



CAJ/63/9

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DATE: April 7, 2011

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Third Session
April 7, 2011

REPORT ON THE CONCLUSIONS

adopted by the Administrative and Legal Committee

Opening of the session

1. The Administrative and Legal Committee (CAJ) held its sixty-third session in Geneva on April 7, 2011, under the Chairmanship of Mr. Lü Bo (China).
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 informed the CAJ that the former Yugoslav Republic of Macedonia had deposited its instrument of accession to the 1991 Act of the UPOV Convention on April 4, 2011, and would become the sixty-ninth member of the Union on May 4, 2011.
5. The Chair noted also that the Association for Plant Breeding for the Benefit of Society (APBREBES) and the European Coordination Via Campesina (ECVC) had been granted observer status in the Council, the CAJ, the Technical Committee (TC) and the Technical Working Parties (TWPs), and that observer status for CropLife International had been extended to the CAJ, the TC and the TWPs.
6. The Chair confirmed that the report of the sixty-second session of the CAJ held in Geneva on October 19, 2010 (document CAJ/62/9), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

7. The CAJ adopted the agenda, as presented in document CAJ/63/1 with the addition of document CAJ/63/8 under items 4, 5, 6, 8 and 9.

Oral report on developments in the Technical Committee

8. The CAJ noted the oral report made by Mr. Joël Guiard (France), Chair of the Technical Committee (TC), on the forty-seventh session of the TC, which was held in Geneva from April 4 to 6, 2011 (see document CAJ/63/8).

TGP documents

9. The CAJ considered documents CAJ/63/2, CAJ/63/8, TGP/11/1 Draft 10 and TGP/5 Section 10/2 Draft 2.

TGP/11 Examination of Stability (document TGP/11/1 Draft 10)

10. The CAJ proposed the adoption of document TGP/11/1 by the Council on the basis of document TGP/11/1 Draft 10, amended as indicated in the document and in accordance with the TC proposal contained in paragraph 2 of document CAJ/63/8, as follows:

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| Annex I | |
| 1.3 | <p>to replace the second paragraph to read as follows:</p> <p>“In addition to the five trees supplied for the examination of distinctness, a second set of test trees are required for the assessment of uniformity and stability. The minimum number of trees required is 25 trees on MM106, or 30 trees on M9. The trees can be located on a site selected by the breeder or agent and should be established at the same time as trees supplied for the examination of distinctness. These trees should be at least second propagation cycle trees and be of the same standard and quality as those used for the testing of distinctness.”</p> |

11. The CAJ agreed that document TGP/11/1 Draft 10, as amended above, should be the basis for adoption of document TGP/11/1 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

TGP/5 Section 10/2 Experience and Cooperation in DUS Testing: Notification of Additional Characteristics (document TGP/5 Section 10/2 Draft 2)

12. The CAJ proposed the adoption of document TGP/5 Section 10/2 by the Council on the basis of document TGP/5 Section 10/2 Draft 2, amended as indicated in the document and in accordance with the TC proposals contained in paragraph 5 of document CAJ/63/8, as follows:

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| 4.2, 4.3 | to replace the text to read as follows: “4.2 Proposals for additional characteristics and states of expression notified to the Office of the Union by means of document TGP/5 Section 10, will be presented to the relevant Technical Working Party(ies) (TWP(s)) at the earliest opportunity with information on the extent of use of the characteristic. The characteristics will then, as appropriate, be posted on the password-restricted area of the UPOV website (http://www.upov.int/restrict/en/index_drafters_kit.htm), on the basis of comments made by the relevant TWP(s), and/or the TWP(s) may initiate a revision or a partial revision of the Test Guidelines concerned.” |
| Annex | to put information about extent of use of the characteristics in the box for explanation/illustration |

13. The CAJ agreed that document TGP/5: Section 10/2 Draft 2, as amended above, should be the basis for adoption of document TGP/5: Section 10/2 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

Program for the development of TGP documents

14. The CAJ agreed the program for the development of TGP documents, as set out in the Annex to document CAJ/63/2, subject to the inclusion in the program of the revision of document TGP/7 “Development of Test Guidelines”, as set out in paragraphs 8 to 10 of document CAJ/63/8.

UPOV Information Databases

15. The CAJ considered documents CAJ/63/6 and CAJ/63/8 and the presentation of the prototype of the web-based version of the Plant Variety Database, made by Mrs. Lili Chen, Software Developer, World Intellectual Property Organization (WIPO).

16. The CAJ noted the developments concerning:

- (a) the GENIE database, as set out in paragraphs 2 to 4 of document CAJ/63/6 ; and
- (b) the program for improvements to the Plant Variety Database (“Program”), as set out in paragraphs 5 to 28 of document CAJ/63/6.

Timetable for introduction of web-based version of Plant Variety Database

17. The CAJ agreed with the proposal that a web-based version of the Plant Variety Database, based on the existing content of the UPOV-ROM Plant Variety Database, be launched on the UPOV website during the course of 2011. The CAJ noted that the database would contain the same data as provided for the UPOV-ROM, according to existing data submission procedures, and would include similar search functions. It noted that, in addition, provisions would be made for the results of the searches to be downloaded in the form of an Excel spreadsheet or an html report, thereby enabling full access to the data in the Plant Variety Database.

18. The CAJ noted that the prototype of a web-based version of the Plant Variety Database would also be presented at the eighty-first session of the Consultative Committee, to be held in Geneva on April 8, 2011. It noted that the comments of the TC and the CAJ would be reported to the Consultative Committee, at its eighty-first session, in conjunction with the invitation for the Consultative Committee to consider the proposals concerning the launching of the web-based version of the Plant Variety Database, as set out in document CAJ/63/6.

Policy for access to Plant Variety Database

19. With regard to the web-based version of the Plant Variety Database, the CAJ noted that the Consultative Committee, at its eighty-first session, to be held in Geneva on April 8, 2011, would be invited to consider the following policy options for access:

(a) free access to all users;

(b) free access to all members of the Union, contributors to the Plant Variety Database and other parties agreed by the members of the Union. Other subscribers to be charged on the basis of:

(i) an annual fee, similar to that charged for the UPOV-ROM; or

(ii) a fee according to use, e.g. number of searches.

20. The CAJ noted that the TC, at its forty-seventh session, had noted the support by some delegations for the policy option “free access to all users.”

21. The CAJ expressed its preference for a policy of “free access to all users”, for the web-based version of the Plant Variety Database, and noted that the comments of the CAJ and TC would be reported to the Consultative Committee, at its eighty-first session.

Title of the Plant Variety Database

22. The CAJ expressed its support for the proposal to rename the Plant Variety Database as “VENUS” and the development of a suitable visual icon and noted that the comments of the CAJ would be reported to the Consultative Committee, at its eighty-first session.

23. In response to a request for clarification concerning the procedure for approving policy concerning the Plant Variety Database, the Vice Secretary-General noted that, in the past, policy matters concerning Plant Variety Database had been agreed by the Consultative Committee. However, he recalled that the Consultative Committee, at its seventy-eighth session, held on October 21 and 22, 2009, “agreed that, unless otherwise agreed by the Council, documents which set out UPOV policies or guidance, once approved by the relevant UPOV Committees, as appropriate, must be adopted by the Council. In cases where a rapid presentation of a UPOV policy or guidance is required, such that adoption could not be achieved by presentation of a document to the Council, approval would be sought by correspondence from the representatives to the Council of the members of the Union”. Therefore, subject to the decision of the Consultative Committee, the Vice Secretary-General anticipated that the recommendations of the Consultative Committee on policy matters concerning the Plant Variety Database would need to be presented for adoption by the Council.

Molecular techniques

24. The CAJ considered documents CAJ/63/7, CAJ/63/8 and BMT/DUS Draft 5.

UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)

25. The CAJ noted the adoption of document UPOV/INF/17/1 “UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)”.

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

26. The CAJ proposed the adoption of document BMT/DUS by the Council on the basis of document BMT/DUS Draft 5, amended as indicated in the document and in accordance with the TC proposals contained in paragraph 19 of document CAJ/63/8, as follows:

| | |
|-----------------|---|
| General | Editorial Committee to check the French, German and Spanish translations before the document is prepared for adoption by the Council. |
| 2.4 | to delete “System for” |
| Annex 4 - Title | to delete “System for” |

27. The CAJ agreed that document BMT/DUS Draft 5, as amended above, should be the basis for adoption of document BMT/DUS by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

28. The CAJ noted that a general explanation of the context of information materials, including TGP documents, would be provided by means, for example, of the distance learning courses, the UPOV website and presentation materials.

Possible development of document TGP/15

29. The CAJ agreed that document TGP/15 should be developed separately, but in parallel, to document BMT/DUS on the basis that document BMT/DUS would provide a report on the development and consideration of all models within UPOV and that document TGP/15 would provide guidance for the use of those models that had received a positive assessment and for which accepted examples could be provided, i.e. Models “Characteristic-specific molecular markers” (Section 3.1.1) and “Combining phenotypic [characteristics] and molecular distances in the management of variety collections” (Section 3.1.2) for the time being. It agreed that the purpose of both documents should be clarified within the documents and noted that both documents would need to be adopted by the Council. The CAJ also agreed that consideration should be given to how to maintain both documents in an efficient way.

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

30. The CAJ noted the report on developments in the BMT, as set out in paragraphs 32 and 33 of document CAJ/63/7. The CAJ noted the program for the thirteenth session of the BMT, to be held in Brasilia, Brazil, from November 22 to 24, 2011, with the preparatory workshop to be held on November 21, 2011, as set out in paragraphs 34 and 35 of document CAJ/63/7. The CAJ noted that, in order to encourage the presentation of information in relation to the use of molecular techniques in examining essential derivation and in variety identification, it would be appropriate to dedicate a specific day to those items at the thirteenth session of the BMT. The CAJ noted that breeders and other experts would be offered the possibility to attend for that specific day, which would be on November 22, 2011.

Development of information materials concerning the UPOV Convention

31. The CAJ considered documents CAJ/63/3 and CAJ-AG/10/5/7.

Report of the work of the CAJ-AG at its fifth session

32. The CAJ noted the report on the work of the CAJ-AG at its fifth session, as provided in document CAJ-AG/10/5/7 “Report” and summarized in paragraphs 5 to 21 of document CAJ/63/3.

Information materials considered by the CAJ by correspondence

33. The CAJ noted the adoption of document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications”, by the Council, at its forty-fourth ordinary session, held in Geneva on October 21, 2010.

Proposals for the development of information materials

34. The CAJ noted the request made by the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and agreed to request the Office of the Union to prepare a document, on the basis of contributions received, on “propagation and propagating material” for consideration by the CAJ-AG at its sixth session in October 2011.

35. The CAJ noted the proposal made by the Delegation of the Republic of Korea for the development of information materials on alternative dispute settlement mechanisms for breeders’ rights, such as arbitration and mediation and the intervention by the representative of ISF on the existing ISF arbitration and mediation rules.

36. The CAJ agreed that the Office of the Union should consult with the Republic of Korea and ISF with a view to preparing a document for consideration by the CAJ at its sixty-fourth session in October 2011, if appropriate.

37. In reply to a question from the Delegation of Argentina and the Delegation of Belgium, the Office of the Union recalled that the procedure to revise the official texts in Spanish and

Dutch of the UPOV Convention was provided in Article 41(2) of the 1991 Act of the UPOV Convention, as follows: “(2) [Official texts] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.”

Work program for the development of information materials for the sixth session of the CAJ-AG, to be held in Geneva in October 2011, and for the sixty-fourth session of the CAJ, to be held in Geneva in October 2011

38. The CAJ approved the following work program for the sixth session of the CAJ-AG, to be held in October 2011:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes
 - (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
4. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)
5. Matters arising after the grant of a breeder’s right
6. Objectives of the possible development of a document on the exhaustion of the breeder’s right under the 1991 Act of the UPOV Convention
7. Explanatory Notes on Propagation and Propagating Material
8. Date and program for the seventh session

39. In reply to a question on the participation of observer organizations in the work of the CAJ-AG, the Vice Secretary-General recalled the terms of reference of the CAJ-AG that provide that “[o]bserver organizations, in particular those representing the interests of breeders, might be invited by the CAJ-AG to present their views on a particular provision of the 1991 Act to assist in [its] work” (see document CAJ/52/4, paragraph 14, and document CAJ/52/5 “Report”, paragraph 67).

Report on a proposal, for consideration by the Consultative Committee, to provide a streamlined procedure for the updating of documents previously adopted by the Council

40. The CAJ noted that the Consultative Committee, at its eighty-first session, to be held in Geneva on April 8, 2011, would be invited to consider the following approach for the updating of documents previously adopted by the Council:

(a) to present a Council document proposing specific amendments to the document being updated without presenting a complete revised draft document to the Council. The Council would be invited to adopt the revised version of the document on the basis of the specific amendments and the Office of the Union would prepare and publish the revised document on that basis; and

(b) to present to the Council for adoption, in conjunction with the Council document containing the specific amendments to the document being updated, an information document, similar to document “List of TGP Documents and Latest Issue Dates” (document TGP/0/3) containing the latest references and dates of information documents (for instance, INF and EXN series of documents).

41. The CAJ expressed its support for the above proposal to provide a streamlined procedure for the updating of documents previously adopted by the Council.

42. The CAJ noted that if the above approach was endorsed by the Consultative Committee, at its eighty-first session, the specific amendments for the updating of document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”, would be presented for consideration by the Council, at its forty-fifth ordinary session, to be held on October 20, 2011.

Variety denominations

43. The CAJ considered documents CAJ/63/4 and CAJ/63/8.

Revision of UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/INF/12/3), Annex I, Part I “Classes within a genus”, with regard to Class 4.1 Solanum tuberosum L. / Class 4.2 Solanum other than Class 4.1

44. The CAJ noted the report on the adoption of document UPOV/INF/12/3, the publication of that document and the updating of the GENIE database with the amended UPOV codes for the relevant taxa.

Eupatorium and Eutrochium

45. The CAJ noted the botanical synonymies that existed for species of *Eupatorium* L. and that the TC, at its forty-seventh session, had invited the TWO to consider the following possible solutions to that situation at its forty-fourth session to be held from November 7 to 11, 2011, in Fukuyama City, Hiroshima Prefecture, Japan:

(a) Continue to consider all species currently included within the genus “Eupatorium” in the UPOV-ROM as “Eupatorium” (i.e. *Eupatorium purpureum* L., *Eupatorium dubium*,

Eupatorium ligustrinum). The TC noted that this approach would not follow the “Guide to the UPOV Code System” and would not guarantee to avoid problems with other species of “Eupatorium” that might occur in the UPOV-ROM in future: GRIN lists 91 species / subspecies that are sometimes included within “Eupatorium”, of which only 17 are considered by GRIN to fall within *Eupatorium* L.. The TC noted that this approach would have the effect of creating a denomination class for “Eupatorium”, without explicitly establishing the coverage of the class;

(b) Create a new denomination class in document UPOV/INF/12/3 “Explanatory notes on variety denominations under the UPOV Convention”, Annex I: Part II. “Classes encompassing more than one genus” to cover relevant genera, e.g. *Eupatorium* L., *Eutrochium* Raf., *Ageratina* Spach, etc.; or

(c) Apply the GRIN botanical classification of species and continue to follow the General Rule (one genus / one class). For example, the varieties in the UPOV-ROM indicated as *Eupatorium purpureum* L. would be considered as *Eutrochium purpureum* (L.) E. E. Lamont var. *purpureum* and would be allocated a UPOV code for the genus *Eutrochium* Raf.. The TC noted that such an approach would require that the appropriate species could be correctly identified for the 12 varieties, and any other such entries in future, indicated as *Eupatorium* L. in the UPOV-ROM. The TC noted that this it would also be necessary to amend the UPOV codes for the species concerned.

Report on information concerning the registration of variety denominations as trademarks

46. The CAJ noted the information concerning the registration of variety denominations as trademarks, as set out in document CAJ/63/4, paragraphs 15 to 19.

Electronic application systems

47. The CAJ considered documents CAJ/63/5 and CAJ/63/8.

Standard references for the UPOV Model Application Form and linear blank form

48. The CAJ agreed that the Office of the Union should seek information on the extent to which members of the Union use the standard references to the UPOV Model Application Form in their application forms.

49. The CAJ expressed its support to develop a Linear Blank Form for PBR Applications be developed with the following features:

(a) users* could select the language in which the items in the Linear Blank Form for PBR Applications would be presented (Input Template language);

* The term “user” is used instead of “applicant” or “breeder”, in order to avoid any implication that the use of the Linear Blank Form for PBR Applications might indicate that an application is being filed for a plant breeder’s right.

(b) users could select (a) language(s) in which the completed Linear Form for PBR Applications could be downloaded (Output Template language);

(c) users could choose the format in which to download the completed Linear Form for PBR Applications: Word, Excel, XML and/or PDF;

(d) users could choose to store the input data in an associated database (hosted by UPOV), in order, for example, to allow further downloading in different languages and/or formats. The data would be password protected and the password would only be issued to the user concerned; and

(e) a disclaimer that the use of the information associated with the Linear Blank Form for the filing of an application for a breeder's right with the authority of a member of the Union would be the responsibility of the user.

50. The CAJ noted that the languages in which the Linear Blank Form for PBR Applications would be developed would be prioritized on the basis of discussions with the international breeders' organizations and according to available resources. In the case of languages other than English, French, German and Spanish, interested members of the Union would be consulted before the relevant language versions were made available on the UPOV website. In addition, there would be an explanation that the translations had not been adopted by the Council.

51. The CAJ noted that ISF would be willing to contribute financial resources to the development of the Linear Blank Form for PBR Applications on the basis of the concept set out above.

Standard references for the Technical Questionnaire (TQ)

52. The CAJ noted that the TC, at its forty-seventh session, had agreed to delay consideration of the approach for providing standard references for the UPOV Model Technical Questionnaire and for the characteristics in the Test Guidelines, as set out in Annexes I and II to document TC/47/18, with a view to a future revision of document TGP/7, pending the outcome of work on the Linear Blank Form for PBR Applications.

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

53. The CAJ recalled the latest situation concerning Proposal 2 "Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ", as set out in paragraph 15 of document CAJ/63/5.

Program for the sixty-fourth session

54. The CAJ anticipated that one day would be sufficient for the program of its sixty-fourth session and, therefore, it agreed to hold the sixth session of the CAJ-AG on October 18, 2011, instead of on October 22, 2011. The CAJ agreed the following program for its sixty-fourth session, to be held in Geneva on October 17, 2011:

1. Opening of the session
2. Adoption of the agenda
3. Development of information materials concerning the UPOV Convention
4. TGP documents
5. Molecular techniques
6. Variety denominations
7. Information and databases
 - (a) UPOV information databases
 - (b) Exchangeable software
 - (c) Electronic application systems
8. DUS examination of seed-propagated varieties of Papaya
9. Program for the sixty-fifth session
10. Adoption of the report on the conclusions (if time permits)
11. Closing of the session

55. This report was adopted by the Administrative and Legal Committee at the close of its session on April 7, 2011.

[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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