



Item 5 of the
Provisional
Agenda

COMMISSION ON PLANT GENETIC RESOURCES

Third Session

Rome, 17-21 April 1989

PROGRESS REPORT ON LEGAL ARRANGEMENTS WITH A VIEW
TO THE ESTABLISHMENT OF AN INTERNATIONAL NETWORK
OF BASE COLLECTIONS IN GENE BANKS UNDER THE AUSPICES
OR JURISDICTION OF FAO

Table of Contents

	<u>Paragraphs</u>
I. ANALYSIS OF REPLIES RECEIVED BY THE SECRETARIAT	1-19
II. ANALYTICAL TABLE OF REPLIES (ANNEX I)	
III. SUMMARY OF THE CHARACTERISTICS OF MODELS A, B, C AND D AS SET OUT IN DOCUMENT CPGR/89/6-REV. (October 1987) (ANNEX II)	

ANALYSIS OF REPLIES RECEIVED BY THE SECRETARIAT

1. The Commission, at its Second Session in March 1987, had before it document CPGR/87/6, Study on Legal Arrangements with a view to the Possible Establishment of an International Network of Base Collections in Gene Banks under the Auspices or Jurisdiction of FAO. That document dealt specifically with legal issues related to the actual creation of the network, such as the arrangements that might be concluded between FAO and governments or other entities (for example, the international agricultural research centres) in order to bring their base collections within the international network, and the types of instrument that would be required to do so.

2. The Commission noted that this document outlined four arrangements (entitled "A" to "D") that could be envisaged. These models ranged from complete control over the base collections being exercised by FAO, to much looser arrangements whereunder a government or institution would formally agree to carry out certain fundamental obligations towards FAO regarding the base collection.

3. At the conclusion of its discussion on this subject, the Commission agreed that the choice of any particular model or variant thereof was up to the government or institution concerned. The Commission therefore invited the Director-General to approach governments, international agricultural research centres and other entities with a view to ascertaining their readiness to bring their base collections under the auspices or the jurisdiction of FAO and, if they were prepared to do so, to indicate the arrangements they favoured.

4. Accordingly, the Director-General, by Circular State Letter G/LE-48 of 23 October 1987, requested comments on the aforementioned legal study. He pointed out that the study outlined four arrangements or models ("A" to "D") which could be used to bring base collections within the international network. However, the precise conditions under which a government or institution would place a base collection within a network under the auspices or the jurisdiction of FAO could be negotiated by FAO in each case, and then embodied in the corresponding agreement.

5. In that letter, the Director-General requested, in particular, that indications be given as to:

- (i) whether the Government (Institution) is prepared to bring its collection or collections within this network, and
- (ii) if the answer to (i) is in the affirmative, what arrangements it would favour for doing so.

6. A total of 27 replies was received by the Secretariat. An analysis of the information received, has been prepared by the Secretariat and follows hereinafter. In addition, an analytical table of the replies is attached as Annex I and the paragraphs of document CPGR/87/6 Rev. summarizing the characteristics of Models A, B, C and D are reproduced in Annex II.

7. In response to the question whether the government (institution) would be prepared to bring its collection or collections within the network, 21 governments and institutions stated that they would be prepared to do so. Three governments did not reply specifically to that question. However, two of them stated a preference as to the model which they favoured whilst the third stated that two models were under study. Three governments stated that they did not wish to participate in the network.

8. In response to the question as to which arrangements would be favoured, 20 governments and institutions expressed a preference for Models C and D; 11 favoured Model C; 6 favoured Model D; 2 preferred either Model C or Model D and 1 was studying both these Models. One government favoured Model B. Three governments, while willing to participate, expressed no preference as to the model.

9. Five governments stipulated, however, that their participation would be subject to certain conditions or to further consideration:

- (i) Costa Rica specified that its participation would take place under the auspices (not the jurisdiction) of FAO, as described in Model C, subject further to the condition that FAO provide donations or financial support to share in the expenses of maintaining the base collection. Finally, the conclusion of an agreement with FAO would constitute an international undertaking for the government, which could be revised periodically to adjust to the government's means.
- (ii) Denmark recalled that its official collections of plant genetic resources were subject to the policies of the Nordic Gene Bank and consequently it could not accept any cession of sovereignty from the Nordic Gene Bank to FAO. Thus, Denmark would only be in a position to consider Model D with supplements or perhaps Model C, following consultations.
- (iii) France would be prepared to bring base collections held by public institutions within the network. The distribution of germplasm would take place under conditions, in particular financial conditions, which would have to be examined case by case.
- (iv) The Federal Republic of Germany would be prepared to bring the base collections held by Federal institutions within the international network and to negotiate an appropriate arrangement on the basis of Model D. This would be subject to the restrictions stated in its letter of 14 January 1985 referred to in Document CPGR/85/3-Add.1.
- (v) The United Kingdom recalled that neither of the two base collections in the UK was under direct government control and that their special legal position made it impossible for the UK government to take powers to bring them under control. Thus, while the UK accepted the principle of an international network

and was willing to participate as far as it was able, its lack of legal powers caused problems in relation to all four models. The ability of the UK to release material would depend on the willingness of the gene banks to release it (assuming it was available). Subject to the foregoing, the UK would be prepared to accept Model D in principle.

10. One government (Spain) stated that it could accept Model C immediately. Whilst Model B was more consonant with the position upheld by Spain, it raised the problems of transfer of ownership of germplasms to PAO and surrendering the right to apply national legislation to such germplasms. Nevertheless, Spain did not want to abandon indefinitely the possibility of reverting to Model B; this could be adopted but would require long administrative and parliamentary procedures.

11. One institution (International Centre for Tropical Agriculture, CIAT, Colombia) underlined the distinction between base collections and active or working collections. It considers the base collection to be a reserve back-up, should samples be lost from the working collections. Thus, the base collection could not be placed under external control. However, CIAT has duplicated certain germplasms which have been transferred to Brazil and to Costa Rica for secondary security storage. Duplicates of the base collections could eventually be produced and provided to FAO, subject to a modest funding requirement for processing. If collections were placed in the network, the germplasms would have to be from the working collections. Three governments referred to this distinction also. Chile intended to set up a base collection and three active collections. Switzerland noted that the collections in Federal agriculture research stations were not separated into base and active collections and that it was up to the person responsible in each station to make the distinction. Tunisia would be willing to include both types of collection within the network.

12. It may be noted from the replies received that many governments do not as yet have base collections, although several have plans to establish such collections. Among the existing collections, there is a significant difference in size and scope from one Member Nation to another. Some are very restricted in content (specializing in certain types of germplasm) whilst others are much broader in scope. Naturally, the contents of collections are greatly influenced by particular requirements of the country, availability of germplasm and availability of funds.

13. A most significant and unexpected result of the Circular State Letter was that three Member Nations spontaneously offered to provide space in their gene banks to FAO for the establishment of collections:

- (i) Argentina offered space in its base collection bank for the storage of international collections of germplasm under the jurisdiction of FAO;

- (ii) Ethiopia, noting the "advantage of establishing a truly international germplasm network of base collections under the jurisdiction of FAO as those described in Models A and B", offered "to the international community through FAO, 20m³ space in its PGRC/E 1/ genebank to store 'ad honorem' international base collections, following international standard conditions. PGRC/E would be the custodian of these collections administered by FAO and [would] give priority to indigenous samples of cereals, pulses and oil crops from other African countries".

- (iii) Spain, "in order to contribute forthwith to the existence of base collections in gene banks under the jurisdiction of FAO, supported by Spain and envisaged in Model B" wished "to offer to FAO 30 cubic metres of space in the Vegetal Germplasm Bank of the National Agrarian Research Institute to allow the Organization to store international collections of plant genetic resources (preferably, grain legumes and seed propagated forage) which would be placed under the jurisdiction of FAO with Spain remaining the custodian of such collection".

14. The offers referred to above constitute a very promising variant on the placing of an already existing collection under the auspices or jurisdiction of FAO. It could lead to additional offers by other institutions which might have space available or which would create space to be put at the disposal of FAO. Assuming that satisfactory arrangements could be concluded for accepting space which was offered and that the required organizational and staff requirements could be met, FAO could request duplicates of germplasms in existing national or international base collections for storage in the space made available. Collections thus established could be tailored to specific requirements such as the needs of prospective users of a given collection, regional preferences or special exigencies.

15. The foregoing would also respond to the wish of many Member Nations which do not have their own facilities, to be able to place germplasm under the auspices or jurisdiction of FAO rather than have ownership of the germplasm transferred to another country or to a private enterprise.

16. A further aspect for consideration is that some Member Nations and institutions might be willing to duplicate germplasms held in the FAO network. This should be done to the extent possible in the area of collection of the crop in order to reduce the negative effects of natural selection under alien conditions which can produce loss of genetic diversity.

1/ Plant Genetic Resources Centre/Ethiopia.

17. Finally, as requested by the Commission, information is required on the possible financial and administrative implications that the arrangements might entail. The indications which can be given at this stage are rather summary, but they do cover the essential considerations. First, as concerns FAO staff requirements, these would be difficult to estimate at this stage and will have to be evaluated in the light of the amount of work to be undertaken. There would ultimately be increased travel costs for FAO staff in respect both of the negotiation and establishment of the network and of its administration. The extent of such costs is difficult to foresee now as they will depend on the scope of the network and the time frame. Finally, with regard to the development of technical standards for the network, costs should not be excessive since the Secretariat would draw to a great extent on the existing International Board for Plant Genetic Resources (IBPGR) standards as well as those in other international or national institutions.

18. Models A, B, C and D, since they apply only to base collections, would not imply any significant costs to FAO, as stated in paragraph 17 above. With respect to offers of space to be made available to FAO for the storage of base collections, it has been stated explicitly in two cases and it would seem to be implicit in the other offer, that the space is being offered free of charge. Consequently, the financial implications for FAO would be limited to ensuring maintenance of standards and commitments in respect of the base collections or the space made available and, in particular, to the expenses involved in travel and inspection. Moreover, within the limits of the resources available to FAO for assistance in the conservation of base collections will be given to gene banks where base collections are stored under the auspices or jurisdiction of FAO if such assistance is required.

19. In conclusion, the replies of Member Nations and institutions provide a very favourable basis for further development and implementation of the principle of establishing an international network of base collections under the auspices or jurisdiction of FAO.

20. The Commission on Plant Genetic Resources may wish, therefore, to request the Director-General:

- (i) to continue seeking the views of governments and institutions which have not replied yet to circular state letter G/LE-48 of 23 October 1987;
- (ii) to initiate negotiations with governments and institutions which have stated that they are prepared to bring their collections within the network;
- (iii) to examine with the Member Nations concerned the feasibility and the means of accepting their offers to make space available to FAO in their gene banks;
- (iv) to examine the respective roles of the base collections and working/active collections; and
- (v) to keep under review and, in the light of arrangements being concluded, report. on the related, financial implications for FAO.

ANALYTICAL TABLE OF REPLIES

	Member Nation or Institution	Model				Participation	Comments
		A	B	C	D		
1.	Argentina					Yes	Offer to provide space in a national base collection
2.	Bangladesh			X		Yes	
3.	Botswana					No	
4.	Canada					No	
5.	Chile			X		--	Participation not specified
6.	International Centre for Tropical Agriculture (Colombia)				X	Yes	Duplicate collection
7.	Costa Rica			X		Yes	Under auspices of FAO, with some amendments
8.	Czechoslovakia			X		Yes	
9.	Yemen P.D.R.			X		Yes	
10.	Denmark			X	X	Eventual	Subject to consultation and modification
11.	Ethiopia			X	X	Yes	offer of 20m ³ space to be administered by FAO under Model A or B
12.	France				X	Yes	For base collections held by public institutions
13.	Germany, F.R.				X	Yes	For base collections held by Federal institutions and subject to restrictions

	Member Nation or Institution	Model				Participation	Comments
		A	B	C	D		
14.	Istituto di Miglioramento Genetico e Produzione delle Sementi (Italy)			X		Yes	
15.	Iraq		X			Yes	
16.	Madagascar			X		--	Participation not specified
17.	Morocco					Yes	Model preference not stated
18.	Philippines			X		Yes	
19.	Senegal			X	X	--	Models C and D under study; participation not specified
20.	Spain			X		Yes	Offer of 30m ³ space under jurisdiction fo FAO under Model B
21.	Switzerland				X	Yes	
22.	Syria					Yes	Model preference not stated
23.	Togo			X		Yes	
24.	Tunisia				X	Yes	
25.	UK				X	Yes	In principle, with reservations and subject to availability
26.	Uruguay			X		Yes	
27.	Zimbabwe					No	

SUMMARY OF THE CHARACTERISTICS OF MODELS A, B, C AND D
AS SET OUT IN DOCUMENT CPGR/87/6-Rev. (OCTOBER 1987)

MODEL A

This model would reflect a strict interpretation of the concept of a base collection being under the "jurisdiction" of FAO. The principal features would be as follows:

- (a) Ownership of the resources in the base collection would be unconditionally transferred to FAO;
- (b) The premises in which the base collection is conserved would be donated or leased to FAO;
- (c) Entire responsibility for the management and administration of the base collection would be transferred to FAO and carried out according to rules promulgated by FAO;
- (d) All policies concerning activities relating to the base collection would be determined by FAO;
- (e) Financial responsibility for the maintenance of the base collection and all related activities would either devolve upon FAO, or be the object of continuing financial commitments on the part of the Government;
- (f) The staff assigned to running the base collection would become FAO staff members or would carry out their functions under contracts with FAO giving them some other status.

MODEL B

This model would to a considerable extent reflect the concept of a base collection being placed under the jurisdiction of FAO. However, unlike Model A, certain functions would still be performed by the Government. In effect, the Government would undertake to act as custodian of the base collection on behalf of FAO and, thereby, on behalf of the international community. The principal features would be as follows:

- (a) Ownership of the resources in the base collection would be unconditionally transferred to FAO;
- (b) As the resources would become the property of FAO, the Government would renounce the right to subject such resources to national legislation;

- (c) The premises in which the base collection was conserved would not be transferred to or leased by FAO, but FAO would, at any time, have a right of access to such premises and the right to inspect all activities performed therein directly related to the conservation and free exchange of resources covered by the network;
- (d) The management and administration of the base collection would remain with the Government, but would be carried out in agreement with FAO. FAO would have the right to recommend and even require action whenever it considered such action to be called for to ensure the proper conservation of and access to the base collection;
- (e) All policies concerning activities related to the resources in the base collection would be determined by FAO in consultation with the Government;
- (f) The staff assigned to run the base collection would not become FAO staff members, nor be paid by FAO, but would receive FAO's technical back-stopping and their work would be subject to inspection in accordance with (c) above;
- (g) Entire financial responsibility for the maintenance of the base collection would remain with the Government which would bring to FAO's attention any difficulties regarding the continued conservation of the resources in the base collection or regarding the implementation of measures recommended or required by FAO under (d) above;
- (h) The agreement between FAO and the Government would include a provision to the effect that FAO may, after consultation with the Government, re-allocate or transfer the resources in the base collection to other gene banks in the event that the Government were to give formal notice of its wish to terminate its commitment or decide to withdraw from the FAO network.

MODEL C

The principal features of this Model might be along the following lines:

- (a) Ownership of the resources in the base collection would remain vested in the Government 1/ (unlike Models A and B);
- (b) The premises in which the base collection was conserved would not be transferred to or leased by FAO, but FAO would, at any time, have a right of access to such premises and the right to inspect the activities performed there.

1/ The use of the term "Government" in (a), (c), (d) and (e) is intended to include Governmental institutions.

- (c) Responsibility for the management and administration of the base collection would remain with the Government and be carried out in conformity with national legislation, but FAO would have the right to recommend action, when it considered that such action was desirable for the proper conservation of the resources in the base collection.
- (d) Policies concerning the activities relating to the base collection would be determined by the Government (unlike Models A and B), but FAO would be associated with the policy making process.
- (e) Entire financial responsibility for the maintenance of the base collection would remain with the Government which would bring to FAO's attention any difficulties regarding the continued conservation of the resources in the base collection or regarding the implementation of measures recommended by FAO under (c) Above.
- (f) The staff assigned to running the base collection would not have any contractual relationship with FAO.
- (g) The Government would bind itself in the agreement concluded with FAO, to make the resources in the base collection available for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction, either directly to users or through FAO, and either free of charge or on mutually agreed terms.

MODEL D

The principal features of this Model might be along the following lines:

- (a) Ownership of the resources in the base collection would remain vested in the Government;
- (b) The premises in which the base collection is conserved would not be transferred to or leased by FAO, and (unlike Models B and C) FAO would not have a right of access to the premises or to inspect activities performed there.
- (c) Responsibility for the management and administration of the base collection, as well as for taking policy decisions concerning the activities relating to the base collection, would be exclusively in the hands of the Government.
- (d) Entire financial responsibility for the maintenance of the base collection would be assumed by the Government and the staff would be employed by the Government.
- (e) The Government would bind itself in exactly the same way as, indicated under (g) of Model C.