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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Forty-Eighth Ordinary Session
Geneva, October 16, 2014**

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-eighth session in Geneva on October 15 and 16, 2014.
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/48/1 Rev.):
 - (a) Appointment of the Secretary-General (document C/48/15)
 - (b) Developments on the Plant Breeders' Rights Act for Zanzibar (document C/48/18)
 - (c) Adoption of documents (document C/48/16)
 - (d) Financial Statements for 2013 (documents C/48/13 and C/48/14)
 - (e) Arrears in contributions as of September 30, 2014 (document C/48/11)
 - (f) Financial Management Report for the 2012-2013 Biennium (document C/48/4)
 - (g) Calendar of meetings in 2015 (document C/48/8)
 - (h) Draft Press Release (document C/48/20)
3. The Consultative Committee recommended to the Council the adoption of the answers to the frequently asked questions, as set out in paragraphs 46 and 47 of this document.
4. The Consultative Committee recommended to the Council to approve the use of the special project fund for training purposes, as set in paragraph 32 of this document.
5. The work of the Consultative Committee at its eighty-eighth session is summarized in the following paragraphs.

Appointment of the Secretary-General

6. The Consultative Committee recommended to the Council to appoint Mr. Francis Gurry as the Secretary-General of UPOV for the period from October 16, 2014, to September 30, 2020.

Developments on the Plant Breeders' Rights Act for Zanzibar

7. The Consultative Committee recommended to the Council to:

(a) note that the Plant Breeders' Rights Act of Zanzibar, which was adopted by the Zanzibar House of Representatives, incorporates the changes in the decision of the Council of March 22, 2013 (see document C(Extr.)/30/8 "Report", paragraph 13, and document C/48/18, paragraph 2);

(b) agree that the additional changes, as presented in the Annex II to document C/48/18, do not concern the substantive provisions of the 1991 Act of the UPOV Convention, and, subject to that agreement,

(c) confirm the decision on conformity of March 22, 2013 and inform the Government of the United Republic of Tanzania that the instrument of accession of the United Republic of Tanzania may be deposited.

Documents proposed for adoption by the Council

TGP/2/2: List of Test Guidelines Adopted by UPOV (Revision)

8. The Consultative Committee recommended to the Council to adopt the revision of document TGP/2 "List of Test Guidelines Adopted by UPOV" (document TGP/2/2) on the basis of the proposal in document C/48/16, paragraph 2.

TGP/5: Experience and Cooperation in DUS Testing

9. The Consultative Committee recommended to the Council to adopt the revision of document TGP/5 "Experience and Cooperation in DUS Testing", Section 10 "Notification of Additional Characteristics and States of Expression" (document TGP/5, Section 10/3) on the basis of the proposal in document C/48/16, paragraph 5.

TGP/7/4: Development of Test Guidelines (Revision)

10. The Consultative Committee recommended to the Council to adopt the revision of document TGP/7 "Development of Test Guidelines" (document TGP/7/4), on the basis of document TGP/7/4 Draft 1.

TGP/8/2: Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision)

11. The Consultative Committee recommended to the Council to adopt the revision of document TGP/8 "Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability" (document TGP/8/2), on the basis of document TGP/8/2 Draft 1.

TGP/14: Glossary of Terms Used in UPOV Documents (correction of Spanish version)

12. The Consultative Committee recommended to the Council to adopt the correction of the Spanish version of document TGP/14: Section 2: Subsection 3: Color, paragraph 2.2.2 (TGP/14/2 Corr. (S)), as proposed in document C/48/16, paragraph 18.

TGP/0/7: List of TGP documents and latest issue dates (Revision)

13. The Consultative Committee recommended to the Council to adopt the revision of document TGP/0 "List of TGP documents and latest issue dates" (document TGP/0/7), on the basis of document TGP/0/7 Draft 1.

UPOV/INF/16/4: Exchangeable Software (Revision)

14. The Consultative Committee recommended to the Council to adopt the revision of document UPOV/INF/16 "Exchangeable Software" (document UPOV/INF/16/4), on the basis of document UPOV/INF/16/4 Draft 1.

UPOV/INF/22/1: Software and Equipment Used by Members of the Union

15. The Consultative Committee recommended to the Council to adopt document UPOV/INF/22 "Software and Equipment Used by Members of the Union" (document UPOV/INF/22/1), on the basis of document UPOV/INF/22/1 Draft 1.

16. The Consultative Committee noted the plan to issue a circular to the designated persons of the members of the Union in the Technical Committee, inviting them to provide information regarding non-customized software and equipment used by members of the Union.

UPOV/INF-EXN/6: List of UPOV/INF-EXN Documents and Latest Issue Dates

17. 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/6) on the basis of document UPOV/INF-EXN/6 Draft 1.

Financial Statements for 2013

18. The Consultative Committee noted that, in the English version of document C/48/14 "Report of the External Auditor: Audit of the 2013 financial statements", Graph 1, the title should read "Costs for 2012 and 2013 by type of expenditure" and not "2013 and 2014".

19. The Delegation of the European Union requested clarification on the lack of inclusion within the accounts of UPOV's 'share' of the actuarial debt of the United Nations Joint Staff Pension Fund (UNJSPF) and the reference in the Report of the External Auditor to non-compliance with IPSAS 20, concerning the disclosure note on key management personnel.

20. The Consultative Committee noted the following explanations provided by the Director of the Financial Division of WIPO:

(a) In relation to the lack of inclusion within the accounts of UPOV's 'share' of the actuarial debt of the United Nations Joint Staff Pension Fund (UNJSPF), it was explained that the UNJSPF was not currently able to apportion the liabilities or the assets across the individual organizations which participate in the pension fund. In such circumstances, IPSAS permitted the recognition of the pension fund as a defined contribution scheme rather than as a defined benefits scheme and that was the approach that had been adopted by all other UN agencies which comply with IPSAS. She noted that only contributions paid were therefore shown within the accounts. Just as the UNJSPF could not identify liabilities and assets for each participating organization, neither could it identify the portion of the deficit to be contributed by each organization.

(b) With regard to the reference in the Report of the External Auditor to non-compliance with IPSAS 20 concerning the disclosure note on key management personnel, the possibility of having a class of personnel which included only one person was not mentioned within the standard. A review of the practice of other organizations with small secretariats had not revealed any separate disclosure of one individual within that particular note. She was of the view that the current level of disclosure was appropriate and, given the lack of a specific reference within the standard, did not believe that the note was non-compliant.

21. The Consultative Committee noted the information contained in the "Report of the External Auditor: Audit of the 2013 Financial Statements" (document C/48/14) and recommended to the Council to approve the Financial Statements for 2013.

Arrears in contributions as of September 30, 2014

22. The Consultative Committee noted the status of payment of contributions as of September 30, 2014, and noted that due to recent payments, Jordan had no arrears.

Financial Management Report for the 2012-2013 Biennium

23. The Controller reported that Regulation 4.11 of the Financial Regulations and Rules of UPOV provide that “[u]nless otherwise agreed by the Council, UPOV’s investment policy shall be the same as WIPO’s investment policy”. In that regard, she reported that changes to the financial management and investment environment had arisen from the fact that WIPO and UPOV, along with other international organizations, would no longer be able to hold their bank deposits with the State of Switzerland within the Federal Finance Administration (FFA) after the end of 2015. The Controller indicated that the investment policy previously adopted by WIPO Member States referred to this banking relationship and would, therefore, have to be updated and revised.

24. The Consultative Committee noted that the adoption of relevant measures concerning WIPO’s investment policy would be reported to the Consultative Committee and the Council.

25. The Consultative Committee noted the following statement made by the Delegation of the European Union:

“The EU and its Member States can agree to approve the financial management report for the 2012-2013 financial period.”

However, we would like to present the following remarks:

- We insist on the need to ensure balanced budgets and therefore ask the Office of the Union to identify means to achieve it;
- Concerning the future financial management, due account should be taken of the results of the working group of the UN-CEB Finance and Budget Network, in particular, the financing of long-term employee benefits (see agenda item 10);
- This ongoing work of the UN-CEB Finance and Budget Network should be finalized urgently, thus allowing UPOV to examine this issue in a timely and efficient manner;
- To this end, a UPOV “Ad hoc” working group should be established with the specific aim of examining the results of the said UN working group, in particular, a possible common approach to the “After Service Health Insurance (ASHI)”, including management of funds and the financing of liabilities and measures to contain or reduce those liabilities; this is in accordance with conclusions adopted by the UPOV Council in April 2014
- can ask the UPOV Office to report on measures to contain or reduce liabilities.

Additionally, we are of the opinion that possibly, the adjustment of the value of the reserve funds has to be resolved as soon as the Council has decided how to finance the ASHI liabilities.”

26. The Controller reported that WIPO was fully engaged in the United Nations-wide initiative under the UN CEB Finance and Budget (FB) Network processes. She noted that the UN-wide initiative was progressing slower than expected. The WIPO Secretariat, along with several other agencies, contributed to the Terms of Reference for the study to be conducted by the FB network. The WIPO Secretariat was expecting further information on the status and progress by the next meeting which was planned to take place before the end of November. Furthermore, the WIPO Secretariat was also contacting and discussing the matter with other agencies who had progressed significantly on funding and financing their ASHI liabilities including the use of external investment managers. Some agencies had been able to fully fund their long-term employee benefit liabilities while others were well on their way to doing so.

27. The Consultative Committee recommended to the Council to approve the financial management report for the 2012-2013 financial period.

Preparation of reports to the Council

28. The Consultative Committee:

(a) noted the presentation of information in documents C/48/2 “Annual Report of the Secretary-General for 2013” and C/48/12 “Performance report for the 2012-2013 Biennium”;

(b) noted that the members in the Technical Committee had been copied in the request for information for the preparation of document C/48/5 "Cooperation in Examination"; and

(c) considered the planned use of surveys by the Office of the Union.

Financing of long-term employee benefits

29. The Consultative Committee recalled the intervention made by the Delegation of the European Union on the financing of long-term employee benefits and the report made by the Controller on the working group of the UN CEB Finance and Budget Network under item 8 "Financial Management Report".

30. The Consultative Committee noted that any new developments with regard to financing of long-term employee benefits would be reported to the Consultative Committee at its eighty-ninth session, in March 2015.

Special project fund

31. The Consultative Committee recalled that the Council, at its thirty-first extraordinary session, held in Geneva on April 11, 2014, had decided to create a special project fund for the amount of the reserve fund exceeding 15 percent of the total income for the 2012-2013 Biennium.

32. The Consultative Committee recommended to the Council, at its forty-eighth ordinary session, to approve the use of the special project fund for training purposes. Subject to the approval of the Council, the Consultative Committee requested a report on the planned implementation of the use of the funds for training purposes at its eighty-ninth session, in March 2015.

International filing system, quality assurance and variety denomination search

33. The Consultative Committee noted the information provided on the WIPO International Patent System (PCT), International Trademark System (Madrid) and International Design System (Hague) and considered the written contribution by ISF, CIOPORA and CropLife International, in conjunction with their joint presentation at the eighty-eighth session of the Consultative Committee.

34. The Consultative Committee requested the Office of the Union to prepare a document to clarify the issues raised and possible ways forward with regard to an international system of cooperation, for consideration by the Consultative Committee at its eighty-ninth session, in March 2015.

Observers in UPOV bodies

35. The Consultative Committee noted the *ad hoc* invitations issued to experts.

36. The Consultative Committee considered the information provided by the Friends World Committee for Consultation (FWCC), at its eighty-eighth session, in relation to the FWCC request for the granting of observer status to the Council and to the CAJ. The Consultative Committee concluded that it was not possible to decide that FWCC had demonstrated its "competence in areas of direct relevance in respect of matters governed by the UPOV Convention".

37. The Consultative Committee decided to grant observer status to the South Centre in the Council and the Administrative and Legal Committee (CAJ).

38. The Consultative Committee decided to grant observer status to the World Farmers' Organisation (WFO) in the Council, the Administrative and Legal Committee (CAJ) and the Technical Committee (TC).

Access to UPOV documents and publication of information

Documents on the UPOV website

39. The Consultative Committee noted that a total of around 7,000 documents had been scanned and reproduced as electronic, word-recognizable documents. It further noted that the records of the diplomatic conferences on the revisions of the UPOV Convention, documents of meetings of UPOV with international organizations (IOM documents) and issues of the Plant Variety Protection Gazette and Newsletter had already been uploaded on the UPOV website. In parallel with that process, the Consultative Committee heard that a systematic review had been made of the existing documents posted under the UPOV "Meeting Documents" section to identify and rectify errors and omissions that had occurred during the migration to the redesigned website in 2011-2012. With regard to the remaining work, to upload older UPOV session documents and older documents from UPOV seminars, it noted that the work would be done on an *ad hoc* basis as resources allowed. The Consultative Committee noted that the work would not be given a high priority because there had been limited demand for the documents concerned and the documents were now all available electronically and could be provided on demand.

Publication of the list of observers in UPOV bodies

40. 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.

Database of consultants

41. The Consultative Committee agreed that information concerning consultants that were used by UPOV in 2014 be presented to the Consultative Committee at its ninetieth session, in October 2015, on the same basis as in the Annex to document CC/87/3.

UPOV distance learning courses

42. The Consultative Committee endorsed the plans for the launch of the DL-305 course "Examination of Applications for Plant Breeders' Rights", both as a single course, and also as two component courses: DL-305A "Administration of Plant Breeders' Rights"; and DL-305B "DUS Examination".

Communication strategy

43. The Consultative Committee approved the development of a proposal for a new logo for consideration by the Consultative Committee at its eighty-ninth session and approval by the Council at its thirty-second extraordinary session in March 2015.

44. The Consultative Committee noted that the Trilogy¹ publication, including the Executive Summary had been published in French. It further noted that the Executive Summary had been published in Spanish and that the full publication would be available in the near future.

45. The Consultative Committee noted the plans for the introduction of stakeholder-focused features on the UPOV website during 2015.

46. The Consultative Committee proposed the following FAQs for adoption by the Council at its forty-eighth ordinary session, to be held in Geneva on October 16, 2014:

¹ Publication combining the proceedings of the "UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership", the "Symposium on Plant Breeding for the Future" and the "Symposium on the benefits of plant variety protection for farmers and growers".

<p><i>Question: Does the UPOV Convention regulate varieties that are not protected by plant breeders' rights?</i></p>
<p>Answer: The UPOV system does not regulate varieties that are not covered or no longer covered by plant variety protection. Therefore many plant varieties can be replanted by a farmer without any authorization of the breeder.</p> <p>UPOV does not regulate any other system of intellectual property rights governing the protection of plants/plant varieties. It is necessary to consult the legislation in each UPOV Contracting Party in order to know the situation and the answer in that UPOV member.</p>
<p><i>Question: Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?</i></p>
<p>Answer: Since the 1991 Act and 1978 Act do not specifically address or define subsistence farmers it is necessary to consult the legislation of each UPOV Contracting Party for the answer to this question specific to that UPOV member.</p> <p>Within the scope of the breeder's right exceptions provided under the UPOV Conventions, UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing subsistence farmers to exchange this against other vital goods within the local community.</p>
<p><i>Question: Under the UPOV system, breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. Can farmers, for instance, be allowed to exchange seeds of protected varieties freely within the local community?</i></p>
<p>Answer: Article 14(1)(a) of UPOV 1991 and article 5(1) of UPOV 1978 define the acts in respect of the propagating material for which the breeder authorization shall be required; Article 14(1)(b) and respectively Article 5(2) state that the breeder may make his authorization subject to conditions and limitations.</p> <p>Therefore any breeder may decide on the conditions and limitations under which he authorizes the exploitation of his/her protected variety. He may, for instance, allow the farmer to exchange seeds of protected varieties freely within the local community.</p>

47. The Consultative Committee proposed the following modified FAQ for adoption by the Council at its forty-eighth ordinary session, to be held in Geneva on October 16, 2014:

<p><i>Question: Why is plant variety protection necessary?</i></p>
<p>Answer: Successful breeding requires great skill and knowledge. In addition, large-scale breeding calls for significant investment in land, specialized equipment (for example, greenhouses, growth chambers and laboratories), and skilled, scientific manpower.</p> <p>It takes a long time to develop a successful plant variety (10 to 15 years in the case of many plant species). Yet not all new plant varieties are successful and, even where the varieties show significant improvements, changes in market requirements may eliminate the possibility of a return on investment. This makes it necessary to balance the benefits with the return of the original high investment. Generally, however, plant breeding results in the availability of varieties with increased output and improved quality for the benefit of the society.</p> <p>Sustained and long-term breeding efforts are only worthwhile if there is a chance to be rewarded for the investment made. To recover the costs of this research and development, the breeder may seek protection to obtain exclusive rights for the new variety.</p>

At the same time, a new variety, once released, can often be easily reproduced by others. The original breeder is thus deprived of the fair opportunity to benefit from his or her investment. It is, therefore, critical to provide an effective system of plant variety protection, which encourages the development of new varieties of plants thereby benefiting the breeder and society at large.

- [Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership](#)
- [UPOV Report on the Impact of Plant Variety Protection](#)

In addition to making plant variety protection available, other measures to encourage plant breeding activities include increased public funding for plant breeding, facilitating access to genetic resources and encouraging public-private partnerships.

48. The Consultative Committee agreed that the draft FAQ concerning information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general, should be referred to the Technical Committee for consideration.

49. The Consultative Committee noted the plans to develop a brief, illustrative explanation of the benefits of the UPOV system aimed at an audience with no previous knowledge of plant breeding or plant variety protection and/or illustrative examples of the benefits of plant variety protection.

50. The Consultative Committee deferred plans for the updating of the Impact Study pending work to identify with the Secretary of the ITPGRFA and the Secretariat of WIPO possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV with a view to a possible joint publication on interrelated issues regarding innovation and plant genetic resources.

51. The Consultative Committee noted the use of e-workshops for training of Leading Experts on the use of the web-based Test Guidelines Template.

52. The Consultative Committee noted that the timetable for the introduction of a UPOV channel on YouTube would reflect the possible development of a new UPOV logo.

53. The Consultative Committee noted that results of the communication strategy would be reported as a part of the annual report of the Secretary-General and performance report for the biennium.

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

54. The Consultative Committee noted the communication from the Office of the Secretary of the ITPGRFA, summarizing the latest situation in relation to the invitation from the ITPGRFA to UPOV and WIPO to jointly identify possible areas of interrelations among the respective international instruments of UPOV, WIPO and the ITPGRFA.

Plant variety protection statistics

55. The Consultative Committee noted the plans to provide information for type of crop for each UPOV code in the GENIE database as a basis to obtain statistics on plant variety protection from the PLUTO database, whilst noting the constraints on the accuracy and completeness of any such analysis.

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

56. 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

57. The Consultative Committee noted that it had not been possible for Oman to make a presentation in 2014, and agreed to renew the invitation in order to enable Oman to make a presentation at a future session of the Consultative Committee, if appropriate.

58. The Consultative Committee welcomed the presentations of Costa Rica and Georgia on progress in the implementation of the UPOV system and areas where they would welcome guidance or assistance.

59. The Consultative Committee approved the issue of invitations to the former Yugoslav Republic of Macedonia and Peru to make presentations at the ninetieth session of the Consultative Committee, to be held in October 2015.

Developments of relevance to UPOV in other international fora

60. The Consultative Committee noted that the OECD Forest Seed and Plant Certification Scheme, at its Annual Meeting, held in Paris, on September 24 and 25, 2014, had agreed to amend the Rules of the Certification Scheme to introduce a definition of plant breeder's right and to make a reference to the definition of "variety" under the UPOV Convention.

61. The Consultative Committee noted that, at the seventieth session of the Administrative and Legal Committee (CAJ), held in Geneva on October 13, 2014, the CAJ had noted the interest to discuss the relationship and effects of the implementation of the "Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity" for the breeder's exemption (see document CAJ/70/10 "Report on the Conclusions", paragraph 40).

62. The Consultative Committee noted that the WIPO Standard Committee on Patents (SCP), at its twenty-first session to be held in Geneva, from November 3 to 7, 2014, would consider documents concerning exceptions, including a breeder's exemption. The Consultative Committee requested the Office of the Union to make a report on the discussion at the SCP on that matter at the eighty-ninth session of the Consultative Committee in March 2015.

63. The Consultative Committee noted the developments of relevance to UPOV in other international fora.

Preparation of the calendar of meetings

64. The Consultative Committee noted that, at the seventieth session of the Administrative and Legal Committee (CAJ), held in Geneva on October 13, 2014, the CAJ had agreed that all matters under consideration by the CAJ-AG at its ninth session should, following the ninth session of the CAJ-AG, be considered by the CAJ and that the CAJ-AG should only be convened, on an *ad hoc* basis, as considered appropriate by the CAJ (see document CAJ/70/10 "Report on the Conclusions", paragraphs 38).

65. The Consultative Committee noted, on that basis, that the CAJ might propose a revision of the Calendar of Meetings in 2015.

66. The Consultative Committee recommended to the Council to approve the calendar of meetings in 2015, and to consider the tentative dates of meetings in 2016, as provided in document C/48/8.

Draft press release

67. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in document C/48/20 Prov. with the inclusion of the following proposed modified FAQ: "Why is plant variety protection necessary?"

68. *The Council is invited to:*

(a) consider the recommendations of the Consultative Committee contained in paragraphs 3 and 4 above; and

(b) note the work of the Consultative Committee at its eighty-eighth session, as reported in this document.

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