



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Item 20 of the Provisional Agenda

FIFTH SESSION OF THE GOVERNING BODY

Muscat, Oman, 24-28 September 2013

MATTERS RELEVANT TO THE TREATY ARISING FROM THE FAO REFORM PROCESS AND THE REVIEW OF STATUTORY BODIES

EXECUTIVE SUMMARY

1. The present document provides an update on the FAO reform process and review of statutory bodies, in particular those aspects which are of relevance to the implementation of the Treaty and the administration of the Treaty Systems and Secretariat, since the last session of the Governing Body.
2. The Governing Body is invited to take note of the contents of this Report and to consider the draft resolution prepared by the Chair of the Governing Body and contained in the *Appendix* to this document.

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Appendix :Draft Resolution on Greater Financial and Administrative Authority for the Treaty within the Framework of FAO

I. INTRODUCTION

1. At its Fourth Session, the Governing Body considered the ongoing reform process in FAO, following the *Report of the Independent External Evaluation of FAO (IEE)*, and the implications for the implementation of the Treaty and the administration of the Treaty Systems and Secretariat.
2. In the context of the reform process the Committee on Constitutional and Legal Matters of FAO (CCLM), the Programme Committee, the Finance Committee and the Council of FAO have been engaged in discussions on the review of statutory bodies under FAO with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO, which is the case of the International Treaty.
3. The Governing Body also requested the Secretary to continue engaging in the FAO reform process.

II. BACKGROUND

4. At its first meeting, the Bureau of the Fifth Session discussed this issue and agreed to make efforts to alert their colleagues in the regions regarding a questionnaire circulated by FAO to collect country views on the review of article XIV bodies.
5. The Bureau also requested the Chair of the Governing Body, when meeting with the Director-General and senior management of FAO, to sensitize them to the activities and functional needs of the Treaty as contained in the *List of Functional Needs of the Treaty* compiled by the Bureau of the Fifth Session¹.
6. The present document provides an update on the FAO reform process and review of statutory bodies, in particular those aspects which are of relevance to the implementation of the Treaty and the administration of the *Treaty Systems and Secretariat*, since the last meeting of the Governing Body.

III. RECENT DEVELOPMENTS

7. In 2012 and 2013, a number of meetings of significance to the review of the Article XIV bodies have taken place, including the 95th Session of the Committee on Constitutional and Legal Matters (CCLM), the 112th Session of the Programme Committee, the 147th Session of the Finance Committee, the 145th Session of the Council, the 148th Session of the Finance Committee and the 145th Session of the Council, in addition to the guidance provided by the Bureau. The major decisions of relevance for the International Treaty are detailed in chronological order in this section.

95th Session of the CCLM

8. The Ninety-fifth Session of the CCLM, held from 8 to 11 October 2012, reviewed and advised on a detailed list of outstanding issues concerning statutory bodies established under Article XIV of the Constitution, with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO.
9. The list of issues was prepared drawing on the results of a consultation process with membership of FAO and secretaries of these bodies, undertaken in response to *Immediate Action Plan (IPA)* action 2.69, as well as the documentation already examined in 2009 by the CCLM.
10. The CCLM agreed that it was essential to identify bodies with *substantial functional autonomy* established under Article XIV of the Constitution which would benefit from the facilities foreseen in the document. The report of the meeting states that “*examples of these bodies*

¹ Appendix 4, Report of the first meeting of the Bureau of the Fifth Session of the Governing Body (IT/GB-5 Bureau 1/12/Report, App.4)

are the Indian Ocean Tuna Commission, the General Fisheries Commission for the Mediterranean and the International Treaty on Plant Genetic Resources for Food and Agriculture”.

11. As a general guiding principle, the CCLM held the view that increased delegation of authority to bodies established under Article XIV of the Constitution could be considered provided that the secretariats of those bodies be adequately staffed and appropriate oversight mechanisms by the Organization were in place².
12. On the issue of conclusion of arrangements with other organizations, the CCLM noted that a procedure approved by the FAO Council in 2004 had been operating satisfactorily and seemed to respond to the needs of bodies under Article XIV of the Constitution, while allowing for coherence between the activities of those bodies and those of FAO.
13. On budgetary, financial and audit issues, the CCLM considered that these matters should be examined by the Finance Committee. As regards human resources matters, the CCLM noted that these were mainly within the purview of the Finance Committee and could be addressed through Management action.
14. As regards channels of communication with Governments and official correspondence, the CCLM noted an earlier proposal that the Correspondence Manual be adjusted to reflect the particular situation of bodies under Article XIV of the Constitution, but this had not been done. The CCLM requested that this proposal be implemented.
15. As regards relations with donors, the CCLM noted the proposal that facilities regarding resource mobilization be given to secretaries of bodies under Article XIV of the Constitution, subject to a need for overall coherence in resource mobilization activities of FAO. The CCLM also stressed that in some cases the secretariats were under a legal obligation to implement funding strategies flowing directly from the constituent instruments or from decisions of the bodies and, therefore, had to maintain direct relations with donors.
16. As regards the organization of meetings, including the conclusion of Memoranda of Responsibilities regarding such meetings, insofar as these involved issues related to the universal status of FAO and privileges and immunities they should continue to be concluded by or on behalf the Director-General.
17. As regards the servicing of meetings, including possible outsourcing of some activities such as translation, the CCLM noted that the matter was mainly within the purview of the Finance or Programme Committee and that there was, in any case, a need for quality control by FAO. The CCLM did not agree with the recommendation that, in order to reduce costs, some meetings be held in a limited number of languages.
18. As regards external relations of bodies under Article XIV of the Constitution, the CCLM was of the view that secretaries of bodies referred to in paragraph 16, including the International Treaty, should travel on business in accordance with the statutory body work programme and allocated budget.
19. As regards the issue of participation by non-governmental organizations (NGOs) and other stakeholders in meetings of FAO, including meetings of statutory bodies, the CCLM recommended that the current flexible, pragmatic practice continue. The CCLM agreed that, for the time being, no general rules on NGO participation applicable to all meetings of the Organization should be established in view of the differentiated nature of NGOs and stakeholders, the currently evolving situation, the different needs and status of the meetings of the Organization, as well as potential lack of consensus on the matter among the membership. In this particular

² Some of these criteria are their funding mechanisms, their functional needs and legal authority as defined in the constituent instruments, the conditions of appointment of their secretaries and their accountability to the bodies in question.

regard, the CCLM observed that it would be difficult to extend to other bodies of the Organization the regime currently applied to the Committee on World Food Security.

20. As regards the issue of the reporting relationship with the main bodies of FAO, the CCLM considered that in view of the specific legal status of each body under Article XIV of the Constitution, the scope and purpose of reporting should be primarily defined by each body taking into account as appropriate the views of the Organization. The CCLM considered that in some cases, reporting to the Conference is justified.

21. The CCLM referred the review set out in document CCLM 95/12 to the subsequent sessions of the Programme and Finance Committee and requested that its deliberations be made available to these Committees.

112th Session of the Programme Committee

22. The 112th Session of the Programme Committee was held on 5-9 November 2012 and considered the CCLM review and recommendations. The Committee:

- a) endorsed the proposed differentiated approach towards bodies established under Article XIV of the Constitution (“Article XIV bodies”) which have distinct statutory features and operational requirements;
- b) noted the deliberations of the CCLM on matters such as the need for a review of whether adequate oversight mechanisms were in place as a condition for increased delegations of authority, official travel by secretariats of Article XIV bodies, adjustments to the Correspondence Manual and use of languages;
- c) requested to be kept informed of the implementation of the deliberations of the CCLM in view of the fact that most of the recommendations were within Management’s authority; and
- d) concurred with the proposals that a pragmatic, flexible approach continued to be taken in respect of the participation by non-governmental organizations, civil society organizations and the private sector in meetings of Article XIV bodies. (para. 28, CL 145/6)

147th Session of the Finance Committee

23. The 147th Session of the Finance Committee took place on 5-9 November 2012. The Committee:

- a) noted that Management would report on the implementation of the deliberations of the CCLM to the Finance Committee at its Spring session in 2013;
- b) noted that some Members had submitted written observations on document FC 147/20 which Management would examine;
- c) requested Management to provide further information on the main statutory, administrative and financial characteristics of existing bodies under Article XIV so that it could examine the proposals made in relation to specific bodies; and
- d) decided to re-examine the matter in detail at its session of Spring 2013. (para. 50, CL 145/7)

145th Session of the Council

24. The 145th Session of the Council took place on 3-7 December 2012. The Council endorsed the Programme Committee’s recommendation that it was desirable to bring to a close the IPA-related action for a “Review of Article XIV bodies”, and endorsed the adoption of a differentiated approach towards bodies established under Article XIV of the Constitution which had distinct statutory features and operational requirements. Furthermore, the Council requested that it be kept informed on the implementation of the deliberations of the Committee on Constitutional and Legal Matters (CCLM), and concurred with the proposals that a pragmatic and

flexible approach continue to be taken regarding the participation by non-governmental organizations, civil society organizations and the private sector in meetings of Article XIV bodies (para. 34).

25. The Council further looked forward to receiving further information regarding the statutory, administrative and financial characteristics of Article XIV bodies, so that it could examine proposals made in relation to specific bodies (para. 36(i)).

26. The Council further reaffirmed the differentiated nature of statutory bodies under Article XIV of the FAO Constitution, concurred with the overall conclusions of the Committee on outstanding issues regarding greater administrative and financial authority while remaining in the organizational framework of FAO; requested that the Administration report on the implementation of the deliberations of the CCLM to the Finance and Programme Committees at their March session in 2013, and requested that a Report be submitted to the next session of the Council (para. 39(e)).

Second Meeting of the Bureau of the International Treaty

27. At the second meeting from 8 to 9 March 2013 in Muscat, Oman, of the Bureau considered a document summarising the above developments and acknowledged “*the progress made so far in the governing bodies of FAO in relation to the review of Article XIV Bodies and was of the view that the outcomes so far of the Committee on Constitutional and Legal Matters, the Finance Committee and the Programme Committee were very positive and presented a good opportunity to enhance the functional autonomy of the Treaty, while remaining within the framework of FAO*”.

28. The Bureau welcomed “*the recognition of the differentiated nature of Article XIV bodies by the FAO governing bodies and requested greater financial and administrative authority for the Treaty within the framework of FAO*”. It also noted the fact that “*customized arrangements would be made for those statutory bodies which have substantial functional autonomy, such as the Treaty*”. Moreover, it considered that the List of Functional needs of the Treaty, which had been compiled by the Treaty membership, would provide a good basis to allow the International Treaty to exercise its administrative authority.

29. The Bureau agreed to take several follow-up actions:

1. to send a draft Resolution, prepared by the Chair of the Governing Body, to this Session on the basis of his discussions with the FAO Administration and the list of functions needs identified by the Treaty membership.³
2. to send a letter from the Chair to the Director-General of FAO reiterating the functional needs of the Treaty.

148th Session of the Finance Committee

30. The issue was again examined by the Finance Committee of FAO at its 148th Session from 18 to 22 March 2013. In general, the Committee observed that the long-standing issue of the degree of autonomy and operational facilities to be recognized to these bodies was complex in view of their differentiated nature. The Committee:

- a) concurred with the criteria for increased delegations of authority proposed in document FC 148/21 and reiterated the need for a differentiated approach to the matter given the specific characteristics of Article XIV bodies;
- b) noted that Management was in the process of implementing the recommendations contained in Appendix II to document FC 148/21, and generally reflected in paragraph

³ The draft resolution is contained in the *Appendix* to this document.

27 of that document, which were within Management's authority, and requested a report on the matter at a future session of the Committee, possibly as part of the IPA follow-up report by the Secretariat; and

- c) acknowledged, in view of FAO's general accountability for the operation of Article XIV bodies, the need for Management to follow a flexible but prudent approach, by recognizing the functional requirements of these bodies, while ensuring as far as appropriate observance of FAO's policies and procedures.

146 Session of the Council

31. At the end of April, the 146 Session of the FAO's Council considered the Report of the Finance Committee and:

- a) noted the Finance Committee's concurrence with the criteria for increased delegations of authority for Article XIV bodies, as set out in Appendix to [the] Report, and the need for a differentiated approach given the specific characteristics of these bodies;
- b) noted, given FAO's general accountability for the operation of Article XIV bodies, the need for a prudent approach by recognizing the functional requirements of these bodies, while ensuring, in a pragmatic manner, the observance of FAO's policies and procedures.

32. Following the request of the Bureau, the Secretary will report to the Fifth Session of the Governing Body on the decisions of the 38th Session of the FAO Conference regarding the review of statutory bodies, with particular reference to Article XIV bodies, and the implications for the International Treaty and its systems and Secretariat. The Chair will provide a verbal on its discussions with the FAO Administration about customised arrangements of the exercise of greater financial and administrative authority by the International Treaty while remaining within the framework of FAO. The update will include any relevant decisions since the time of preparation of this document, including those of the FAO Conference.

IV. GUIDANCE SOUGHT

33. The Governing Body is invited to:

- i) take note of the relevant processes and issues in the context of the FAO reform process and the review of statutory bodies;
- ii) endorse the draft resolution prepared by the Chair of the Governing Body and contained in the *Appendix* to this document on "*Greater Financial and Administrative Authority for the Treaty within the Framework of FAO*".

DRAFT RESOLUTION **/2013
GREATER FINANCIAL AND ADMINISTRATIVE AUTHORITY FOR THE TREATY
WITHIN THE FRAMEWORK OF FAO

THE GOVERNING BODY,

- (i) *Acknowledging* the progress made so far in the governing bodies of FAO in relation to the review of Article XIV bodies;
- (ii) *Recalling* the decision of the FAO Council regarding the adoption of a differentiated approach towards bodies established under Article XIV of the FAO Constitution on the basis of their distinct statutory features and operational requirements;
- (iii) *Wellcoming* that customized arrangements will be made for those statutory bodies which have substantial functional autonomy, such as the Treaty;
- (iv) *Recalling* the provisions of Article 20 of the International Treaty on the functions and duties of the Secretary with regards to the administrative support to the Sessions of the Governing Body and the communication to Contracting Parties;
- (v) *Recalling* Article 20.5 of the International Treaty on the duty of the Secretary to cooperate with other organizations and treaty bodies, including in particular the Secretariat of the Convention on Biological Diversity (CBD), in achieving the objectives of the Treaty;
- (vi) *Noting* that the the terms of reference of the Secretary as adopted by the First Session of the Governing Body specify that the International Treaty Secretariat shall enjoy functional autonomy and be technically accountable to the Governing Body;
- (vii) *Acknowledging* that the review of Article XIV bodies by the governing bodies of FAO represents an opportunity to enhance the functional autonomy of the International Treaty, while remaining within the framework of FAO;
- (viii) *Appreciating* the support provided to the International Treaty by the Director General of FAO;

Hereby **decides** to:

1. **Recognize** the support which FAO has provided under the leadership of the Director-General to the International Treaty;
2. **Request** the Bureau to continue facilitating the contacts with the FAO Management for the recognition of the functional autonomy of the International Treaty, according to the criteria already identify by the Committee on Constitutional and Legal Matters and the other governing bodies of FAO;
3. **Request** the Bureau of the Sixth Session to continue to address the functional needs of the International Treaty on the basis of the elements already identified by past Bureaus and Committees of the Treaty;

4. **Request** the Secretary to continue engaging in the FAO reform process, in particular the implementation of the FAO Strategic Framework and the Medium Term Plan, as well as the review of the FAO statutory bodies and to report to the next Session of the Governing Body on matters of relevance to the International Treaty.