



CAJ/60/10
ORIGINAL: English
DATE: October 19, 2009

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

**Sixtieth Session
Geneva, October 19 and 20, 2009**

REPORT ON THE CONCLUSIONS

adopted by the Administrative and Legal Committee

Opening of the session

1. The Administrative and Legal Committee (CAJ) held its sixtieth session in Geneva on October 19, 2009, under the Chairmanship of Mrs. Carmen Gianni (Argentina).
2. The list of participants is reproduced in the Annex to this report.
3. The session was opened by the Chair, who welcomed the participants.
4. The Chair informed the CAJ that Slovakia, which had been a member of the Union since January 1, 1993, became bound by the 1991 Act of the UPOV Convention on June 12, 2009.
5. The Chair confirmed that the report of the fifty-ninth session of the CAJ, held in Geneva on April 2, 2009 (document CAJ/59/8), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

6. The CAJ adopted the agenda, as presented in document CAJ/60/1 Rev.

TGP documents

7. The CAJ considered document CAJ/60/2 and an oral summary of certain comments of the Technical Working Party for Agricultural Crops (TWA), the Technical Working Party for Ornamental Plants and Forest Trees (TWO) and the Technical Working Party for Fruit Crops (TWF).

TGP/7 “Development of Test Guidelines” (Revision)

8. The CAJ made no comments on document TGP/7/2 Draft 3.

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

9. The CAJ made no comments on document TGP/8/1 Draft 13.

TGP/11 “Examining Stability”

10. The CAJ considered document TGP/11/1 Draft 5 and noted the aspects that the TC had requested to be addressed in the next draft of document TGP/11/1.

TGP/14 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents” (documents TGP/14/1 Draft 9 and TGP/14/1 Draft 9 Supp.)

11. The CAJ considered documents TGP/14/1 Draft 9 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents” and TGP/14/1 Draft 9 Supp.

12. In response to a comment made by the Delegation of Belgium concerning the cross references in the French version of document TGP/14/1 Draft 9 for “PBR” and “droit d’obtenteur”, the Vice Secretary-General confirmed that the French, German and Spanish translations of document TGP/14/1 would be reviewed by the relevant members of the Editorial Committee before the document was proposed for adoption.

Program for the development of TGP Documents

13. The CAJ agreed the program for the development of TGP documents, as set out in Annex II to document CAJ/60/2.

Development of information materials concerning the UPOV Convention

14. The CAJ considered document CAJ/60/3.

Report concerning information materials considered by correspondence in 2009

15. The CAJ noted the report concerning information materials considered by correspondence in 2009, as provided in paragraphs 5 to 7 and in Annex II of document CAJ/60/3.

Summary of the documents concerning information materials approved by the CAJ which the Council is invited to adopt at its forty-third ordinary session, to be held in Geneva on October 22, 2009

16. The CAJ noted the summary of the documents concerning information materials approved by the CAJ which the Council would be invited to adopt at its forty-third ordinary session, to be held in Geneva on October 22, 2009, as set out in paragraph 9 of document CAJ/60/3.

17. In response to a request for clarification, the Chair confirmed that the Council, at its forty-third ordinary session, to be held in Geneva on October 22, 2009, would be invited to adopt document “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” (document UPOV/EXN/EDV Draft 3) (see paragraph 9 of document CAJ/60/3). The Chair recalled that at the fifty-eighth session of the CAJ, held in Geneva on October 27 and 28, 2008, the CAJ approved the text of document UPOV/EXN/EDV Draft 3 (see document CAJ/58/6 “Report on the Conclusions”). She added that the possible revision of that document, to be considered by the CAJ-AG, was intended to explore if it would be possible to further extend the guidance provided in the document proposed for adoption by the Council.

Work program for the fourth session of the CAJ-AG which was approved by the CAJ at its fifty-ninth session

18. The CAJ noted the documents to be considered by the CAJ-AG at its fourth session to be held in Geneva on October 23, 2009, as set out in paragraphs 11 and 12 of document CAJ/60/3. The CAJ noted that the comments provided by the International Seed Federation (ISF) on document “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 UPOV Convention” (document UPOV/EXN/HRV Draft 4) had been posted on the CAJ-AG section of the UPOV website and would be considered by the CAJ-AG at its fourth session.

Proposal for the development of a new information document

19. The CAJ agreed to the preparation of an information document on ongoing obligations of members of the Union and related notifications (document UPOV/INF/15/1), as set out in paragraphs 14 and 15 of document CAJ/60/3.

Participation of CIOPORA and ISF in the work of the CAJ-AG

20. The CAJ noted that it had agreed, at its fifty-ninth session, that CIOPORA and ISF should be invited to participate at part of the fourth session of the CAJ-AG, in order to present their comments and views on relevant matters. Those invitations had been sent to CIOPORA and ISF accordingly.

21. The CAJ recalled that the terms of reference of the CAJ-AG provided that “[o]bserver organizations, in particular those representing the interests of breeders, might be invited by the advisory group to present their views on a particular provision of the 1991 Act to assist in their work. Where appropriate, those presentations might be made in conjunction with a CAJ session” (see paragraph 14 of document CAJ/52/4 and paragraph 67 of document CAJ/52/5, “Report”).

22. With regard to the request of CIOPORA and ISF for a more institutionalized cooperation with the CAJ-AG, the CAJ agreed that, in the first instance, that matter should be considered by the CAJ-AG and the recommendations of the CAJ-AG, at its forth session, reported for consideration by the CAJ at its sixty-first session, to be held in Geneva on March 25, 2010.

Variety denominations

23. The CAJ considered document CAJ/60/4.

24. The CAJ agreed to the proposal by the TC, at its forty-fifth session, held in Geneva from March 30 to April 1, 2009, that Class 202 in document UPOV/INF/12/1, Annex I, Part II “Classes encompassing more than one genus”, be extended to cover *Megathyrsus*, *Panicum*, *Setaria* and *Steinchisma*.

25. The CAJ agreed to the proposal by the TC, at its forty-fifth session, that Class 211 in document UPOV/INF/12/1, Annex I, Part II “Classes encompassing more than one genus” should be modified to cover all species of *Agaricus*, *Agrocybe*, *Auricularia*, *Dictyophora*, *Flammulina*, *Ganoderma*, *Grifola*, *Hericium*, *Hypsizigus*, *Lentinula*, *Lepista*, *Lyophyllum*, *Meripilus*, *Mycoleptodonoides*, *Naematoloma*, *Panellus*, *Pholiota*, *Pleurotus*, *Polyporus*, *Sparassis* and *Tricholoma*. The CAJ further agreed that the name of Class 211 should be changed to “Class 211 (Mushrooms).”

26. The Delegation of the Russian Federation proposed that the UPOV code for “*Lentinula edodes*”, in Class 211 in document UPOV/INF/12/1, Annex I, Part II “Classes encompassing more than one genus”, should be checked. The Office of the Union agreed to check the validity of the UPOV code. However it was noted that that would not affect the wording of the proposal in document UPOV/INF/12/2 Draft 1, to be presented to the Council for adoption at its forty-third ordinary session, to be held in Geneva on October 22, 2009.

27. The CAJ further agreed that a draft revised version of the “Explanatory Notes on Variety Denominations under the UPOV Convention”, document UPOV/INF/12/2 Draft 1, incorporating the proposals concerning Class 202 and Class 211, be presented to the Council for adoption at its forty-third ordinary session, to be held in Geneva on October 22, 2009.

28. The CAJ noted the developments concerning the botanical reclassification of *Lycopersicon*, including *Lycopersicon esculentum* Mill. (Tomato), and *Cyphomandra* and the implications concerning denomination classes, which would be considered by the TC at its forty-sixth session, as set out in paragraphs 21 to 28 of document CAJ/60/4.

Electronic application systems

29. The CAJ considered document CAJ/60/5.

Proposal 1: Standardized reference by authorities to the UPOV Model Application Form and UPOV Model TQ

30. The CAJ considered “Proposal 1: Standardized reference by authorities to the UPOV Model Application Form and UPOV Model TQ”, on the basis of paragraphs 21 to 30 of document CAJ/60/5 and approved the:

- (i) standard UPOV references for the UPOV Model Application Form and UPOV Model TQ, as set out in Annexes II and IV of document CAJ/60/5;
- (ii) inclusion of an explanation of the standard references in the revision of document TGP/7 and in a revision of document TGP/5 Section 2/2;
- (iii) posting of standard references and “linear blank forms” (in “Word” format) on the freely-accessible area of UPOV website, on the basis of Annexes II and IV of document CAJ/60/5; and
- (iv) translation of “linear blank forms” into other languages, as set out in paragraph 26 of document CAJ/60/5.

31. The CAJ agreed that Proposal 1 “Standardized reference by authorities to the UPOV Model Application Form and UPOV Model TQ”, as approved by the CAJ at its sixtieth session, would be put forward for adoption by the Council in October 2010.

Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ

32. The CAJ considered “Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”, on the basis of paragraphs 36 and 37 of document CAJ/60/5.

33. The CAJ agreed that a Circular should be issued to the CAJ inviting expressions of interest in relation to “Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”. The response to that circular would be considered by the CAJ at sixty-first session, in March 2010.

UPOV-ROM Plant Variety Database

34. The CAJ considered document CAJ/60/6.

35. As a part of the UPOV-WIPO arrangement concerning the UPOV Plant Variety Database, as set out in paragraph 6 of document CAJ/60/6, the CAJ noted the deployment by WIPO of a database administrator, Mr. José Appave, Senior Administration Clerk, who was introduced to the CAJ, and further noted that the selection process of a software developer was underway.

36. The CAJ noted that the TC would be invited to consider the proposal of the Technical Working Party on Automation and Computer Programs (TWC) to conduct an analysis of the use of the fields in the UPOV-ROM Plant Variety Database, at the forty-sixth session of the TC, as set out in paragraph 8 of document CAJ/60/6. It was noted that the “use” of fields related to the inclusion of data in those fields by contributors.

37. The CAJ approved the continued involvement of the Office of the Union in exploratory discussions with WIPO concerning a brand-related database, in accordance with the approach set out in paragraphs 12 and 13 of document CAJ/60/6 and requested the Office of the Union, as appropriate, to develop a proposal for consideration by the TC, CAJ and the Consultative Committee.

38. The CAJ noted that the Office of the Union planned to organize a meeting with interested parties to discuss the possible development of a common search platform, as set out in paragraph 14 of document CAJ/60/6.

Molecular techniques

39. The CAJ considered document CAJ/60/7.

UPOV Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (BMT Guidelines)

40. The CAJ considered document BMT Guidelines (proj.15) “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction” in conjunction with document CAJ/60/7. The CAJ made no comments on the document.

41. The CAJ agreed that a draft of the BMT Guidelines should be prepared for approval by the TC and CAJ in March 2010, in anticipation of adoption of the BMT Guidelines by the Council in 2010.

Proposals for the utilization of biochemical and molecular techniques in the examination of DUS considered by the BMT Review Group

42. The CAJ noted that the BMT Review Group had:

“(a) concluded that the proposal in the Annex to document BMT-RG/Apr09/2 ‘Proposal: System for combining phenotypic and molecular distances in the management of variety collections’, incorporating the clarifications set out in document BMT-RG/Apr09/3, paragraphs 7 and 8 (Annex III to this document), where used for the management of variety collections, was acceptable within the terms of the UPOV Convention and would not undermine the effectiveness of protection offered under the UPOV system;

“(b) agreed that the proposal in the Annex to document BMT-RG/Apr09/2 (Annex III to this document) represented a model that might be applicable to other crops provided that the elements of the proposal were equally applicable. In that respect, it noted, for example, that the proposal in the Annex to document BMT-RG/Apr09/2 (Annex III to this document) applied only to maize parental lines and did not extend to other types of maize. The BMT Review Group concluded that it was important to consider on a case-by-case basis whether the model would be applicable; and

“(c) noted that some of the elements of the proposal in the Annex to document BMT-RG/Apr09/2 (Annex III to this document) were similar to the Option 2 approach “Calibration of threshold levels for molecular characteristics against the minimum distance in traditional characteristics”, as set out in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add.. However, the BMT Review Group concluded that it would not be appropriate to classify the proposal under Option 2 and agreed that the proposal should be referred to as the ‘System for combining phenotypic and molecular distances in the management of variety collections’”.

43. The CAJ endorsed the recommendations of the BMT Review Group, as set out above.

44. The CAJ noted that the TC, at its forty-sixth session, would be invited to express its opinion on the recommendations of the BMT Review Group, as set out in paragraph 22 of document CAJ/60/7, in conjunction with the opinion of the CAJ.

Revision of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add.

45. The CAJ noted the timetable for the revision of documents TC/38/14-CAJ/45/5 “Ad Hoc Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (“The BMT Review Group”)” and TC/38/14 Add.-CAJ/45/5 Add. “Recommendations of the BMT Review Group and Opinion of the Technical Committee and the Administrative and Legal Committee Concerning Molecular Techniques”, as set out in paragraph 27 of document CAJ/60/7.

46. The CAJ agreed that a first draft of the revised version of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add. should be prepared for consideration by the TC at its forty-sixth session and by the CAJ at its sixty-first session, both in March 2010. On that basis, the CAJ noted that a document could be presented for adoption by the Council in October 2010, in conjunction with the BMT Guidelines.

Matters arising after the grant of a breeder’s right

47. The CAJ considered document CAJ/60/8.

48. The CAJ expressed its support for the development of a document concerning matters arising after the grant of a breeder’s right. The CAJ agreed that the Office of the Union should issue a circular inviting members of the Union to provide examples of matters that might be covered by the document. In the meantime, the CAJ agreed that the CAJ-AG should be invited to have a first exchange of views on the possible structure and content of such a document, at its fourth session. A report on the responses to the circular and the consideration by the CAJ-AG would be reported to the CAJ at its sixty-first session in March 2010, in order to determine how best to proceed with the development of a document.

Exchangeable software

49. The CAJ considered documents CAJ/60/9, UPOV/INF/Software Draft 2 “Exchangeable Software” and the oral report by the Chair of the TC.

50. The CAJ noted that document UPOV/INF/Software Draft 2 “Exchangeable Software” could be amended to accommodate new categories, as appropriate.

51. The CAJ further noted that subject to the approval of the TC and the CAJ, document UPOV/INF/Software would be put forward for adoption by the Council and would be revised in response to on-going developments concerning exchangeable software (see document UPOV/INF/Software Draft 2, section 2 “Procedure for inclusion of software”).

Program for the sixty-first session

52. The CAJ agreed the following program for its sixty-first session, to be held in Geneva on March 25, 2010, and anticipated that a full day would be necessary to cover the program:

1. Opening of the session
2. Adoption of the agenda
3. Oral report on developments in the Technical Committee
4. TGP documents
 - (a) TGP/7/2 Development of Test Guidelines” (Revision)
 - (b) TGP/8/1 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”
 - (c) TGP/14/1 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents”
5. Development of information materials concerning the UPOV Convention
 - (a) Report of the work of the CAJ-AG at its fourth session
 - (b) Report on the information materials considered by correspondence (UPOV/INF/15)
 - (c) Information materials for consideration at the sixty-first session
 - (d) New proposals for information materials
6. Variety denominations
7. Electronic application systems
8. UPOV-ROM Plant Variety Database
9. Molecular techniques:
 - (a) UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)
 - (b) revision of documents TC/38/14-CAJ/45/5 “Ad Hoc Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (‘The BMT Review Group’)” and TC/38/14 Add.-CAJ/45/5 Add “Recommendations of the

BMT Review Group and Opinion of the Technical Committee and the Administrative and Legal Committee Concerning Molecular Techniques”

10. Matters arising after the grant of a breeder's right
11. Exchangeable software
12. Program for the sixty-second session
13. Adoption of the report on the conclusions (if time permits)
14. Closing of the session

53. This report was adopted by the Administrative and Legal Committee at the close of its session on October 19, 2009.

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

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

(dans l'ordre alphabétique des noms français des membres/
 in the alphabetical order of the names in French of the members/
 in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
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