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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

COUNCIL

Thirty-Third Extraordinary Session
Geneva, March 17, 2016

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

prepared by the Office of the Union

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1. The Consultative Committee held its ninety-first session in Geneva on March 17, 2017.
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(Extr.)/33/1 Rev.2):
 - (a) Adoption of documents (document C(Extr.)/33/2)
 - (b) Calendar of meetings in 2016 (document C(Extr.)/33/4)
 - (c) Press Release (document C(Extr.)/33/5)
3. The Consultative Committee recommended to the Council:
 - (a) with the agreement of the Director General of the World Intellectual Property Organization (WIPO) (see Article 8(1) of the WIPO/UPOV Agreement), an exception for Ms. Hend Madhour, in relation to Staff Regulation 4.16 (a), to provide for a maximum additional two-year extension of the temporary appointment of Ms. Madhour in order for her to continue her functions in relation to the "Electronic application form project" (EAF Project);
 - (b) the establishment of a separate UPOV bank account to hold funds allocated for financing UPOV's After-Service Health Insurance (ASHI) liability, and that the amount represented by the provisions for ASHI obligations at the end of the 2014-2015 biennium, together with the balance from the 6 per cent charge after deduction of the respective biennium's payments, if any, be transferred to that account starting from the 2016-2017 biennium and to apply to that account the investment policy that WIPO applied to the account for financing WIPO's ASHI liability;
 - (c) to approve the organization of a "Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)", to be held at UPOV Headquarters in Geneva, on October 26, 2016, as set out in paragraphs 28 and 29 of this document;
 - (d) to approve the draft program for the "Seminar on Propagating and Harvested Material in the context of the UPOV Convention," to be held in Geneva on October 24, 2016, as reproduced in the Annex and as set out in paragraphs 30 to 32 of this document.

4. The work of the Consultative Committee at its ninety-first session is summarized in the following paragraphs.

Documents proposed for adoption by the Council

5. The Consultative Committee considered document UPOV/EXN/PPM/1 Draft 6 “Explanatory Notes on Propagating Material under the UPOV Convention”. The following suggestions were made to modify the text:

“FACTORS THAT ~~MIGHT BE~~ HAVE BEEN CONSIDERED IN RELATION TO PROPAGATING MATERIAL

“The UPOV Convention does not provide a definition of ‘propagating material’. Propagating material encompasses reproductive and vegetative propagating material. The following are non-exhaustive examples of factors that have been considered by members of the Union in relation to whether material is propagating material:

[...]

(ii) whether the material has been or may be used to propagate the variety;

(iii) whether the material is capable of producing entire plants of the variety ~~and is factually used for propagating purposes;~~

[...]”

6. The Consultative Committee agreed that it would not be possible to recommend to the Council the adoption of document UPOV/EXN/PPM/1 “Explanatory Notes on Propagating Material under the UPOV Convention”, on the basis of document UPOV/EXN/PPM/1 Draft 6, and recommended to the Council to ask the Administrative and Legal Committee (CAJ) to consider document UPOV/EXN/PPM/1 Draft 6 at its seventy-third session, to be held in October 2016. The Consultative Committee agreed that the comments made on document UPOV/EXN/PPM/1 Draft 6, at its ninety-first session and at the “Seminar on Propagating and Harvested Material in the context of the UPOV Convention”, to be held in Geneva on October 24, 2016, should be considered by the CAJ in conjunction with document UPOV/EXN/PPM/1 Draft 6.

Internal Audit and Reports of the WIPO Independent Advisory Oversight Committee

7. The Consultative Committee noted that, on the basis of the risk assessment of UPOV, there had been no internal audit of UPOV in 2015.

8. The Consultative Committee noted that the Secretary-General had not been made aware of the need for any investigations in UPOV in 2015.

9. The Consultative Committee noted the information contained in the Independent Advisory and Oversight Committee (IAOC) quarterly reports for 2015 (documents WO/IAOC/36/2, WO/IAOC/37/2, WO/IAOC/38/1 and WO/IAOC/39/1), and in the IAOC Annual Report 2014-2015 (document WO/GA/47/2).

10. The Consultative Committee noted the developments concerning the evaluation of the program of activities of UPOV by the Internal Oversight Division (IOD).

Financing of long-term employee benefits

11. The Consultative Committee noted the oral report by the Controller concerning the consideration of document A/70/590 by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) of the United Nations.

12. The Consultative Committee noted that the upcoming session of the High-Level Committee on Management (HLCM) from the member organizations of the United Nations system, to be held in Vienna later in March 2016, would consider the financing of long-term employee benefits.

13. With regard to possible measures for the containment of after-service health insurance liabilities, the Consultative Committee noted the administrative efficiency of any UPOV measures being consistent with WIPO measures and agreed that the plans of WIPO on this matter, which would be developed with due consideration for the measures developed by the Working Group of the UN CEB Finance and Budget Network, should be presented to the Consultative Committee.

14. The Consultative Committee recommended to the Council the establishment of a separate UPOV bank account to hold funds allocated for financing UPOV's After-Service Health Insurance (ASHI) liability, and that the amount represented by the provisions for ASHI obligations at the end of the 2014-2015 biennium, together with the balance from the 6 per cent charge after deduction of the respective biennium's payments, if any, be transferred to that account starting from the 2016-2017 biennium and to apply to that account the investment policy that WIPO applied to the account for financing WIPO's ASHI liability.

Electronic application form

15. The Consultative Committee noted the developments concerning the development of a prototype electronic form and considered the plans for the development of the prototype electronic application form Version 2 (PV2).

16. The Consultative Committee noted the oral report by the Vice Secretary-General of the Seventh Meeting on the Development of a Prototype Electronic Form ("EAF/7 meeting"), held on March 16, 2016, in which it was reported that the EAF/7 meeting had agreed:

- (a) on the release of PVP-XML Version 2 (Version to be used for the Prototype_PV2);
- (b) on the plan presented for the test campaign for PV2 and had noted that participating members should:
 - create WIPO Accounts to access and use the prototype (PVP Offices & Breeders)
 - provide terms and conditions when needed (PVP Offices)
 - check mapping files: mandatory/optional elements (PVP Offices)
 - provide bank account details and application fee (amount and currency) to be used (PVP Offices)
 - develop the client interface to interact with EAF in form of system-to-system communication (if requested) (PVP Offices);
- (c) that the Eighth Meeting on the Development of a Prototype Electronic Form ("EAF/8 meeting") would be held in Geneva on Monday October 24, 2016, starting at 6 p.m.

17. In relation to the possible implementation of an operational system, the Consultative Committee agreed the following:

- (a) all legal requirements of the PVP Offices concerned would need to be met
 - e.g. to clarify that the EAF does not represent an intermediary in the application process. The application would be made by the user with the PVP Office concerned;
- (b) all questions would be available in the languages of the participating UPOV members;
- (c) users would be required to provide information (answers) in a language accepted by the authority concerned (as indicated in the form);
- (d) the following two options in relation to integration with PVP Offices systems:
 - (i) Case 1: In the case of PVP Offices with no electronic system or who do not wish to integrate their existing system with the EAF, they would receive the submitted application data via:
 - e-mail or
 - regular mail/hand delivery
 - (ii) Case 2: System-to-System communication
 - Synchronization for submitted application data
 - Validation of submitted application data and authorization through Web application;

- (e) all data would be encrypted and considered confidential;
- (f) that the EAF system should allow, if requested, for PVP Office fees to be collected by UPOV and distributed to the PVP Offices in a form and currency determined by the PVP Office concerned;
- (g) that the implementation of the EAF would not affect the fees that PVP Offices would receive per application;
- (h) for payment to cover the costs of the EAF, including UPOV charge per application, as follows:
 - CHF 150 / submitted application in 2017/2018
 - CHF 250 / submitted application from 2019 on;
- (i) that financial and administrative regulations and rules should be presented for approval at the EAF/8 meeting;
- (j) on the development of a program of training for PVP Offices and users, to be arranged in conjunction with the launch of the EAF;
- (k) on a program of publicity on the availability of the system for breeders to be organized in conjunction with the launch of the EAF;
- (l) on the need to develop an approach to add new crops more rapidly, for consideration at the EAF/8 meeting;
- (m) to make an initial assessment of the feasibility of including information for official variety list purposes, for consideration at the EAF/8 meeting.

18. The Consultative Committee agreed, subject to approval by the participants to the EAF project, the CAJ and the Consultative Committee, to seek the approval by the Council at its fiftieth session, to be held in Geneva on October 28, 2016, for the launch of the EAF at the end of 2016 or beginning of 2017.

International system of cooperation

19. The Consultative Committee agreed that members of the Union be given until May 20, 2016, to:
- (a) provide additional issues concerning a possible ISC;
 - (b) comment on the draft mandate and terms of reference; and
 - (c) indicate their wish to participate in a working group to explore the issues concerning a possible ISC.
20. The Consultative Committee agreed that, on the basis of the information provided above, the Office of the Union would prepare a document for consideration at its ninety-second session, to be held in Geneva on October 27, 2016, containing a draft mandate and terms of reference for a possible ISC-WG, issues to be considered and proposed members of the ISC-WG. Subject to agreement on those matters, the ISC-WG would meet immediately following the ninety-second session of the Consultative Committee.

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

DISCUSSIONS IN THE PRESENCE OF THE SECRETARY AND THE CHAIR OF THE GOVERNING BODY OF THE ITPGRFA AND OF OBSERVERS

21. The Consultative Committee welcomed the presentation made by the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) on possible areas of interrelations between the ITPGRFA and the UPOV Convention.
22. The Consultative Committee noted the intervention made by the representative of the Association for Plant Breeding for the Benefit of Society (APBREBES) concerning the letter and paper sent to UPOV on

March 2, 2016, which had been circulated to the Consultative Committee on March 3, 2016 (Circular E-16/043).

23. The Consultative Committee noted the intervention made by the representative of South Center.
24. The Consultative Committee noted that the summary of the discussions in the presence of observers would be provided in the detailed report.

DISCUSSIONS IN THE PRESENCE OF THE SECRETARY AND THE CHAIR OF THE GOVERNING BODY OF THE ITPGRFA WITHOUT THE PRESENCE OF OBSERVERS

25. The Consultative Committee considered the possible elements of a symposium program presented by the Secretary of the ITPGRFA, as follows:

Welcome remarks by UPOV and ITPGRFA

Session 1: Overview of UPOV and the ITPGRFA

- Overview of UPOV
- Overview of the ITPGRFA

Session 2: Analysis of the Inter-relations between Farmers' Rights and Plant Breeders' Rights Under the ITPGRFA and the UPOV Convention

- Presentation by 4 experts
- Discussion

Session 3: Experiences of the Contracting Parties in Implementing the UPOV Convention and the ITPGRFA

- Experiences shared by 4 Contracting Parties
- Discussion

Session 4: Overview of initiatives involving the ITPGRFA and UPOV

- Information initiatives (joint workshops)
- Practical initiatives (Platform for Co-development and Transfer of Technology; Public Private Partnership on Pre-breeding)
- Mutual attendance, participation, and information exchange (Committees, enhancement, etc)
- Discussion

Closing Remarks by UPOV and ITPGRFA

26. The Consultative Committee endorsed the above elements of the program whilst noting that more than four presentations by Contracting Parties might be necessary and noting that it would be useful to provide information on real problems experienced by farmers and breeders.

27. The Consultative Committee noted that the draft program would need to be considered within the ITPGRFA. If there were substantial changes proposed by the ITPGRFA, the Consultative Committee would be consulted by correspondence. If agreement could not be reached by correspondence, the Consultative Committee agreed that it would need to reconsider the matter further at its ninety-second session.

28. The Consultative Committee recommended to the Council to approve the organization of a "Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)", to be held at UPOV Headquarters in Geneva, on October 26, 2016, as follows:

(a) the draft program for a symposium, as presented by the Secretary of the ITPGRFA (see paragraphs 25 and 26 above);

(b) four experts, to be agreed by the Office of the Union, in consultation with the President of the Council, and the Secretary of the ITPGRFA, to be invited to present their views at the Symposium;

(c) Contracting Parties to the UPOV Convention and the ITPGRFA would present information on their experiences in implementing the UPOV Convention and the ITPGRFA;

(d) invitations to the Symposium to be sent to members and observers in UPOV bodies and to Contracting Parties and observers to the ITPGRFA and the Symposium to be open to the public with

advance registration, with the presentations and a video of the Symposium being made available on the UPOV website after a suitable broadcast delay;

(e) a joint publication of the proceedings of the Symposium to be produced by the ITPGRFA, containing the speakers' written contributions and a summary of discussions, to be made available on the UPOV website at a later date;

(f) UPOV to provide the venue for the Symposium and to cover the interpretation costs in English, French, German and Spanish.

29. The Consultative Committee agreed to consider the outcome of the Symposium at its ninety-second session and to consider any possible further action concerning interrelations at that time.

Draft program for a "Seminar on Propagating and Harvested Material in the context of the UPOV Convention," to be held in Geneva on October 24, 2016

30. The Consultative Committee recommended to the Council to approve the draft program for the "Seminar on Propagating and Harvested Material in the context of the UPOV Convention," to be held in Geneva on October 24, 2016, reproduced in the Annex to this document.

31. The Consultative Committee recommended to the Council that invitations to the Seminar be sent to members and observers in UPOV bodies, that the Seminar be open to the public with advance registration and that the presentations and a video of the Seminar be made available on the UPOV website after a suitable broadcast delay.

32. The Consultative Committee recommended to the Council that the proceedings of the Seminar, including the speakers' written contributions and a summary of discussions, be published on the UPOV website.

Developments of relevance to UPOV in other international fora

33. The Consultative Committee noted the oral update by the Vice Secretary-General with regard to a joint OECD/UPOV/ISTA/AOSA Workshop on Biochemical and Molecular Techniques.

34. The Consultative Committee noted the developments in the Organization for Economic Co-operation and Development (OECD) Seed Schemes (TWG) and, in particular:

(a) the amendments to rules on acceptance of varieties;

(b) the role of biochemical and molecular techniques in describing / identifying varieties; and

(c) the plans for a joint OECD/UPOV/ISTA/AOSA Workshop on Biochemical and Molecular Techniques to take place in Paris, on June 8, 2016.

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

36. The Consultative Committee requested the Office of the Union to prepare a draft FAQ on the relevance of the UPOV system of plant variety protection for the United Nations Sustainable Development Goals (SDGs).

Preparation of the Calendar of Meetings

37. The Consultative Committee invited the Council to note the proposed change of venue of the forty-fifth session of the Technical Working Party for Agricultural Crops (TWA), to be held from July 11 to July 15, 2016 in Mexico, from Queretaro to Mexico City, and to approve a revision of document C/49/8 Rev. "Calendar of Meetings in 2016" to reflect that change.

38. The Consultative Committee also recommended to the Council to include the following proposed meetings in the revision of document C/49/8 Rev. "Calendar of Meetings in 2016", as follows:

(a) the Eighth Meeting on the Development of a Prototype Electronic Form, to be held in the evening of October 24;

(b) the Second Meeting of the Working Group on Variety Denominations (WG-DEN), to be held in the evening of October 25;

(c) the "Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)", to be held on October 26;

(d) the First Meeting of the Working Group on a Possible International System of Cooperation (ISC-WG), to be held in the evening of October 27.

39. Consequently, the revised calendar of meetings in 2016 (C/49/8 Rev.) would be modified as follows:

Council

C/50 October 28

Consultative Committee

CC/92 October 27
(Working Group on a Possible International System of Cooperation (ISC-WG):
October 27 (evening))

Administrative and Legal Committee

CAJ/73 ~~October 25 and 26~~
(Meeting on the Development of a Prototype Electronic Form (EAF/8):
October 24 (evening))
(Working Group on Variety Denominations (WG-DEN/2): October 25 (evening))

Seminar on propagating and harvested material in the context of the UPOV Convention

October 24

Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)"

October 26

40. *The Council is invited to:*

(a) *consider the recommendations of the Consultative Committee contained in paragraph 3; and*

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

[Annex follows]

ANNEX

SEMINAR ON PROPAGATING AND HARVESTED MATERIAL
IN THE CONTEXT OF THE UPOV CONVENTION

Geneva, October 24, 2016

DRAFT PROGRAM

(Extract from document UPOV/SEM/GE/16/1 Prov.)

- 8.30 Registration
- 9.30 Welcome address by Mr. Francis Gurry, Secretary-General, UPOV
- 9.35 Opening by Mr. Luis Salaices, President of the Council of UPOV
- 9.40 The development of guidance on propagating and harvested material
Mr. Peter Button, Vice Secretary-General, UPOV
- Session I: Perspectives on the notions of propagating material and harvested material
- Moderator: Mr. Button
- 9.50 Perspective of the International Community of Breeders of Asexually Reproduced
Ornamental and Fruit-Tree Varieties (CIOPORA)
(speaker to be confirmed)
- 10.10 Perspective of the Committee of Professional Agricultural Organisations (COPA) –
General Committee for Agricultural Cooperation in the European Union (COGEPA)
Mr. Thor Gunnar Kofoed, Denmark
- 10.30 Perspective of the European Coordination Via Campesina
Mr. Guy Kastler
- 10.50 Perspective of the International Seed Federation (ISF)
(speaker to be confirmed)
- 11.10 *Coffee*
- Session II: Analysis of court decisions on propagating material and harvested material
- Moderator: Ms. Yolanda Huerta, Legal Counsel, UPOV
- 11.30 Mr. Axel Metzger
University of Humboldt, Germany
- 11.50 *(speaker to be confirmed)*
Academic expert, Argentina
- 12.10 Mr. Herbert Zech
University of Basel, Switzerland
- 12.30 Lunch
- Session III: Experiences of cases concerning propagating material and harvested material
- Moderator: Mr. Martin Ekvad, Chair of the Administrative and Legal Committee

- 14.30 Mr. Antonio Villarroel
Asociación Nacional de Obtentores Vegetales (ANOVE), Spain
- 14.50 Mr. Nik Hulse
A/g Chief of Plant Breeders' Rights, Plant Breeder's Rights Office, IP Australia
- 15.10 (speaker to be confirmed)
Royalty Administration International, Netherlands
- 15.30 (speaker to be confirmed)
Instituto Nacional de Semillas (INASE), Argentina
- 15.50 Mr. Kasper van Kempen (*to be confirmed*)
Anti-Infringement Bureau for Intellectual Property Rights on Plant Material (AIB), Belgium
- 16.10 Mr. Gert Würtenberger (*to be confirmed*)
Würtenberger Kunze, Germany
- 16.30 Coffee
- 16.45 Panel Discussion
Moderator: Mr. Raimundo Lavignolle, Vice-President of the Council of UPOV
Panel members: (to be confirmed)
- 17.25 Closing remarks by Mr. Ekvad
- 17.30 End of Seminar

[End of Annex and of document]