



## Item 9 of the Provisional Agenda

### COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

#### Thirteenth Regular Session

Rome, 18 – 22 July 2011

### STATUS AND PROFILE OF THE COMMISSION

#### TABLE OF CONTENTS

|  | <i>Para.</i> |
|--|--------------|
| I. Introduction  | 1 - 4        |
| II. Background   | 5 - 10       |
| III. Status of Technical Committees under Article V.6 (b) of the<br>FAO Constitution   | 11 - 21      |
| IV. Procedural conditions for a change in the status of the Commission into<br>Committee under Article V.6 (b) of the FAO Constitution | 22 - 29      |
| V. Other ways and means to raise the profile of the Commission   | 30 - 34      |
| VI. Guidance sought  | 35           |



## I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (Commission), at its Twelfth Regular Session, emphasized the need for raising the profile of the Commission. It stressed its important role within the institutional structure of FAO and noted that it was the body with the second-highest number of Member Countries after the FAO Conference and had played a crucial role in the development of international policies for genetic resources for food and agriculture.
2. The Commission requested its Secretary to prepare an analysis of potential constraints of the Commission's current status, and to analyze and assess the advantages and disadvantages of a possible change of the Commission's status to a Technical Committee, as referred to in Article V.6 of the Constitution of FAO. The Commission also requested its Secretariat to explore creative and innovative mechanisms, approaches and tools to raise the profile of the Commission, in addition to reviewing its status within the constitutional framework of FAO.<sup>1</sup>
3. The FAO Conference, at its Thirty-sixth Session, welcomed the review of the status of the Commission within the constitutional framework of FAO as scheduled by the Commission for this session.<sup>2</sup>
4. This document briefly considers the current status of the Commission within the constitutional framework of FAO; examines the status of Technical Committees under Article V, paragraph 6 (b) of the FAO Constitution; and provides some considerations, mainly of a procedural nature, regarding a possible change in status of the Commission into one of such Technical Committees. The document also considers other ways and means to raise the profile of the Commission.

## II. BACKGROUND

5. The Commission was established by the Conference under Article VI.1 of the FAO Constitution, according to which the Conference or Council may establish commissions: *"to advise on the formulation and implementation of policy and to coordinate implementation of policy."*
6. The framework governing the activities of the Commission consists of the FAO Constitution, the General Rules of the Organization (GRO), the Statutes of the Commission as emerging from its constituent Resolutions, and its Rules of Procedure, seen in the light of current Part O of Volume II of the Basic Texts of the FAO.<sup>3</sup> The Commission reports to the Director-General, who brings to the attention of the Conference, through the Council, any recommendations adopted by the Commission that have policy implications, or that affect the programme or finances of the Organization.
7. At its Eleventh Regular Session, in 2007, the Commission *"requested the Director General of FAO to initiate preliminary consideration of ways in which the status of the Commission might be raised within the constitutional framework of the Organization, in order to reflect the Commission's role as the only intergovernmental body responsible specifically for biodiversity for food and agriculture."*<sup>4</sup>
8. At its Twelfth Regular Session, in 2009, following the presentation of a working document reviewing the current constitutional status of the Commission and outlining options for

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<sup>1</sup> CGRFA-12/09/Report, paragraph 102.

<sup>2</sup> C 2009/REP, paragraph 173.

<sup>3</sup> 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.

<sup>4</sup> Cf. CGRFA-11/07/Report, paragraph 102.

upgrading of such a status,<sup>5</sup> ”the Commission emphasized the need to raise the profile of the Commission, and to take into consideration all possible means of doing so, in view of the ongoing FAO reform process and taking into account the on-going review of the Statutory Bodies of FAO. It requested its Secretary to prepare an analysis of potential constraints of the Commission’s current status, and to analyze and assess the advantages and disadvantages of a possible change of the Commission’s status to a Technical Committee, as referred to in Article V.6 of the Constitution of FAO. It noted that the analysis should be prepared in a timely manner, and take into account the FAO reform process and the on-going review of the Statutory Bodies of FAO.”<sup>6</sup>

9. It may be useful to mention that the working document prepared for the Twelfth Regular Session, examined, in some detail, the option of converting the Commission into a body under Article XIV of the FAO Constitution, which substantially differs from both the current status of the Commission under Article VI, paragraph 1 of the FAO Constitution and from a possible re-establishment of the Commission under Article V, paragraph 6 (b) of the Constitution. Bodies under Article XIV of the FAO Constitution are established by separate agreements of international law, which have “a legal life of their own”. Bodies under Article XIV of the FAO Constitution enjoy a measure of autonomy from the Organization in constitutional, functional and, to some extent, administrative terms. Many of their decisions reach directly the respective constituencies (i.e. the Contracting Parties to the underlying agreements/conventions/treaties) with a limited filter by FAO bodies. The working document also examined some features of bodies under Article VI of the FAO Constitution, which are entirely tied to the structure of FAO and their main function is to advise or report to other FAO bodies within their respective areas of competence.

10. Hence, at the Twelfth Regular Session of the Commission, elements and criteria regarding a possible change into a body under Article XIV of the FAO Constitution were offered to the Commission for consideration but did not generate any apparent action by the membership, except for the request made at that Session referring to a possible change of the Commission’s status to a Technical Committee under Article V, paragraph 6 (b) of the FAO Constitution.

### **III. STATUS OF TECHNICAL COMMITTEES UNDER ARTICLE V, PARAGRAPH 6 (b) OF THE FAO CONSTITUTION**

11. The current status of the Technical Committees within FAO should be seen in the light of the Immediate Plan of Action (IPA) for FAO Renewal (2009-11) which contained the following general statement regarding the future status of the Committees:

*“The Technical Committees are fundamental to FAO’s work. They are committees of the whole membership and have distinct roles: Firstly, developing global information exchange, policy coherence and instruments for their areas of competence; and secondly, providing proposals to the Council and the Conference on the Strategy and Programme of the Organization. Technical Committees, as committees of the whole, deal with world issues as well as FAO’s programme and will report directly to the FAO Conference on global issues and to the Council on FAO programme priorities and performance”*

12. The following specific actions were contained in the relevant Action Matrix of the IPA

*“The Committees will report to Council on FAO’s budget and priorities and strategies for the programmes and directly to the FAO Conference on global policy and regulation (2.56), and:*

<sup>5</sup> *The Status of the Commission*, CGRFA-12/09/22.

<sup>6</sup> CGRFA-12/09/Report, paragraph 102.

*(a) Chairs will remain in office between sessions and provide their reports to the Council and Conference (2.57);*

*(b) Ways of working – Technical Committees will: - meet more flexibly as to duration and frequency, according to needs, normally once in each biennium. They will address priority emerging issues and may be convened especially for this purpose (2.58); - the Chair will facilitate full consultation with Members, on agendas, formats and duration (2.59);*

*(c) More use will be made of parallel sessions and side events, taking care that countries with small delegations can participate (informal sessions will include NGOs and the private sector including representation from developing countries) (2.60).*

13. The implementation of the IPA resulted in a number of amendments to the Basic Texts of the Organization. In particular, through Conference Resolution 5/2009, Article V, paragraph 6 of the FAO Constitution was amended to read as follows:

*“6. In the performance of its functions, the Council shall be assisted:*

*a) by a Programme Committee, a Finance Committee, and a Committee on Constitutional and Legal Matters, which shall report to the Council; and*

*b) by a Committee on Commodity Problems, a Committee on Fisheries, a Committee on Forestry, Committee on Agriculture which shall report to the Council on programme and budget matters and to the Conference on policy and regulatory matters.”*

14. Article V, paragraph 6 reflects a general distinction the committees between the so-called “committees of restricted membership” which deal with financial, administrative, programme and legal matters (the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Matters) and the “technical committees of open membership” of the Council. Article V.6, paragraph 7, further specifies that the composition and terms of reference of the Technical Committees are governed by rules adopted by the Conference.

15. The reporting lines of the Technical Committees referred to in Article V, paragraph 6 (b) of the FAO Constitution are defined in the Constitution which provides that they report to the Council on programme and budget matters, and to the Conference on policy and regulatory matters.

16. In Resolution 6/2009, the FAO Conference approved a number of consequential amendments to the GRO concerning the agendas of the Conference, which is now tasked with reviewing the reports on policy and regulatory matters of the Technical Committees of open membership (cf. Rule II, paragraph 2 of the GRO), and of the Council, which reviews the reports on programme and budget matters of the same Technical Committees (cf. Rule XXIV, paragraph 2 of the GRO).

17. In accordance with the new framework, the Conference is due to give more attention to global policy issues and international regulatory frameworks, acting normally on the recommendation of the Technical Committees (Resolution 7/2009 of the FAO Conference). The Council is primarily entrusted with administrative, financial and programme matters, although it would have authority to alert the Technical Committees to any issues pertaining to or arising out of the world food and agriculture situation and related matters, especially any such issues of an urgent nature (cf. Rule XXIV, paragraph 1 of the General Rules of the Organization, as amended by Resolution 6/2009 of the FAO Conference). The mandate and general procedures regarding the operation of each Technical Committee are set out in the GRO.

18. The various Technical Committees are in the process of considering the review of their own Rules of Procedure to reflect the new reporting lines, based on the recommendations made by the Committee on Constitutional and Legal Matters and the Council in the following terms:

- at each session, the Committees shall approve a report embodying its views and recommendations and decisions, including when requested, a statement of minority views;
- the Committees shall make every effort to ensure that recommendations are precise and can be implemented;
- policy and regulatory matters shall be referred to the Conference, whereas programme and budget matters shall be referred to the Council;
- any recommendations adopted by the Committees which affect the programme or finances of the Organization shall be reported to the Council with the comments of the appropriate committees of the Council.

19. As prescribed by the IPA, the Conference at its Session in 2009, adopted a definition of “*Governing Bodies*”, which is now set out in Volume II, Part B of the Basic Texts, as follows:

*“The Governing Bodies of FAO are the bodies which directly, or indirectly through their parent bodies, contribute within their respective mandates, to:*

- (a) the definition of the overall policies and regulatory frameworks of the Organization;*
- (b) the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget, and*
- (c) exercise, or contribute to the oversight of the administration of the Organization”*

*The Governing Bodies comprise the Conference, the Council, the Programme Committee, the Finance Committee, the Committee on Constitutional and Legal Matters, the Technical Committees referred to in paragraph 6 (b) of the Constitution and the Regional Conferences (i.e. for Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, and the Near East)”*.

20. The Conference also adopted Resolution 10/2009 entitled “*Reform of the Programming, Budgeting and Results-Based Monitoring System*”. Through this resolution, the Conference introduced revised programme and budget documentation consisting of (a) a Strategic Framework prepared for a period of ten to fifteen years; (b) a Medium Term Plan covering a period of four years and reviewed each biennium and (c) a Programme of Work and Budget covering biennial periods. Through this resolution, the Conference introduced a revised schedule of sessions of the Governing Bodies of the Organization for the implementation of the new system. The revised schedule of sessions takes account of the fact that the Conference holds its regular session in June of the year prior to the beginning of the biennium and proposes a new timing for the sessions of all Governing Bodies (including the Technical Committees) so as to allow them to fully participate in the process of preparation and adjustment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget and to monitor performance against relevant performance indicators. The resolution contains, as an annex, a table with the new schedule of sessions of the Governing Bodies.

21. The above framework aims at entrusting the Technical Committees with an enhanced status as a result of the amendments to the FAO Basic Texts and other decisions taken by the FAO Conference in 2009. Reporting lines have been clarified and strengthened; the inclusion within the definition of “*Governing Bodies*” have also added to the new status, as the FAO Governing Bodies are the policy making organs, which define or contribute to the definition and approval of the policies and programmes of FAO within their respective areas of competence.

#### IV. PROCEDURAL CONDITIONS FOR A CHANGE IN THE STATUS OF THE COMMISSION INTO A COMMITTEE UNDER ARTICLE V, PARAGRAPH 6 (b) OF THE FAO CONSTITUTION

22. A recommendation as to whether the Commission should be transformed into a Committee under Article V, paragraph 6 (b) of the FAO Constitution is a matter for the Commission which would formulate its recommendation in light of all pertinent considerations.
23. In general terms, a change of the Commission into a Technical Committee under Article V, paragraph 6 (b) of the FAO Constitution as a committee of open membership, would (a) raise the profile of the Commission and provide for greater visibility for the Commission and its work as one of the Governing Bodies of FAO;<sup>7</sup> (b) provide for direct and separate reporting lines on programme and budget matters (to the Council), and on policy and regulatory matters (to the Conference)<sup>8</sup>; and (c) stimulate changes in working practices that may be necessary pursuant to the specific actions that the IPA has foreseen for Technical Committees<sup>9</sup>. The new Committee would hold its sessions in accordance with the schedule of sessions contained in Resolution 10/2009 entitled “*Reform of the Programming, Budgeting and Results-Based Monitoring System*”.
24. These changes could be considered of an important nature and would allow the Committee, as a Governing Body of FAO, to have a greater and direct involvement in the preparation of the programme and budget documents of the Organization. In general, other procedural features of the *modus operandi* of the Commission as a Committee under Article V, paragraph 6(b) of the Constitution would remain substantially the same as those of the current Commission.
25. However, the establishment of a new Technical Committee should also be seen in the general context of the FAO reform. It is noteworthy, that the IPA, while envisaging detailed actions to strengthen FAO governance with respect to ensuring the independence, transparency and efficiency of the Governing Bodies, including the Technical Committee, does not foresee the establishment of any additional Technical Committee. The creation of an additional Technical Committee could therefore be considered as incompatible with the Members’ general guidance regarding the strengthening of FAO governance. There is also the risk that proliferation of Technical Committees could lead to more fragmented and less strategic consideration of FAO’s technical areas of work.
26. From a procedural standpoint, the change in the status of the Commission would involve an amendment to Article V, paragraph 6 (b) of the FAO Constitution. Amendments to the Constitution adhere to strict procedural conditions. In particular, proposals for amendment of the Constitution, which may be made either by the Council or by a Member Nation (cf. Article XX, paragraph 3 of the Constitution) must be circulated to Member Nations and Associate Members at least 120 days before the opening of the session at which they are to be approved (cf. Article XX, paragraph 4 of the Constitution). Such amendments must be approved by the Conference at a two-thirds majority of the votes cast, provided that such majority is more than one half of the Member Nations of the Organization (cf. Article XX, paragraph 1 of the Constitution)<sup>10</sup>. On the basis of long-standing practice of the Organization, proposed amendments to the Constitution have generally been the result of a process of negotiation or discussion involving the membership. As a general rule, such proposed amendments were, as a minimum, reviewed by the CCLM and the Council. In the event that it should be decided to proceed with an amendment to Article V,

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<sup>7</sup> Cf. paragraph 19.

<sup>8</sup> Cf. paragraph 15.

<sup>9</sup> Cf. paragraph 11.

<sup>10</sup> An amendment of the Constitution could only be considered by the Conference in 2013. The Conference Resolution approving the amendments would also refer to the abolition of the Commission as a body under Article VI of the Constitution, and its “reconstitution” under Article V, paragraph 6(b) of the Constitution.

paragraph 5 (b) of the Constitution, the proposals should be reviewed by other Governing Bodies of FAO, including some of the other Technical Committees.

27. From a procedural standpoint, the proposal would also involve an important addition to the GRO of a Rule setting forth the mandate and *modus operandi* of the Technical Committee, as is the case with the other Committees. Under Rule XLIX, paragraph 2 of the GRO, amendments to the GRO are approved by a two-thirds majority of the votes cast provided that the total number of affirmative and negative votes should be more than one half of the Member Nations of the Organization. Presumably, this process would need to involve the membership.

28. Should the Commission be of the view that its status should be modified so that it would become a Committee under Article V, paragraph 6 (b) of the FAO Constitution a recommendation to that effect should be made to the Director-General in accordance with the provisions on “reporting” set out in Rule XI of the Rules of Procedure<sup>11</sup>. The Director-General would refer the report of the Commission to the Conference through the Council. Given the implications of the proposal, and in view of its particular nature as one involving major changes in the status of the Commission, the proposal could also be referred to a number of concerned Governing Bodies of the Organization.

29. From a policy and programme standpoint, the proposal may need to be seen in the light of two considerations. First, the re-establishment of the Commission as a Technical Committee under Article V, paragraph 6 (b) of the FAO Constitution may need to be seen in relation to mandates of other Technical Committees in order to avoid potential overlap between them. Second, but this matter would need to be further reviewed, the proposal may need to be considered in relation to the options currently set forth in the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget.

## V. OTHER WAYS AND MEANS TO RAISE THE PROFILE OF THE COMMISSION

30. In emphasizing the need for raising the profile of the Commission, the Commission, at its last session, also requested the Secretariat to explore mechanisms and tools (other than a change in the status of the Commission) to raise the Commission’s profile. The term “profile” may be understood in very different ways: it may refer, for example, to the profile of the Commission within the institutional framework of FAO, to the Commission’s technical/ scientific reputation or to the policy-setting role which the Commission has, as a negotiating forum with a respectable track record. Given that a change of the Commission’s status, in the context of which the Commission, at its last session, considered its profile, would primarily affect the Commission’s role within the institutional framework of FAO, the considerations below put special emphasis on mechanisms and practices that either affect or could be changed to strengthen the Commission’s role within the institutional framework of FAO.

31. The *institutional profile* of the Commission obviously depends to varying degrees on different factors. These factors include: the membership size; the Commission’s reporting lines; the effectiveness of its working practices, including inter-sessional working practices; the effectiveness of the Commission’s work programming; the Commission’s strategic partnerships; the Commission’s role in the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget of FAO; and the Commission’s role in the oversight of

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<sup>11</sup> This Rule reads as follows: ‘*The Commission shall report to the Director-General who shall bring to the attention of the Conference through the Council any recommendations adopted by the Commission, which have policy implications, or which affect the programme or finances of the Organization. As soon as they become available, copies of each report of the Commission will be circulated to Members and Associate Members of the Organization and also to international organizations and agencies that are concerned with genetic resources*’.

the administration of FAO in the areas of interest to it. The Commission would score well in respect of most of these factors, but not all of them:

- With its 172 Member Countries, the Commission is still the FAO body with the second-highest number of Member Countries after the FAO Conference. However, not all Members of FAO have joined the Commission and the Commission may wish to consider initiatives aiming to increase its membership.
- The Commission also adopted rather effective working practices and did so even before the adoption of the IPA: the Commission adopted a rolling 10-year Multi-Year Programme of Work in 2007; since 2007 the Commission's Bureau plays an active role between sessions; in 2009, the Commission confirmed the Bureau's active intersessional role with the adoption of its Rules of Procedure<sup>12</sup>; the Commission's Statutes also allow for the convening of extra-ordinary sessions (six of such sessions have been held between 1994 and 2001) and for the establishment of subsidiary bodies, including intergovernmental technical working groups. The Commission, at this session, may wish to consider further intersessional work and activities.
- While the Commission, according to its Statutes, reports to the Director-General, who brings to the attention of the Conference, through the Council, any recommendations adopted by the Commission that have policy implications, or that affect the programme or finances of the Organization, the Conference, at its 36<sup>th</sup> Session in 2009, requested the Commission "to report on its work to future sessions of the Conference".<sup>13</sup>
- The Commission plays a lead role in the cooperation between FAO and the Conference of the Parties of the Convention on Biological Diversity (CBD), and the Conference of the Parties to the CBD has regularly recognized the importance of cooperation with FAO and its Commission.<sup>14</sup> The Commission also collaborates with many other organizations, such as the Consultative Group on International Agricultural Research (CGIAR), and instruments, such as the International Treaty. At this session, the Commission may wish to provide further guidance as to future cooperation with the CBD and other international organizations and instruments.
- However, the Commission is not as influential as other bodies of FAO, in the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget of FAO. Currently, the Commission also does not exercise, or contribute to the oversight of the administration of FAO in the areas of interest to the Commission.

32. While the Commission's institutional profile is far from being weak, there is room for improvement, in particular with regard to its role in the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget and in the oversight of relevant areas of the administration of FAO. However, if the Commission wishes to play a more prominent role in these areas, it might wish to consider a change of its status to a Technical Committee given that technical committees, by their definition, contribute within their respective mandates directly to these areas.<sup>15</sup> Alternatively, the Commission could suggest the establishment of a direct reporting line to the highest FAO Governing Bodies, namely the Council and the Conference, through the Programme and Finance Committees. However, it should be noted that while such reporting line is firmly established for Technical Committees, other bodies might not enjoy the same institutional privilege on a permanent basis.

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<sup>12</sup> CGRFA-13/11/Inf.3

<sup>13</sup> C 2009/REP, paragraph 172.

<sup>14</sup> CGRFA-13/11/21

<sup>15</sup> Cf. Paragraph 18.

33. The *technical profile* of the Commission depends to a large extent on the technical and scientific accuracy of analyses and assessments prepared by FAO under the guidance of the Commission. It also depends on the communication and dissemination of material produced for and by the Commission. Material tailored to a wider audience than delegates could help raising the Commission profile. The Commission's technical profile might also depend on the timeliness and inclusiveness of assessments which FAO prepares at the request of the Commission. The Commission's technical profile would also benefit from the attendance of delegates highly qualified to contribute actively to a multidisciplinary consideration of the subjects on the agenda of the Commission.<sup>16</sup> In all these areas, there is room for improvement. Capacity-building, financial support, including for the participation of delegates from developing countries in sessions of the Commission, its Bureau and its subsidiary bodies, as well as any activities aiming to establish, improve and maintain the information base, including electronic information systems, for the different sectors of genetic resources for food and agriculture, at national, regional and global levels, may considerably help to raise the technical profile of the Commission. Improvements in these areas would raise the Commission's technical profile, irrespective of whether it maintains its current status, or is re-established as a Technical Committee.

34. The Commission's *policy profile* is obviously determined by the initiation and successful conclusion of negotiating processes in the areas of interest to the Commission and the adoption and effective implementation of instruments which the Commission has agreed on. The Commission has played an important role in the development and monitoring of international policies for genetic resources for food and agriculture, as evidenced by the International Treaty, and more recently, the *Global Plan of Action for Animal Genetic Resources* and the FAO Conference Resolution 18/2009,<sup>17</sup> which the Commission negotiated and agreed at its last session. New policy-setting processes, such as the process of updating of the Global Plan of Action related to plant genetic resources, as well as efforts to implement and assist in the implementation of the Commission's policy instruments could help to raise the Commission's policy profile - irrespective of the Commission's status.

## VI. GUIDANCE SOUGHT

35. The Commission may wish to recommend

A. with regard to its status,

(a) subject to further consideration by other relevant Technical Committees, that its status be modified so that it becomes a Committee under Article V, paragraph 6 (b) of the FAO Constitution and invite the Director-General to bring the recommendation to the attention of relevant Governing Bodies of FAO and to report on the outcome of their deliberations to the Commission's next regular session;

or

(b) that it maintains its current status as a Commission established under Article VI.1 of the FAO Constitution, continues to report to the Director-General and, as appropriate, through the Programme and Finance Committees, to Council and Conference, and consults with relevant Technical Committees to ensure complementarity between the Commission's mandate and the mandate of the Technical Committees;

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<sup>16</sup> See Rule V.2 of the Commission's Rules of Procedure (CGRFA-13/11/Inf.3)

<sup>17</sup> Resolution 18/2009, *Policies and arrangements for Access and Benefit-sharing for Genetic Resources for Food and Agriculture*, available on the Commission's website, at: <http://www.fao.org/nr/cgrfa/cgrfa-about/cgrfa-history/cgrfa-res1809/en/>

or

(c) that it maintains its current status as a Commission established under Article VI.1 of the FAO Constitution, continues to report to the Director-General and reports through the Technical Committees of FAO to the Programme and Finance Committees.

**B.** Mechanisms and tools, as appropriate, to raise the Commission's profile.