



CAJ/62/9

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Second Session
October 19, 2010

REPORT

adopted by the Administrative and Legal Committee

Opening of the session

- *1. The Administrative and Legal Committee (CAJ) held its sixty-second session in Geneva on October 19, 2010, under the Chairmanship of Mrs. Carmen Gianni (Argentina).
- *2. The session was opened by the Chair, who welcomed the participants.
- *3. The list of participants is reproduced in the Annex to this report.
- *4. The Chair confirmed that the report of the sixty-first session of the CAJ, held in Geneva on March 25, 2010 (document CAJ/61/12), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

- *5. The CAJ adopted the agenda, as presented in document CAJ/62/1 with the addition of document UPOV/EXN/HRV Draft 5 Corr. under agenda item 4.

* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Conclusions (document CAJ/62/8).

TGP documents

*6. The CAJ considered documents CAJ/62/2 and TGP/11/1 Draft 8.

TGP/11/1 Draft 8: "Examining stability"

*7. The CAJ considered document TGP/11/1 Draft 8, in conjunction with the comments of the Technical Working Party on Agricultural Crops (TWA), Technical Working Party on Automation and Computer Programs (TWC) and Technical Working Party for Vegetables (TWV), as set out in paragraph 9 of document CAJ/62/2, and the oral report of the comments of the Technical Working Party for Ornamental Plants and Forest Trees (TWO) and Technical Working Party for Fruit Crops (TWF) reported at the sixty-second session of the CAJ. The CAJ noted that it would consider a draft of document TGP/11 incorporating comments of the Technical Working Parties (TWPs) at its sixty-third session to be held in Geneva in April 2011.

*8. The CAJ noted that the Technical Committee (TC), at its forty-seventh session to be held in April 2011, would be invited to consider the possibility of organizing a seminar to consider the issues related to the submission of parent lines for hybrid varieties of vegetables where the parent lines are not examined as a part of the DUS examination of the hybrid, as set out in paragraph 11 of document CAJ/62/2.

*9. The CAJ agreed the program for the development of TGP documents, as set out in the Annex to document CAJ/62/2.

Development of information materials concerning the UPOV Convention

*10. The CAJ considered document CAJ/62/3.

Matters considered by the CAJ-AG at its fifth session

*11. The CAJ noted that the Administrative and Legal Committee Advisory Group (CAJ-AG) had held the first part of its fifth session on October 18, 2010, and would continue discussions on the following matters on the afternoon of October 19, 2010:

(a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention;

(b) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention;

(c) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision);

(d) Objectives of the possible development of a document on the exhaustion of the breeder's right under the 1991 Act of the UPOV Convention; and

(e) Date and program for the sixth session.

*12. The conclusions of the CAJ-AG on the above matters would be reported to the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011.

13. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) referred to the first part of the fifth session of the CAJ-AG, in the context of discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention, in which CIOPORA had requested the development of explanatory notes on “propagation and propagating material”.

14. The Chair recalled that the CAJ-AG would continue discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention on the afternoon of October 19, 2010. She noted that the request made by CIOPORA would be considered by the CAJ-AG and the conclusions of the CAJ-AG on those matters would be reported to the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011.

Objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention

*15. In recognition of the difficulty in developing a common definition of “own holdings”, the CAJ-AG, at its fifth session, agreed to propose to the CAJ that, for the time being, it should not seek to develop guidance on the notion of “own holdings”.

16. The representative of the International Seed Federation (ISF) noted with disappointment the conclusion of the CAJ-AG that, for the time being, the CAJ should not seek to develop guidance on the notion of “own holdings”.

Matters arising after the grant of a breeder’s right

*17. The CAJ noted that the CAJ-AG had considered document CAJ-AG/10/5/6 and had invited members of the Union, in particular those which had made contributions on matters arising after the grant of a breeder’s right (see Annex to document CAJ-AG/10/5/6), to provide the Office of the Union with comments on whether their contributions had been identified under appropriate headings of document CAJ-AG/10/5/6 and whether further guidance should be developed. Based on those comments, the Office of the Union would prepare a document for consideration by the CAJ-AG at its sixth session in October 2011.

UPOV/INF/15/1: “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications”

*18. The CAJ noted that document UPOV/INF/15/1 Draft 1 was approved by the CAJ by correspondence and that the Council would be invited to adopt document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010, on the basis of document UPOV/INF/15/1 Draft 2.

Variety denominations

*19. The CAJ considered document CAJ/62/4.

*20. The CAJ noted that the amendment proposed by the TWV, at its forty-fourth session, held in Veliko Tarnovo, Bulgaria, from July 5 to 9, 2010, to Class 4 of document

UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as set out in document CAJ/62/4, would be put forward as a revision of document UPOV/INF/12/2 for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010.

Electronic application systems

*21. The CAJ considered document CAJ/62/5.

22. The Delegation of the European Union reported that the online application system of the Community Plant Variety Protection Office (CPVO) of the European Union was introduced at the beginning of 2010 for a limited number of species. The Delegation explained that, in the first instance, the European Union wished to monitor that the system was functioning in a satisfactory manner prior to making that system available to members of the Union.

*23. The CAJ noted the developments reported in document CAJ/62/5 and noted that the conclusions of the TC, at its forty-seventh session, to be held in Geneva in April 2011, concerning standard references for the UPOV Model TQ and for Test Guidelines, would be reported to the CAJ at its sixty-third session, to be held in Geneva in April 2011.

UPOV-ROM Plant Variety Database

24. The Delegation of the European Union noted the clarification in document CAJ/62/6 that the current arrangements for providing data for the UPOV-ROM, as set out in the memorandum of understanding between UPOV and the Community Plant Variety Office of the European Union (CPVO), would not be affected by the UPOV-WIPO arrangement. The Delegation requested an explanation of how the costs for implementing the program for improvements to the Plant Variety Database, as set out in document CAJ/62/6, would be covered.

25. The Vice Secretary-General noted that, as explained in paragraph 2 of document CAJ/62/6, the resources for implementing the program for improvements to the Plant Variety Database would be provided by WIPO under the WIPO/UPOV Agreement. In that regard, he recalled that Mr. José Appave and Mrs. Lili Chen had been employed by WIPO to implement the program.

26. The representative of ISF noted that there was a significant overlap between the data specified in the UPOV Model Application Form and in the UPOV-ROM Plant Variety Database. He suggested that the development of a web-based version of the Plant Variety Database could lead to the development of a UPOV electronic application form.

27. The Technical Director recalled that the terms of reference of Mrs. Lili Chen, as software developer, were determined by the UPOV-WIPO arrangement.

*28. The CAJ noted the developments concerning the program for improvements to the Plant Variety Database, as set out in document CAJ/62/6.

*29. Ms. Lili Chen, Software Developer, New Service Development Unit, Global Databases Section, Global Information Service, World Intellectual Property Organization (WIPO), was introduced to the CAJ.

Molecular techniques

*30. The CAJ considered document CAJ/62/7.

*31. The CAJ noted the developments concerning the “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)”, as set out in paragraphs 4 to 7 of document CAJ/62/7, and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT), as set out in paragraphs 22 and 23 of document CAJ/62/7.

*32. The CAJ agreed to consider a new draft of document BMT/DUS at its sixty-third session, to be held in Geneva in April 2011, as set out in paragraphs 20 and 21 of document CAJ/62/7.

Program for the sixty-third session

*33. The CAJ noted that the TC, at its forty-sixth session, held in Geneva from March 22 to 24, 2010, had agreed that the Test Guidelines for Papaya should be adopted on the basis that they would apply to vegetatively propagated varieties. The TC had agreed that the TWPs should be invited to consider how to address the DUS examination of seed-propagated varieties of Papaya on the basis of a document to be prepared by the Leading Expert, Mr. Alejandro Barrientos-Priego (Mexico), and the Office of the Union with a view to revising the Test Guidelines for Papaya to include seed-propagated varieties at the earliest opportunity. The TC had also agreed that the CAJ should be invited to consider that matter (see document TC/46/15 “Report on the Conclusions”, paragraph 99). The CAJ agreed to consider that matter at its sixty-fourth session to be held in Geneva in October 2011.

*34. The CAJ agreed the following program for its sixty-third session, to be held in Geneva on April 7, 2011, 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
5. Development of information materials concerning the UPOV Convention
6. Variety denominations
7. Electronic application systems

8. UPOV-ROM Plant Variety Database
9. Molecular techniques
10. Program for the sixty-fourth session
11. Adoption of the report on the conclusions (if time permits)

35. The present report has been adopted by correspondence.

[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/
por orden alfabético de los nombres en francés de los miembros)

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