

**Consultative Committee****CC/93/6****Ninety-Third Session  
Geneva, April 6, 2017****Original:** English  
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**ORGANIZATION OF THE UPOV SESSIONS***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to facilitate consideration by the Consultative Committee on whether to organize a single set of sessions from 2018.
2. The Consultative Committee will be invited to:
  - (a) consider the possible organization of a single set of sessions from 2018, taking into account the views of the TC, as set out in paragraph 3, including an approach for the organization of the TC work in order to accommodate a single session in November 2018, as set out in paragraph 8;
  - (b) if appropriate, identify suitable dates for a single set of sessions from 2018, taking into account the views of the TC;
  - (c) if appropriate, make a recommendation to the Council on the above basis;
  - (d) consider the measures to increase opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions, as set out in paragraphs 12 and 13;
  - (e) consider the proposals in relation to the nature and content of documents in order to make the sessions as efficient as possible, as set out in paragraph 15;
  - (f) consider inviting the CAJ and TC to express their views with regard to the proposals set out in paragraph 15 as a basis for further consideration at the ninety-fourth session of the Consultative Committee; and
  - (g) consider the possible approaches for the examination of laws, as set out in paragraphs 22 to 32, should the Council decide to plan only one ordinary session per year.

**BACKGROUND**

3. At its ninety-second session, held in Geneva on October 27, 2016, the Consultative Committee considered document CC/92/17 "Organization of the UPOV sessions". The Consultative Committee agreed to consider, at its ninety-third session, whether to organize a single set of sessions from 2018, according to the following proposal, subject to comments from the TC, as follows:
  - (a) after 2017, to hold a single set of sessions of UPOV bodies in the period mid- to late November, with a more specific proposal for timing being developed after taking into account the views of the Technical Committee, which would be invited to consider the matter at its fifty-third session, to be held in Geneva from April 3 to 5, 2017;

(b) an arrangement for the scheduling of the UPOV bodies, on the following basis:

Friday	Working Group (if appropriate)
Saturday	Working Group (if appropriate) / Enlarged Editorial Committee
Sunday	Working Group (if appropriate) / Enlarged Editorial Committee
<b>Monday</b>	<b>Technical Committee</b>
<b>Tuesday</b>	<b>Technical Committee</b>
<b>Wednesday</b>	<b>Administrative and Legal Committee</b>
<b>Thursday</b>	<b>Consultative Committee</b>
<b>Friday</b>	<b>Council</b>
Saturday	Symposium /Seminar/Working Group (if appropriate)

4. The Consultative Committee requested the Office of the Union to prepare proposals concerning:
- (i) opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions, as set out in paragraph 12 of document CC/92/17;
  - (ii) the nature and content of session documents in order to make the sessions as efficient as possible, as set out in paragraph 36 of document CC/92/17; and
  - (iii) the examination of laws of future members.
5. The Consultative Committee agreed that a document providing certain key elements of the Draft Program and Budget should be prepared after the Consultative Committee session one year before the Draft Program and Budget would be presented to the Council for adoption, noting that a revised draft could be considered by correspondence in March/April, if necessary.
6. The following sections consider the proposals above.

#### SCHEDULING OF THE UPOV BODIES

7. The Technical Committee, at its fifty-third session, to be held in Geneva on April 3 to April 5, 2017, will consider the proposal to organize a single set of sessions from 2018, as set out in paragraph 3 of this document, on the basis of a document prepared by Chairperson of the TC and the Office of the Union (see document TC/53/14 "Organization of the UPOV sessions").
8. Subject to the Council deciding that the TC should hold its fifty-fourth session in November 2018, document TC/53/14 includes the following approach for consideration by the TC for the organization of its work in order to accommodate a single session in November 2018:
- (a) For Test Guidelines proposed for adoption in 2018, to agree a procedure for adoption by correspondence as follows:
    - Draft Test Guidelines would be prepared as agreed by the TWPs and circulated with the recommendations of the TC-EDC;
    - In the absence of any objections to the draft Test Guidelines with amendments recommended by the TC-EDC, the Test Guidelines would be adopted;
    - In the case of objections, the objections would be referred to the relevant TWP for consideration at its 2018 session, and the Test Guidelines considered for adoption by the TC at its fifty-fourth session, in November 2018;
    - TC-EDC to meet on March 26 and 27, 2018, and in conjunction with the TC at its fifty-fourth session, in November 2018, if necessary.
  - (b) For TGP documents, to invite the TC-EDC to consolidate comments made by the TWPs at their sessions in 2017 and, in the absence of consensus between the TWPs, to formulate proposals for further consideration by the TWPs at their sessions in 2018;
  - (c) All other matters to be considered at the fifty-fourth session of the TC in November 2018.

9. With regard to timing of sessions in November 2018, the TC has been invited to consider if the week of [November 12-16]/[November 26-30] would be a suitable week.
10. The views of the TC will be reported to the Consultative Committee, at its ninety-third session, in an addendum to this document.

11. *The Consultative Committee is invited to:*

(a) *consider the possible organization of a single set of sessions from 2018, taking into account the views of the TC, as set out in paragraph 3, including an approach for the organization of the TC work in order to accommodate a single session in November 2018, as set out in paragraph 8.*

(b) *if appropriate, identify suitable dates for a single set of sessions from 2018, taking into account the views of the TC; and*

(c) *if appropriate, make a recommendation to the Council on the above basis.*

#### OPPORTUNITIES FOR MEMBERS OF THE UNION TO MEET AND EXCHANGE INFORMATION IN CONJUNCTION WITH THE UPOV SESSIONS

12. Document CC/92/17 noted that a single set of sessions would reduce the number of opportunities for members of the Union to meet and noted that the Consultative Committee might wish to consider measures that would increase opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions in such a situation. The following measure might be considered in that regard:

- (a) Book meeting rooms for delegates to use for bi-lateral/multi-lateral meetings;
- (b) Organize a meeting and/or visit of relevance for UPOV;
- (c) Organize a social event during one lunch-break or evening, e.g. dinner seminar (example: dinner with panel discussion organized in conjunction with the forty-eighth session of the TC in 2012).

13. In the case of a visit or a social event, this could be organized in place of the traditional reception held on the evening of the first day of the March/April and October/November sessions, in order to minimize or eliminate the cost to participants.

14. *The Consultative Committee is invited to consider the measures to increase opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions, as set out in paragraphs 12 and 13.*

#### THE NATURE AND CONTENT OF SESSION DOCUMENTS IN ORDER TO MAKE THE SESSIONS AS EFFICIENT AS POSSIBLE, AS SET OUT IN PARAGRAPH 36 OF DOCUMENT CC/92/17

15. Document CC/92/17 identified the following measures that the UPOV bodies might consider in relation to the nature and content of documents in order to make the sessions as efficient as possible:

- (a) Separation of documents into two types of documents:
- (i) documents containing matters on which a decision by the body concerned is needed (“decision documents”)

In order to ensure that the documents containing matters on which a decision is needed are as brief as possible, matters for information concerning the same subject would be placed in a separate, information document.

- (ii) documents for information only.

Documents for information only might be posted on a separate section of the website of the body concerned (“information section”) and not considered individually. As a further measure to keep documents as clear and concise as possible and to improve accessibility of information, the “information section” could also contain reference material that is currently only accessible via references to UPOV session documents (e.g. Communication Strategy, Training and Assistance Strategy, Program for Improvements to the Plant Variety Database, UPOV Code System etc.);

(b) Earlier posting of documents. At present, the target is to post documents six weeks before the UPOV session concerned. Changing the target to post “decision documents” three months before the UPOV sessions would allow more time for members of the Union to consult internally and between other members of the Union, thereby potentially facilitating discussion at the sessions;

(c) Consultation by correspondence between the UPOV sessions on selected subjects in order to facilitate discussion at the UPOV session; and

(d) Preparation of joint documents for UPOV sessions to avoid the need for members of the Union to have multiple documents with the same substantial information. For example, a TGP document being considered for adoption by the UPOV Council on the basis of recommendation by the TC and CAJ currently requires three separate documents. Under this proposal, a single joint TC-CAJ-Council document would be prepared, explaining the steps to be taken in each UPOV body.

16. *The Consultative Committee is invited to:*

(a) *consider the proposals in relation to the nature and content of documents in order to make the sessions as efficient as possible, as set out in paragraph 15; and*

(b) *consider inviting the CAJ and TC to express their views with regard to the proposals set out in paragraph 15 as a basis for further consideration at the ninety-fourth session of the Consultative Committee.*

## EXAMINATION OF LAWS OF FUTURE MEMBERS

### Background

17. Document UPOV/INF/13 “Guidance on how to become a member of UPOV”, paragraph 10, states as follows:

“10. Requests for examination of laws by the Council are required to reach the Office of the Union at least four weeks prior to the week of the relevant Council session. In general, requests received after that date would be considered at the subsequent session of the Council. The Council holds its ordinary session in October and, where necessary, holds an extraordinary session in March/April. The dates of the sessions can be found at <http://www.upov.int/meetings/en/calendar.html>.”

18. If the Council were to plan only one session per year, this would create the possibility that a State or organization having submitted a request under Article 34(3) for examination of its legislation or proposed legislation with the 1991 Act of the UPOV Convention could have to wait more than one year to receive the advice of the Council. In particular, a law submitted in November 2018 could potentially not be considered until November 2019.

19. In the five extraordinary sessions of the Council held between 2012 and 2016, the Council examined the conformity with the 1991 Act of the UPOV Convention of the following three pieces of legislation:

- Plant Breeders' Rights Bill for Zanzibar (2013)
  - The report of the discussions in the Consultative Committee and the Council can be found in documents CC/85/11 "Report", paragraphs 7 to 12, and C(Extr.)/30/8 "Report", paragraphs 8 to 14, respectively.
- Draft ARIPO Protocol for the Protection of New Varieties of Plants (2014)
  - The report of the discussions in the Consultative Committee and the Council can be found in documents CC/87/11 "Report", paragraphs 6 and 10 to 14, and C(Extr.)/31/6 "Report", paragraphs 7 to 13, respectively.
- Draft provisions of Book Four 'Plant Varieties' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights of Egypt (2015)
  - The report of the discussions in the Consultative Committee and the Council can be found in documents CC/89/12 "Report", paragraphs 9 to 13, and C(Extr.)/32/10 "Report", paragraphs 9 to 12, respectively.

20. Document CC/92/17 noted that the examination of the conformity of the legislation or proposed legislation of any State or organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention might be a matter for the Consultative Committee to consider in relation to the need for an extraordinary session of the Council.

21. The Rules of Procedure of the Council (document UPOV/INF/7, Rule 4), state as follows with regard to the convocation of sessions of the Council:

"Rule 4: Convocation of Sessions of the Council

"(1) The convocation, referred to in Article 19(1) and (2) of the UPOV Convention, of any ordinary or extraordinary session of the Council shall be effected, subject to paragraph (3), below, by a written notification emanating from the Secretary-General sent on the instruction of the President of the Council or the person replacing him according to Article 7(2) to (5).

"(2) Subject to paragraph (3), below, the convocation of a session of the Council shall be notified at least two months in advance of the starting date of the session convened and will be accompanied by a draft agenda and, as far as possible, by the preparatory documents prepared by the Office of UPOV.

"(3) In the event of urgency, the Council may be convened with a notice of less than two months.

"(4) Where a session is convened with a notice of less than two months, the Council's decisions shall require that they be made without a dissenting vote."

Possible approaches

22. An extraordinary session of the Council to consider laws would address the possible delay in providing advice to States and organizations. However, it would also reduce the frequency with which UPOV would only hold one session per year. As explained above, in the period 2012 and 2016, there would need to have been extraordinary sessions of the Council in 3 of the 5 years. An alternative approach would be to organize a procedure for possible examination of laws by correspondence. Those two approaches and the approach of examining of laws only at the ordinary sessions of the Council, are considered below.

*Extraordinary session of the Council*

23. In the first instance, it is assumed that the convocation of an extraordinary session of the Council would also require the convocation of a session of the Consultative Committee.

24. As explained above, Rule 4 of the Rules of Procedure of the Council states that the convocation of an extraordinary session of the Council shall be notified at least two months in advance of the starting date of the session convened and will be accompanied by a draft agenda and, as far as possible, by the preparatory documents prepared by the Office of the Union.

25. It is anticipated that it would be unrealistic to convene sessions of the Council and Consultative Committee at only two months' notice unless a preliminary date had been established. Therefore, under such an approach, the Council would need to be invited to set a preliminary date at a previous session. It is proposed that the preliminary date of the extraordinary session of the Council would be during the week that the UPOV sessions would traditionally have met in March/April. In order to provide a reasonable time for planning of attendance, it is proposed that requests for examination of laws by the Council at an extraordinary session would be required to reach the Office of the Union by December 31, with an explanation of why an extraordinary session would be justified. All requests received after that date, or with no explanation of why an extraordinary session would be justified, would be examined by the Council at its ordinary session.

*Examination by correspondence*

26. It is proposed that a procedure for examination by correspondence might be used if:

(a) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council with an explanation of why a procedure of examination by correspondence would be justified; and

(b) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention.

In such cases, the procedure could be as follows:

- (i) the Office of the Union would inform the Council (members and observers) at the earliest opportunity of the receipt of a request;
- (ii) the Office of the Union would post a document with the analysis of the law ("analysis document"), in the four UPOV languages, in the Council section of the UPOV website within six weeks of receipt of the request;
- (iii) the Council (members and observers) to be notified of the posting of the analysis document and the law on the UPOV website with a request for decision by the Council by correspondence within 30 days;
- (iv) if no objections were received from Council representatives of members of the Union within 30 days, the Council would be deemed to have taken a positive decision;
- (v) if an objection were raised by the Council representative of a member of the Union, the examination of the law would be referred to the earliest ordinary session of the Council and the Council informed accordingly;
- (vi) in cases where questions or requests for clarification were received from members or observers, where requested, these would be circulated to members and observers. There would then be a period of a further 30 days for the questions to be answered or clarifications provided by the Office of the Union, in consultation with the State or organization requesting the examination of the Law, if applicable. If those were provided to the satisfaction of the Council representatives of the members of the Union, the Council would be deemed to have taken a positive decision and the Council would be notified accordingly. If any Council representatives of members of the Union were not satisfied with the reply received, the examination of the law would be referred to the earliest ordinary session of the Council and the Council (members and observers) informed accordingly.

27. In cases other than those covered by paragraph 26, the examination of the law would be referred to the earliest ordinary session of the Council. In such cases, the Office of the Union would also inform the Council (members and observers) at the earliest opportunity of the receipt of the request and that the examination of the law would be referred to the ordinary session of the Council.

28. Any changes to the procedure for the examination of laws would need to be reflected in a revision of document UPOV/INF/13 "Guidance on how to become a member of UPOV".

*Examination of laws only at the ordinary sessions of the Council*

29. It is apparent from the explorations in paragraphs 22 to 28 of this document that neither the organization of extraordinary sessions of the Council, nor a procedure for examination of laws by correspondence, would avoid delays in the Council giving its advice in all cases.

30. In the case of the organization of extraordinary sessions of the Council, the window of receipt of requests would be rather narrow (mid-November to end December) and would always require Council representatives to make tentative provisions to attend a session in Geneva in March/April.

31. In the case of a procedure for examination of laws by correspondence, this would provide a wider window for receipt of requests but would only apply to cases where the analysis of the Office of the Union anticipated a positive decision and did not identify any significant issues concerning the conformity of the legislation with the UPOV Convention. This approach would also require vigilant monitoring of communications by all members and observers throughout the window for receipt of requests.

32. For the purposes of considering the degree of any problem arising from the examination of laws only at the ordinary sessions of the Council, the dates of receipt of requests for the cases mentioned in paragraph 19, were as follows:

<u>Legislation</u>	<u>Date of Request</u>
Plant Breeders' Rights Bill for Zanzibar	February 18, 2013
Draft ARIPO Protocol for the Protection of New Varieties of Plants	March 6, 2014
Draft provisions of Book Four 'Plant Varieties' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights of Egypt	November 3, 2014

33. *The Consultative Committee is invited to consider the possible approaches for the examination of laws, as set out in paragraphs 22 to 32, should the Council decide to plan only one ordinary session per year.*

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