



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

UPOV

CAJ/VIII/3

ORIGINAL: French

DATE: September 11, 1981

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Eighth Session

Geneva, October 12 to 14, 1981

RECIPROCITY IN ALL RESPECTS

Document prepared by the Office of the UnionIntroduction

1. At its seventh session, the Administrative and Legal Committee decided to include in the agenda of its eighth session the question of reciprocity in all respects, notably concerning the protection of end product. This decision was in response to the following observation made by the Delegation of France, which appears in paragraph 26 of document CAJ/VII/5: "The question [of the extension of protection to the end product] was an important one, but (...) the lack of exact reciprocity between member States of UPOV in itself already raised a problem that had to be settled before that of products from countries without protection was embarked upon."

Convention References

2. Article 5(4) of the Convention provides on the one hand that any member State may grant breeders a more extensive right than that set out in Article 5(1), and on the other hand that that State may limit the benefit of such a right, according to the principle of reciprocity in all respects, to the nationals of member States that grant an identical right and to natural and legal persons resident or having their headquarters in any of those States. With regard to the protection of the end product in the case of ornamental plants (cut flowers), reciprocity in all respects is at present used by Switzerland and provided for by South Africa.

Advantages and Drawbacks of Reciprocity in All Respects

3. Like the reciprocity provided for in Article 3(3) of the 1978 Text of the Convention, which in effect grants the right to protection for each species only to the country's own nationals and to those of the other member States that also protect the species, reciprocity in all respects may provide member States that have introduced protection of lesser scope with the incentive to extend it: the breeders of those countries are at a disadvantage, in relation to the breeders of States affording a higher level of protection, and balance can only be restored by standardizing levels of protection upwards. However, breeders can overcome the reciprocity obstacle individually, for instance by transferring the right to protection to a national of a country with a high level of protection, or by establishing a legal person in such a State, which could lessen the incentive effect.

4. Reciprocity in all respects does, however, have a certain number of drawbacks, which seem to outweigh substantially the advantage described above:

(i) It obliges the State that has adopted it to ascertain the level of protection in the other countries whose nationals have access to protection in it, the former State (member countries of UPOV and, under certain circumstances, non-member countries). This is not always easy to do.

(ii) It leads to the existence of protection at several levels in one and the same State and, for instance, to the presence on the market of unprotected varieties, varieties having the level of protection provided for in the national law and, in addition, varieties having the levels of protection ascertained as mentioned above, which is an inconvenience particularly for the users of those varieties.

(iii) From the point of view of competition between protected varieties, it can put national and assimilated varieties at a disadvantage in relation to varieties having more limited protection. For instance, in the case of the protection of cut flowers, royalties will be charged on imported cut flowers --and their cost price will consequently be higher--only if they are of national or assimilated varieties. In the case of the protection of seedlings for transplantation, the production of such seedlings from seed multiplied by the producer himself will be subject to royalties in the case of national and assimilated varieties, and not in the case of varieties protected for the benefit of nationals of countries in which the seedlings are not eligible for protection.

(iv) It cannot be provided for in a certain number of States, on account of either their national laws or international agreements, which limits the incentive effect described in paragraph 3 above still further.

[End of document]