



CAJ/65/13

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Fifth Session
Geneva, March 29, 2012

REPORT

adopted by the Administrative and Legal Committee

Opening of the session

- *1. The Administrative and Legal Committee (CAJ) held its sixty-fifth session in Geneva on March 29, 2012, under the Chairmanship of Mr. Lü Bo (China).
- *2. The session was opened by the Chair, who welcomed the participants. The list of participants is reproduced in the Annex to this report.
- *3. The Chair reported that the observer status of the Asia and Pacific Seed Association (APSA) had been extended to the CAJ, Technical Committee (TC) and Technical Working Parties (TWPs).
- *4. The Chair informed the CAJ that Ireland, which had been a member of the Union since November 8, 1981, had deposited its instrument of ratification of the 1991 Act of the UPOV Convention on December 8, 2011, and had become bound by the 1991 Act on January 8, 2012.
- *5. The Vice Secretary-General reported that Mr. Raimundo Lavignolle had left the Office of the Union at the end of 2011, and expressed his appreciation for the dedicated and excellent service that Mr. Lavignolle had provided during his 13 years with the Office of the Union.
- *6. The Chair confirmed that the report of the sixty-fourth session of the CAJ held in Geneva on October 17, 2011 (document CAJ/64/12), had been adopted by correspondence and was available on the UPOV website.
- *7. The CAJ agreed to the inclusion of photographs in the list of participants of the report of the session, subject to agreement by each participant.

Adoption of the agenda

- *8. The CAJ adopted the agenda, as presented in document CAJ/65/1, with the addition of document CAJ/65/9 Rev., under agenda item 9, and document CAJ/65/11, under agenda items 5 to 10. It noted that an interactive version of the pdf version of the agenda had been made available on the website.

* An asterisk next to the paragraph number indicates that the text is reproduced from the Report on the Conclusions (document CAJ/65/12).

*9. The CAJ agreed that, where appropriate, documents under consideration at its sixty-fifth session would be displayed on screen in the language of the original document.

Report on Developments in the Technical Committee

*10. The CAJ noted the report made by Mr. Joël Guiard (France), Chair of the Technical Committee (TC), on developments in the TC, at its forty-eighth session, held in Geneva from March 26 to 28, 2012. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were reported in document CAJ/65/11. It further noted that the report on all the conclusions of the TC was available in document TC/48/22 "Report on the Conclusions".

Development of Information Materials Concerning the UPOV Convention

*11. The CAJ considered documents CAJ/65/2 and CAJ-AG/11/6/7.

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

*12. In relation to the wording concerning propagation and propagating material in the first sentence of paragraph 18 of document CAJ/65/2, in particular the term "risk", the CAJ noted the request of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOFORA) for a more neutral wording to be used in future.

*13. The CAJ noted the report on the work of the Administrative and Legal Committee Advisory Group (CAJ-AG) at its sixth session, held in Geneva on October 18, 2011, as provided in document CAJ-AG/11/6/7 "Report" and summarized in paragraphs 5 to 19 of document CAJ/65/2.

*14. The CAJ endorsed the recommendation of the CAJ-AG that, in recognition of the complexity of the legislation and jurisprudence concerning the exhaustion of intellectual property rights, the CAJ should not seek to develop guidance on exhaustion of the breeder's right under the 1991 Act of the UPOV Convention beyond the guidance provided in document UPOV/INF/6 "Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention" (see document CAJ/65/2, paragraph 16, and document CAJ-AG/11/6/7 "Report", paragraph 24).

Revision of Document UPOV/INF/6 "Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention"

*15. The CAJ noted the adoption by the Council of the revision of document UPOV/INF/6 "Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention" (document UPOV/INF/6/2).

Document to be Considered by the Administrative and Legal Committee at its Sixty-Fifth Session

*16. The CAJ considered document UPOV/INF/ADS Draft 1 "Alternative Dispute Settlement Mechanisms".

*17. The CAJ agreed the following amendment to document UPOV/INF/ADS Draft 1:

Preamble, paragraph 2	first sentence to read as follows: "The purpose of this document is to provide information on <u>certain</u> alternative dispute settlement mechanisms for breeders' rights."
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*18. The CAJ agreed that, on the basis of the above amendment, the Office of the Union should prepare a revised version of document UPOV/INF/ADS Draft 1, to be considered for adoption by the Council at its forty-sixth ordinary session, to be held in Geneva on November 1, 2012.

Program for the Development of Information Materials

*19. The CAJ agreed the program for the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" (document UPOV/INF/5), as set out in paragraph 29 of document CAJ/65/2, and noted that

a document providing background information on the proposed changes and a first draft of the revision of document UPOV/INF/5 would be presented to the CAJ at its sixty-seventh session, to be held in March 2013.

*20. The CAJ agreed to prepare a proposal to revise document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications" in order to include guidance on the provision of data for the UPOV Plant Variety Database. The CAJ agreed that the Office of the Union should prepare a proposed revision for document UPOV/INF/15 for consideration by the CAJ at its sixty-sixth session, to be held in October 2012.

*21. The CAJ approved the following work program for the seventh session of the CAJ-AG, to be held in October 2012:

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. Explanatory Notes on Propagation and Propagating Material
7. Date and program for the seventh session

*22. The CAJ noted that the date for the seventh session of the CAJ-AG would be considered under item "Program for the sixty-sixth session" of the CAJ.

*23. The CAJ noted the suggestion of the Association for Plant Breeding for the Benefit of Society (APBEBES) to include a limited number of permanent places for observers representing various stakeholder groups such as farmers, breeders and certain other observer non-governmental organizations (NGOs) (e.g. two per stakeholder group) in the CAJ-AG and to allow the stakeholder groups to coordinate on the persons to occupy those places at each session of the CAJ-AG, according to the matters under consideration. It also noted the APBEBES suggestion that those permanent places could be supplemented on an *ad hoc* basis, as considered appropriate by the CAJ-AG. The CAJ agreed with the suggestion of the Vice Secretary-General to invite the CAJ-AG to consider that approach at its seventh session, in October 2012.

*24. The CAJ noted the arrangements concerning the posting of CAJ-AG documents and comments, and the *ad hoc* invitations to observer organizations, as set out in paragraphs 33 to 36 of document CAJ/65/2, and noted in particular the following:

(a) In order to ensure that the CAJ-AG had sufficient time to consider written comments, the CAJ-AG agreed that comments should be sent, in English, to the Office of the Union at least two weeks prior to the relevant session of the CAJ-AG;

(b) The CAJ-AG had agreed that, in cases where written comments were received from an observer organization, the CAJ-AG would invite the observer organization to the relevant part of the next CAJ-AG session if the presence of the organization was considered necessary to present its views or to provide further explanations concerning its written comments. In that regard, the CAJ-AG had agreed that the CAJ-AG would, if necessary, decide by correspondence whether to invite the observer organization to the relevant part of the CAJ-AG session; and

(c) On the basis of comments received for the sixth session of the CAJ-AG, the CAJ-AG agreed at its sixth session to invite CIOPORA, the European Coordination Via Campesina (ECVC) and the International Seed Federation (ISF) to the relevant part of the seventh session of the CAJ-AG.

TGP Documents

*25. The CAJ considered documents CAJ/65/3, CAJ/65/11, TGP/15/1 Draft 2 and TGP/12/2 Draft 2.

TGP/15 *Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (document TGP/15/1 Draft 2)*

*26. The CAJ agreed with the conclusion of the TC that document TGP/15/1 Draft 1 be redrafted (restructured) as follows (see paragraph 9 of document CAJ/65/3 and paragraph 3 of the Annex to document CAJ/65/11):

- firstly, to present the principles, including the assumptions which provided the basis for the positive assessment of the examples in the approved models; and
- secondly, to provide practical experience in the form of examples in the implementation of the principles.

*27. The CAJ noted that, at the forty-eighth session of the TC, with regard to TGP/15/1 Draft 2, Annex I, paragraph 3(a), the representative of the ISF had questioned whether it was necessary for markers to be examined more than once on the same sample. He had also suggested that paragraph 3(b) be amended to clarify that, if there was a difference between the information provided in the Technical Questionnaire and the result of the bioassay, the result of the bioassay would prevail (see paragraph 4 of the Annex to document CAJ/65/11).

*28. The CAJ noted that the TC had agreed that, on the basis of the comments above, a new draft should be prepared by the Office of the Union in conjunction with the Chairman of the TC and the Chairman of the BMT, which would be presented to the Enlarged Editorial Committee (TC-EDC) at its meeting in January 2013 and a further draft presented to the TC at its forty-ninth session. The TC had noted that the timetable for the development of document TGP/15 would be reported to the TWPs at their sessions in 2012. (see paragraph 5 of the Annex to document CAJ/65/11).

Revision of TGP Documents

TGP/7 *Development of Test Guidelines*

*29. The CAJ noted the developments concerning the revision of document TGP/7 “Development of Test Guidelines”, in accordance with the TC conclusions contained in paragraphs 6 to 18 of the Annex to document CAJ/65/11.

TGP/12 *Guidance on Certain Physiological Characteristics (document TGP/12/2 Draft 2)*

*30. The CAJ considered the revision of document TGP/12 “Guidance on Certain Physiological Characteristics”, in conjunction with the comments of the TC, as a basis for the adoption of the revision of document TGP/12/2 by the Council at its forty-sixth ordinary session to be held in Geneva on November 1, 2012.

*31. The CAJ agreed with the proposal of the TC to amend document TGP/12/2 Draft 2 to read as follows (see paragraph 20 of the Annex to document CAJ/65/11):

“2.3.2 Quantitative characteristics

“Disease resistances for which there is a continuous range of levels of susceptibility / resistance across varieties, are quantitative characteristics. Guidance for the development of appropriate states of expressions for quantitative characteristics is provided in document TGP/9, Guidance Note GN 20, section 3.

“Example with 1 – 3 scale: Resistance to *Sphaerotheca fuliginea* (*Podosphaera xanthii*) (Powdery mildew) in Melon (UPOV Test Guidelines: TG/104/5)

“[Table]

“Example with 1 – 9 scale: Resistance to *Colletotrichum trifolii* in Lucerne (UPOV Test Guidelines: TG/6/5)

“[Table]”

*32. The CAJ agreed to submit document TGP/12/2 Draft 2 “Guidance on Certain Physiological Characteristics” as the basis for adoption of TGP/12 by the Council, at its forty-sixth ordinary session, to be held on November 1, 2012. The CAJ noted that the editing of the original English text and the French, German and Spanish translations would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/12/2 to the Council.

Program for the development of TGP documents

*33. The CAJ approved the program for the development of TGP documents, as set out in the Annex to document CAJ/65/3, subject to:

- (i) adoption of document TGP/0/5 in 2012 and document TGP/0/6 in 2013;
- (ii) corrections to the numbering of sessions in 2013; and
- (iii) deletion of “(Color Subsection & revisions)” from TWPs in 2013 and addition to CAJ/67 in 2013.

UPOV Information Databases

*34. The CAJ considered documents CAJ/65/6 and CAJ/65/11.

GENIE DATABASE

*35. The CAJ noted the plans of the Office of the Union to introduce a user guide for the GENIE database in 2012, following the revisions to UPOV Code System, as set out below.

UPOV CODE SYSTEM

UPOV code developments

*36. The CAJ noted the creation of 173 new UPOV codes and the amendment to 12 UPOV codes, which brought the total number of UPOV codes in the GENIE database at the end of 2011 to 6,851.

*37. In accordance with the procedure set out in Section 3.3 of the Guide to the UPOV Code System, the CAJ noted that the Office of the Union would prepare tables of UPOV code additions and amendments, for checking by the relevant authorities, for each of the TWP sessions in 2012.

Proposals to amend the Guide to the UPOV Code System

*38. The CAJ agreed to amend the Guide to the UPOV Code System as follows:

- (i) *UPOV codes for hybrids: Section 2.2.6*

*39. The approach for introducing UPOV codes for hybrid genera and species will be amended such that a single UPOV code will cover all hybrid combinations of the same genera/species, as follows:

“2.2.6 In the case of UPOV codes for hybrid genera and species, the UPOV code will not distinguish between two hybrids produced using the same parents. A UPOV code is created for the first hybrid notified to UPOV in accordance with the procedure set out in paragraphs 2.2.3 to 2.2.5. However, if a subsequent request is received for a hybrid involving the same genera/species in a different combination, the Principal Botanical Name will be amended to indicate that the UPOV code covers all combinations involving the same genera/species.

Example:

UPOV code request received for: *Alpha one x Alpha two*

UPOV Code	Principal Botanical Name
ALPHA_OTW	<i>Alpha one x Alpha two</i>

Subsequently, UPOV code request received for: *Alpha two x Alpha one*
or
(Alpha one x Alpha two) x Alpha one
etc.

UPOV Code	Principal Botanical Name
ALPHA_OTW	Hybrids between <i>Alpha one</i> and <i>Alpha two</i>

(ii) UPOV codes for hybrids: Section 2.2.7

*40. Section 2.2.7 to be deleted.

(iii) UPOV codes for hybrids: Binomial names

*41. To amend the UPOV Code System with regard to hybrids to refer to “binomials”, as follows:

“2.2.2 In the case of a genus which is formed as a hybrid between other genera and for which there is a binomial name which is taxonomically recognized in its own right (e.g. × *Triticosecale* [= *Triticum* x *Secale*]), the ‘genus element’ of the UPOV code is based on the binomial name taxonomically recognized ‘hybrid’ genus. For example, × *Triticosecale* has the UPOV code ‘TRITL’.

“2.2.3 In the case of a genus which is formed as a hybrid between two genera (‘hybrid genus’) (e.g. *Alpha* x *Beta*) and for which there is no binomial name which is not taxonomically recognized as a genus in its own right (‘hybrid genus’), a UPOV code is created for the new ‘hybrid genus’. The genus element of the UPOV code is produced by combining the first two letters of the female parent genus and the first three letters of the male parent genus. For example, a ‘hybrid genus’ which was formed as a hybrid between *Alpha* (UPOV code: ALPHA) and *Beta* (UPOV code: BETAA) would have the UPOV code ‘ALBET’ ~~Carlus (UPOV code: CARLU) x Phillipus (UPOV code: PHILL) would have the UPOV code ‘CAPHI’.~~

“2.2.4 In the case of a species which is formed as a hybrid between two species and for which there is no binomial name which is not taxonomically recognized as a species in its own right (‘hybrid species’) (e.g. *Alpha one* x *Alpha two*), a UPOV code is created for the new ‘hybrid species’. The species element of the UPOV code is produced by combining the first letter of the female parent species and the first two letters of the male parent species. For example, a ‘hybrid species’ which was formed as a hybrid between *Alpha one* (UPOV code: ALPHA_ONE) x *Alpha two* (UPOV code: ALPHA_TWO) would have the UPOV code ‘ALPHA_OTW’.

“2.2.5 In the case of a hybrid genus (or species) which is formed as a hybrid between more than two genera (or species) and for which there is no binomial name which is not taxonomically recognized as a genus in its own right, the same general approach is followed as for a hybrid between two genera (or species); the sequence of letters used in the UPOV code is based on the order of female parent followed by male parent.”

(iv) Variety Types

*42. To delete Section 2.4. In agreeing with that deletion, the CAJ noted that information on types of variety could be provided in GENIE by means of notes. It was also noted that the deletion did not preclude the introduction of new features in GENIE and PLUTO in the future in order to provide relevant information on variety types.

(v) Publication of UPOV Codes

*43. To amend Section 4, as follows:

“4. Publication of UPOV Codes

“4.1 As explained in Section 3.2, all UPOV codes can be accessed in the GENIE database, which is ~~made~~ available on the ~~freely accessible area of the~~ UPOV website (see <http://www.upov.int/genie/en/>).

“4.2 In addition, the UPOV codes, together with their relevant botanical and common names, and variety denomination class and linked hybrid/parent UPOV codes, as contained in the GENIE database, are published on the ~~first restricted area of the~~ UPOV website (see http://www.upov.int/restrict/en/upov_rom_upov_code_system/index.htm <http://www.upov.int/genie/en/updates/>). That information is published in a form that facilitates electronic downloading of the UPOV codes ~~for use by contributors to the UPOV ROM.~~”

PLANT VARIETY DATABASE

*44. The CAJ considered the program for improvements to the Plant Variety Database (“Program”) on the basis of document CAJ/65/6.

Title of the Plant Variety Database (Program: Section 1)

*45. The CAJ noted that the name of the Plant Variety Database had been changed to “PLUTO”.

Web-based version of the Plant Variety Database (Program: Section 6)

*46. The CAJ noted the developments concerning the program for improvements to the Plant Variety Database as reported in document CAJ/65/6, and further noted that the following features would be introduced to PLUTO in 2012:

(a) information on the latest date of submission by the contributors, in the form of a pdf document, with further plans to link the date of submitted information to particular data;

(b) an explanation of the search rules, which would be developed in conjunction with the introduction of the denomination search facility; and

(c) a facility to save search settings.

*47. The CAJ agreed to amend the “Program for Improvements to the Plant Variety Database”, as set out in Annex II to document CAJ/65/6, with regard to Section 3.2 “Data quality and completeness” and Section 3.3 “Mandatory items”, in order to introduce the possibility for contributors to the Plant Variety Database to provide data in the original alphabet, in addition to the data being provided in Latin alphabet. That amendment was on the basis that:

(a) data in the original alphabet could be provided for the following fields (see Section 3.2 “Data quality and completeness”, Table):

- (i) Species: common name (see new TAG <520>);
- (ii) Denomination (see <550>, <551>, <552>, <553>);
- (iii) Breeder’s reference (see <650>);
- (iv) Synonym of variety denomination (see <651>);
- (v) Trade name (see <652>);
- (vi) Applicant’s name (see <750>);
- (vii) Breeder’s name (see <751>);
- (viii) Maintainer’s name (see <752>);
- (ix) Title holder’s name (see <753>);
- (x) Type of other party (see <760>);
- (xi) Other relevant information (see <950>); and
- (xii) Remarks (see <960>); and

(b) data would not be included in the Plant Variety Database unless all data provided in the original alphabet was also provided in Latin alphabet (see Sections 3.2 and 3.3 “Required data”).

Provision of assistance to contributors (Program: Section 2)

*48. The CAJ noted the summary of the contributions to the Plant Variety Database in 2011, as set out in document CAJ/65/6, Annex III.

*49. The CAJ noted that the WIPO Brand Database Unit had been contacted by the following members of the Union: Albania; Argentina; Azerbaijan; Belarus; Bolivia; China; Colombia; Costa Rica; Croatia; Dominican Republic; Georgia; Iceland; Jordan; Kenya; Kyrgyzstan; Mexico; Morocco; Nicaragua; Oman; Panama; Paraguay; Republic of Korea; Singapore; South Africa; Trinidad and Tobago; Tunisia; Ukraine; Uruguay; Uzbekistan and Viet Nam in order to investigate the arrangements that would be needed in order for them to start to contribute data. It noted that solutions had been developed to allow the contribution of data in non-TAG format by Kenya and South Africa.

*50. With regard to contributors that did not provide UPOV codes for their data supplied, the CAJ noted that a method for providing missing UPOV codes for data submitted for the Plant Variety Database had been developed by the WIPO Brand Database Unit. That method had been used to suggest UPOV codes for

consideration by the contributors, in order that UPOV codes could be entered for all data in the Plant Variety Database. On that basis, the CAJ noted that UPOV codes had been allocated for virtually all entries in the Plant Variety Database.

Data to be included in the Plant Variety Database (Program: Section 3)

*51. The CAJ agreed to the proposal to amend the “Program for Improvements to the Plant Variety Database”, as set out in Annex II to this document, with regard to Section 3.2 “Data quality and completeness” (see new TAG <800>), in order to introduce the possibility for contributors to the Plant Variety Database to provide information on dates on which a variety was commercialized for the first time in the territory of application and other territories, as set out in document CAJ/65/6, Annex IV.

*52. The CAJ noted that the following disclaimer would be added:

“The absence of information in [item XXX] does not indicate that a variety has not been commercialized. With regard to any information provided, attention is drawn to the source and status of the information as set out in the fields ‘Source of information’ and ‘Status of information’. However, it should also be noted that the information provided might not be complete and accurate.”

Frequency of data submission (Program: Section 4)

*53. The CAJ agreed that there should be no changes to the frequency for publication of that data, i.e. six updates per annum, for the time being. However, it noted that it would be possible to correct any important data errors in PLUTO at the earliest possible opportunity where requested by the data contributor.

*54. The CAJ noted that the Office of the Union had issued circular E-12/013, on January 23, 2012, to recipients of the UPOV-ROM, informing them of the launch of the freely-accessible PLUTO database on the UPOV website and requesting an indication on whether they wished to continue to receive the UPOV-ROM. In the replies received: 14 recipients from members of the Union had indicated that they wished to continue to receive the UPOV-ROM; and 13 recipients from members of the Union and 7 paying subscribers, had indicated that they did not wish to continue to receive the UPOV-ROM. The CAJ also noted the plans for WIPO Brand Database Unit to develop its own version of the UPOV-ROM as a part of the program for improvements to the Plant Variety Database.

Common search platform (Program: Section 7)

*55. The CAJ noted that there had been no substantial developments concerning the development of a common search platform since 2010. It also noted that WIPO, the Community Plant Variety Office (CPVO) of the European Union, the Royal General Bulb Growers’ Association (KAVB) (Netherlands) and the Commission for Nomenclature and Cultivar Registration of the International Society for Horticultural Science (ISHS) might be consulted on possible approaches later in 2012.

Exchangeable Software

*56. The CAJ considered documents CAJ/65/8 and CAJ/65/11.

Revision of Document UPOV/INF/16/1 “Exchangeable Software”

*57. The CAJ noted the adoption by the Council of document UPOV/INF/16/2 “Exchangeable Software”.

New Software to be Considered for Inclusion in a Future Revision of Document UPOV/INF/16 “Exchangeable Software”

*58. The CAJ noted that the Consultative Committee, at its eighty-second session, held in Geneva on October 19 and on the morning of October 20, 2011, had endorsed the inclusion of the offers by Naktuinbouw, provided in the form of a helpdesk on practical technical questions as well as information on internship, in section “(ii) Offers of assistance for the development of plant variety protection” of the “Assistance” webpage. It noted that the Consultative Committee had also endorsed the inclusion of the offer for assistance on the development of electronic office management systems made by the Community Plant Variety Office of the European Union (CPVO) in section “(ii) Offers of assistance for the development of plant variety protection” of the “Assistance” webpage.

*59. The CAJ considered the recommendation of the TWC, at its twenty-ninth session, concerning the inclusion of “Bionumerics Software for Databasing and Data Analysis” in document UPOV/INF/16, in conjunction with the comments of the TC. The CAJ noted that different views on whether commercial software should be considered in document UPOV/INF/16 had been expressed at the TC session and that the TC had suggested that it would be appropriate to review the title of document UPOV/INF/16 “Exchangeable Software” and Section “1. Requirements for exchangeable software”, before taking a view on the inclusion of the “Bionumerics Software for Databasing and Data Analysis” software (see paragraph 61 of the Annex to document CAJ/65/11). The CAJ agreed that a review of document UPOV/INF/16 should be included in the agenda for its October session in 2013.

Electronic Application Systems

*60. The CAJ considered documents CAJ/65/5 and CAJ/65/11.

Standard References to the UPOV Model Application Form

*61. The CAJ noted that the Office of the Union would issue a survey on the extent to which members of the Union use the standard references of the UPOV Model Application Form in their application forms and would present the results of that survey to the CAJ at its sixty-sixth session in October 2012.

Electronic Version of the UPOV Model Application Form

*62. The CAJ noted the developments concerning meetings between experts of UPOV, WIPO, CPVO and ISF, in order to develop proposals for consideration by the CAJ.

63. The Vice Secretary-General reported, as explained in document CAJ/65/5, paragraph 24, that during the discussions at the second meeting of experts, the difficulty in identifying applications that were made for the same variety in different territories, because of the absence of a unique variety identifier, was highlighted. At that meeting, it was noted that the possibility of creating a unique variety identifier had been discussed within UPOV in the past, but had not been pursued. It was agreed that the CAJ should be informed of the discussion in order that the CAJ might consider whether the matter was worthy of further discussion.

64. The Chair invited the CAJ to express its views on whether to discuss the potential benefits of a unique variety identifier.

65. The Delegation of the European Union requested clarification in relation to the proposal to discuss matters concerning a unique variety identifier, in particular, the practical issues of how a unique variety identifier would be implemented and how its use could be monitored.

66. The Vice Secretary-General noted that those practical issues were raised in past discussions and, at that time, it was concluded that it would be difficult to develop such a unique variety identifier. The idea was that when an application was made for the first time anywhere in the territory of a member of the Union a unique UPOV reference would be allocated and thereafter used in relation to that variety in applications made in other members of the Union. He emphasized that earlier discussions had highlighted the importance that a variety denomination should become as far as possible the unique variety identifier and recalled that the guidance on variety denominations emphasized that breeders must propose the same variety denomination in all members of the Union and members of the Union were encouraged to accept that denomination, unless there were particular reasons that prevented that registration.

67. The Delegation of the Netherlands raised the problem of identifying one variety before the variety denomination was registered.

68. The Delegation of Spain noted the problems caused by applications that were made for the same variety in different territories because applicants, sometimes the same applicant, gave different names to the variety. It encouraged cooperation in order to avoid repeating trials for the same variety and to facilitate using the reports resulting from the trials.

69. The Vice Secretary-General noted that the UPOV model application for plant breeders' rights provided an item for the breeder to disclose if an application had been made in another territory. He suggested that one way to approach the matter of the unique variety identifier would be to revisit previous discussions that

took place in connection with the development of the guidance on variety denominations before reaching a conclusion on whether to pursue discussions or not.

70. The Delegation of the Netherlands recognized that it might be true that a breeder used different denominations for the same variety in different regions or countries, but the breeder should be aware of the risk he was taking. In such a case, it noted that the second application made by the breeder would be examined against the first application, because the breeder indicated that the two applications were not the same.

71. The Delegation of Germany noted that it was hard to solve the problem from a legal point of view and to introduce restrictions if a provisional denomination was already used or changed by the breeder prior to the decision of registering the denomination.

72. The Delegation of France noted that it was rare to have a denomination submitted from the outset when the application was filed; in general, the breeder provided first a provisional reference. It believed there were two reasons to consider discussions on the matter of a unique variety identifier. The first reason was to identify candidate varieties because they should be considered in the examination for distinctness, uniformity and stability (DUS) of other varieties. In that regard, it noted that it was difficult to integrate the candidate varieties from members of the Union in the DUS trials. The Delegation said that the second reason was to enable other countries to use the DUS results if the variety had already been examined in a country.

73. The Delegation of the European Union was of the opinion that, although there were a number of problems, it might be useful to discuss and clarify matters concerning a unique variety identifier.

*74. The CAJ discussed issues concerning the creation of a unique variety identifier (see paragraph 24 of document CAJ/65/5). It agreed that the Office of the Union should prepare a document to explain the issues, for consideration at its sixty-sixth session in October 2012.

Molecular Techniques

*75. The CAJ considered documents CAJ/65/7 and CAJ/65/11.

Document BMT/DUS "Possible Use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)"

*76. The CAJ noted the adoption by the Council of document UPOV/INF/18/1 "Possible Use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)".

Document TGP/15

*77. The CAJ noted that document TGP/15/1 Draft 2 "Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)" was considered under agenda item 5 "TGP documents (document CAJ/65/3)".

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

*78. The CAJ noted the following conclusions of the TC (see paragraphs 29 to 31 of the Annex to document CAJ/65/11 and paragraphs 11 to 15 of document CAJ/65/7):

(a) The TC agreed that it would be appropriate for the Office of the Union to investigate the possibility of a coordinated meeting of the BMT and the Working Group on DNA Methods of the Variety Committee of the International Seed Testing Association (ISTA), for the fourteenth session of the BMT;

(b) The TC approved the program for the fourteenth session of the BMT, including the dedication of a particular date ("Breeders' Day"), for the items on the use of molecular techniques in the consideration essential derivation and in variety identification, as set out in paragraphs 32 and 33 of document TC/48/7;

(c) The TC noted that a presentation on matters considered by the BMT at its thirteenth session, with particular regard to the use of molecular techniques in the consideration of essential derivation and in variety identification, would be made at the sixty-fifth session of the CAJ.

*79. The CAJ noted the presentation made by the Office of the Union on matters considered by the BMT, at its thirteenth session, with particular regard to the use of molecular techniques in the consideration of essential derivation and in variety identification, as set out in paragraphs 16 and 17 of document CAJ/65/7.

*80. The CAJ noted that the TC had included an item in the agenda for its forty-ninth session, to be held in March 2013, for a discussion on molecular techniques. Under that agenda item, the TC planned to consider application of models for the use of molecular techniques in the examination of DUS by members of the Union and would receive presentations of the situation with regard to molecular techniques in other international organizations. The TC had agreed that the discussions under that agenda item should be organized for Monday afternoon and Tuesday morning or afternoon.

Variety Denominations

*81. The CAJ considered documents CAJ/65/4 and CAJ/65/11.

82. The Delegation of the Netherlands requested a clarification on the process for the creation of UPOV codes.

83. The Vice Secretary-General explained that the Office of the Union created a UPOV code in response to requests from members of the Union, for example when a member of the Union received an application for a breeder's right and needed to include the UPOV code in the data provided for the Plant Variety Database.

*84. The CAJ agreed with the conclusion of the TC to propose the creation of 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", as set out in paragraphs 15 and 16 of document CAJ/65/4 and in paragraph 33 of the Annex to document CAJ/65/11, as follows:

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 213	Eupatorium L. Acanthostyles R. M. King & H. Rob. Ageratina Spach Asplundianthus R. M. King & H. Rob. Bartlettina R. M. King & H. Rob. Campuloclinium DC. Chromolaena DC. Conoclinium DC. Cronquistianthus R. M. King & H. Rob. Eutrochium Raf. Fleischmannia Sch. Bip. Praxelis Cass. Viereckia R. M. King & H. Rob.	EUPAT - AGERT - - - - - - - EUTRO - - -

85. The CAJ noted the report made at the TC by the Delegation of Japan that the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS) (ICNCP) was in the process of revising the Code of Nomenclature for Cultivated Plants and would make proposals to the IUBS Commission for the Nomenclature of Cultivated Plants in 2013 (see paragraph 34 of the Annex to document CAJ/65/11). It agreed with the TC that the Office of the Union should contact ICNCP in order to explain the guidance provided by UPOV in document UPOV/INF/12 "Explanatory notes on variety denominations under the UPOV Convention".

DUS Examination of Seed-Propagated Varieties of Papaya

*86. The CAJ considered documents CAJ/65/9 Rev. and CAJ/65/11.

*87. The CAJ noted the progress in the development of the draft of the Test Guidelines for Papaya, in order to cover seed-propagated varieties. It noted that the TC had concluded that it would be difficult to assess the proportion of male plants, hermaphrodite plants and female plants (Chars. 17-19) on the basis of the proposed sample sizes: 5 plants and 20 plants. The CAJ noted that, therefore, the TC had agreed that the

draft Test Guidelines for Papaya be referred back to the Technical Working Party for Fruit Crops (TWF) for further consideration in that regard.

*88. The CAJ noted that the TC had agreed with the general approach taken in the Test Guidelines in order to cover seed-propagated varieties of Papaya. In particular, it noted that the use of characteristics such as “Plant: proportion of hermaphrodite plants”, “Plant: proportion of female plants” and “Plant: proportion of male plants” was an approach that had already been used for other adopted Test Guidelines.

Webcasting of UPOV Sessions

*89. The CAJ considered documents CAJ/65/10 and CAJ/65/11, and received a presentation on communication technologies.

*90. The CAJ noted that webcast meetings would be freely accessible on the internet. However, it noted that it was possible to restrict access to meeting communications by Webinar and WebEx. The Vice Secretary-General clarified that questions concerning policy on access would be considered by the Consultative Committee.

*91. The CAJ noted the conclusions of the TC as set out in paragraphs 69 to 71 of the Annex to document CAJ/65/11.

Program for the sixty-sixth session

*92. The CAJ endorsed the proposal made by the CAJ-AG, at its sixth session on October 18, 2011, to hold the sixty-sixth session of the CAJ on the morning of October 29, 2012, and the seventh session of the CAJ-AG on the afternoon of October 29 and on October 30, 2012 (see document CAJ/65/2, paragraph 32).

*93. The CAJ agreed the following program for its sixty-sixth session:

1. Opening of the session
2. Adoption of the agenda
3. Development of information materials concerning the UPOV Convention
4. Variety denominations
5. Information and databases
 - (a) UPOV information databases
 - (b) Electronic application systems
6. Webcasting of UPOV sessions
7. Issues concerning a unique variety identifier
8. Program for the sixty-seventh session
9. Adoption of the report on the conclusions (if time permits)
10. Closing of the session

94. *This report was adopted by correspondence.*

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

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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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