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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE

**Eighty-Ninth Session
Geneva, March 27, 2015**

ADDENDUM TO:
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. On February 26, 2015, Mr. Francis Gurry, in his capacity as Director General of WIPO and Secretary-General of UPOV, received a letter from Mr. Shakeel Bhatti, Secretary, International Treaty on Plant Genetic Resources for Food and Agriculture (Secretary of the ITPGRFA), concerning interrelations among the respective international instruments of UPOV, WIPO and the ITPGRFA (see Annex I to this document).
2. 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". The draft agenda of the second meeting of the ACSU is reproduced as Annex II to this document.
3. Under agenda item 5, the ACSU considered document IT/ACSU-2/15/4 "Interrelations between the International Treaty and relevant instruments of UPOV and WIPO" which, in its paragraph 8, contained an indicative list of some of the issues that were received by the Secretary of the ITPGRFA. A copy of document IT/ACSU-2/15/4, paragraph 8, is reproduced in Annex III to this document.
4. The ACSU recommended to forward the entire list in slightly amended form to UPOV and WIPO. It further advised to group the issues under four elements of Article 9 of the ITPGRFA, namely the rights mentioned in its subparagraphs 9.2 a), 9.2 b), 9.2 c) and 9.3. A copy of Article 9 of the ITPGRFA is reproduced in Annex IV to this document.
5. The Office of the Union explained that, with regard to UPOV, it would be matter for the Council of UPOV to decide on any matters concerning a joint initiative.
6. *The Consultative Committee is invited to note the developments reported in this document.*

[Annexes follow]



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Our Ref: ITPGRFA/InterrelationsUPOV-WIPO

Your Ref:

Rome, 26 February 2015

<http://www.planttreaty.org>

Dear Dr. Gurry,

Following Resolution 8/2013, paragraph 3, adopted by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture in 2013 and previous correspondence, you may recall that the next steps which were defined in Notification GB6-028 for the identification of interrelations among our respective international instruments, were to invite Contracting Parties and stakeholders of the Treaty to provide relevant information for the identification and to compile such relevant information and forward it to the Ad Hoc Technical Committee on Sustainable Use of the Treaty.

The meeting of the Committee will be held in Rome, Italy, on 2-3 March 2015, and, following the closing of the deadline for submission of information, I have the pleasure to send to you attached the Annotated Agenda of the Committee meeting. The agenda item dealing with the areas of interrelations of the Treaty with the International Convention for the Protection of New Varieties of Plants (UPOV) and the World Intellectual Property Organization (WIPO) is scheduled for Tuesday, 3 March 2015. All submissions received have been compiled in document IT/ACSU-2/15/Inf.5, which, for your ease of reference, is also enclosed.

After 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.

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Dr Francis Gurry
Secretary-General
International Convention for the Protection of New
Varieties of Plants
Director-General
World Intellectual Property Organization
34, chemin des Colombettes
1211 Geneva 1
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I remain at your disposal for any further information you may require and look forward to continuing our excellent cooperation on matters of mutual interest to the UPOV Convention, WIPO and the International Treaty.

Yours sincerely,



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

[Annex II follows]

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January 2015



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



**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

Draft Provisional Agenda

1. Opening of the meeting
2. Election of Co-chairs
3. Adoption of the agenda and time table
4. Resolution 7/2013, *Implementation of Article 6, "Programme of Work on Sustainable Use"*
 5. Identification of interrelations between the International Treaty, especially its Art. 9, and relevant instruments of UPOV and WIPO
 6. National and stakeholders experiences regarding breeding strategies and regulations concerning variety release and seed distribution
7. Any other business
8. Adoption of the report

[Annex III follows]

ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

EXTRACT FROM DOCUMENT IT/ACSU-2/15/4 "INTERRELATION BETWEEN THE
INTERNATIONAL TREATY AND RELEVANT INSTRUMENTS OF UPOV AND WIPO"

"8. Some of the issues on possible interrelations of the International Treaty and the relevant instruments of UPOV and WIPO, which are mentioned in the submissions received by the Secretary in response to Notification GB6-028 and through the "Farmers' Rights Comments Submissions" webpage and which are compiled in document IT/ACSU-2/15/Inf.5, can be summarized as follows:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) The right of farmers to participate in making decisions, at the national level, 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) The "farmers' privilege" under UPOV 1991 in comparison to the concept of "Farmers' Rights" under the Treaty.
- i) 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.
- j) Recognition of farmers as breeders under the Treaty and relevant instruments of UPOV and WIPO.
- k) 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.
- l) The DUS (distinct, uniform, stable) criteria of UPOV and farmers' varieties, farmers' informal seed systems and farmers' traditional knowledge.
- m) The "breeders' exemption" under the UPOV Convention and the right of farmers to equitably participate in benefit sharing under Article 9 of the Treaty.
- n) Patents in plants or plant varieties and their possible impact on Farmers' Rights.
- o) Possible impact of the technical assistance provided by WIPO relating to PGRFA on the implementation of farmers' rights and the objectives of the Treaty.
- p) Possible 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.
- q) The enforcement provisions and mechanisms in the three instruments, with special regard to the potential enforcement of Farmers' Rights."

[Annex IV follows]

ANNEX IV / ANNEXE IV / ANLAGE IV / ANEXO IV

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

ARTICLE 9 OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

“Article 9 - Farmers’ Rights

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers’ Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers’ Rights, including:

- a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- c) the right 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.

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.”

[End of Annex IV and of document]