information databases

71. The Technical Director made an oral update on developments concerning the GENIE database, the UPOV code system and the plant variety database (UPOV-ROM).

72. The Technical Director reported that the data in the Access version of the GENIE database had been successfully transferred into an Oracle database, which would allow it to be made available on the UPOV website. He confirmed that the improvements to the prototype Access version of the database had been incorporated into the Oracle database. He informed the CAJ that the Oracle version of the GENIE database had already been used to generate document TC/43/4 and that it was planned that the GENIE database would be made available online within six months.

73. With regard to the UPOV-ROM Plant Variety Database, the CAJ was informed that around 64% of the entries contained in the UPOV-ROM had been supplied with UPOV codes. The Technical Director reported that, at the forty-third session of the TC, the representative of the OECD had explained the interest of the OECD in the UPOV-ROM Plant Variety Database and had invited the Office of the Union to make a presentation on the UPOV-ROM and the GENIE database at the Annual Meeting of the OECD Seed Schemes in July 2007.

74. The CAJ took note of the oral report made by the Technical Director on developments concerning the GENIE database, the UPOV code system and the UPOV-ROM.

Program for the fifty-sixth session

75. The Vice Secretary-General introduced paragraphs 19 to 22 of document CAJ/55/4, concerning a proposal for a revised calendar of meetings for the October sessions of the CAJ and the CAJ-AG of 2007. In particular, when considering item 10 “Program for the fifty-sixth session”, the CAJ was 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.

76. The Chair noted that a possible reduction of the CAJ session in October to one day was dependent on the agenda of that session. In light of the discussions during the fifty-fifth session of the CAJ, the Chair presented the proposed program for the fifty-sixth session in October 2007:

1. Opening of the session
2. Adoption of the agenda
3. Presentations by members of the Union and the International Seed Federation (ISF) on experiences and initiatives for the development of electronic application forms and technical questionnaires
4. TGP documents

TGP/5: Experience and Cooperation in DUS Testing

Section 1/2 Draft 2: Model Administrative Agreement for International Cooperation in the Testing of Varieties

Section 2/2 Draft 2: UPOV Model Form for the Application for Plant Breeders' Rights

Section 4/2 Draft 2: UPOV Model Form for the Designation of the Sample of the Variety

Section 5/2 Draft 2: UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results

Section 6/2 Draft 2: UPOV Report on Technical Examination and UPOV Variety Description

Section 7/2 Draft 2: UPOV Interim Report on Technical Examination

Section 11/1 Draft 1: Examples of contracts/agreements between authorities and breeders

5. Molecular techniques
6. Development of information materials concerning the UPOV Convention
7. Enforcement of plant breeders' rights
8. Program for the fifty-seventh session

77. The CAJ endorsed the program for the fifty-sixth session in October 2007, as proposed by the Chair.

78. The Chair referred, in particular, to two points on the draft agenda: presentations by members of the Union and ISF on experiences and initiatives for the development of electronic application forms and technical questionnaires; and the examination of TGP documents comprising several model forms (document TGP/5). He estimated that the presentations would take half a day, while the work on the examination of the different forms might take up to one full day.

79. The Delegation of Spain, recalling the deliberations of the CAJ in the past concerning model forms, considered that the examination of those forms might take at least one full day.

80. The Delegation of Germany wondered if, for efficiency purposes, it was better to allocate half a day to the presentations on electronic forms and the rest of the day to the other items of the draft agenda.

81. The Delegation of the European Community recalled that the proposition in paragraph 19 of document CAJ/55/4 was made by the Delegation of the European Community. The intention of that proposal was that, whenever the CAJ agenda permitted, the October CAJ session could 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 Delegation noted the additional items in the fifty-sixth session of the CAJ, mainly the presentations by members and ISF and the deliberations on document TGP/5. Although one day to cover all the items was still its preference, the Delegation observed that that would require a long working day.

82. The Chair confirmed his initial assessment that one day for the fifty-sixth session of the CAJ in October 2007 did not seem sufficient to cover all the agenda items.

83. The Delegation of the European Community supported the proposal, for the fifty-sixth session of the CAJ in October 2007, to be allocated two days and explained that, on that basis, it expected important progress in the deliberations concerning the model forms in order to facilitate future harmonization.

84. The CAJ agreed that the advice of the CAJ to the Consultative Committee was that the fifty-sixth session of the CAJ should be held on October 22 and 23, 2007, and that the second session of the CAJ-AG should be held on October 26, 2007.

85. The Vice Secretary-General informed the CAJ of a proposal from the Office of the Union for the Consultative Committee to review the organization of the work of the sessions of the CAJ and the extraordinary sessions of the Council, in order to make the best use of the time and resources of the delegations and the Office of the Union. For example, it might be beneficial to hold only one session a year of the CAJ in October and to make the holding of an extraordinary session of the Council and the corresponding session of the Consultative Committee conditional, based on whether urgent and important matters required such sessions and when requests for examination of laws were received three months prior to the Council extraordinary session. He added that such a proposal to review the organization of the UPOV sessions would be made to the Consultative Committee at its seventy-third session on March 30, 2007, with a suggestion that the Office of the Union might prepare a document taking into consideration the comments made by the Consultative Committee. If agreed, a document would be discussed at the seventy-fourth session of the Consultative Committee on October 24, 2007.

86. The Delegation of the European Community appreciated the suggestions made by the Vice Secretary-General on the organization of the UPOV sessions. It noted that such initiatives might help to reduce the need for delegations to travel and make the best use of the time of the members and the Office of the Union.

87. The Chair recalled that any recommendation concerning the organization of the UPOV sessions was a matter for the Consultative Committee. He noted that there might be advantages of not holding a CAJ session in April if there was no other session of the Council

and the Consultative Committee in April either. However, if there was a need to hold a Council session, for instance if an examination of a law had been requested, then it would be necessary for the Council to meet in Geneva in April. The Chair also noted the advantage of having more time available for the preparation of the documents if there was only one session of the CAJ per year. He recalled that there were other ways to consult members on administrative and legal matters, for instance by electronic means. He noted that it would be useful that a document be prepared for the session of the Consultative Committee in October 2007 in order to identify the advantages and disadvantages of such an approach.

88. The Delegation of France reported that, in principle, it would be in favor of removing the CAJ session in April.

89. The CAJ agreed that the Chair should report to the Consultative Committee that the CAJ had had a preliminary discussion on a possible reorganization of the UPOV sessions and that, in particular, the CAJ had heard some arguments in favor of the abolition of the April session of the CAJ.

90. The present report has been adopted by correspondence.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
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in the alphabetical order of the names in French of the members/
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[L'annexe II suit/
Annex II follows/
Anlage II folgt/
Sigue el Anexo II]

ANNEX II

STATEMENT BY THE DELEGATION OF VIET NAM

Chairman,
Ladies and Gentlemen,

On behalf of the Ministry of Agriculture and Rural Development, Viet Nam appreciates the warm welcome into the UPOV family. We are very honored to be a member of UPOV.

After more than 11 years of efforts for joining UPOV, on November 24, 2006, Viet Nam deposited its instrument of accession to the UPOV Convention (1991 Act). On December 24, 2006 Viet Nam became the sixty-third member of UPOV.

The Intellectual Property Law of Viet Nam entered into force on July 1, 2006 and the Decree No. 104/2006/ND-CP on Detailed Regulations to Implement Some Articles in the Intellectual Property Law, Chapters on Plant Variety Rights entered into force on November 2, 2006. On April 7, 2006, based on Article 5 of the Law, the Council of UPOV took a positive decision on the conformity of the Law, with the 1991 Act of the UPOV Convention.

Plant breeders' rights in Viet Nam fall under the responsibility of the Ministry of Agriculture and Rural Development (MARD). The Plant Variety Protection Office in the Department of Crop Production of MARD has the appropriate legal and institutional framework for the grant of protection of plant breeders' rights. The staff received excellent training from Denmark, Japan and the United States of America and in the field of plant breeders' rights.

Viet Nam is planning to cooperate in DUS testing with members of UPOV such as Japan and the Netherlands and also with some countries of the region which are not yet members of UPOV such as Malaysia, Thailand and the Philippines. As of today, protection is available in Viet Nam for 15 species. In order to enhance the Plant Variety Protection System, the Ministry of Agriculture and Rural Development is improving its legal and institutional framework concerning plant variety protection.

I would like to emphasize our gratitude for the assistance received by the Office of the Union in the accession procedure of Viet Nam to the UPOV Convention.

I would like also to convey thanks to experts from Denmark, Japan and the United States of America, and from other authorities of the members of the Union for their assistance and cooperation.

Thank you.

[End of Annex II and of document]