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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

CONSULTATIVE COMMITTEE

Ninetieth Session
Geneva, October 28, 2015

**INTERRELATION WITH THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE (ITPGRFA)**

Document prepared by the Office of the Union

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1. The purpose of this document is to invite the Consultative Committee to consider developments concerning possible areas of interrelations among the international instruments of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the World Intellectual Property Organization (WIPO) and UPOV.

BACKGROUND

2. The fifth session of the Governing Body of the ITPGRFA (GB) was held in Muscat, Oman, from September 24 to 28, 2013 (see <http://www.planttreaty.org/content/gb5>). The final report of the fifth session of the GB and the resolutions adopted at the session are available at <http://www.planttreaty.org/content/report-fifth-session-governing-body>.

3. Resolution 8/2013 "Implementation of Article 9, Farmers' Rights" stated as follows:

"THE GOVERNING BODY,

"Recalling the recognition in the International Treaty of the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made, and will continue to make, for the conservation, and development use of plant genetic resources as the basis of food and agriculture production throughout the world;

"Welcoming the submissions of views and experiences from Contracting Parties and other stakeholders, as compiled in document IT/GB-5/13/Inf.8;

"Recognizing also the submissions of views and experiences that have been compiled prior to previous sessions of the Governing Body;

"Also recalling resolutions 2/2007, 6/2009 and 6/2011;

[...]

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

[...]"

4. Developments between 2013 and February 2015, are reported in documents CC/88/10 “Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)” and CC/88/10 Add. “Addendum - Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)”.

5. The Consultative Committee, at its eighty-ninth session, held in Geneva on March 27, 2015 considered documents CC/89/9 “Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)” and CC/89/9 Add. “Addendum - Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)” and noted the developments concerning possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV (see document CC/89/11 “Report on the Conclusions”, paragraphs 38 and 39).

6. Document CC/89/9 Add. explained that, on February 26, 2015, Mr. Francis Gurry, in his capacity as Director General of WIPO and Secretary-General of UPOV, had received a letter from Mr. Shakeel Bhatti, Secretary of the ITPGRFA, concerning interrelations among the respective international instruments of UPOV, WIPO and the ITPGRFA (see document CC/89/9 Add, Annex I). The letter indicated that the second meeting of the Ad Hoc Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU) would include agenda item 5 “Identification of interrelations between the International Treaty, especially its Art. 9, and relevant instruments of UPOV and WIPO” and further indicated that “[A]fter the Ad Hoc Technical Committee will have processed the identified interrelations, the results will be transmitted to you and, based on the interrelations thus identified, jointly a small team of 3-4 experts will be agreed and an initial outline for a joint report be prepared and made available for public comment by membership and stakeholders of the respective instruments”.

7. On March 27, 2015, after the eighty-ninth session of the Consultative Committee, the Office of the Union received a letter from the Secretary of the ITPGRFA, transmitting the results of ACSU, a copy of which is attached as Annex I [in English only] to this document.

8. In order to assist the Consultative Committee at its ninetieth session, in its consideration of Mr. Bhatti’s letter of March 27, Mr. Gurry, in his capacity as Secretary-General of UPOV, wrote to Mr. Bhatti on April 27, 2015, suggesting that it would be beneficial to:

- clarify the purpose of the “Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the Ad Hoc Technical Committee on Sustainable Use at its second meeting in March 2015”, as presented in Appendix II of Mr. Bhatti’s letter of March 27; and
- elaborate on the proposal for “jointly a small team of 3-4 experts will be agreed and an initial outline for a joint report be prepared and made available for public comment by membership and stakeholders of the respective instruments”.

9. A copy of Mr. Gurry’s letter is provided in Annex II to this document [in English only].

10. Mr. Peter Button, Vice Secretary-General of UPOV, briefly met with Mr. Bhatti in Rome on September 8, 2015, at the fringes of the Third Meeting of the Platform for the Co-Development and Transfer of Technologies. Mr. Bhatti explained that he was in the process of preparing a reply to Mr. Gurry’s letter of April 27, 2015. Once received, a copy of the letter from Mr. Bhatti will be provided in an addendum to this document.

11. The Sixth Session of the Governing Body of the ITPGRFA will be held in Rome, from October 5 to 9 October 2015. The Office of the Union plans to attend that session. Any developments concerning possible interrelations between the ITPGRFA and UPOV will be reported to the Consultative Committee at its ninetieth session.

12. The Consultative Committee is invited to consider the developments concerning possible areas of interrelations among the international instruments of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the World Intellectual Property Organization (WIPO) and UPOV reported in this document.

ANNEX I

Letter from the Secretary of the ITPGRFA dated March 27, 2015
(in English only)



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Our Ref.: ITPGRFA/ACSU-2 Outcomes

Your Ref.:

Rome, 27 March 2015

<http://www.planttreaty.org>

Dear Dr. Gurry,

Referring to my letter of 26 February 2015, I would like to bring to your attention the main outcomes of the successful second meeting of the *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU), which was held from 2 to 3 March 2015 in Rome, Italy.

At first I would like to thank you for sending a representative of the Office of the International Union for the Protection of New Varieties of Plants (UPOV) to attend this meeting and for his active and valuable participation.

The Committee in its discussions followed the steps advised by the Bureau of the Sixth Session of the Governing Body on 6 October 2014, as set out in [Notification GB6-028](#). The full Report of the ACSU is available on the [Treaty website](#). As you will see from the relevant passages of the Report (excerpted for your ease of reference at Appendix 1), the ACSU discussed possible issues of interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty) and the relevant instruments of UPOV and the World Intellectual Property Organization (WIPO). It reviewed the tentative list of some of the issues that were mentioned in the submission that I had received before the meeting and recommended to forward the list in slightly amended form to UPOV and WIPO (see Appendix 2). It noted that the different instruments recognize and promote different forms of innovation in the use of plant genetic resources for food and agriculture by farmers and breeders, including formal and informal systems.

In accordance with the steps set out in the Notification GB6-028 for the identification of interrelations among our respective international instruments, I would now like to kindly suggest to have a meeting to have a preliminary discussion on the issues of interrelations that were processed by the ACSU, as well as further potential issues of interrelations, and on the possible team of experts which would draft the first outline of a joint report.

It would be a pleasure for me to have an initial meeting on these issues later this week or next week, as I will be in Geneva for the UPOV Council and the Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: Regional, National and Local Experiences, until coming Thursday, 2 April.

../..

Dr. Francis Gurry
Secretary-General
International Convention for the Protection of New
Varieties of Plants
Director-General
World Intellectual Property Organization
Geneva

I remain at your disposal for any further information you may require and I look forward to continuing our excellent cooperation on all matters of mutual interest to WIPO, the UPOV Convention and the International Treaty.

Please accept the assurance of my highest regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Shakeel Bhatti', with a stylized flourish at the end.

Dr. Shakeel T. Bhatti
Secretary
International Treaty on Plant Genetic Resources
for Food and Agriculture

March 2015



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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**SECOND MEETING OF THE *AD HOC* TECHNICAL COMMITTEE ON
SUSTAINABLE USE OF PLANT GENETIC RESOURCES FOR FOOD AND
AGRICULTURE**

2-3 March 2015, Rome, Italy

REPORT

[...]

**6. Identification of Interrelations Between the International Treaty, especially its Article 9,
and Relevant Instruments of UPOV and WIPO**

25. The Global Forum on Agricultural Research (GFAR) reported on its activities and collaboration with the Treaty Secretariat supporting the implementation of Articles 6 and 9 of the Treaty. The statement of GFAR is in *Appendix 12*. Subject to the availability of sufficient resources, GFAR stated its intention to possibly convene a workshop on farmers' rights in collaboration with the Treaty Secretariat, to discuss possible joint activities.

26. The Committee had a preliminary discussion on possible issues of interrelations between the International Treaty and the relevant instruments of UPOV and WIPO.

27. Following the advice by the Bureau, it reviewed the tentative list of some of the issues that were mentioned in the submissions received by the Secretary before this meeting, and recommended to forward the entire list in slightly amended form to UPOV and WIPO. It advised to group the issues under four elements of Article 9 of the Treaty, namely the rights mentioned in its subparagraphs 9.2a), 9.2b), 9.2c) and 9.3. It noted that the different instruments recognize and promote different forms of innovation in the use of PGRFA by farmers and breeders, including formal and informal systems.

[...]

Appendix II

**Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO,
as processed by the *Ad Hoc* Technical Committee on Sustainable Use
at its second meeting in March 2015:**

Art. 9.2a of the International Treaty (protection of traditional knowledge relevant to plant genetic resources for food and agriculture):

- a) The protection of traditional knowledge relevant to plant genetic resources for food and agriculture (PGRFA) in relation to the UPOV Convention, as revised in 1978 and 1991.

Art. 9.2b of the International Treaty (the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture):

- b) The right of farmers to equitably participate in sharing benefits arising from the utilization of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- c) The concept of “Farmers’ Rights” as a collective right in comparison to the generally individual character of intellectual property rights in the instruments of UPOV and WIPO.
- d) The DUS (distinct, uniform, stable) and novelty criteria of UPOV and farmers’ varieties, farmers’ informal seed systems and farmers’ traditional knowledge.
- e) The “breeders’ exemption” under the UPOV Convention and the right of farmers to equitably participate in benefit sharing under Article 9 of the Treaty.

Art. 9.2c of the International Treaty (the rights to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture):

- f) The right of farmers to participate in making decisions on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- g) The participation of farmers in decision making processes, at the regional level, on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- h) Impact of the technical assistance provided by WIPO relating to PGRFA on the implementation of farmers’ rights and the objectives of the Treaty.
- i) Impact of WIPO’s instruments and processes, including the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), on the implementation of Farmers’ Rights.

Appendix II

Art. 9.3 of the International Treaty (rights to save, use, exchange and sell farm-saved seed/propagating material):

- j) The implementation of Farmers' Rights under the International Treaty in light of obligations that countries have under the International Convention for the Protection of New Varieties of Plants (UPOV Convention), as revised in 1978 and 1991.
- k) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of the UPOV Convention, as revised in 1978 and 1991.
- l) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of relevant sui generis national legislation.
- m) The "farmers' privilege" under UPOV 1991 in comparison to the concept of "Farmers' Rights" under the Treaty.
- n) The concept of "essentially derived varieties" under UPOV 1991 in relation to the concept of "Farmers' Rights" under the Treaty, especially with regard to farmer-breeders and to informal seed systems.
- o) Recognition of farmers as breeders under the Treaty and relevant instruments of UPOV and WIPO.
- p) Patents in plants or plant varieties and their possible impact on Farmers' Rights.
- q) The enforcement provisions and mechanisms in the three instruments, with special regard to the potential enforcement of Farmers' Rights.

[Annex II follows]

ANNEX II

Letter from the Secretary-General of UPOV dated April 27, 2015
(in English only)



Mr. Shakeel Bhatti
Secretary
International Treaty on Plant Genetic
Resources for Food and Agriculture
Via delle Terme di Caracalla
00153 Rome
Italy

April 27, 2015

Dear Mr. Bhatti,

Thank you for your letter of March 27, 2015, regarding the main outcomes of the second meeting of the *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU), which was held from March 2 to 3, 2015 in Rome.

As you may recall from my letter of April 30, 2014, the Council of the International Union for the Protection of New Varieties of Plants (Council), at its thirty-first extraordinary session, held in Geneva on April 11, 2014, expressed its appreciation to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty) for the thanks the Governing Body had offered to UPOV for the practical support UPOV had provided to the International Treaty, and the Council confirmed its continuing commitment to mutual supportiveness.

The same letter of April 30, 2014, also explained that the matters raised in your letter of January 27, 2014, had been considered by the members of the Union at the eighty-seventh session of the Consultative Committee, held in Geneva on April 11, 2014. The Consultative Committee requested the Office of the Union to identify with the Secretary of the International Treaty and the Secretariat of the World Intellectual Property Organization (WIPO) possible areas of interrelations among the international instruments of the International Treaty, WIPO and UPOV with a view to a possible joint publication on interrelated issues regarding innovation and plant genetic resources, and other possible initiatives, and to present proposals for consideration by the Consultative Committee at its eighty-eighth session, to be held in Geneva on October 15, 2014.

Prior to consideration by the Consultative Committee, at its eighty-eighth session, I received your communication of October 14, explaining that the International Treaty intended to refer the matter of possible areas of interrelations among the international instruments of the International Treaty, WIPO and UPOV, to ACSU. In the light of that development, the Consultative Committee deferred consideration of the matter until its eighty-ninth session, in order to consider the outcome of the ACSU.

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e-mail: shakeel.bhatti@fao.org

Mr. Shakeel Bhatti, Rome – April 27, 2015

The Consultative Committee, at its eighty-ninth session, held on the morning of March 27, 2015, was provided with a copy of your letter of February 17, 2015, reporting that ACSU had been asked to provide advice to you, as Secretary of the International Treaty, on the identification of interrelations between the International Treaty and the relevant international instruments of UPOV and WIPO. The Consultative Committee was also provided with a copy of your letter of February 26, 2015, explaining that, after the ACSU "will have processed the identified interrelations, the results will be transmitted to you and, based on the interrelations thus identified, jointly a small team of 3-4 experts will be agreed and an initial outline for a joint report be prepared and made available for public comment by membership and stakeholders of the respective instruments.". Unfortunately, your letter of March 27, 2015, transmitting the results of ACSU, was received on the afternoon of March 27, after the eighty-ninth session of the Consultative Committee.

The Consultative Committee, at its eighty-ninth session, agreed to consider the matter of interrelations with the International Treaty at its ninetieth session, to be held in Geneva on October 28, 2015. The Office of the Union will present your letter of March 27 to the Consultative Committee as the basis for consideration at its ninetieth session. To assist the Consultative Committee in its consideration of your letter of March 27, it would be beneficial to:

- clarify the purpose of the "Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the Ad Hoc Technical Committee on Sustainable Use at its second meeting in March 2015", as presented in Appendix II of your letter of March 27; and
- elaborate on your proposal for "jointly a small team of 3-4 experts will be agreed and an initial outline for a joint report be prepared and made available for public comment by membership and stakeholders of the respective instruments".

In that regard, I would be grateful if you could arrange a meeting with Mr. Peter Button, Vice Secretary-General of UPOV.

I look forward to further enhancing the cooperation between the International Treaty and UPOV.

Yours sincerely,



Francis Gurry
Secretary-General

[End of Annex II and of document]