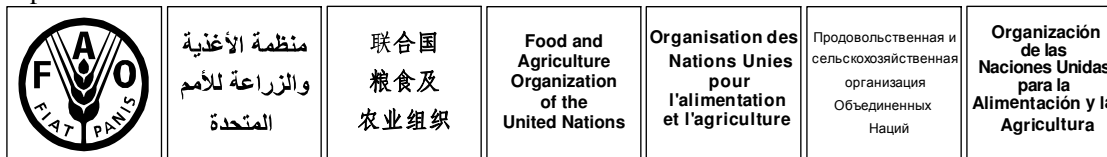


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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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**REVIEW OF ARTICLE XIV STATUTORY BODIES WITH A VIEW TO
ALLOWING THEM TO EXERCISE GREATER FINANCIAL AND
ADMINISTRATIVE AUTHORITY WHILE REMAINING WITHIN THE
FRAMEWORK OF FAO**

I. BACKGROUND

A. Introduction

1. The Immediate Plan of Action (IPA) for FAO Renewal (2009-11) included action 2.69 requesting Management, the Council and the Conference to “undertake a review with a view to making any necessary changes to enable those statutory bodies which wish to do so to exercise financial and administrative authority and mobilize additional funding from their members, while remaining within the framework of FAO and maintaining a reporting relationship with it”.

2. The CCLM at its Eighty-eighth Session, from 23 to 25 September 2009, examined a “preliminary review of statutory bodies with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO”¹. The Council, at its Hundred and Thirty-seventh Session in September and October 2009, having noted the work of the CCLM, expressed satisfaction at the comprehensive nature of the review and stressed that its implementation should be seen as an on-going process to be carried out in the course of the next few years. The Council invited the Secretariat to take action in respect of matters within its authority and consult the relevant Governing Bodies with regard to matters which would need to be considered by the membership. The Council

¹ CCLM 88/3 and CL 137/5.

endorsed the recommendation that, in the context of that process, the membership of relevant statutory bodies, with particular reference to bodies under Article XIV be invited to consider the preliminary review and offer their views on the issues addressed therein².

3. Two years after the above review, the matter was again brought to the attention of the Programme Committee, the Finance Committee and the CCLM. In general, while issues related to the operation of these bodies were considered to be important and deserving attention, there are some differences in the manner in which the Committees approached the matter. The Programme Committee, at its session of October 2011, examined a short document based on the preliminary review in conjunction with a follow-up to the evaluation of FAO's work on international instruments. The Committee noted the varied nature and the complexity of the issues addressed observing that they were either of an administrative or financial nature or of a substantive nature. As regards administrative issues, the Committee requested that every effort be made to address them. The Programme Committee invited the secretariat to speed up the process of consultation required for the implementation of action 2.69 of the IPA in an active and pragmatic manner. The Committee also recognized the differentiated nature of the statutory bodies covered by the review and recommended that individual considerations be taken into account.³

4. In March 2012, the CCLM noted the highly differentiated nature of bodies established under Article XIV of the Constitution. As regards administrative, institutional and financial issues, the CCLM requested that, drawing on the questionnaire sent to Permanent Representatives, as well as the extensive documentation already examined in 2009, the Secretariat should prepare a compilation of outstanding issues that the CCLM would review at its session of Autumn 2012. *“As a general guiding principle, the CCLM considered that it was possible to contemplate delegating administrative and financial authority to Article XIV bodies, as envisaged by IPA action 2.69, provided however that effective accountability and oversight mechanisms be established. The CCLM would advise on the matter in light of relevant legal considerations, including the variety of Article XIV bodies and their specific functional requirements”*⁴.

5. In May 2012, the Finance Committee was provided an oral report on the situation of the review of bodies under Article XIV of the Constitution. The report underlined that these bodies were established by treaties adopted by the Conference or Council, that they were administratively within the framework of FAO but should enjoy a suitable measure of functional autonomy and that it was not easy to reconcile these requirements. In addition, functional autonomy had to be exercised subject to FAO's general accountability for the operation of these bodies. The Committee: (a) noted that the consultation process was under way and, in that context, there was a need to differentiate among bodies established under Article XIV of the Constitution depending on their specific characteristics and operational needs; (b) noted that a detailed document reviewing administrative and financial areas where a relaxation of a number of operational procedures and practices could be considered, would be presented to the Autumn Sessions of the Programme Committee and the CCLM⁵.

² CL 137 REP, paragraph 53

³ CL 143/7, paragraphs 19-24.

⁴ CL 144/2.

⁵ CL 144/12, paragraphs 44 and 45.

B. Preliminary considerations: consultation with FAO Members and general approach

6. This document which draws extensively on the document prepared in September 2009, is prepared in response to the above requests and reflects a desire on the part of the Secretariat to bring the long-standing process of review of the matter to a satisfactory and timely conclusion. It is a common document for the CCLM and the Finance Committee. The Programme Committee might examine a shorter version concentrating on substantive, programme issues.

7. The Organization launched a consultation process with the membership of FAO on the matter. Overall, the interest and utility of the questionnaire to address the issues under consideration were significantly lower than anticipated. Three series of observations can be made in this connection.

7.1. First, the Organization received 45 responses to the questionnaire from only 37 Members, as some Members submitted more than one answer (cf. paragraph 7.3 below). While noting that, as a general rule, bodies established under Article XIV of the Constitution created by treaty typically concern a limited number of Members, which are the parties thereto, the figure of 37 Members is very low when compared with the overall membership of FAO (193), or with the number of parties to the International Treaty on Plant Genetic Resources for Food and Agriculture (127), or to the International Plant Protection Convention (177). There was thus a very large number of Members that did not respond to the questionnaire (i.e. more than 4/5 of the membership of FAO). In general, the Members of FAO which responded included Members which, over the years, have taken direct interest in issues pertaining to the workings of bodies under Article XIV of the Constitution. However, this was not always the case and there are a number of Members that in the past took a very active stand in discussions regarding the status of bodies under Article XIV of the Constitution which did not respond to the questionnaire. The limited number of responses to the questionnaire is also surprising given the fact that the issue of the consultation with the membership was debated – at times extensively - in some bodies under Article XIV of the Constitution and the administration was urged to complete the consultation process as a matter of urgency. It is unclear whether the absence of responses reveals disagreement at the proposed increased autonomy or lack of concern with the issues raised, or both. In any case, the Organization notes that although this matter was raised in the context of the Independent External Evaluation of FAO and the IPA, and was pursued subsequently in some Governing Bodies, the statistics does not seem to reflect that the issue concerns the membership as a whole.

7.2. Second, the responses received from the 37 respondent Members were predominantly in favor of increased autonomy, subject to some restrictions or caveats. Thus, a majority of the respondent Members which answered the questionnaire were generally in favor that statutory bodies should be entrusted with greater authority in handling relations with external organizations, in handling relations with Governments which are not Members of the statutory bodies, or that they should be able to enjoy greater autonomy in relation to donors. However, it should be pointed out that the answers were also couched in general, abstract terms and very often subject to qualification. In this sense, the responses are of limited value

for this review insofar as they propose a general line of action, but no specific guidance is provided to the secretariat to address concretely the practical issues that arise. This is partly understandable, insofar as it appears from this document that many of these issues have to do with internal workings of bodies under Article XIV and FAO. On the other hand, more specific guidance on how to better reconcile functional autonomy and the fact of being administratively placed within FAO would have been much appreciated. The same issue arose a few years ago in the context of the Independent Evaluation of FAO's Work in International Instruments which urged FAO to address issues of autonomy of statutory bodies under Article XIV of the Constitution and other treaty bodies, but without providing specific guidance^[1]. **That said, there were exceptions to this, and a few Members did provide very much detailed views on specific issues covered in this document.** The Secretariat will draw some of the views expressed by Members to the attention of concerned units within the Organization. A few Members have also expanded the review to cover statutory bodies that are outside the purview of this document, such as the Rotterdam Convention and the Codex Alimentarius Commission. In the same vein, a few Members emphasized that each body under Article XIV of the Constitution has its own characteristics and it is difficult to envisage general solutions for those specific situations. Finally, some Members responded only in relation to one or two statutory bodies under Article XIV, of which they are Members, and not in respect of the general questions asked. Also, as happens in connection with exercises of this nature, some Members answered some of the questions asked, but not all.

7.3. Third, the Organization submitted the questionnaire through Permanent Representatives to FAO, and not to national technical departments involved in the activities of specific bodies. Over the years, the Organization has observed that the same Member may, depending on the technical administration which represents that Member, hold different views on the same matter in different statutory bodies of the Organization. In other words, at times there has been no consistency in the positions expressed by a Member within the various meetings and bodies of the Organization. For this reason, the questionnaire was sent to the Members through the Permanent Representatives to FAO out of a desire to ensure consistency in the positions taken. This may have contributed to the general nature of the answers provided to the questionnaire. This may also have contributed to a situation where Members did not answer the questionnaire. In addition, despite this approach there have been situations where the same Member submitted several responses from different departments or in respect to specific bodies.

8. **It is therefore important to recall that notwithstanding requests by various bodies for increased autonomy for bodies under Article XIV of the Constitution, operational guidance provided to the secretariat by the membership was extremely limited.** Consistent with the conclusions of the review of the matter by the committees so far, this document contains general information on the characteristics of bodies under Article XIV of the Constitution. It is useful in this regard to stress the differentiated nature of these bodies whose status is defined by treaties and which are the result of negotiations and do not conform to a pre-determined uniform pattern. As reflected in the *“Principles and procedures which should govern conventions and agreements concluded under articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the*

[1] PC 101/5(a) Evaluation of FAO's work in international instruments.

Constitution” (hereinafter referred to as “*the Principles...*”)^[2] these bodies are administratively linked to FAO and act through FAO, but are expected to enjoy a measure of autonomy on technical matters. Such degree of autonomy depends on a number of factors. It is useful to identify the bodies which should benefit from facilities reviewed in this document, or at least to agree on criteria on the basis of which the administration could identify those bodies.

C. General characteristics of bodies established under Article XIV of the Constitution

9. Article XIV of the Constitution makes provision for the negotiation of conventions and agreements, within meetings convened by, or on behalf of the Director-General and their adoption by the Conference or the Council. These instruments are subsequently subject to national ratification procedures. These instruments are said to have a “*life of their own*” and usually provide for obligations extending beyond those set out in the Constitution and the other Basic Texts of FAO. For instance, the bodies may adopt regulatory measures directly binding upon the Members and may have autonomous budgets. Two bodies established under Article XIV are financed entirely by mandatory contributions of Members, whereas in the case of another body, the financial contribution of FAO is of a residual nature. The secretaries of some of these bodies are appointed by the Director-General in consultation with, or with the agreement of, Members and, in a few cases, although they are ultimately appointed by the Director-General, they are elected by Members. In some cases, the bodies in question approve their own budgets and programmes of work and their secretaries are directly accountable to the Members for the execution of the budget and the work programme. It has generally been considered that these bodies have functional autonomy.

10. The degree of autonomy enjoyed by them depends upon the above factors with particular reference to funding modalities. Although the conventions and agreements are negotiated “within” FAO and are approved ultimately by the Conference, in the case of universal conventions, or by the Council, as regards regional agreements, in general they are brought into force through acceptance or ratification procedures by individual States or regional economic integration organizations eligible to become parties thereto. They are therefore instruments of international law.

11. On the other hand, the conventions and agreements are placed under the framework of FAO and retain close links with the Organization. Membership is open only to Members of FAO or of the United Nations, its Specialized Agencies or the International Atomic Energy Agency. The bodies may adopt and amend their own Financial Regulations provided that these are consistent with the principles embodied in the Financial Regulations of FAO. The Financial Regulations are to be reported to the Finance Committee which may disallow them if they are inconsistent with the principles of the Financial Regulations of FAO. Contributions, either to the budget or for any other activities, are to be paid into a trust fund managed in accordance with the financial procedures of the Organization. The constituent instruments of the bodies do not entrust them with legal personality, i.e. capacity to hold rights and obligations in their own right and, therefore, they have to act through FAO, as confirmed by a review of the matter by the Council⁶. The secretary and the staff of these bodies are officials of FAO appointed by the Director-General and subject to the Staff

^[2] Part O of Volume II of the Basic Texts.

⁶ CL 127/REP, paragraph 90.

Regulations and Rules of the Organization. Their work relationship is with the Organization, which is the respondent party should any staff member decide to file a complaint arising from the working relationship with FAO. The Director-General, as legal representative of FAO, may have to respond for any legal liabilities arising from the functioning of the bodies, without prejudice to the fact that any financial liability should be charged to the budget of the body. The bodies benefit from a comprehensive set of facilities, privileges and immunities, and are bound by inherent obligations that are attached to the status of FAO, as provided for in a number of multilateral and bilateral instruments, in particular the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, as well as a network of bilateral agreements between FAO and countries which have supplemented the rights and obligations established in that Convention in the countries concerned.

12. **Still, conventions and agreements established under Article XIV have a hybrid nature. They are clearly treaties under international law in which the Parties play a major role; on the other hand these treaties are placed under the framework of FAO and operate through FAO⁷.** This position is confirmed by past practice of the Organization⁸. In particular, the position was restated in 2007 in the context of submissions to the CCLM and Council related to the Indian Ocean Tuna Commission and followed by the Parties to the Agreement establishing the Commission. The purpose of this review is not to examine the nature of the conventions and agreements placed under the framework of FAO, *per se*, but rather to identify how some of the bodies currently operating under this framework, or which could be established under this framework in the future, could be entrusted with greater administrative and financial autonomy. However, these developments are useful to understand the status of the bodies and the legal context in which they operate. As reflected in the “*Principles...*”, it has generally been considered that these bodies are administratively linked to FAO and act through FAO, but should enjoy a measure of functional autonomy.

13. **This review focuses on conventions and agreements concluded under Article XIV which, by virtue of their provisions, enjoy a substantial measure of autonomy. The review will address existing conventions or agreements as well as potential future conventions and agreements that might be established within the framework of FAO.** As indicated above, commissions and committees established under Article VI of the Constitution are outside the scope of this review⁹.

⁷ Article 5 of the Vienna Convention on the Law of the Treaties is entitled “*Treaties constituting international organizations and treaties adopted within an international organization*” and reads as follows: “*The present convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization*”. As it appears from the preparatory work of the International Law Commission, treaties concluded within international organizations must to a large extent be considered a category of their own and while the freedom of the negotiating States should be preserved, the main stages of the life of such treaties are considered matters for the organizations, as these treaties are normally the work of the organizations.

⁸ The Secretariat prepared two long documents which researched this complex matter including from the perspective of the origin of conventions and agreements concluded under Article XIV of the Constitution. These documents were: “*Process for a change in the nature of a statutory body of FAO, established under Article XIV of the Constitution, into a body outside the framework of FAO (change in status of the Indian Ocean Tuna Commission)*”, CCLM 81/3; and “*Supplementary Observations on the Proposals for a Change in the Status of the Indian Ocean Tuna Commission*”, IOTC/REV.1 for the Informal Group of Legal Experts on the Process for a Change in the Nature of a Statutory Body under Article XIV of the Constitution into a Body Outside the Framework of FAO (Possible Change in the Status of the Indian Ocean Tuna Commission).

⁹ Article XV, paragraph 1 of the Constitution provides that “*the Conference may authorize the Director-General to enter into agreements with Member Nations for the establishment of international institutions dealing with questions relating to food and agriculture*”. This provision has not been implemented for the past fifty years and there is currently no international

D. Need for a determination of statutory bodies eligible for proposals contained in this review

14. **When defining the scope of this review, it is useful to keep in mind the need for a determination, on the basis of the provisions of the constituent instruments of each body, and its operating features, as to whether in light of its objectives, functional requirements and characteristics, the secretariats of those bodies should be able to exercise greater financial and administrative authority. Given their differentiated nature, there would seem to be a need to determine on a case-by-case basis whether particular claims for increased autonomy are legitimate ones, are a result of the views and needs of the membership and, in general, are justified in the light of the functional requirements of the bodies in question..** This is not easy as in the case of some bodies under Article XIV of the Constitution – mainly those essentially financed by the Members – there would be ample administrative, legal and practical justification to grant a substantial number of operational facilities. The situation is more complex as regards bodies that are almost entirely financed by the Organization. It may be difficult in those cases, both for reasons of principle and practical reasons to entrust the secretariats with the same facilities as the bodies financed directly by their Members.

15. This seems to be confirmed by the text of IPA action 2.69 which does not refer to all statutory bodies, but instead makes a specific reference to the statutory bodies “*that wish to exercise greater administrative and financial autonomy*”.

16. **The determination of bodies that could be entrusted with greater administrative and financial authority would seem to be a matter for managerial judgment, taking into account the views of the Members, the nature of the activities exercised and the status of the bodies in question especially as regards the issue of whether the body is financed entirely by autonomous budgets. There would be a need to determine which bodies would be eligible for the benefit of the proposals in this document¹⁰. It is essential that the CCLM and the Committees, which will review this matter, provide guidance on this important preliminary issue. In the event that it should not be possible to agree on a list of statutory bodies that would benefit from the proposals, it would be nevertheless useful to agree on criteria that could be followed in addressing any concerns of bodies under Article XIV of the Constitution.** The FAO Secretariat (units concerned) could eventually prepare, in respect of each body, a table summarizing or setting forth the respective roles and responsibilities of the secretariats of the bodies in question and the Organization.

E. Differentiated nature of the recommendations of this review

17. This review covers a range of issues brought to the attention of the secretariat in many ways (at the request of Members or the secretaries of statutory bodies or on the initiative of

institution established thereunder. In addition, it does not seem that there is a clear idea of how this provision would operate in future. Therefore, what could be the bodies set up under Article XV is also outside the scope of this review.

¹⁰ There is an obvious risk that statutory bodies and secretaries of these bodies might wish to benefit from a more favourable regime without justification.

other units of the Organization) over the years. In some cases, some of the questions raised led to some discussion within the Governing Bodies of FAO.

18. However, it should be stressed that the issues covered in this review are not all of the same nature. Some of them may be changed through decisions entirely within the authority of the administration. In few other cases, the implementation of proposals could raise issues of principle for FAO and its membership which would have to address them.

19. Subject to the views that the Committees may have on the matter, most of the proposed actions foreseen in this document could be addressed internally by the administration.

II. POSSIBLE AREAS WHERE STATUTORY BODIES COULD EXERCISE GREATER ADMINISTRATIVE AND FINANCIAL AUTHORITY

20. This section lists areas which have been identified as matters on which increased autonomy could be entrusted to statutory bodies and their secretaries. Possible solutions are outlined and the CCLM is invited to offer its views on the suggestions made and to advise whether matters should be pursued by other Governing Bodies of the Organization and the relevant statutory bodies.

A. External relations

a) Attendance at external meetings

21. While self-financing is not and cannot be the unique criterion, bodies established under Article XIV of the Constitution that are basically self-financed should be allowed autonomy in attending external meetings of important and direct relevant to the programme of activities of the bodies concerned. In this case, an appropriate mechanism for a certain degree of oversight following the established administrative rules and procedures of FAO should be necessary and the advice of the governing bodies on this matter would be useful..

22. On 30 March 2012, a Director-General's Bulletin 2012/18 on "Official Travel of FAO Staff" was issued. In line with guidance provided by the Programme Committee in October 2011¹¹, the DGB contains more flexible rules in respect of travel by staff serving bodies established under Article XIV of the FAO Constitution. The Bulletin provides that travel plans of staff of Article XIV bodies for attending and servicing the meetings of their governing bodies are reviewed and receive a blanket approval from the concerned ADG at the beginning of each year. For other travels, the secretariats of Article XIV bodies should submit on a quarterly basis a list as accurate as possible of other missions and meetings being attended, indicating the number of participants for the blanket approval of the concerned ADGs. The only restriction concerns travel for attending representational meetings of high

¹¹ CL 143/7, para. 20 ("that every effort be made to remove administrative obstacles in order to ensure the effective and efficient functioning of the statutory bodies, while preserving overall FAO's integrity and interests").

level and complex nature which require the presence of a corporate delegation (such as Rio+20), which is subject to corporate review and coordination.

23. The Committees are invited to note that this Bulletin seems to have settled any outstanding issues from the perspective of administrative responsibility of a host agent .

b) Conclusion of arrangements with other organizations and institutions

24. At its Hundred and Twenty-seventh Session in October 2004, the Council agreed on a procedure for conclusion of agreements by bodies under Article XIV of the Constitution with other organizations and institutions. Such agreements should be reported to FAO prior to conclusion with a view to ascertaining any possible policy, programme or financial implications for the Organization, in keeping with the spirit of the Basic Texts, at the time. The secretaries of the bodies could be authorized to sign the agreements which should make appropriate reference to their status of bodies under Article XIV of the FAO Constitution. The Council noted that, in reviewing any proposed agreements, FAO would take account of the functional requirements of the bodies concerned and would not interfere with their substance, except in the event that they should have policy, programme or financial implications for FAO¹².

25. Substantial experience has now been gained since 2004 in dealing with this matter¹³. Secretaries of bodies under Article XIV have been able to conclude arrangements with other organizations and institutions in the context of a process which seem to reconcile the interests of both parties, insofar as the proposals are referred to, and reviewed by the Organization. At times the process involves specific features as in the case of the General Fisheries Commission for the Mediterranean where, after the above internal process of review, arrangements are referred to the Commission for approval prior to signature. In this area it would seem that an appropriate evolution has taken place over the years, which seems to have responded to the concerns of all parties. The only issue that would seem to be open is related to the need to identify the extent to which this applies to all bodies under Article XIV¹⁴, or only some of them. In view of lessons learnt from the past and the lack of clarity on certain procedures and criteria for concluding agreements with the donors, it is useful to develop concrete proposals on what agreements can be signed by the Article XIV bodies, and to provide practical procedures to facilitate consultations and clearance of the agreement by relevant FAO offices, including the legal, technical and finance units. Consideration could be given to drawing up a list of bodies under Article XIV which could benefit from the facilities foreseen in this section.

¹² CL 127/REP, paragraphs 91 and 92.

¹³ An internal procedure for review and clearance of arrangements with other organizations and institutions which goes back to some thirteen years ago subject to some limited changes, has been harmonized with this particular decision regarding the conclusion of arrangements by bodies under Article XIV of the Constitution.

¹⁴ Issues of principle – if not to some extent of a theoretical nature - were asked whether in signing agreements a secretary was representing FAO and acting as representative of FAO, or representing the body in question and acting in the name of that body. The matter was not pursued at the time. This situation would seem to be related to the question of whether bodies established under Article XIV have legal personality, i.e. capacity to hold rights and obligations in their own right. The general position followed within the Organization and reflected in official documents of the Organization, including the Report of the Hundred and Twenty-seventh Session of the Council, is that the constituent instruments of bodies under Article XIV do not entrust them with legal personality and they have to act through FAO or draw on the legal capacity of FAO. Still secretaries could be authorized to sign donor agreements on the basis of a delegation to that effect.

B. Budgetary, audit and financial issues

a) Project servicing costs

26. The issue of the level of project servicing costs has been occasionally raised mainly because autonomous or special budgets of bodies under Article XIV are trust funds within the meaning of the Financial Regulations. The legal basis for recovering project servicing costs is set out in Financial Regulation 6.7 whereby “*Voluntary contributions, whether or not in cash, may be accepted by the Director-General, and Trust and Special Funds may be established by him to cover moneys made available to the Organization for special purposes, provided that the purpose of such contributions and moneys are consistent with the policies, aims and activities of the Organization. (...) The acceptance of any such contributions and moneys which directly or indirectly involves additional financial obligations for Member Nations and Associate Members shall require the consent of the Conference*”. The Governing Bodies have put in place a policy for full recovery of project servicing costs incurred directly or indirectly for providing administrative and operational services to projects financed from extra-budgetary resources, including trust funds. This policy is to ensure that the requirements that extra-budgetary projects do not involve costs and additional financial obligations for the membership of FAO are met.

27. The Governing Bodies have established a policy on the matter, the latest version of which may be found in FC 140/8 “*Measures to improve implementation of the Organization’s Support Cost Policy*”. The policy defines the main PSC rates applicable to trust funds and provides that the Director, OSP makes individual determinations in respect of that policy, which are reported annually to the Finance Committee. The Conference in 2011¹⁵ reaffirmed the policy of full cost recovery that had been approved by the Council in 2000 in line with Financial Regulation 6.7 and urged the Director-General to vigorously pursue improving administrative and operational support cost recovery from extra-budgetary activities.

28. The policy provides that long-term trust fund accounts (e.g. Commissions established under the auspices of FAO, including Article XIV bodies) will be subject to a case-by-case estimate of the actual level of varied indirect support costs and charged accordingly. In the past Article XIV bodies made occasional requests for exemption from PSC rates that, at least in one case, were referred to the Finance Committee. The Finance Committee has taken a very restrictive approach to the matter¹⁶. This is also an area where some Members take different views. As Members of the Organization they support a restrictive policy regarding application of the support costs policy. However, as Members of Article XIV bodies they may take a different view within specific constituencies. Under the circumstances, the secretariat has no option but to apply the policies established by the Governing Bodies of the Organization.

¹⁵ C 2011/REP, paragraph 100. See also Conference Resolution 5/2011, operative paragraph 4.

¹⁶ See FC 104/5, FC 107/4. In 2004, the Finance Committee noted that six of the seven existing Commission trust funds had been established over twenty years ago in line with the support cost policy at the time. It agreed that it would not be cost effective to review the rates for this six existing trust funds. The Committee confirmed the current policy on determining support cost rates for long term trust funds on a case by case basis and, therefore, that a standard rate for all Commissions was not recommended. It agreed that this policy should be applied to any new Commission trust funds and not retroactively to pre-existing funds of this nature. CL 127/14, paragraph 22-23.

b) Presentation of financial information

29. In some sessions of bodies established under Article XIV of the Constitution, there were occasional discussions on issues regarding presentation of financial information and requests for improvement of the quality or the accessibility of the presentation of financial reporting. This has not been recently raised and it would seem that the matter is essentially of a practical nature and could be addressed through increased collaboration between the secretaries of the bodies and the Finance Division.

c) Third party audits

30. There have been an increasing number of requests for special audits of activities and accounts of bodies under Article XIV of the Constitution by outside parties. FAO has a system of oversight which includes, *inter alia*, an internal audit function and an external audit function. Consistent with the intergovernmental multilateral nature of the organizations of the United Nations System, these organizations are attached to the single audit principle that is reflected in a number of provisions of the Basic Texts. There is thus under the Financial Regulations an External Auditor who is appointed by the Council. The External Auditor is completely independent and solely responsible for the conduct of the audit. The External Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Organization. The Finance Committee may also request the External Auditor to perform certain specific examinations and issue separate reports on the results. Costs involved in such examinations would be covered by the budget of the concerned body under Article XIV of the Constitution.

31. In line with the intergovernmental and universal nature of the organizations of the United Nations scheme, the membership should be able to rely on the audit scheme established by these organizations and which they have instituted. It would be incompatible with the overall system that individual Members would wish that particular activities or particular programmes should be audited by entities other than those entrusted by the full membership of the Organization. Both internal and external auditors in carrying out their functions are supposed to apply procedures that should offer to the membership a satisfactory level of assurance and comfort of compliance with procedures.

32. Notwithstanding this, in some bodies under Article XIV, there have been requests for special audits. The Committees are invited to advise on how this could be done. A possible course of action might consist in referring the request to the Finance Committee which would examine it under Financial Regulation 12.6 whereby "*the Finance Committee may request the External Auditor to perform certain specific examinations and issue separate reports on the results*".

C. Human resources matters

33. Issues related to human resources policies and rules have been extensively discussed in connection with the status of bodies established under Article XIV of the Constitution. This matter involves many dimensions and it is necessary to make a number of distinctions and

provide some information in that regard. The situation is also likely to evolve in future and in this review reference will be made to a few relevant parameters. **The position of principle is that the secretaries of these bodies and the staff are subject to the Staff Regulations and Rules, but a number of adjustments to Human Resources policies and practices may be necessary.**

a) Staff in the Professional and higher categories

34. Paragraph 32 (iii) of the Principles regarding bodies under Article XIV and under Article VI provides that *“the Secretary of each body shall be appointed by the Director-General and shall be administratively responsible to him. In the case of bodies referred to in paragraph 33 (c) [i.e. bodies that, in addition to being financed by the Organization, have autonomous budgets], the basic texts may specify that the Secretary shall be appointed by the Director-General after consultation with, or with the approval or concurrence of, the members of the body concerned”*. In some cases the content of the above paragraph has been incorporated in the constituent instruments of bodies under Article XIV, and special procedures for the appointment of secretaries have been developed. Some of these procedures have involved the issuance of a vacancy announcement, usually approved by the relevant body, a pre-screening of candidates carried out jointly by representatives of FAO and of members of the body, and eventual selection by the members of the body itself. The Council, at its Hundred and Twenty seventh Session, in November 2004, reviewed these procedures and endorsed them¹⁷. In general terms, the Council considered that insofar as there was full involvement of both the membership and FAO throughout the process of identification of the candidates, this particular procedure applicable to bodies under Article XIV enjoying substantial autonomy was not objectionable.

35. As regards the selection and appointment of professional staff, the procedures of the field staff selection panel have generally been followed, also in line with the general position that the bodies in question have the status of field projects, including those of field projects based at headquarters. The Organization was confronted with requests for an increased role by the secretary to be involved in the appointment of Professional staff. These requests have generally been accommodated by involving the secretary as the member or the lead officer in the selection panel, under the established selection procedures for Professional staff serving

¹⁷ It is worth recalling the content of the deliberations of the Council on that occasion: “93. The Council recognized that, in cases where the secretary of a body is appointed by the Director-General with the approval of the body concerned, the need arises to harmonize the requirements inherent in the status of the secretaries of functional autonomy and technical accountability towards the concerned bodies and of administrative accountability towards the Organization, as officials of FAO. The Council noted that the selection and appointment process cannot be seen as one including two parallel and independent segments consisting, on the one hand, in the identification of a candidate by the body and, on the other hand, his or her appointment by the Director-General who would be required merely to appoint the selected candidate, without any form of involvement in the process of identification of qualified candidates. The Council stressed that this would not be consistent with the applicable legal framework, including the constitutional duties of the Director-General in the selection and appointment of staff. 94. The Council agreed that the procedure adopted recently by the General Fisheries Commission for the Mediterranean (GFCM), at its Extraordinary Session (Malta, 19-23 July 2004), provided a legally acceptable solution for the appointment of secretaries of bodies under Article XIV of the FAO Constitution having autonomous budgets. The Council invited the Indian Ocean Tuna Commission (IOTC) to amend its Rules of Procedure, as far as the selection and appointment procedure of its secretary is concerned, along the lines of the procedure approved by the GFCM, on the understanding that the revised procedure would apply only in future” (CL 127/REP).

on field projects. However, it is important to stress that selection and appointment by field selection panels, does not apply to bodies that are essentially financed by the Regular Programme, such as the secretariat of the International Plant Protection Convention, and other bodies in the same situation, to which the standard procedures for appointment of the Professional Staff apply.

36. The question of the supervisory authority over secretaries of bodies established under Article XIV of the Constitution in the context of performance assessment reports needs to be addressed. The need of performance monitoring and appraisal of an international staff in any public service organization is a common practice and it is essential that the appropriate mechanism should be implemented to ensure the accountability. However, the distinction between functional and operational matters and administrative matters should normally provide useful guidance to approach this issue. This action could be addressed within Management, insofar as PEMS agreements, which is now applicable to the level of DDGs in FAO could be reviewed and multi-rater tools may be adjusted to improve the system.

b) Staff in the General Service category

37. In general, it has been a policy of FAO that, in the case of “*field projects based at headquarters*”, General Service staff are subject to the same policies and procedures as General Service staff members assigned to other positions at Headquarters. Reservations in respect of this policy have been expressed. Secretaries of some bodies, at times supported by the relevant commission, have pressed for a deviation from established selection procedures on the grounds that, being accountable for the programme of work of the commissions, they should be able to select such qualified General Service staff members as they deem fit. The applicability of redeployment procedures to bodies under Article XIV has also been questioned.

38. Despite these requests, it is considered that standard policies applicable to General Service staff should be applied. It would be difficult, including for personnel management reasons, to take a different approach with positions which involve a fairly high degree of “*interchangeability*”, such as positions in the General Service category. However, the situation could evolve and the matter might be pursued again in future by secretaries and by bodies under Article XIV. In the event that similar requests were to be pursued, a possible course of action might be to consider, at least as a working hypothesis, that General Service staff members serving on some bodies under Article XIV financed by autonomous budgets could be selected under different rules. However, the administration would not accept obligations *vis-à-vis* that staff in the event that they had to be re-deployed from the secretariats of the bodies under Article XIV to any other position of the Organization.

39. The Committees are invited to note that the Organization is prepared to examine this matter further.

c) Contractual arrangements for personnel

40. In the course of the preparation of this document, secretaries of bodies under Article XIV referred to the desirability of reconsidering levels of authority for approvals regarding recruitment of consultants and subscribers to Personal Services Agreements, including levels of honoraria for consultants.

41. The Organization is prepared to examine these matters which can be addressed administratively.

d) Other contractual arrangements

42. Some observations have been made in connection with the standard terms of Letters of Agreement under Section 507 of the Administrative Manual. These are contractual arrangements between FAO and a "Recipient Organization" for the production of specific outputs. As a general rule, the Recipient Organization is a non-profit institution. The standard conditions of the Letters of Agreement on the level of disbursements have been considered too restrictive. The matter seems to involve the conciliation of the overall financial accountability of FAO in respect of funds which it holds and the autonomy of the bodies.

43. It is suggested that any concerns expressed be addressed through internal managerial consultation.

D. Channels of communication with Governments

44. Traditionally, there have been rules on channels of communication with Governments set forth in the Administrative Manual. Sections 602 (Correspondence Handbook), 603 (Guidelines for the Preparation and Dispatch of Correspondence) and 604 (Protocol Forms of Address in Formal Correspondence) of the Administrative Manual contain rules on correspondence. In particular, all correspondence with "*Cabinet Ministers or their equivalent, ambassadors, permanent representatives or heads of diplomatic missions*" is signed by the Director-General. Communications to executive heads of international organizations are also for signature by the Director-General. Special procedures apply to heads of decentralized offices and the Assistant Director-General, Technical Cooperation Department. "*Heads of decentralized offices are authorized to address correspondence to cabinet ministers, heads of diplomatic missions and officials of equivalent rank in their country/ies of accreditation (Manual paragraph 602.4.15)*". In addition, "*the Assistant Director-General, Technical Cooperation Department, is authorized to address correspondence in the name of the Director-General to cabinet ministers or their equivalent, ambassadors, permanent representatives or heads of diplomatic missions on matters related to field projects*" (Manual paragraph 602.4.16)¹⁸. In practice some relaxation of these procedures has taken place, but the principles and procedures set forth in these sections of the Administrative Manual remain in force.

¹⁸ The Assistant Director-General, Administration and Finance also signs a number of formal letters, notably requests for payment of assessed contributions.

45. There may be an objective need for statutory bodies – some of them entrusted with authority to adopt regulatory measures directly binding upon Members – to interact with heads of Governmental departments. In practice some relaxation of these procedures may have taken place on an informal basis. Often liaison, including the dispatch of letters, is done through the Chairperson of the statutory body but this may not be a satisfactory situation. It would be appropriate that this situation be regularized by allowing, within parameters to be defined, secretariats to inter-act with the membership of the bodies to certain level of government authorities. It would be useful to ensure that the units that “host” or have relations with the secretariats under Article XIV of the Constitution should be kept informed of such correspondence in order to ensure the synergy of programmes and consistency of policies .

46. It is suggested that, following consultations with the main concerned departments, special rules and criteria regarding official correspondence be applied by secretaries of bodies under Article XIV. The extent to which such rules would also apply to the secretaries of other statutory bodies would also be determined on that occasion. This is a matter primarily for Management.

E. Relations with donors

47. The Technical Cooperation Department has overall responsibility for resource mobilization. This Department, through the Policy and Programme Development Support Division (TCS) is responsible for resource mobilization by delivering (i) donor liaison and programming services, (ii) information services on extrabudgetary activities and donor policies, and (iii) advisory support to resource mobilization activities by decentralized offices at regional and country level. Areas of competence include all funding from donor government agencies, multilateral agencies and Unilateral Trust Fund donors. On the basis of applicable procedures, the Assistant Director-General, Technical Cooperation Department has authority to sign donor agreements. The question of the extent to which autonomous statutory bodies may inter-act and liaise with donors has been raised. The matter is important also in consideration of the fact that IPA Action 2.69 refers specifically to the possibility for the statutory bodies to exercise greater financial and administrative authority and “*mobilize additional funding from their members, while remaining within the framework of FAO and maintaining a reporting relationship with it*”. This is a matter essentially of a policy nature to be addressed in close consultation with the Technical Cooperation Department and presumably also with concerned technical units.

48. Some facilities have been recognized to the benefit of bodies under Article XIV of the Constitution. Thus, for the past few years, secretaries have occasionally been able to sign donor agreements on behalf of the Organization and on the basis of a delegation from the Assistant Director-General, TC. Recently, there has been increased recognition of the possibility for heads of departments and decentralized offices to have an increased role in resource mobilization in close collaboration with the Technical Cooperation Department. In this overall context, one could consider that secretaries of bodies under Article XIV of the Constitution could have an enhanced role in resource mobilization in close coordination with the various other concerned units, with particular reference to the Technical Cooperation Department, the technical units and decentralized offices. However, there would be a need for some coherence in the various resource mobilization activities through sharing information in a transparent manner.

49. The Committees are invited to review and advise on this matter, which is essentially within the authority of Management.

F. Organization of meetings

50. Bodies under Article XIV of the Constitution do organize a large number of meetings and two issues pertaining to such meetings have been brought to the attention of the secretariat: the conclusion of memoranda of responsibilities and that of translation of documents for meetings, although the latter arises in a context broader than that of the organization of meetings.

a) Conclusion of memoranda of responsibilities

51. Under Rule XXXVIII, paragraph 4 of the GRO “*when determining the site of any meeting to be convened by the Organization, the Director-General should be satisfied that the host government is willing to grant to all delegates, representatives, experts, observers and members of the Secretariat of the Organization attending such a meeting the immunities that are necessary for the independent exercise of their functions in connection with the meeting*”.

52. Prior to each meeting held outside headquarters or the main regional and sub-regional offices, the Director-General is required to conclude an arrangement defining responsibilities of the host government and FAO in respect of meetings. Three sets of provisions are important. The first is the requirement that the host government should accord for the purpose of the meeting to delegates and observers and to FAO, its property, funds and assets, as well as to FAO staff, privileges and immunities specified in the Convention on the Privileges and Immunities of the Specialized Agencies. The second is a requirement that it should grant visas and all necessary facilities to delegates, observers and consultants attending the meeting. The third is a requirement that the Government should hold FAO harmless in respect of any claims brought by delegates and observers or by other third parties arising out of the meeting, except where it is agreed by the Host Government and FAO that the claim arises from gross negligence or willful misconduct of such staff¹⁹.

53. These requirements are linked to the status of the organizations of the United Nations System, under the framework of which bodies established under Article XIV of the Constitution operate. In addition, the granting of privileges and immunities to the organizations of the system is seen by most host Governments as an act of sovereignty. It

¹⁹ These requirements are linked to the status of FAO as an intergovernmental organization of the United Nations System. The first requirement relates to the immunity from every form of jurisdiction which FAO enjoys. This immunity concerns officials of FAO as well as delegates to meetings. For the purpose of the meetings, participants should be able to exercise their functions independently and this should be done through the benefit of the functional immunity of FAO¹⁹. The second requirement is related to the universal nature of FAO and the need to ensure that whenever the Organization convenes a meeting, the host Government should agree to grant visas for all participants¹⁹. The third requirement – acceptance by the host Government of a hold-harmless clause - is also related to the inter-governmental nature organizations of the United Nations. These organizations are of a non-profit nature. This operating model does not foresee the possibility that they could accept losses which – in the absence of a donor willing to cover them – would have to be absorbed by the membership at large. This is why in all technical operation activities and in operations regarding meetings Of the organizations of the system request, as a condition for the convening of meetings, that the host government should deal with claims that might be brought against the Organization and arising out of such meetings. Occasionally, there is a need to negotiate some clauses on secondary, peripheral issues.

would seem important that Memoranda of Responsibilities should continue to be concluded by the Director-General, in the same manner as in other organizations of the United Nations System where such arrangements are concluded by executive heads. It is also important that the integrity of the regime of privileges and immunities be duly safeguarded as this is an essential condition for the operation of the organizations of the system as a whole²⁰. The integrity and uniform application of the regime would be incompatible with the conclusion of host agreements, dealing with the immunity of the Organization, by secretaries of bodies. There is reason to believe that this could also be objected to by the Governments as a matter of principle.

54. In light of the above considerations, the Committees may wish to confirm that memoranda of responsibilities in connection with meetings convened by bodies under Article XIV of the Constitution continue to be concluded by the Director-General. Recent practice in relation to meetings of Article XIV bodies has not revealed any difficulties in connection with the implementation of these responsibilities by FAO.

b) Issues related to servicing of meetings

55. This issue is addressed under the heading regarding the organization of meetings, because there is a need to translate documents in that connection, but it arises in a context broader than that of the organization of meetings. As a general rule, bodies established under Article XIV of the Constitution do organize a substantial number of meetings and commission a large number of translations through the Meeting Programming and Documentation Unit. Not infrequently, the membership Article XIV bodies has expressed disagreement with current arrangements and has requested increased reliance on outsourcing. Insofar as the matter acquired an important dimension in a number of bodies and seems to be a concern of secretaries, it is raised in this review^{21/22}. In a similar vein, proposals have been made that, in order to reduce costs, some meetings be held in a limited number of languages, provided, however, that this should not be objected to.

²⁰ Also taking into account the fact that any deviation by one organization from the regime generally accepted has implications in respect of other organizations of the system.

²¹ RBR Final Report, pages 128-142. The matter was addressed in the context of the Root and Branch Review by Ernest & Young.

²² In the Management Response to the RBR Final Report dated 20 May 2009, Management observed: "*the RBR recommends the implementation of a model characterized by a new financial mechanism for the FAO translation services at lower costs by providing reduced internal services (focusing on revision and proofreading) and with an increased proportion of externally contracted translators (up to 90% of the current volume from 50% currently). The internal service would be mainly responsible for quality control (with all outsourced translations being revised internally), management of terminology and roster of freelance translators, with about 50% of the current staffing (one or two translators and one general service staff per language group). Management agrees with the RBR proposal to review the existing back-charge system in order to address its disincentive effect on translation rates. While there might be scope for increasing the outsourcing of translation, it should be noted that, among comparable UN organizations, FAO already has the highest level of outsourcing. A further increase in the proportion of outsourced translation, combined with the proposed staff reduction, would seriously affect the Organization's capacity necessary to carry out urgent translations (including in-session for meetings) and to provide the quality revision services needed to review externally translated documents (...)*" (page 7). The administration has expressed its views on the matter in its Management Response. The Chair's Aide-Mémoire of the Meeting of Working Group III of the Conference Committee for IEE Follow-Up (Coc-IEE) of 20 May 2009 states: "*Members considered that, looking forward, it will be important to (...) ensure the provision of quality translation services, in an effective, timely and cost-efficient manner, taking account of the urgent and confidential nature of the documents to be translated. This could entail revisiting the existing back-charge system, while pursuing the policy of outsourcing at a level commensurate with the required quality and timeliness of translations*".

56. The matter is not primarily an issue of a legal nature. However, insofar as it has been raised in many “autonomous” statutory bodies, the CCLM may wish to recommend that this be reviewed by other bodies of the Organization and, in particular, whether a selective approach to outsourcing of the translation of documents could be considered in respect of some bodies under Article XIV of the Constitution.

G. Participation of observers from non-governmental organizations and other stakeholders in meetings of statutory bodies

57. Pending the establishment and adoption of new policies, secretaries of bodies under Article XIV and of other statutory bodies, as appropriate, could seek to implement, in consultation with concerned units of the Organization and the chairpersons of the concerned bodies, *ad hoc* measures for inviting NGOs and other stakeholders.

58. As reported to the Committees, the Organization was supposed to address the issue of the formulation of new procedures for participation in meetings of bodies under Article XIV of the Constitution, as part of an exercise in the definition of rules redefining observer status in FAO of both governmental and non-governmental organizations. There has been no progress in this exercise because of difficulties to define general common criteria and rules applicable to all constituencies which are highly differentiated. This is also associated with the fact that Members may hold different views on the matter depending on specific constituencies and bodies. It is proposed to continue with the current pragmatic, flexible and differentiated approach regarding participation of non-governmental organizations in meetings of the Organization, Governing Bodies and statutory bodies. This approach has worked in a satisfactory manner and has allowed for increased participation in a range of committees of representatives of civil society and non-governmental organizations, while responding to the specific needs of the bodies in question and the concerns of their respective constituencies.

H. The issue of the reporting relationship with FAO

59. The issue of the reporting relationship with FAO and its Governing Bodies was the subject of consultation both with the Membership, including through the questionnaire that was circulated to Permanent Representatives, and at inter-secretariat level. The outcome of the consultation was not conclusive and in particular there were no definite views as to the scope and purpose of the reporting.

60. This matter does not seem to be of urgency as compared with the concerns underlying this document and could continue to be under review in the future. In addition, as evidenced in this document, there are forms of reporting between the secretariats and the Organization on administrative matters.

I. Principles and procedures which should govern conventions and agreements concluded under articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution

61. In earlier submissions the question of whether the “*Principles and procedures which should govern conventions and agreements concluded under articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*” should be amended was raised. The Principles were adopted in 1957 and were amended on specific points on a few occasions, notably in 1991. They should be amended in a number of respects not only in connection with bodies under Article XIV but also in connection with committees and commissions under Article VI of the Constitution. Again, the situation of these bodies is very much differentiated and evolving and it would not be easy to re-define at present a substantial number of rules and procedures so as to ensure that they respond to actual needs and “fit all situations”. This exercise could be carried out at a later stage. Meanwhile, the Organization would implement the measures foreseen in this review.

III. SUGGESTED ACTION BY THE COMMITTEE

62. The CCLM is invited to review this document and offer such views thereon as appropriate.

63. The CCLM is, in particular, invited to:

- a) confirm the differentiated nature and functional needs of bodies established under Article XIV of the Constitution (cf. inter alia paragraph 8);
- b) confirm the need for a determination of the bodies to which the recommendations of this review would apply, taking into account the views of the Members, the nature of the activities exercised, the existing oversight mechanism of any specific body and the overall status of the bodies in question or to establish criteria on the basis of which the secretariat will determine bodies eligible to facilities foreseen in this review (cf. paragraph 16);
- c) confirm that, in general, the recommendations made in this review are within the authority of Management (cf. paragraph 19 refers);
- d) note the special arrangements regarding travel by secretariats of bodies under Article XIV of the Constitution and make such recommendations as appropriate in that connection (cf. paragraph 22 and 23);
- e) note that procedures for the conclusion of arrangements by bodies established under Article XIV of the Constitution have been operating very satisfactorily in the course of the past few years and confirm that they may continue to be followed where appropriate (cf. paragraph 25);
- f) while noting the authority of other Committees, including the Finance Committee in that connection, advise on budgetary, financial and audit issues as appropriate, (cf. paragraphs 26 to 32). The issues raised in this connection can be addressed by Management, except

for the particular situation of rates of Project Servicing Costs and the single audit principle;

- g) while noting the special authority of the Finance Committee on the matter, advise on human resources issues presented in the review, including on those related to selection of staff in the Professional and higher categories, performance assessment, General Service category, contractual arrangements for personnel and other contractual arrangements such as Letters of Agreements (cf. paragraphs 33 to 43). In general, these actions are within Management's authority;
- h) endorse the proposal that special criteria and rules could be applied regarding channels of communication with Governments and official correspondence of secretaries of bodies established under Article XIV be prepared (cf. paragraphs 46). These actions may be addressed by Management;
- i) advise on any issues concerning relations with donors (cf. paragraph 47 to 49). These issues are within Management's authority ;
- j) note the importance of issues pertaining to the privileges and immunities of the Organization and confirm the current practice that "memoranda of responsibilities", negotiated and concluded by the Director-General, should be maintained (cf. paragraphs 51 to 54);
- k) advise on matters related to servicing of meetings, including translation of documents (cf. paragraphs 55 and 56);
- l) note the considerations regarding participation in meetings of representatives of non-governmental organizations, civil society organizations and other stakeholders and suggest that the issue of the formulation of a comprehensive set of rules and procedures regarding their participation in meetings be addressed at a later stage (cf. paragraphs 57 and 58);
- m) note that the issue of the reporting relationship between statutory bodies and FAO does not need to be addressed as a matter of priority, in light of the developments presented in this review (cf. paragraphs 59 and 60).
- n) note that, in view of the evolution under way regarding the status of bodies established under Article XIV of the Constitution as well as their differentiated nature, the proposed amendments to the Principles should be deferred, until further experience on the matter is gained. The implementation of the recommendations of this review would obviate the need for immediate review of the Principles (cf. paragraph 61).