

DRAFT

UPOV Council Holds Annual Session

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its annual ordinary session on October 21, 2010.

The Council noted a modest increase – 3 percent - in the overall number of applications (13,019) for plant variety protection in 2009. A record number of titles in force – 86,325 – was registered in 2009, representing a 6 percent increase on figures for 2008.

In 2009, the number of plant genera and species for which there were agreements between members of the Union for cooperation in the examination of distinctness, uniformity and stability exceeded 1,400 (a 3 percent increase on 2009).

The Council thanked out-going Vice Secretary General, Mr. Rolf Jördens, for his dedicated service over the past ten years. Mr. Jördens will be succeeded by Mr. Peter Button, who is currently UPOV's Technical Director, on December 1, 2010.

Round-up of key developments:

Examination of laws

The Council decided that the Draft Law on Plant Variety Protection of the Republic of Tajikistan was in conformity with the provisions of the 1991 Act of the UPOV. Once this draft law is adopted by the Republic of Tajikistan, that country will be in a position to deposit its instrument of accession to the 1991 Act of UPOV.

Observersⁱ

Observer status was granted to the Association for Plant Breeding for the Benefit of Society (APBREBES) and to European Coordination Via Campesina (ECVC) for the Council, the Administrative and Legal Committee (CAJ), the Technical Committee (TC) and the Technical Working Parties (TWPs). The observer status for CropLife International was extended to the CAJ, TC and TWPs.

NordGen access to UPOV-ROM Plant Variety Database (UPOV-ROM)ⁱⁱ

It was agreed that NordGen (Nordic Genetic Resource Center) be granted a free subscription to the UPOV-ROM Plant Variety Database (UPOV-ROM) with an explanation that the background to this sharing of information is provided by the "Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD)", adopted by the Council of UPOV at its thirty-seventh ordinary session on October 23, 2003.ⁱⁱⁱ

Finances and internal auditing

UPOV's Financial Regulations and Rules were revised, together with the introduction of provisions for internal auditing

Information and Guidance

The Council also adopted a number of information and guidance documents in relation to:

- (a) conditions and limitations concerning the breeder's authorization in respect of propagating material; the definition of variety; and a revision of the explanatory note on variety denominations;
- (b) guidance documents on the examination of Distinctness, Uniformity and Stability ("DUS")^{iv} and on DNA-Profiling; and
- (c) information on software that would be made available by members of the Union to all other members of the Union.

A full report of the decisions of the Council at its forty-fourth ordinary session is available at: http://www.upov.int/en/documents/c/index_c44.htm)

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Background information

I. Members of UPOV

as of October 21, 2010 (68)

Albania ³	Chile ²	France ²	Latvia ³	Portugal ²	Trinidad and Tobago ²
Argentina ²	China ²	Georgia ³	Lithuania ³	Republic of Korea ³	Tunisia ³
Australia ³	Colombia ²	Germany ³	Mexico ²	Republic of Moldova ³	Turkey ³
Austria ³	Costa Rica ³	Hungary ³	Morocco ³	Romania ³	Ukraine ³
Azerbaijan ³	Croatia ³	Iceland ³	Netherlands ³	Russian Federation ³	United Kingdom ³
Belarus ³	Czech Republic ³	Ireland ²	New Zealand ²	Singapore ³	United States of America ³
Belgium ¹	Denmark ³	Israel ³	Nicaragua ²	Slovakia ³	Uruguay ²
Bolivia	Dominican Republic ³	Italy ²	Norway ²	Slovenia ³	Uzbekistan ³
(Plurinational State) ²	Ecuador ²	Japan ³	Oman ³	South Africa ²	Viet Nam ³
Brazil ²	Estonia ³	Jordan ³	Panama ²	Spain ³	
Bulgaria ³	European Union ^{3,4}	Kenya ²	Paraguay ²	Sweden ³	(Total 68)
Canada ²	Finland ³	Kyrgyzstan ³	Poland ³	Switzerland ³	

¹ 1961 Convention as amended by the Additional Act of 1972 is the latest Act by which one State is bound.

² 1978 Act is the latest Act by which 22 States are bound.

³ 1991 Act is the latest Act by which 44 States and one organization are bound.

⁴ Operates a (supranational) Community plant variety rights system which covers the territory of its 27 members.

II States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention

States (17):

Armenia, Bosnia and Herzegovina, Egypt, Guatemala, Honduras, India, Kazakhstan, Malaysia, Mauritius, Montenegro, Peru, Philippines, Serbia, Tajikistan, The former Yugoslav Republic of Macedonia, Venezuela and Zimbabwe.

Organization (1):

African Intellectual Property Organization (OAPI)

(member States of OAPI (16): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo).

III States and intergovernmental organizations which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention

States (21):

Algeria, Bahrain, Barbados, Cambodia, Cuba, Cyprus, El Salvador, Ghana, Indonesia, Iraq, Islamic Republic of Iran, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Pakistan, Saudi Arabia, Sudan, Thailand, Tonga, Turkmenistan, United Republic of Tanzania and Zambia.

Organizations (2):

African Regional Intellectual Property Organization (ARIPO)

(member States of ARIPO (17): Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe)

Southern African Development Community (SADC)

(member States of SADC (15): Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe).

OBSERVERS IN UPOV BODIES

1. STATES

<i>State</i>	<i>Council</i>	<i>CAJ</i>	<i>TC</i>	<i>TWP</i>
Algeria	✓	✓	✓	
Armenia	✓	✓		
Bangladesh	✓			
Barbados	✓			
Bosnia and Herzegovina	✓	✓		
Burkina Faso	✓			
Burundi	✓			
Cambodia	✓			
Côte d'Ivoire	✓			
Cuba	✓			
Cyprus	✓			
Djibouti	✓			
Dominica	✓			
Egypt	✓	✓	✓	
El Salvador	✓			
Fiji	✓			
Gabon	✓			
Ghana	✓	✓		
Greece	✓	✓		✓
Guatemala	✓		✓	
Guyana	✓			
Honduras	✓	✓		
India	✓	✓	✓	
Indonesia	✓			
Iraq	✓			
Iran, Islamic Republic of	✓			
Jamaica	✓			
Kazakhstan	✓	✓		
Lebanon	✓			
Libyan Arab Jamahiriya	✓			
Luxembourg	✓			
Madagascar	✓			
Malawi	✓			
Malaysia	✓	✓		✓
Mauritius	✓	✓	✓	
Mongolia	✓			

<i>State</i>	<i>Council</i>	<i>CAJ</i>	<i>TC</i>	<i>TWP</i>
Montenegro	✓			
Pakistan	✓	✓		
Peru	✓	✓	✓	✓
Philippines	✓			
Saudi Arabia	✓	✓	✓	✓
Senegal	✓			
Serbia	✓	✓	✓	
Seychelles	✓			
Sri Lanka	✓			
Sudan	✓			
Suriname	✓			
Syrian Arab Republic	✓			
Tajikistan	✓	✓	✓	
Thailand	✓	✓		
The former Yugoslav Republic of Macedonia	✓	✓		
Tonga	✓			
Turkmenistan	✓	✓	✓	
Uganda	✓			
United Republic of Tanzania	✓	✓	✓	
Venezuela	✓	✓	✓	✓
Yemen	✓			
Zambia	✓			
Zimbabwe	✓	✓	✓	

2. INTERGOVERNMENTAL ORGANIZATIONS

<i>Intergovernmental organization</i>	<i>Council</i>	<i>CAJ</i>	<i>TC</i>	<i>TWP</i>
African Intellectual Property Organization (OAPI)	✓	✓	✓	✓
African Regional Intellectual Property Organization (ARIPO)	✓			
Andean Community	✓			
Bioversity International (former International Plant Genetic Resources Institute, IPGRI)	✓	✓	✓	✓
Consultative Group on International Agricultural Research (CGIAR)	✓			
European Free Trade Association (EFTA)	✓	✓		
European Patent Organisation (EPO)	✓	✓		
Food and Agriculture Organization of the United Nations (FAO)	✓		✓	
International Seed Testing Association (ISTA)	✓		✓	✓
Organisation for Economic Co-operation and Development (OECD)	✓		✓	✓
The World Conservation Union (IUCN)	✓			
United Nations Development Programme (UNDP)	✓			
United Nations Environment Programme (UNEP)	✓			
United Nations Industrial Development Organization (UNIDO)	✓			
World Bank	✓			
World Intellectual Property Organization (WIPO)	✓	✓		
World Trade Organization (WTO)	✓	✓		

3. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

<i>International non-governmental organization</i>	<i>Council</i>	<i>CAJ</i>	<i>TC</i>	<i>TWP</i>
Association for Plant Breeding for the Benefit of Society (APBREBES)	✓	✓	✓	✓
Asia and Pacific Seed Association (APSA)	✓			
Association of European Horticultural Breeders (AOHE)	✓			
Biotechnology Industry Organization (BIO)	✓			
Committee of Agricultural Organizations in the European Union (COPA)	✓			
Committee of National Institutes of Patent Agents (CNIPA)	✓			
Committee of Nordic Industrial Property Agents (CONOPA)	✓			
CropLife International	✓	✓	✓	✓
European Coordination Via Campesina (ECVC)	✓	✓	✓	✓
European Federation of Agents of Industry in Industrial Property (FEMIP)	✓			
European Federation of Agricultural and Rural Contractors (CEETAR)	✓			
European Federation of Pharmaceutical Industries' Associations (EFPIA)	✓			
European Seed Association (ESA)	✓	✓	✓	✓
General Committee for Agricultural Co-operation in the European Union (COGECA)	✓			
International Association for the Protection of Intellectual Property (AIPPI)	✓			
International Association of Horticultural Producers (AIPH)	✓	✓	✓	
International Chamber of Commerce (ICC)	✓			
International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS) (ICNCP)	✓			
International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOFORA)	✓	✓	✓	✓
International Federation of Agricultural Producers (IFAP)	✓			
International Federation of Industrial Property Attorneys (FICPI)	✓			
International Seed Federation (ISF)	✓	✓	✓	✓
Seed Association of the Americas (SAA)	✓	✓	✓	✓
Union of European Practitioners in Industrial Property (UNION)	✓			
Union of Industrial and Employers' Confederations of Europe (UNICE)	✓			

ⁱ Information about UPOV bodies and the rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies and access to UPOV documents can be found at <http://www.upov.int/en/about/structure.html>.

ⁱⁱ see http://www.upov.int/en/publications/cd_rom.htm

ⁱⁱⁱ http://www.upov.int/export/sites/upov/en/news/2003/pdf/cbd_response_oct232003.pdf

^{iv} Document TG/1/3 "General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants" (see http://www.upov.int/en/publications/tg-rom/tg001/tg_1_3.pdf) explains that:

"1.1 According to Article 7 of the 1961/1972 and 1978 Acts and Article 12 of the 1991 Act of the UPOV Convention, protection can only be granted in respect of a new plant variety after examination of the variety has shown that it complies with the requirements for protection laid down in those Acts and, in particular, that the variety is distinct (D) from any other variety whose existence is a matter of common knowledge at the time of the filing of the application (hereinafter referred to as a "variety of common knowledge") and that it is sufficiently uniform (U) and stable (S), or "DUS" in short. [...]"

"1.2 The purpose of this document (hereinafter referred to as "the General Introduction"), and the associated series of documents specifying Test Guidelines' Procedures (hereinafter referred to as "the TGP documents"), is to set out the principles which are used in the examination of DUS. The identification of those principles ensures that examination of new plant varieties is conducted in a harmonized way throughout the members of the Union. This harmonization is important because it facilitates cooperation in DUS testing and also helps to provide effective protection through the development of harmonized, internationally recognized descriptions of protected varieties."