



C/47/15 Rev.

ORIGINAL: English

DATE: October 23, 2013

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL

Forty-Seventh Ordinary Session Geneva, October 24, 2013

REPORT BY THE PRESIDENT ON THE WORK OF THE EIGHTY-SIXTH SESSION
OF THE CONSULTATIVE COMMITTEE; ADOPTION OF RECOMMENDATIONS,
IF ANY, PREPARED BY THAT COMMITTEE

Document prepared by the Office of the Union

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1. The Consultative Committee held its eighty-sixth session in Geneva on October 23, 2013 and on the morning of October 24, 2013.
2. The recommendations made by the Consultative Committee on the following items, as set out in this report, will be considered by the Council under the relevant agenda items (see document C/47/1 Rev.):
 - (a) Examination of the conformity of the Law for the Protection of New Varieties of Plants of Bosnia and Herzegovina with the 1991 Act of the UPOV Convention (document C/47/17)
 - (b) Developments concerning the Plant Breeders' Bill of Ghana (document C/47/18)
 - (c) Adoption of documents (document C/47/13)
 - (d) Examination and approval of the Draft Program and Budget of the Union for the 2014-2015 Biennium (document C/47/4)
 - (e) Financial statements for 2012 (document C/47/12)
 - (e) Arrears in contributions as of September 30, 2013 (document C/47/11)
 - (f) Calendar of meetings in 2014 (document C/47/8)
 - (g) Draft Press Release (document C/47/16)
3. The work of the Consultative Committee at its eighty-sixth session is summarized in the following paragraphs.

Preliminary examination of the conformity of the Law for the Protection of New Varieties of Plants of Bosnia and Herzegovina with the 1991 Act of the UPOV Convention

4. The Consultative Committee recommended to the Council to:

(a) note the analysis in this document;

(b) note the information provided by the Delegation of Bosnia and Herzegovina that the English translation of the Law required verification and that the following corrections would be made to the translation in accordance with the original text of the Law:

(i) to delete the text in Article 2(1)(f), which was already contained in Article 21(7);

(ii) to delete the words “a small” in Article 22(2);

(iii) to correct the translation in Article 11(6) to reflect that a procedure for granting a breeder's right can start also by filing an application outside of Bosnia and Herzegovina;

(iv) to correct the translation in Article 11(7) in accordance with the terms used for the national treatment provision in Article 5;

(d) take a positive decision on the conformity of the Law for the Protection of New Varieties of Plants of Bosnia and Herzegovina with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Bosnia and Herzegovina to deposit its instrument of accession to the 1991 Act; and

(d) authorize the Secretary-General to inform the Government of Bosnia and Herzegovina of the above decision.

Developments concerning the Plant Breeders' Bill of Ghana

5. The Consultative Committee recommended to the Council to:

(a) note the information provided by the Delegation of Ghana that that the text of Section 10 of the Bill provided in document C/47/18, Annex II, had been modified as follows: “Where the application is by an applicant who is a successor-in-title, the applicant shall support the ~~applicant~~ application with the proof of the successor's title”;

(b) note that the Plant Breeders' Bill of Ghana, which was presented to the Parliament incorporated the changes in the decision of the Council of November 1, 2012 (see document C/46/19 “Report”, paragraph 12, and paragraph 2 of document C/47/18); and

(c) agree that the additional changes presented in the Annex II to document C/47/18, including the change in the above paragraph (a), do not affect the substantive provisions of the 1991 Act of the UPOV Convention, and, subject to that agreement,

(d) confirm the decision on conformity of November 1, 2012.

Documents proposed for adoption by the Council

TGP/14/2: Glossary of Terms Used in UPOV Documents (Revision)

6. The Consultative Committee recommended to the Council to adopt the revision of document TGP/14 “Glossary of Terms Used in UPOV Documents” (document TGP/14/2) and the Supplementary document to TGP/14 “Glossary of terms used in UPOV documents” (TGP/14/2 Supplement), on the basis of documents TGP/14/2 Draft 1 and TGP/14/2 Supplement Draft 1.

TGP/15/1: [New Types of Characteristics] [Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)]

7. The Consultative Committee recommended to the Council to adopt document TGP/15/1 “Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)” on the basis of document TGP/15/1 Draft 5.

TGP/0/6: List of TGP Documents and Latest Issue Dates (Revision)

8. The Consultative Committee recommended to the Council to adopt document TGP/0/6 “List of TGP Documents and Latest Issue Dates”, on the basis of document TGP/0/6 Draft 1.

UPOV/EXN/BRD/1: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention

9. The Consultative Committee recommended to the Council to adopt document UPOV/EXN/BRD/1 “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention”, on the basis of document UPOV/EXN/BRD Draft 7.

UPOV/EXN/HRV/1: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention

10. The Consultative Committee noted that the Administrative and Legal Committee (CAJ), at its sixty-eighth session, held on October 21, 2013, had approved document UPOV/EXN/HRV Draft 10, as the basis for adoption of document UPOV/EXN/HRV/1 “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” by the Council, at its forty-seventh ordinary session (see document CAJ/68/10 “Report on the Conclusions”, paragraph 7).

11. The Consultative Committee agreed that the suggestion for an editorial improvement to paragraph 4 of document UPOV/EXN/HRV Draft 10, made by the Delegation of the United States of America, could be considered in the future work on Explanatory Notes on Acts in Respect of Harvested Material.

12. The Consultative Committee recommended to the Council to adopt document UPOV/EXN/HRV/1 “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention”, on the basis of document UPOV/EXN/HRV Draft 10.

UPOV/INF/6/3: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision)

13. The Consultative Committee recommended to the Council to adopt 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/6/3), on the basis of the proposed amendments to document UPOV/INF/6/2, as presented in the Annex to document C/47/13.

UPOV/INF/16/3: Exchangeable Software (Revision)

14. The Consultative Committee noted that the CAJ, at its sixty-eighth session, held on October 21, 2013, had approved document UPOV/INF/16/3 Draft 1, as the basis for adoption of document UPOV/INF/16/3 “Exchangeable Software” by the Council, at its forty-seventh ordinary session (see document CAJ/68/10 “Report on the Conclusions”, paragraphs 31 and 33).

15. The Consultative Committee recommended to the Council to adopt the revision of document UPOV/INF/16 “Exchangeable Software”, on the basis of document UPOV/INF/16/3 Draft 1.

UPOV/INF-EXN/5: List of UPOV/INF-EXN Documents and Latest Issue Dates

16. The Consultative Committee recommended to the Council to adopt the revision of document UPOV/INF-EXN “List of INF-EXN Documents and Latest Issue Dates” (document UPOV/INF-EXN/5) on the basis of document UPOV/INF EXN/5 Draft 1.

Preliminary examination of the Draft Program and Budget of the Union for the 2014-2015 biennium

17. The Consultative Committee recommended to the Council to approve:

(a) the proposals contained in the Draft Program and Budget for the 2014-2015 Biennium, as presented in the Annex to document C/47/4, including the amount of contributions from members of the Union;

(b) the proposed maximum ceiling of expenditure in the regular budget; and

(c) the total number of posts for the Office of the Union.

Financial statements for 2012

18. The Consultative Committee noted that the Council, at its forty-fifth ordinary session held on October 20, 2011, had agreed to the adoption of the International Public Sector Accounting Standards (IPSAS) beginning with the financial period starting in 2012 (see paragraph 9(b) of document C/45/18 "Report").

19. The Consultative Committee recommended to the Council to:

(a) approve the Financial Statements for 2012; and

(b) note that the financial management report for the 2012-2013 financial period would be submitted to the Council by August 31, 2014, for approval by the Council at its forty-eighth ordinary session, in October 2014.

20. In response to questions raised by the Delegations of the United States of America and Germany, the Consultative Committee agreed to include an item "Financing of long-term employee benefits" in the program of its eighty-seventh session.

Reserve Fund

21. In a situation where the amount of the reserve fund exceeds 15 percent of the total income for the 2012-2013 Biennium, the Consultative Committee recommended the creation of a special UPOV account that would be used to finance extra-budgetary projects agreed by the Council. It was agreed that the account should be used for projects that would, in particular:

(i) support members of the Union, and in particular new members, in the operation of their plant variety protection systems;

(ii) extend over more than one biennium;

(iii) provide long-term benefits to members of the Union; and

(iv) be advanced more rapidly by extra-budgetary funds.

22. It was further agreed that projects to be considered under a special UPOV account would be presented for consideration by the Consultative Committee prior to submission to the Council for approval. In that regard, it was agreed that the Consultative Committee would have flexibility to recommend projects that took into account factors other than those identified in (i) to (iv) above.

Arrears in contributions as of September 30, 2013

23. The Consultative Committee noted the status of payment of contributions as of September 30, 2013, and noted that due to recent payments, Nicaragua had no arrears and that the Plurinational State of Bolivia had a balance due of 10,728 Swiss francs.

24. The Consultative Committee noted the interventions by the Delegations of Argentina, Brazil and Poland, which reported that their payments would be made before the end of the year.

Preparation of reports to the Council

25. The Consultative Committee approved the proposed presentation of information in the performance report for the biennium, with a recommendation to avoid the use of three-dimensional graphics and to use appropriate color schemes.

26. The Consultative Committee noted the planned use of surveys by the Office of the Union and requested the Office of the Union to provide an illustration of the presentation of the results of surveys for consideration by the Consultative Committee at its eighty-eighth session, in October 2014.

27. The Consultative Committee recommended to the Council to copy the circular concerning cooperation in examination, e.g. see C/xx/5, to the Technical Committee (TC) designated persons in order to ensure that the maximum amount of information could be collected.

Access to UPOV documents and publication of information

UPOV documents

28. The Consultative Committee noted that the revised disclaimer text has been posted on the meeting section of the UPOV website and that a disclaimer has been incorporated in UPOV session documents.

29. The Consultative Committee noted that the resources of the Office of the Union had not yet allowed the scanning and posting on the UPOV website of important documents that are only available in paper format, and that the Office of the Union was continuing to verify the correct inclusion of documents on the redesigned UPOV website.

Database of laws of members of the Union ("UPOV LEX")

30. The Consultative Committee noted that UPOV Lex had been modified in order to include notifications by members of the Union on the plant genera and species for which plant variety protection was applicable in their territories.

Publication of the list of observers in UPOV bodies

31. The Consultative Committee noted that, to date, the resources of the Office of the Union had not allowed the posting on the UPOV website of the date of granting of observer status in the list of observers in UPOV bodies.

New passwords for the restricted area of the UPOV website

32. The Consultative Committee noted that new passwords had been issued for the restricted area of the "Meeting Documents" section of the UPOV website.

Database of consultants

33. The Consultative Committee noted that the Office of the Union was investigating the feasibility of adapting the database used for the WIPO Roster of Consultants for UPOV purposes. The Office of the Union explained that, if it was not possible to use the WIPO database for UPOV purposes, the Office would provide a list of consultants in a different way.

Communication strategy

34. The Consultative Committee approved a communication strategy, including answers to the following frequently asked questions:

- What is UPOV?
- What does UPOV do?
- What is a plant variety?
- What are the requirements for protecting a new plant variety?

- Can breeders use a protected variety in their breeding programs?
- Who can protect a plant variety?
- Where do I apply for protection of a variety?
- Can I obtain protection for more than one country from a single application?
- What are the benefits of plant variety protection and UPOV membership?
- What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?
- What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?
- Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?
- Can I use plant variety protection to protect the following: a trait (e.g. disease resistance, flower color), a chemical or other substance (e.g. oil, DNA), a plant breeding technology (e.g. tissue culture)?
- Can I protect a hybrid variety under the UPOV system?
- How do I know if a variety is protected?
- Who is responsible for enforcing plant breeders' rights?
- Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

35. The Consultative Committee agreed to consider answers to other frequently asked questions, on the basis of comments to be sent to the Office of the Union by November 30, 2013. The new draft answers would be presented for consideration by the Consultative Committee at its eighty-seventh session.

UPOV Distance Learning Course

36. The Consultative Committee noted the plans for the launch of the advanced distance learning course DL-305 "Examination of Applications for Plant Breeders' Rights".

Observers in UPOV bodies

Brunei Darussalam and Malaysia

37. The Consultative Committee noted the granting of observer status to Brunei Darussalam in the Council and to Malaysia in the Technical Committee.

Committee of Nordic Industrial Property Agents (CONOPA)

38. The Consultative Committee noted that, following its request, the Committee of Nordic Industrial Property Agents (CONOPA) had been removed from the list of observers in the Council.

International Federation of Agricultural Producers (IFAP)

39. The Consultative Committee noted that the International Federation of Agricultural Producers (IFAP) no longer existed and agreed to remove IFAP from the list of observers in the Council.

40. The Consultative Committee noted the report on *ad hoc* invitations issued to experts.

Participation of observers in the CAJ-AG

41. The Consultative Committee endorsed the current approach whereby the Administrative and Legal Committee Advisory Group (CAJ-AG) invites, on an *ad hoc* basis, organizations that have observer status in the CAJ to present their views at the relevant part of the CAJ-AG, as it considers appropriate.

42. In relation to the request from APBREBES, the Consultative Committee agreed not to transmit the document on "Observers in UPOV Bodies" to APBREBES, and to inform APBREBES accordingly.

Request of the Friends World Committee for Consultation (FWCC)

43. The Consultative Committee agreed that, in accordance with paragraph 2, of the "Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies"(document UPOV/INF/19/1), the request of the Friends World Committee for Consultation (FWCC) for the granting of observer status to the Council and to the CAJ could not be considered further until it demonstrated its "competence in areas of direct relevance in respect of matters governed by the UPOV Convention". In that regard, it agreed to invite FWCC, upon request, to be present, at the relevant part of the item on observers in the program for its eighty-eighth session in October 2014, in order to explain how its statutes provided the basis to determine "competence in areas of direct relevance in respect of matters governed by the UPOV Convention".

Request of the South Centre

44. In relation to the request of South Centre for the granting of observer status to the Council and to the CAJ, the Consultative Committee agreed to invite South Centre to be present, at the relevant part of the item on observers in the program for its eighty-eighth session in October 2014, in order to explain how its constituent treaty provided the basis to determine "competence in areas of direct relevance in respect of matters governed by the UPOV Convention".

Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention

45. The Consultative Committee noted the report made on the situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention.

Reports from new members of the Union

46. The Consultative Committee noted that it was not possible for Georgia to make a presentation in 2013 on progress in the implementation of the UPOV system and any particular areas where they would welcome guidance or assistance, and agreed to renew the invitation in order for Georgia to make the presentation at the eighty-eighth session of the Consultative Committee, to be held in October 2014.

47. The Consultative Committee approved the issue of invitations to Costa Rica and Oman to make presentations on progress in the implementation of the UPOV system and any particular areas where they would welcome guidance or assistance, at the eighty-eighth session of the Consultative Committee, to be held in October 2014.

Developments of relevance to UPOV in other international fora

World Seed Project (WSP)

48. The Consultative Committee noted the developments concerning resourcing of the World Seed Project.

East Asia Plant Variety Protection Forum (EAPVP Forum)

49. The Consultative Committee noted the developments concerning the EAPVP Forum.

Organisation for Economic Co-Operation and Development (OECD)

50. The Consultative Committee noted the developments concerning the OECD Forest Seed and Plant Scheme.

Developments under the Auspices of the Convention on Biological Diversity (CBD)

51. The Consultative Committee noted the developments concerning the CBD.

Developments under the Auspices of the Food and Agriculture Organization of the United Nations (FAO)

Commission on Genetic Resources for Food and Agriculture (CGRFA)

52. The Consultative Committee noted the developments concerning the CGRFA.

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

53. The Consultative Committee noted the developments concerning the ITPGRFA Platform for the Co-Development and Transfer of Technologies and agreed that the Office of the Union explore how the information in the PLUTO, GENIE and UPOV Lex databases might be made available through that platform.

54. The Consultative Committee noted the developments concerning the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and in particular that the fifth session of the Governing Body of the ITPGRFA (GB), held in Muscat, Oman, from September 24 to 28, 2013, had adopted the following resolution under the item "Implementation of Article 9, Farmers' Rights":

"Resolution: Implementation of Article 9, Farmers' Rights

"3. Requests the Secretary to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments;"

55. The Consultative Committee noted the developments concerning the consultation to promote public-private partnerships for pre-breeding.

World Intellectual Property Organization (WIPO)

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

56. The Consultative Committee noted the developments concerning the IGC.

57. The Consultative Committee noted the developments concerning the WIPO Methodology and Tools for the Development of National IP Strategies and that the Office of the Union would explain to the Delegation of Norway its comments on an earlier draft of the WIPO Questionnaire "A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities".

World Trade Organization (WTO)

Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights)

58. The Consultative Committee noted the developments in relation to WTO.

International Seed Testing Association (ISTA)

59. The Consultative Committee noted the developments in relation to ISTA.

International Rice Research Institute (IRRI)

60. The Consultative Committee noted the request by IRRI for the provision of information on plant variety protection and the acceptance by the Office of the Union.

EXPO 2015

61. The Consultative Committee noted that there had been no significant developments concerning EXPO 2015 since the eighty-fifth session of the Consultative Committee.

Matters raised by the International Seed Federation (ISF)

62. The Consultative Committee agreed to the development of document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation" into an umbrella document that would identify key issues for the operation of a plant variety protection system and which would provide links to detailed information materials;

63. The Consultative Committee agreed to invite the CAJ and TC to consider the ISF recommendations in relation to existing and possible future information materials, in parallel with the development of document UPOV/INF/15 into an umbrella document.

64. With regard to the ISF recommendation for regular provision of information to PLUTO Plant Variety Database, the Consultative Committee noted:

(i) the Program for Improvements to the PLUTO Plant Variety Database (see document CAJ/68/6 "UPOV information databases");

(ii) the report on data contributed to the plant variety database by members of the Union and other contributors and assistance that has been provided for data contribution;

(iii) that the CAJ, at its sixty-eighth session, held in Geneva on October 21, 2013, had endorsed a proposal to increase the frequency of updating of the PLUTO database; and

(iv) the inclusion of the section "Variety Denominations (PLUTO database)" in document UPOV/INF/15.

65. The Consultative Committee agreed to invite ISF to express its views to the TC with regard to databases of variety descriptions and the criteria identified by the TC for the publication of variety descriptions, as set out in document TC/45/9 "Publication of Variety Descriptions".

66. The Consultative Committee requested the Office of the Union and ISF to elaborate the problems faced and possible solutions in relation to ISF's ideas concerning: an international filing system; a UPOV quality assurance program; and a central examination system for variety denominations, for consideration by the Consultative Committee at its eighty-seventh session.

Preparation of the calendar of meetings

67. The Consultative Committee recommended to the Council the following change to the calendar of meetings in 2014 in document C/47/8:

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

BMT/14 November ~~11 to 14~~ 10 to 13, Seoul, Republic of Korea
(Preparatory workshop on November ~~10-9~~)"

Draft press release

68. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in document C/47/16 Prov.

69. *The Council is invited to:*

(a) note the work of the Consultative Committee at its eighty-sixth session, as reported in this document; and

(b) agree to copy the circular concerning cooperation in examination, e.g. see C/xx/5, to the Technical Committee (TC) designated persons in order to ensure that the maximum amount of information could be collected (see paragraph 27 above).

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