I. Introduction

1. This item is referred to the Committee on Constitutional and Legal Matters (hereinafter “CCLM or the Committee”) under Rule XXXIV, paragraph 7 (a) and (b) of the General Rules of the Organization (GRO). As briefly described below, this matter has been the subject of extensive consideration by the Governing Bodies and three Statutory Bodies established under Article XIV of the Constitution of the Organization (hereinafter “Article XIV Bodies”). It has also been the subject of extensive consultation led by the Independent Chair of the Council (hereinafter “the ICC”).

2. The present document provides an update on the consultation process undertaken by the ICC with the chairpersons of the concerned Article XIV Bodies. It also reports on the FAO Secretariat revised position regarding this item in light of on-going developments of the consultation process as reported by the ICC to FAO Management. The CCLM is invited to provide its views on any next steps that it considers may be taken in this matter, having regard to the process that has taken place to date and the constitutional and legal framework of the Organization.

II. Background

3. The CCLM considered the procedure for the selection and appointment of Secretaries of Article XIV Bodies at its 103rd Session (October 2016)\(^1\), 106th Session (March 2018)\(^2\), 107th Session

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\(^1\) CCLM Report – CL155/2 and CCLM document 103/2
\(^2\) CCLM Report – CL159/2 and CCLM document 106/5

Documents can be consulted at [www.fao.org](http://www.fao.org)
This matter primarily concerns essentially three treaties, establishing bodies under Article XIV of the Constitution of the Organization, namely:

a) the Agreement for the Establishment of a General Fisheries Commission for the Mediterranean (“GFCM”);
b) the Agreement for the Establishment of the Indian Ocean Tuna Commission (“IOTC” or “the Commission”); and
c) the International Treaty on Plant Genetic Resources for Food and Agriculture (“ITPGRFA” or “the Treaty”).

The above three treaties provide that their Secretaries “are appointed by the Director-General with the approval of (…)” the Bodies concerned, consistent with the Basic Texts of the Organization. A practice had developed, however, by which the selection of candidates for positions of Secretary was undertaken through voting or elections by the Members of the Body concerned, with no, or very limited, involvement of the FAO Secretariat. The candidate identified in this manner would, under this practice, be subsequently referred to the Director-General for final appointment.

In 2016, a request was made to the Governing Bodies to reassess this practice as it was not consistent with the ordinary meaning of the provisions of the treaties, nor conform with the Basic Texts, with the responsibilities of the Director-General, or with the procedures in the United Nations System for staff selection in respect of similar bodies in other organizations. The concerns arising from these selection procedures and their implications are addressed in detail in a number of documents previously presented to the Governing Bodies (e.g. CCLM Documents 103/2 at Section IV, 106/5 at Section V and 107/3 at Section II), the Commission and the Governing Body of the Treaty.

A proposal was submitted by the FAO Secretariat to the 103rd Session of the CCLM for the selection and appointment of Secretaries of Article XIV Bodies based on standard procedures in place for the appointment of FAO Senior Staff. The FAO Council considered this proposal at its 155th Session and stressed the urgency of filling positions of secretaries of, specifically, the Treaty and the Commission that were then vacant. As the Executive Secretary of the GFCM, had been appointed in 2015 for a term of 5 years, the matter was not considered urgent for that Body.
8. At its 155th Session, the Council decided\textsuperscript{12} that the following process should be followed:

\begin{enumerate}
\item[\textit{a)}] “with immediate effect, the Independent Chairperson of the Council ("ICC") and the FAO Secretariat will consult with the concerned Article XIV Bodies with a view to developing a proposal on procedures for the appointment of Secretaries of concerned Article XIV Bodies acceptable to the Bodies and to be submitted to the FAO Council by the end of 2018”;
\item[\textit{b)}] “also immediately, on an exceptional basis and without setting any precedent, the Director-General will issue Vacancy Announcements for the appointment of two Secretaries (IOTC and ITPGRFA). This will follow standard procedures for the appointment of FAO Senior Staff, with inclusion of two representatives of Members, to be decided by the Bodies, in interview panels and subsequent referral by the Director-General of one candidate to the Bodies for approval at their next session”; and
\item[\textit{c)}] “the Secretaries referred to in sub-para (b) will be appointed for two years subject to confirmation by the concerned Body of the appointment at the end of that period”\textsuperscript{13}.
\end{enumerate}

9. Consistent with the guidance of the Council, selection procedures were undertaken for the Secretaries of the IOTC and the Treaty in accordance with the procedure, which had been proposed by FAO Management\textsuperscript{14}, and is set out in \textit{Annex 1} to this document\textsuperscript{15}.

10. The Council, at its 160th Session, requested the ICC “to continue his consultations with the concerned Article XIV Bodies and the FAO Secretariat towards agreement on a proposal on procedures for the appointment of Secretaries to these Bodies by December 2019”; and agreed that the interim arrangements for the appointment of Secretaries of Article XIV Bodies, “agreed on at its 155th Session and set out in document CCLM 107/3 be followed until a lasting solution acceptable to the concerned Article XIV bodies and the FAO Secretariat is found”\textsuperscript{16}.

11. At its 110th Session, the CCLM welcomed the comprehensive report of the ICC, made during that Session, on the progress on his consultations on this matter, specifically with regard to his discussions with the Commission and the Treaty\textsuperscript{17}.

### III. The ICC’s Consultations

12. Consistent with the guidance of the Council, the former ICC, Mr Wilfred Ngirwa, and the present ICC, Mr Khalid Mehboob, have convened a number of consultations with the Bodies concerned on this issue. These continue, with the aim of finding a long-term, lasting and appropriate

\textsuperscript{12} Report of the Council of FAO, 155th Session, CL 155/REP, paragraphs 26 and 27
\textsuperscript{13} \textit{Id.}
\textsuperscript{14} The Director-General identified Dr Christopher O’Brien, whose proposed appointment was referred to the Commission for approval. (IOTC Circular 2017-050 on the Selection of the Executive Secretary, 28 April 2017). It approved the appointment at its 21st Session and Dr O’Brien was subsequently appointed by the Director-General effective 1 July 2017. The Director-General identified Mr Kent Nnadozie, whose proposed appointment was communicated to the Chairperson of the Governing Body of the Treaty. (IT/GB-7/17/29 on the Selection and Appointment of the Secretary of the Governing Body, Kigali, Rwanda, 30 October - 3 November 2017). The Governing Body of the Treaty, at its 7th Session, approved the appointment of Mr Nnadozie who was subsequently appointed by the Director-General on 3 November 2017. At its 23rd Session (2019), the Commission agreed to renew the tenure of the Executive Secretary, Christopher O’Brien, for a further two-year term and requested its Chair to inform the Director-General of FAO of this decision. At its 8th Session (2019), the Governing Body of the Treaty, approved the proposal made by the Director-General for the reappointment of the Secretary, Mr Kent Nnadozie, for two years (IT/GB-8/19/Report, paragraph 51).
\textsuperscript{15} It can also be found in Annex 1 of CCLM document 107/3
\textsuperscript{16} CL 160 Report, paragraph 13
\textsuperscript{17} CL 164/2 Report of the 110th Session of the of the Committee on Constitutional and Legal Matters (28-29 May 2020)
solution for the appointment of Secretaries of Article XIV Bodies, acceptable to both the FAO Management and the concerned Bodies, and compatible with the Basic Texts, as well as the provisions of the constituent instruments of the concerned Article XIV Bodies. Information on the consultations led by the ICC, which are still under way, can be found in Annex 2 to this document. At the time of writing, no consensus has been reached with the Article XIV Bodies on the selection process.

13. The Informal Meetings organized by the ICC with the Chairpersons and Vice-Chairpersons of FAO’s Regional Groups have also considered this issue and have expressed the desire that a concrete solution be reached.

IV. The proposals and position of FAO Management

14. As stated in the background set out in Section II above, FAO Management presented its proposal for long-term procedures for the selection of Secretaries of Article XIV Bodies, and submitted this to the CCLM’s 103rd Session in 2016. Based on the Council decision referred to above in paragraph 8, these interim procedures were applied for the appointment of the Secretaries of IOTC and the Treaty in 2017. In March 2018, at the 106th Session of the CCLM, FAO Management proposed that this procedure be confirmed as long-term procedure for such appointments. The CCLM took note of the ICC’s on-going consultations, the on-going processes, as well as the views of Management and requested the matter be submitted to it at its next session. In October 2018, during the 107th Session of the CCLM, FAO Management proposed a procedure whereby the selection and appointment of Secretaries for all Article XIV Bodies would be based on the interim procedures with some adjustments to enable engagement in the process by the Body concerned. As reflected in paragraph 10 above, the Council agreed to this proposal until a lasting solution acceptable to the concerned Article XIV Bodies and the FAO Secretariat is found.

15. FAO Management’s proposal for long-term procedures was not, however, accepted by the Bodies concerned. FAO Management considered that alternatives that were proposed by the concerned Article XIV Bodies (see Annex 2) did not fully address the concerns that gave rise to the current consideration on this issue, and/or are inconsistent with the status of Article XIV Bodies in the FAO constitutional and legal framework.

16. Nevertheless, with a view to bringing this matter to a mutually satisfactory close, FAO Management informed the ICC that it would accept a compromise which he has shared with the Chairs of the Article XIV Bodies concerned. The proposal can be found in Annex 3 to this document and is entitled “Revised proposed procedure for the selection and appointment of secretaries of Article XIV Bodies”. This compromise proposal ensures the active participation and involvement of Article XIV Bodies throughout the entire process of selection and appointment as their representatives participate in the shortlisting and interviewing of candidates as well as the final approval by the Body of the recommended candidate. It also provides for an outside external member in the selection and interview panel. Should the Article XIV Body reject this candidate, the Director-General would make a new recommendation.

17. FAO Management is of the view that this compromise proposal appropriately reflects the measure of functional autonomy enjoyed by Article XIV Bodies while, at the same time, respecting the Basic Texts and the international treaties establishing these Bodies. In particular, FAO Management is of the view that this proposal does not infringe on the functional autonomous nature of Article XIV Bodies, while taking note of the accountability of FAO Management for the operation of these Bodies as set out in their treaties and the Basic Texts, in particular, the Constitution, the Financial Regulations and Part O of Volume II entitled “Principles and Procedures which should

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18 CCLM document 106/5, The procedure is set out in Annex to the CCLM document and entitled “Process for the selection and appointment of Secretaries of Article XIV Bodies”
19 CCLM document 107/3, Section III, and Annex I
20 CL 160, Report, paragraph 13 c)
govern Conventions, and Commissions and Committees established under Article VI of the Constitution”.

V. **Suggested Action by the Committee**

18. The CCLM is invited, taking into account the consultations that have taken place to date pursuant to the Council’s direction made at its 155th Session in December 2016:

   a) to take note of the extensive consultations which have taken and are taking place between the ICC and the IOTC, the Treaty and the GFCM and with the Members through regular Informal Meetings with a view to reach a consensus on a lasting solution for the selection and appointment of Secretaries of Article XIV Bodies; and

   b) to confirm that the proposed long-term procedure for the selection and appointment of Secretaries for all Article XIV Bodies, set out in Annex 3, is consistent with the Basic Texts and the relevant Article XIV treaties or to recommend such amendments thereto as it would deem appropriate.
Annex 1

Outline of the interim procedures for the appointment of Secretaries to the Treaty and IOTC21

1. A Vacancy Announcement is drafted by technical departments with support of the Office for Human Resources (“OHR”) as is done for all senior (D1 and above) staff positions. The draft Vacancy Announcement is shared with the Chairperson of the Body concerned who is invited to provide views thereon.

2. The Vacancy Announcement is issued and posted for 46 days.

3. A first review and screening of candidates is undertaken by OHR based on the minimum criteria and qualifications set out in the Vacancy Announcement.

4. A second review is undertaken by the offices of the relevant Deputy Directors-General and Assistant Directors-General to establish a shortlist of candidates for interview. The interview shortlist must contain at least ten candidates, including at least one female candidate.

5. An Interview Panel is established, which is composed of:
   a) the relevant Deputy Director-General or Assistant Director-General (the Chairperson);
   b) one Senior FAO officer;
   c) two representatives of the Members of the Article XIV Body;
   d) one external member; and
   e) one representative of OHR (for process support).

6. Interviews of shortlisted candidates are conducted by the Interview Panel which will prepare a report. The Panel Report will identify a minimum of five qualified candidates, including at least one female candidate. If there is no female candidate, the Panel Report must contain a justification for this omission.

7. The Panel Report is submitted for consideration by the Director-General.

8. Reference checks are undertaken by OHR and the managerial capabilities of the shortlisted candidates are reviewed by an external company.

9. The Director-General identifies one proposed candidate for appointment, whose name and curriculum vitae are referred to the relevant Article XIV Body for approval in accordance with the provisions of the treaty concerned.

10. Upon approval of the Body, an offer is issued to the candidate. Should there be non-approval, the Director-General will propose to the Body another candidate recommended for appointment.

11. Upon acceptance, the Director-General appoints the candidate.

21 CCLM 107/3, Annex I
Annex 2

Proposal of the IOTC, the TREATY and the GFCM

The IOTC

The IOTC, at its 21st Session, established a small drafting group (WG) to develop a proposal for a permanent procedure to select the Executive Secretary of the Commission. The WG revised Appendix II of the Commission’s Rules of Procedure regarding the selection and recruitment of the IOTC Executive Secretary and shared with the ICC its WG’s proposed amendments to the Commission’s Rules of Procedure for the selection and appointment of its Executive Secretary. In a letter addressed to the ICC, it proposed the following permanent proposal:

a) the IOTC Chairperson prepares the Terms of Reference for the vacancy announcement and circulates it to IOTC Members for approval. The vacancy is announced through FAO and IOTC websites;

b) FAO and IOTC Secretariat receive applications and FAO selects eligible candidates and the pre-selected candidates are distributed to IOTC Members;

c) from the list of pre-selected candidates, IOTC Members rank five candidates in order of preference, submits this to IOTC Secretariat which collates them, and this is conveyed to all IOTC Members and the FAO Director-General;

d) the FAO Director-General may conduct the necessary checks to confirm the candidate’s suitability prior to interview;

e) Members shall consider any concerns raised, or any recommendations made by the FAO Director-General and then finalise the list of candidates for interview;

f) IOTC Members invite the five candidates to the next Session of the IOTC for interview. The FAO Director-General will be invited to attend the interviews, may engage in discussions and may veto any applicant that does not meet the FAO principles, but shall not participate in the voting process;

g) Heads of Delegation of IOTC Members select the new Executive Secretary by consensus, if possible, or by secret ballot; and

h) the FAO Director-General is informed of the decision and proceeds with the appointment.

After considering this proposal, FAO Management responded through a Circular State Letter in April 2018, addressed to the Members of the IOTC, and noted that the proposal did not offer a viable solution to the issues it previously raised regarding the appointment of Secretaries through an election. In particular, the IOTC’s proposal did not respect the ultimate responsibility for appointment of Secretaries of Article XIV Bodies to lie with the Director-General of FAO and seemed to reverse the roles clearly expressed in Article VIII (1) of the IOTC Agreement. FAO Management further considered that the proposal would introduce a cumbersome selection procedure.

The Treaty

In July 2017, the Chairperson of the Treaty suggested to follow procedures used by the United Nations Environment Programme (UNEP) for the appointment of the Secretary-General of the CITES Convention be a possible procedure the Treaty could follow with regard to the appointment of its Secretary. This procedure involves the following steps:

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22 Source – information provided by the ICC to the Legal Office
23 IOTC Circular 2017-050 on the Selection of the Executive Secretary, 28 April 2017
24 IOTC Circular 2018-18 on the Proposed Amendments to the IOTC Rules of Procedure to Select the Executive Secretary
25 IOTC Agreement is the Agreement for the Establishment of the Indian Ocean Tuna Commission
26 Convention on International Trade in Endangered Species of Wild Fauna. This is a Treaty body, similar to an Article XIV Body under the FAO Constitution.
a) both the CITES Standing Committee (Bureau) and members of the UNEP Secretariat drafting of the Terms of Reference for the post;

b) UNEP carries out initial screening and short list;

c) a Selection Panel consisting of the Chair of the Standing Committee plus one Member, as well as members of the UNEP Secretariat, interviews the candidates; and

d) the final shortlist is sent to the UNEP Executive Director as a joint recommendation, who then takes the final decision.

However, after further consideration of this proposed procedure, the Chairperson of the Treaty informed the ICC that the Bureau of the Treaty did not agree with this proposal and preferred to have all of their seven regions represented on the selection panel. The ICC did not consider this a practical suggestion for, if FAO had had seven members as well, that would result in a panel of 14 individuals.

In November 2019, the Governing Body of the Treaty convened its 8th Session and provided further guidance for the consultation process with FAO on the long-term procedures for the selection and appointment of Secretaries of Article XIV Bodies. This guidance proposed that:

a) six months prior to the expiration of the term of the Secretary, following FAO procedures, a vacancy announcement stating minimum technical requirements should be drafted and issued, and a list of candidates meeting the minimum requirements of the position prepared;

b) an interview panel consisting of four representatives from the Bureau of the International Treaty, two from developing countries and two from developed countries, and three representatives of FAO, as determined by FAO, should be convened. The interview panel should select a Chair from amongst its members;

c) the interview panel should prepare a shortlist of seven to ten candidates from the list provided by Human Resources Division (CSH) to be interviewed and rank the top five candidates, based on FAO standards.

d) the ranked list should be gender balanced. The interview panel should also submit a consensus report, including justifications for the ranking and, if gender balance is not achieved, a justification for the imbalance;

e) the Director-General then appoints a candidate from among the ranked candidates and presents it to the Governing Body of the International Treaty for approval.

In May 2020, the ICC shared with FAO Management this proposal provided by the Governing Body of the Treaty. FAO Management was unable to accept the proposal presented by the Treaty, considering the accountabilities and responsibilities that are vested in the Director-General and the Organization by the Basic Texts and the Article XIV treaties.

The GFCM

The GFCM discussed issues related to the procedures for the selection and appointment of the GFCM Executive Secretary at its 43rd Session. At the time, the GFCM Members were informed that interim arrangements were currently in place at the level of FAO, which foresaw a selection process similar to that of Senior Officers (P-5 level) through a vacancy announcement. The GFCM expressed the wish to keep the GFCM procedure in place.

On 30 June 2020, the ICC wrote to the Chairperson of the GFCM regarding the selection and appointment of Secretaries of Article XIV Bodies informing him of the process of consultation, which had been started by his predecessor, Mr Wilfred Ngirwa, in 2016 and the deliberations, which have taken place by the Governing Bodies since 2016. The letter also briefly outlined the main consultations held with the IOTC and the Treaty and the various proposals considered during these consultations. He also submitted the compromise proposal which FAO Management had accepted. Said proposal provides for participation by an equal number of representatives of FAO Management

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27 Appendix D to the Report of the 8th Session of the Governing Body of ITPGRFA
and of the Article XIV Body in (i) the interview panel and (ii) in the shortlisting of candidates to be interviewed. The proposal foresees two representatives each plus an outside independent member. The full proposal made to the GFCM on 30 June 2020 can be found in Annex 3 to the present document.

In his reply the Chairperson underscored the need for him to conduct an internal consultation process with GFCM membership on the matter which was launched early July 2020 and expected to be finalized by 30 September 2020. During the exchange with the ICC, the Chairperson informed the ICC that it was essential for all GFCM Members to be duly involved in the process of the selection of the GFCM Executive Secretary. In a meeting with the ICC, the Legal Counsel, the Chairperson of the GFCM reiterated that he would provide the position of the GFCM on the matter upon completion of the consultation process.
Annex 3

Revised proposed procedure for the selection and appointment of Secretaries of Article XIV Bodies

1. A Vacancy Announcement is drafted by technical departments with support of the Human Resources Division (“CSH”) as is done for all senior (D1 and above) staff positions. The draft Vacancy Announcement is shared with the Chairperson of the Body concerned who is invited to provide views thereon.

2. The Vacancy Announcement is issued and posted for 46 days.

3. A first review and screening of candidates is undertaken by CSH based on the minimum criteria and qualifications set out in the Vacancy Announcement.

4. A second review is undertaken by the offices of the relevant Deputy Director-General and the relevant Director (D2) and the two representatives of the Members of the Article XIV Body to establish a shortlist of candidates for interview. The interview shortlist must contain at least ten candidates, including at least one female candidate.

5. An Interview Panel is established, which is composed of:
   a) the relevant Deputy Director-General or Director (D2);
   b) one Senior FAO officer;
   c) two representatives of the Members of the Article XIV Body;
   d) one external member; and
   e) one representative of CSH (for process support).

6. Interviews of shortlisted candidates are conducted by the Interview Panel which will prepare a report. The Panel Report will identify a minimum of five qualified candidates, including at least one female candidate. If there is no female candidate, the Panel Report must contain a justification for this omission.

7. The Panel Report is submitted for consideration by the Director-General.

8. Reference checks are undertaken by CSH and the managerial capabilities of the shortlisted candidates are reviewed by an external company.

9. The Director-General identifies one proposed candidate for appointment, whose name and curriculum vitae are referred to the relevant Article XIV Body for approval in accordance with the provisions of the treaty concerned.

10. Upon approval of the Body, an offer is issued to the candidate. Should there be non-approval, the Director-General will propose to the Body another candidate recommended for appointment.

11. Upon acceptance, the Director-General appoints the candidate.