



منظمة الأغذية  
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联合国  
粮食及  
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Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
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pour  
l'alimentation  
et  
l'agriculture

Продовольственная и  
сельскохозяйственная  
организация  
Объединенных  
Наций

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

### Eighty-eighth Session

Rome, 23-25 September 2009

## 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

### INTRODUCTION

1. The Immediate Plan of Action (IPA) for FAO Renewal (2009-11), approved by the Conference at its Thirty-fifth (Special) Session, contains the following statement under the section entitled “*Statutory Bodies, Conventions, etc.*”:

“28. *The statutory bodies and conventions will be strengthened, enjoying more financial and administrative authority within the framework of FAO and a greater degree of self-funding by their Members. They will have a direct line of access to the appropriate FAO Technical Committees. They will be accountable to the FAO Council and Conference for the use of that proportion of their funding which is provided for from FAO assessed contributions.*”

2. The relevant Action Matrix reads as follows:

“*Conferences of parties to treaties, conventions and agreements such as Codex and the IPPC (incorporated under FAO statutes) may bring issues to the attention of the Council and Conference through the relevant Technical Committee (Basic Texts change) (IPA action 2.68)*

“*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 (IPA action 2.69).*”

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3. The implementation of these actions is related to another action, IPA action 3.17, which reads:

*“Review treaties, conventions, agreements and similar bodies and instruments established under articles VI, XIV and XV of the FAO Constitution with a view to their developing a greater degree of self-funding from their members (see also 2.69). Present report to Council and reports to the parties to the agreements”.*

4. In parallel with the activities called for by the IPA, an independent evaluation of FAO’s Work on International Instruments has been carried out recently<sup>1</sup>. Without specifying the nature of the initiatives to be implemented by FAO, the Evaluation recommended that the Organization should, in respect of future agreements to be negotiated, make efforts to clarify the extent and nature of the relations between FAO and the instrument under negotiation or the body being established. In respect of existing agreements already in force, the Evaluation recommended that FAO should take suitable positive initiatives to settle “*issues of autonomy*”<sup>2</sup>, but did not provide guidance on the substance of the initiatives to be implemented.

5. During its deliberations, the Programme Committee, at its Hundred and first session in May 2009, “*underlined the importance of the review being undertaken as foreseen in the IPA (action 2.69) aimed at addressing issues regarding autonomy of statutory bodies, with particular reference to Article XIV bodies, placed under the framework of FAO and their relationship with FAO. The Committee noted that a paper would be submitted later in 2009*”.

#### **PRELIMINARY OBSERVATIONS REGARDING THE SCOPE OF THE REVIEW**

6. It is necessary to address issues of a preliminary and methodological nature to clarify the scope of this review.

##### **A. Statutory bodies covered by this review**

7. The IPA makes a generic reference to statutory bodies and singles out “*statutory bodies, conventions, treaties, Codex, etc...*” In addition, the IPA actions refer to bodies established under Articles VI, XIV and XV of the Constitution. It would therefore be useful to seek to clarify the scope of this review in light of these references.

8. For many years, reference has been made in FAO’s practice to a loose and somewhat broadly defined concept of “*statutory bodies*”. This concept of statutory body used to be very inclusive, consisting of all “*bodies*” of the Organization. The Governing Bodies, a definition of which is to be inserted in the Basic Texts<sup>3</sup>, used to be considered a sub-set of the “*statutory bodies*”.

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<sup>1</sup> Evaluation of FAO’s Work on International Instruments, PC 101/5(a).

<sup>2</sup> PC 101/5a, recommendation 4.2. Management accepted this recommendation insofar as the recommendation concerned Management itself and made the following observations. First, “*as regards the need for a precise delineation of the linkage of the instrument to FAO, this is certainly important and desirable. But the nature of the linkage is, to a large extent, a matter for negotiation which may not conform to a pre-established uniform pattern*”. As to the second recommendation, concerning existing agreements, “*Management agrees with the need to solve ‘autonomy issues’ as an ongoing and ‘affirmative process’ and is committed to solving these issues insofar as this is possible within the framework of the Organization. A review of the matter has been requested under the IPA. Management regrets that the evaluation did not provide further guidance on this important and complex matter*”. (PC 101/5(a) Sup. 1. Evaluation of FAO’s work on International Instruments – Management response, page 11.)

<sup>3</sup> The proposed definition that should be adopted at the forthcoming session of the Conference is as follows: “*The Governing Bodies 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*

9. The generic expression “*statutory bodies*” continues to be used and includes a large number of committees and commissions established under Article VI or Article XIV of the Constitution, dealing for the most part with technical and scientific matters. In future, it could be considered that statutory bodies will be all bodies of the Organization which are not Governing Bodies. As a general rule, bodies established under Article VI are part of the Organization. They do not have “*a life of their own*”. **With the notable exception of the joint FAO/WHO Codex Alimentarius Commission, which tends to be in a category of its own and to which some references will be made in this review, bodies established under Article VI will remain outside this review.** These bodies do not have a life of their own and, from a legal and institutional point of view, are fully integrated within FAO (the Appendix to this document contains a table highlighting the distinction between bodies established under Article VI and Article XIV).

10. **This preliminary review therefore concerns primarily bodies created by convention or agreement under Article XIV<sup>4</sup>.** Still some of its observations could be of some relevance to

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*establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget and 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 (i.e. Committee on Commodity Problems, Committee on Fisheries, Committee on Forestry, Committee on Agriculture, Committee on World Food Security) and the Regional Conferences (i.e. for Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, and the Near East)”.*

<sup>4</sup> Article XIV of the FAO Constitution reads as follows:

1. *The Conference may, by a two-thirds majority of the votes cast and in conformity with rules adopted by the Conference, approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture.*

2. *The Council, under rules to be adopted by the Conference, may, by a vote concurred in by at least two thirds of the membership of the Council, approve and submit to Member Nations:*

*(a) agreements concerning questions relating to food and agriculture which are of particular interest to Member Nations of geographical areas specified in such agreements and are designed to apply only to such areas;*

*(b) supplementary conventions or agreements designed to implement any convention or agreement which has come into force under paragraphs 1 or 2 (a).*

3. *Conventions, agreements and supplementary conventions and agreements shall:*

*(a) be submitted to the Conference or Council through the Director-General on behalf of a technical meeting or conference comprising Member Nations, which has assisted in drafting the convention or agreement and has suggested that it be submitted to Member Nations concerned for acceptance;*

*(b) contain provisions concerning the Member Nations of the Organization and such non-member States as are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency, and regional economic integration organizations, including Member Organizations, to which their Member States have transferred competence over matters within the purview of the conventions, agreements, supplementary conventions and agreements, including the power to enter into treaties in respect thereto, which may become parties thereto and the number of acceptances by Member Nations necessary to bring such convention, agreement, supplementary convention or agreement into force, and thus ensure that it will constitute a real contribution to the achievement of its objectives. In the case of conventions, agreements, supplementary conventions and agreements establishing commissions or committees, participation by non-member States of the Organization that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency or by regional economic integration organizations other than Member Organizations, shall in addition be subject to prior approval by at least two-thirds of the membership of such commissions or committees. Where any convention, agreement, supplementary convention or agreement provides that a Member Organization or a regional economic integration organization that is not a Member Organization may become a party thereto, the voting rights to be exercised by such organizations and the other terms of participation shall be defined therein. Any such convention, agreement, supplementary convention or agreement shall, where the Member States of the organization do not participate in that convention, agreement, supplementary convention or agreement, and where other parties exercise one vote only, provide that the organization shall exercise only one vote in any body established by such convention, agreement, supplementary convention or agreement, but shall enjoy equal*

bodies under Article VI, especially the Codex Alimentarius Commission, although this review does not focus on these bodies.

## **B. General characteristics of bodies under Article XIV of the Constitution**

11. Article XIV makes provision for the negotiation within meetings convened by, or on behalf of the Director-General and the subsequent adoption by the Conference or the Council of conventions and agreements. 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, these bodies may adopt regulatory measures directly binding upon the Members and may have autonomous budgets. One body established under Article XIV is financed entirely by 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, the secretaries are elected by Members. In some cases, the bodies in question approve their budget and the programme of work and the 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.

12. The degree of autonomy enjoyed by them depends upon the above factors with particular reference to the 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.

13. On the other hand, the conventions and agreements are placed under the framework of FAO and retain very close links with the Organization, even in situations where the bodies which they establish enjoy considerable autonomy. There are several manifestations of this situation. 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, or amendments thereto, 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 by the Organization 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

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*rights of participation with Member Nations parties to such convention, agreement, supplementary convention or agreement;*

*(c) not entail any financial obligations for Member Nations not parties to it other than their contributions to the Organization provided for in Article XVIII, paragraph 2 of this Constitution.*

*4. Any convention, agreement, supplementary convention or agreement approved by the Conference or Council for submission to Member Nations shall come into force for each contracting party as the convention, agreement, supplementary convention or agreement may prescribe.*

*5. As regards an Associate Member, conventions, agreements, supplementary conventions and agreements shall be submitted to the authority having responsibility for the international relations of the Associate Member.*

*6. The Conference shall make rules laying down the procedure to be followed to secure proper consultation with governments and adequate technical preparations prior to consideration by the Conference or the Council of proposed conventions, agreements, supplementary conventions and agreements”.*

and, therefore, they have to act though FAO or draw on its legal capacity as confirmed by a review of the matter by the Council<sup>5</sup>. The secretary and the staff of these bodies are officials of FAO appointed by the Director-General and subject to the Staff 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 the 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.

14. 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 FAO<sup>6</sup>. This position which gave, on occasion, rise to some discussion is confirmed by past practice of the Organization<sup>7</sup>. In particular, the position was restated recently in the context of submissions to the CCLM and Council in connection with 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 but rather to identify how some of the bodies operating currently under this framework or which could be established under this framework could be entrusted with additional administrative and financial autonomy. However, these developments are essential in order to understand the status of the bodies and the legal context in which they operate.

15. **This review will concentrate 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, as a matter of principle, outside the scope of this review except in the particular situation of the Codex Alimentarius Commission.

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<sup>5</sup> CL 127/REP, paragraph 90.

<sup>6</sup> 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.

<sup>7</sup> The Secretariat prepared two long documents some two years ago 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).

16. Finally, 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 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.

**C. Need for an administrative determination of statutory bodies which would be eligible for the facilities foreseen in this review**

17. When defining the scope of this review it is also important to keep in mind that there will be a need to make a determination on the basis of the provisions of the constituent instruments of each body, its operating features and the views of the Members, as to whether the relevant body should be able to exercise greater financial and administrative authority. 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 and not, as an example, a request originating within the secretariat.

18. 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*”.

**19. The determination of bodies that could be entrusted with greater administrative and financial authority would be a matter for managerial judgment, taking into account primarily 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 facilities proposed in this document<sup>8</sup>.**

**D. 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 – Part R of the Basic Texts**

20. Issues regarding the relationship between statutory bodies, especially bodies under Article XIV and the Organization, and the need to reconcile functional autonomy and the fact of being placed under the framework of FAO are not new and go back to the early fifties when the Governing Bodies expressed concern about the issue. This resulted in the adoption by the Conference in 1957 of “*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*”. The Principles were amended on a few limited occasions, notably in 1991 with a view to entrusting some bodies, especially bodies with autonomous budgets, with greater administrative autonomy<sup>9</sup>.

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<sup>8</sup> There is an obvious risk that statutory bodies and secretaries of these bodies might wish to benefit from a more favourable regime without justification.

<sup>9</sup> The Conference, at its Twenty-sixth Session in 1991, noted that a number of developments had taken place, both in the Organization and more generally on the world scene, that called for a review of the provisions of Part R of the Basic Texts with the aim of introducing greater flexibility. Among these were the establishment of commissions in accordance with Article XIV, with independent budgets financed directly by the parties to the agreement outside the framework of the Regular Programme of the Organization. Moreover, other commissions now under consideration and, in particular, regional fishery commissions in light of the changes in the Law of the Sea, should be given a broader

21. As a result of the current review there might be a need to amend some of these Principles. **Some amendments are mentioned in this document, whereas other amendments might be the result of the process of review of this document. It is proposed that these amendments only be undertaken once the process of review of this document will have been completed and all actions to be implemented in that connection will have been identified.**

**E. Preliminary nature of this review**

22. **It should be emphasized that this document is of a preliminary nature.** It was drafted as a submission to the CCLM because, when reviewing issues of this nature in the past, there has always been a strong legal and institutional dimension and the matter has been considered as an element of the “*governance reform*” and has involved a large number of amendments to the Basic Texts.

23. However, the scope of the review extends well beyond the mandate of the CCLM and to a substantial extent concerns matters within the mandate of the Finance Committee. In addition some Technical Committees might be affected by this review, as well as some statutory bodies, in particular, bodies under Article XIV.

24. **The CCLM is invited to advise on which bodies, in addition to the Finance Committee, should consider this review given the wide range of issues of an administrative nature. Perhaps consideration could be given to referring the review to a number of concerned statutory bodies.**

**F. Differentiated nature of the recommendations of this review**

25. 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 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. However, it should be stressed that the issues covered in this review are not of the same nature. Some of them may be changed through decisions entirely within the authority of the administration. In other cases, the implementation of proposals could raise issues of principle for FAO and its membership which would have to address them. In a few cases consultation with other agencies of the United Nations might be required. Some of the proposals might require suitable changes to the constituent instruments of the statutory bodies.

**G. Relationship between the current review and the process of introduction of International Public Sector Accounting Standards in FAO**

26. Similar to other organizations within the United Nations system, the Governing Bodies of FAO have mandated the implementation of International Public Sector Accounting Standards (IPSAS) at FAO. Progress reports on the IPSAS Project are being regularly provided to the Finance Committee.

27. IPSAS is a new set of international accounting rules and disclosure requirements for the preparation and presentation of financial statements aimed at ensuring more transparent and complete financial reporting, in line with international best practice. One of the features of IPSAS

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range of responsibility and increased authority. The Conference, at that time, agreed that it would be opportune and legally desirable to modify some of the Principles and hence some of the Principles were then modified.

is consolidation of financial statements. Consolidation is a process by which the financial statements of an organization are combined with those of its “*controlled entities*” or “*joint ventures*”, as if they were a single economic entity. The issue of what should be included when an organization prepares its consolidated financial accounts is critical because choosing to include or exclude certain entities can have an impact on the financial statements and the picture they provide of an organization’s finances. The financial presentation of certain entities is a visible indicator of an organization’s accountability in respect of the entities and obligations towards those entities.

28. This review concentrates on operational and legal issues. Despite this, many of the observations contained in this review will have a direct impact on indicators of control on the part of FAO and could provide evidence to determine whether a body under Article XIV of the Constitution is controlled by FAO and is to be included or excluded from FAO consolidated financial statements. It is therefore important that the CCLM should be aware that any decisions eventually taken from an operational or legal perspective could have a financial reporting impact. However, while linked to the decisions taken in the context of, or as a result of this review, the process of introduction of IPSAS will be carried out separately and will be reported to the relevant Governing Bodies with particular reference to the Finance Committee.

#### **POSSIBLE AREAS WHERE STATUTORY BODIES COULD EXERCISE GREATER ADMINISTRATIVE AND FINANCIAL AUTHORITY**

29. This section lists areas which have been identified as subject 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**

30. In general the Principles provide in clear terms that the “external relations” of bodies under Article XIV are to be carried out in accordance with FAO’s procedures and guidelines. Thus, paragraphs 28 and 29 provide as follows:

###### *“Relations with international organizations*

28. *The relations between commissions or committees established under Article VI and other international organizations shall be governed by Article XIII of the Constitution and Rule XXIV.4 (c) of the General Rules of the Organization, as well as by the rules adopted by the Conference on the matter of relationship with international organizations. These provisions shall likewise govern the relations between commissions and committees established by conventions and committees under Article XIV of the Constitution and other international organizations.*

###### *Relations with governments*

29. *Commissions and committees established under Article VI and Article XIV of the Constitution should, in principle, not be empowered to enter into arrangements with governments which are not members of the commission or committee. When this, however, is found desirable, a specific provision shall be incorporated in the statutes, convention or agreement, as the case may be,*



*indicating the scope of such authority and specifying that all such arrangements shall be made by the Director-General of the Organization”*

31. Some secretaries, on the occasion of discussions at the statutory bodies, have at times drawn attention to the desirability that they should be entrusted with greater authority in handling relations with third parties, both in relation to attendance at external meetings and the negotiation and conclusion of arrangements.

(a) **Attendance at external meetings**

32. As regards attendance at external meetings, under a long standing policy followed by the Organization, all invitations should receive a single official reply from FAO<sup>10</sup>. Focal units have been established which are responsible for monitoring attendance at meetings organized by organizations or bodies falling under their respective areas of responsibility. A corporate database on external meetings has been developed and is centrally maintained. All invitations received should, under the responsibility of the lead or focal units, be immediately logged into the corporate database. After consultation with other concerned units at headquarters or decentralized offices, the proposals for FAO's attendance and the draft reply to the invitation are submitted to the Office of the Director-General for clearance or signature as appropriate. The Organization adheres strictly to a policy aimed at reducing staff travel and costs to the minimum possible and to ensure the representation of FAO at external meetings, wherever feasible, by officers based in decentralized and liaison offices. Proposals for attendance at external meetings which involve the travel of a staff member using Regular Programme funds are also submitted for approval by the Office of the Director-General.

33. Some related procedures are in force, although their implementation may not always be strictly followed. Thus, staff members designated to represent the Organization at a meeting where they have to take a stand on matters involving policy or financial decisions should have, before their departure from the office, a written brief on the position of FAO on the subjects to be discussed. Depending on the importance of the problems, it is for the Assistant Director-General concerned to decide whether this brief needs to be cleared at division director level, or at his/her own level, or whether special clearance should be sought from the Office of the Director-General. Documents or statements to be presented or delivered by staff members representing FAO at meetings of other organizations should be previously cleared with the Director of the relevant Division who, if need be, will refer them to the Assistant Director-General or to the Deputy Director-General. Finally, the official representing FAO at an external meeting should produce a report on the meeting for on-forwarding to the relevant focal point unit. This unit is required to send to the Office of the Director-General, with its comments, a copy of the reports having policy or financial implications.

34. The status of these instructions in respect of the secretaries of statutory bodies with autonomous budgets and enjoying substantial autonomy is uncertain. There were situations where these instructions were applied in respect of secretaries of these bodies, who raised objections. The Legal Office has been consulted in connection with these instructions.

35. The concerns underlying the instructions are important and should continue to apply throughout FAO to ensure that participation in external meetings is carried out in a fully coordinated and unified manner.

36. **However, it would be desirable to exclude from the scope of these instructions some statutory bodies, including bodies established under Article XIV and enjoying considerable**

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<sup>10</sup> Director-General's Bulletin N° 96/12 of 11 April 1996 as revised by Director-General's Bulletin N° 96/12 Corr. 1

**functional autonomy**<sup>11</sup>. In some cases, such statutory bodies are required, under their constituent instruments, to coordinate and liaise closely (at times conduct joint activities) with other organizations and executive secretaries are therefore expected to travel. In a number of situations, an allocation for travel is specifically provided for in the budgets of the bodies in question and the executive secretaries are required to provide information on the relations with outside bodies. The executive secretaries should also have the possibility to identify the officials under their authority who should be able to participate in external meetings.

37. **This might need to be reflected in the revised Principles currently set out in Part R of the Basic Texts.**

(b) **Conclusion of arrangements with other organizations and institutions**

38. The Organization has also adopted “*Policy guidelines on preparation, clearance and signature of agreements, memoranda of understanding and exchanges of letters*” currently set out in Director-General’s Bulletin N° 99/9 of 5 May 1999. These guidelines apply to all arrangements concluded with third parties except for contractual arrangements, trust fund agreements and donor agreements, including arrangements to be entered into in the context of technical cooperation projects executed under general donor agreements. The Director-General Bulletin used to provide for a two-step procedure for the conclusion of arrangements involving approval in principle by the Director-General, prior to the beginning of the discussions and the negotiation of agreements and also subsequent approval by the Director-General of these arrangements. A determination of the official who will sign the arrangements on behalf of FAO is made on that occasion.

39. Recently, as part of the streamlining of decision-making processes and delegation of authority exercised by the Director-General, Bulletin N° 99/9 of 5 May 1999 has been amended, in particular by eliminating the first step of the procedure involving approval in principle of the proposed arrangements. As regards the second procedural step, arrangements are to be reviewed by the Legal Office, which is currently preparing a note on the proposed arrangement for final approval by the Director-General.

40. It is proposed that, in the context of the review of these arrangements, appropriate rules be defined regarding autonomous bodies established under Article XIV. In this connection, the CCLM should note that at its Hundred and Twenty-seventh Session the Council endorsed the general lines of a procedure for the conclusion of agreements “*other than informal working arrangements*” by bodies under Article XIV, allowing these bodies to exercise a substantial measure of autonomy. Agreements should be reported to the Organization prior to conclusion with a view to ascertaining any possible policy, programme or financial implications for the Organization, in keeping with the spirit of Part R of the Basic Texts. The secretaries of the bodies could be authorized to sign the agreements which should make appropriate reference to the status of the bodies under Article XIV. 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 FAO.

41. At that time the Council requested the Organization to monitor the implementation of this procedure with a view to assessing whether amendments to Part R of the Basic Texts were required<sup>12</sup>.

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<sup>11</sup> A relaxation of these instructions insofar as they concern the Codex Alimentarius Commission would be justified.

<sup>12</sup> CL 127/REP, paragraphs 91 and 92.

42. The procedure recommended by the Council was generally implemented in respect of autonomous bodies in a flexible manner<sup>13</sup> but was not formalized in any document. Nor was a determination made as to whether there was a need to revise Part R of the Basic Texts.

**43. It is recommended that the procedure recommended by the Council be reflected in the Director-General's revised Bulletin N° 99/9. Subsequently, it is proposed to determine the extent to which it should be reflected in Part R of the Basic Texts.**

#### **B. Budgetary and financial issues**

44. For bodies established under Article XIV which have autonomous budgets, discussion has centred on budgetary and financial matters such as the calculation of standard costs and project servicing costs.

45. There have been extensive discussions on financial matters and, in particular, on the level of financial information made available to Members. As a general rule, the budgets of bodies under Article XIV take the form of a multi-donor trust fund into which mandatory contributions, established in accordance with a scale of assessments, are paid. However, financial reporting through standard procedures whereby financial reports are sent periodically to all donors has not been undertaken by the Finance Division, but through the secretaries of the bodies. This is usually done on the occasion of the sessions of the commissions when the new programme of work and budget is also adopted.

46. The membership of the bodies under Article XIV has often called for an improvement of the quality or the accessibility of the presentation of financial reporting. This would not seem to require any particular measures and could simply be achieved through increased collaboration between the secretaries of the bodies and the Finance Division.

47. In the same vein, references were occasionally made to late payments of assessed contributions which could have retained a link with calls for funds being made, in accordance with standard procedures, to administrations other than those involved with the technical bodies under Article XIV. This seems to be a matter to be settled through improved communication between the Finance Division and the secretaries of the concerned bodies.

**48. The CCLM is invited provide its views on how these issues could be addressed.**

#### **C. Human resources matters**

49. Issues related to human resources policies and rules have been extensively discussed. Bodies established under Article XIV as well as executive secretaries have, at times, questioned or enquired about human resources policies and rules. Members of commissions have queried some of the Organization's human resources policies and procedures in the context of extensive debates. This complex matter involves many dimensions and, in this review, it will be possible only to examine general aspects. The situation is also likely to evolve in future and in this review reference will be made to a few relevant parameters.

##### **(a) Staff in the Professional and higher categories**

50. Paragraph 32 (iii) of the Principles as revised by the Conference in 1991 provides that *"the Secretary of each body shall be appointed by the Director-General and shall be*

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<sup>13</sup> Also in consideration of the fact that it was possible to accommodate, on a case by case basis, some requests regarding agreements with third parties.

*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”.*

51. 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 commission, a pre-screening of candidates carried out jointly by representatives of FAO and of members of the body, and eventual election by the members of the commission. The Council at its Hundred and Twenty-seventh Session in November 2004<sup>14</sup> reviewed these procedures and endorsed them. 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 was not objectionable.

52. As regards the selection and appointment of professional staff, the procedures of the field staff selection panel have generally been followed, and 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 under the selection procedures for Professional staff serving on field projects.

**(b) Staff in the General Service category**

53. The situation is different as regards General Service staff. In general, it has been a long standing 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 staff members as they deem fit. The applicability of redeployment procedures to bodies under Article XIV has also been questioned.

54. Despite these requests, standard policies and procedures have been applied. It would be difficult, including for personnel management reasons, to take a different approach with positions

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<sup>14</sup> 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).

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 commissions under Article XIV.

55. In the event that similar requests were to be pursued, a possible course of action might involve considering, 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.

56. The CCLM is invited to advise whether this matter should be examined further. It may need to be reviewed by the Finance Committee.

**(c) Contractual arrangements for personnel**

57. In the course of the preparation of this document, secretaries of bodies under Article XIV referred to the desirability of reconsidering approvals regarding recruitment of consultants and subscribers to Personal Services Agreements.

58. These observations are too specific, may be related to particular situations, and it is proposed that the Human Resources Division should maintain links with secretaries with a view to identifying any issues that would need to be addressed.

**(d) Other contractual arrangements**

59. Similarly, observations have been made in connection with 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. Some of the standard conditions of the Letters of Agreement 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. It is recommended that any concerns expressed be addressed through internal consultation.

**D. Channels of communication with Governments**

60. 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 detailed 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)<sup>15</sup>.

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<sup>15</sup> The Assistant Director-General, Administration and Finance also signs a number of formal letters, notably requests for payment of assessed contributions.

61. 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 Government departments. Secretaries of statutory bodies are occasionally placed in embarrassing situations in light of the above rules and this issue has been referred several times to the Legal Office. They may need to liaise with Cabinet Ministers in some situations. Often such liaison, including the dispatch of letters, is done through the Chairperson of the statutory body but this may not be a satisfactory situation.

**62. It is suggested that 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.**

#### **E. Relations with donors**

63. The Technical Cooperation Department has overall responsibility for the operational activities of the Organization. This Department, mainly but not exclusively through the Field Programme Development Service (TCAP), supports the development of FAO's field and normative activities through resource mobilization by delivering (i) donor liaison and programming services, (ii) information services on extra-budgetary 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.

64. Some statutory bodies established under Article XIV enjoy considerable autonomy. One of these bodies has an autonomous budget financed directly by mandatory assessed contributions by members. A number of these bodies, in addition to receiving funds from FAO, have autonomous budgets. Other bodies, in addition to being financed by the Organization, may undertake cooperative projects and accept contributions to this effect. In this context, the question of the extent to which autonomous statutory bodies may interact with donors has been raised. The matter could be examined in the light of two considerations.

- The first consideration is of a general nature and concerns the degree of autonomy that the secretaries of these bodies could enjoy when interacting with donors and how their relationship with donors is articulated with the functions of the Technical Cooperation Department. References have been made to a need for Article XIV bodies to enjoy greater autonomy in their relations with donors, in light of specific concerns and priorities of the bodies, while being able to rely on the range of support services provided by the Technical Cooperation Department. This consideration seems to be of some importance insofar as 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.
- The second consideration is a specific one and concerns the possibility for the secretaries of these bodies to conclude and sign donor agreements. This is a matter primarily for the Assistant Director-General, Technical Cooperation Department who is entrusted by statutory texts with authority to conclude donor agreements, and which might not pose major difficulties. In a recent situation where the secretary of a commission under Article XIV signed a donor agreement, the Legal Office was confronted with questions relating to his status when signing this donor agreement. In particular, it was asked whether in signing a donor agreement 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.

65. The CCLM is invited to review and advise on this matter.

66. **The CCLM is also invited to express its views on whether the matter should be referred to other bodies of the Organization, including the statutory bodies themselves. The membership of these bodies might have some views on how they see possibilities for the statutory bodies to raise additional funding in the context of their own relations with donors.**

#### **F. Travel authorizations**

67. For many years in FAO there was a practice of issuing blanket travel authorizations to officials in charge of regional activities or regional projects. These officials were authorized to undertake travel within a given region and a given budgetary allocation without having to request specific travel authorizations each time they traveled.

68. It would seem that this system was introduced primarily as a means of obviating work at a time when travel authorizations were issued manually. As a result of the introduction of the Atlas system and the possibility of processing travel authorizations almost in real-time, the practice of issuing blanket travel authorizations to officials in charge of regional projects has been discontinued. Occasional queries have been made regarding the possibility for these officials to benefit from blanket travel authorizations.

69. The reinstatement of this practice in respect of secretaries of bodies under Article XIV could be considered.

#### **G. Organization of meetings**

70. In connection with the organization of meetings, two issues have been brought to the attention of the secretariat: the conclusion of memoranda of responsibilities, and the translation of documents for meetings, although the latter arises in a context broader than that of the organization of meetings.

##### **(a) Negotiation and conclusion of memoranda of responsibilities**

71. A first issue is related to the conclusion of “*memoranda of responsibilities*” prior to the convening of meetings of bodies established under Article XIV. Limited requests have been made for increased flexibility for secretaries who would wish to be entrusted with authority to conclude and sign memoranda of responsibilities regarding specific meetings and at times would wish to accept arrangements more flexible than those usually implemented. Negotiations of memoranda of responsibilities sometimes turn into a lengthy exercise leading to the misperception that there is no need for such an instrument.

72. Under Rule XXXVII, 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”.*

73. The Director-General is required to conclude, prior to each meeting of the Organization held outside headquarters or the main regional and sub-regional offices, an arrangement defining responsibilities of the host government and FAO in respect of the meeting. 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 staff.

74. A specific detailed analysis of each of these requirements, inherently linked to the status of FAO as an intergovernmental organization of the United Nations system, would go well beyond the scope of this review. For the purposes of this review and as regards the first requirement, it relates to the immunity from every form of jurisdiction which FAO enjoys. This immunity concerns officials of the Organization 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 FAO<sup>16</sup>. 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 participants<sup>17</sup>. The third requirement – acceptance by the Host Government of a hold-harmless clause – is also intimately linked with the nature of the inter-governmental 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 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.

75. These requirements are essentially linked to the fundamental nature of FAO, under the framework of which bodies under Article XIV operate. In addition, the granting of privileges and immunities to the organizations of the UN system is seen by most host Governments as an act of sovereignty on important matters. For this reason it is important that Memoranda of Responsibilities should continue to be concluded by the Director-General, in the same manner as in other organizations of the UN 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 UN

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<sup>16</sup> While this matter is approached only from the perspective of the facilities to be accorded in connection with meetings, the possibility for a commission under Article XIV of the Constitution to benefit from immunity of jurisdiction under the Constitution of FAO, the Convention on the Privileges and Immunities of the Specialized Agencies and the network of agreements which FAO has concluded, is a major advantage for the bodies in question. This regime allows any concerned body to operate worldwide, without hindrances, under a scheme which was negotiated some sixty years ago and which an organization outside the UN system is not in a position to obtain.

<sup>17</sup> This is a fundamental principle applied strictly throughout the United Nations. Instances where delegates were denied access and were unable to attend meetings led to major criticism.



system as a whole<sup>18</sup>. Such a regime would be incompatible with the conclusion of host agreements, dealing with the immunity of the Organization, by secretaries of bodies. This could also be objected to by Governments.

**76. In light of the above considerations, the CCLM is invited to confirm that memoranda of responsibilities prior to the convening of meetings should continue to be concluded by the Director-General.**

**(b) Translation of documents**

77. 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 do organize a substantial number of meetings and commission a large number of translations through the FAO Meeting Programming and Documentation Service. Not infrequently, the membership of the bodies under Article XIV has expressed disagreement at 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.

78. The matter was addressed in the context of the Root and Branch Review (RBR) by Ernest & Young (YE)<sup>19</sup>. The administration has expressed its views on the matter in its Management Response<sup>20</sup>. The Chair's Aide-Mémoire of the Meeting of Working Group III of the Conference Committee for the Follow-up to the Independent External Evaluation of FAO of 20 May 2009 stated in this regard: "*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*".

79. At the 126<sup>th</sup> Session of the Finance Committee (11-15 May 2009) "*the need to ensure adequate quality and timeliness of the translations*" was stressed. "*The Committee noted EY's recognition that FAO had an efficient translation service but also noted that the costs of internal translation were higher than the rates applied by freelance translators. The Secretariat noted that FAO was one of only two UN agencies which fully backcharged translation services, and rates were substantially lower than in any other such agency. It was also noted that the present proportion of translation work outsourced was higher than in any other comparable UN agency.*

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<sup>18</sup> 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.

<sup>19</sup> RBR Final Report, pages 128-142.

<sup>20</sup> 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% if 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 costs of translation in FAO represented about 1% of the total net appropriation, which was less than other comparable organizations. Whilst the thrust of the RBR recommendation was agreed by the Secretariat, there were differences on the degree to which outsourcing of translation could be pursued”.*

80. The matter was further discussed by the Council at its 136<sup>th</sup> Session (15-19 June 2009), which then “*emphasized the need for further improvement of the language services and requested that the funding model be changed from backcharging to being incorporated into the regular budget in order to strengthen the assets of the Meeting, Programming and Documentation Service, as well as the quantity and quality of its services. The Council urged the management to initiate an internal study in full consultation with relevant Members”.*

81. The matter is not primarily an issue of a legal nature. However, as the issue has been raised in “autonomous” statutory bodies, the CCLM may wish to recommend that it be addressed in the context of the above mentioned internal study on the role and functions of the FAO language services, which would also cover the need to ensure quality consistency of translations and take into account the incremental workload for the Secretariats of the bodies concerned to manage direct outsourcing, as well as any other pertinent considerations specific to bodies under Article XIV.

#### **H. Participation of observers and other stakeholders in meetings of statutory bodies**

82. The recent Evaluation on FAO’s Work on International Instruments underlined that current policies of FAO on participation of non-governmental organizations and other stakeholders in meetings of a number of bodies are inadequate from the perspective of some instruments and made a recommendation on participation of observers and other stakeholders in meetings of instruments and statutory bodies defined in a broad manner<sup>21</sup>.

83. This specific recommendation (4.10) reads as follows:

*“(a) **Future Strategy:** The FAO Conference or others responsible for maintenance of the FAO Basic Texts should ensure that rules regarding participation of observers in international meetings carefully balance the interests of public participation by all interested groups and the overall objectives of the meeting or process involved.*

*“(b) **Immediate Action:** Each instrument or body should reconsider its individual rules on participation of industry or other non-governmental stakeholders, to maximize its inclusion of views of all relevant sectors and interest groups by credible organizations, and to find an appropriate balance in participation. What is “appropriate” will vary from instrument to instrument.*

*“(c) **Immediate Action:** Each instrument should take a more proactive role in selecting observers, encouraging each of them to marshal and present the views of other organizations within his stakeholder group. Specific options to be considered in order to increase the level of participation by NGOs and private sector groups from developing countries and to enable such groups to represent the interests of other similarly focused groups are:*

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<sup>21</sup> Evaluation of FAO’s Work on International Instruments, PC 101/5(a) Sup. 1.

- preparatory meetings for NGOs and private sector groups to share positions and concerns prior to essential meetings;
- support and assistance to observer groups, to encourage dissemination of the results of FAO meetings and to inform them of the impact of their group's inputs, issues and proposals had on the meeting".

84. In its response, FAO indicated that insofar as Management was concerned, it agreed with the recommendation. More specifically:

*“Management notes that this Recommendation and its sub-parts could be implemented as part of the broader process of review of rules regarding participation of international non-governmental organizations and civil society organizations in the work of FAO, which will be launched in the near future. However, the matter might be far more complex than it appears at first glance insofar as Members seem attached to the intergovernmental nature of the fora operating within or under the framework of FAO. Management would also like to point out that considerable experience has been gained in some specific areas which might help in the process of review of current rules. For instance, in the case of Codex, as a result of the 2002 Codex evaluation, rules and procedures regarding INGO participation have been changed”.*

85. It may be useful to provide additional clarifications on the above. The procedures in force in FAO regarding participation of International Non-Governmental Organizations (INGOs) in the work of the Governing Bodies and statutory bodies were adopted in 1957 as part of a policy concerning relations with INGOs currently set out in Parts O, P and Q of the Basic Texts. Under this policy INGOs with formal status with FAO could participate as observers in meetings of FAO. There were three forms of formal status (consultative status, specialized consultative status, liaison status) which continue to exist. Over the years these criteria were considered to be rather restrictive in light of the mandate of some statutory bodies and, in 1967, at its Forty-ninth Session, the Council approved a possibility for the Director-General, subject to some conditions, to invite INGOs without status to meetings of the Organization. Again over the years, these conditions appeared to be too restrictive and, starting with the World Food Summit of 1996, *ad hoc* solutions for inviting NGOs have been implemented occasionally (notably in connection with meetings of the Committee on World Food Security and the Intergovernmental Working Group for the Formulation of Guidelines on the Progressive Realization of the Right to Food). Still a broader comprehensive policy in respect of NGOs and civil society organizations has not yet been formulated. It is possible that such a future policy might consist of substantive guidelines regarding criteria which NGOs would have to fulfill, presumably a detailed new definition of the extent of rights of participation, and of an intergovernmental review mechanism<sup>22</sup>.

86. The definition of this new policy – a matter primarily for the membership of the Organization and over which the secretariat has little or no influence – could still take some time, including time for review and decision by the Governing Bodies.

**87. 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.**

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<sup>22</sup> Reflecting the practice of the Economic and Social Council of the United Nations.

## I. The issue of the reporting relationship with FAO

88. Some IPA actions deal with the reporting relationship with the Conference, the Council and the Technical Committee which require further review and would seem to call for an analysis broader than that made within the Conference Committee. The IPA contains a generic statement whereby “*statutory bodies and conventions*” will have a direct line of access to the appropriate FAO Technical Committees. They will be accountable to the FAO Council and Conference for the use of that proportion of their funding which is provided for from FAO assessed contributions”. IPA action 2.68 states that “*Conferences of parties to treaties, conventions and agreements such as Codex and the IPPC (incorporated under FAO statutes) may bring issues to the attention of the Council and Conference through the relevant Technical Committee (Basic Texts Change)*”. IPA action 2.69, which forms the major part of this review, refers to entrusting statutory bodies with greater financial and administrative autonomy, “*while remaining within the framework of FAO and maintaining a reporting relationship with it*”.

89. For many years, statutory bodies established under Article XIV or VI of the Constitution used to report in a systematic manner to the Conference or Council. The Conference and Council, which used to have sessions far longer than they have at present, used to examine the activities of such statutory bodies in detail as they emerged from reports of sessions. This was also a reflection of paragraphs 30 and 31 of the Principles requiring the constituent instruments of statutory bodies to include provisions on reporting to the Governing Bodies either directly or through the Director-General<sup>23</sup>. Over the years, the situation has changed due to various factors and systematic reporting may have been abandoned in some cases.

- First, statutory bodies either under Article XIV or Article VI have increased in number, in parallel to a process whereby the Conference and Council tended to concentrate their work on broader policy, programme and budget matters. In some situations, the specific review of the activities of statutory bodies was done through the relevant Technical Committees. This used to be the case, for example, of the Committee on Fisheries which for many years used to be systematically apprised of the activities of all fisheries commissions, and reviewed in some detail the activities of the fisheries commissions established under the framework of FAO, under Article VI or XIV.
- Second, over the years there has been a move towards recognition of greater functional autonomy on the part of some statutory bodies even in situations where the statutes of the

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<sup>23</sup> “30. Provision shall be made in the relevant texts to the effect that commissions, committees and other bodies established under Article VI or Article XIV of the Constitution, as well as their subsidiary bodies, shall transmit their reports and recommendations to the Director-General, those of the subsidiary bodies to be transmitted through the parent body. In the case of bodies referred to in paragraph 33 (c), provision may also be made in the relevant texts to the effect that recommendations or decisions not having financial, policy or programme implications for the Organization, may be transmitted directly to the members of the body concerned for their consideration and action. The Director-General shall: take these reports into account when preparing the Programme of Work and Budget of the Organization; bring to the attention of the Conference through the Council any recommendations adopted by these bodies which have policy implications or which affect the programme or finances of the Organization; include in his annual statement to the Conference an analysis of the work done by these bodies.

31. It is understood that, pending such formal action, the Director-General will circulate these reports to all members of the bodies concerned and to all Member Nations and Associate Members of the Organization for their information. The policy, programme and financial implications for the Organization of these reports shall be acted upon by the appropriate governing body of the Organization”.

bodies in question made provision for reporting to the Conference or Council. This has been in some cases the result of a deliberate policy both on the part of the Organization and the bodies in question. Thus statutory bodies have been reluctant to activate a systematic line of reporting to the Conference or Council even when this reporting line was defined in their statutes. For its part, the Organization and its Members have often respected a desire on the part of the statutory bodies to exercise greater autonomy and have not reminded the statutory bodies of their obligation to report their activities, in order to preserve their autonomy. In parallel, efforts to increase the efficiency of the Conference and Council resulted in a reduction in the duration of their sessions incompatible with any form of systematic review of the activities of the statutory bodies. In addition, there might be situations where activation of a reporting requirement would not be accepted by Members of the statutory bodies.

90. In examining the implementation of the IPA actions it would be useful to keep in mind a number of considerations, in addition to the practice referred to above. First, almost all statutory bodies under Article VI or XIV receive funding from the Organization. Therefore, it would be appropriate, as indicated in the IPA, that the bodies “*will be accountable to the FAO Council and Conference for the use of that proportion of their funding which is provided for from FAO assessed contributions*”. In addition, and consistent with paragraphs 30 and 31 of the Principles, whenever specific recommendations of statutory bodies have “*policy, programme and financial implications*”, these should be reported to the Director-General and through him to the concerned Governing Body. Second, a range of issues of a policy nature – including the desirability of respecting the functional autonomy of the concerned statutory bodies – should be taken into account. In some cases, as reflected in IPA action 2.68, there may be a need to modify the constituent instruments of the bodies, which may be a complex exercise.

91. Therefore it is proposed that a process of reflection on the implementation of the above IPA actions should continue. The issue of the reporting relationship could be referred again to the main relevant statutory bodies and these could be invited to indicate which action they would expect from the Governing Bodies. The scope and purpose of the reporting could be determined both following submissions of the views of the statutory bodies and the Governing Bodies, and a differentiated approach to the matter could be progressively defined. This could eventually result in amendments to the Principles set out in Part R of the Basic Texts.

#### **SUGGESTED ACTION BY THE COMMITTEE**

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

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

- a) offer its views on the scope of this review which focuses on bodies established under Article XIV of the Constitution, but which could at times also concern bodies under Article VI of the Constitution (paragraph 15 refers);
- 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 and the overall status of the bodies in question (paragraph 19 refers);
- c) note the future need to reconsider the Principles of Part R of the Basic Texts once the process of consideration of this review is completed (paragraph 21 refers);
- d) note the preliminary nature of this review and endorse the proposal that other governing bodies and statutory bodies could also review this document (paragraphs 22 to 24 refer);
- e) note the differentiated nature of the recommendations (paragraph 25 refers);

- f) note that decisions eventually taken in the context of, or as a result of this review could have an impact upon the ultimate accounting treatment and financial reporting required under IPSAS (paragraphs 26 to 28);
- g) endorse the proposal that special rules regarding attendance at external meetings be formulated in respect of bodies under Article XIV of the Constitution and, where appropriate, bodies under Article VI of the Constitution, and note that the Principles of Part R of the Basic Texts might need to be amended (paragraphs 32 to 37 refer);
- h) endorse the proposal that procedures for the conclusion of arrangements by bodies under Article XIV of the Constitution be prepared (paragraphs 38 and 43 refer) and a determination be made of whether this should be reflected in the Principles of Part R of the Basic Texts;
- i) advise on the course of action to be taken in respect of a few budgetary and financial issues (paragraphs 44 to 47 refer);
- j) note existing provisions regarding selection and appointment of secretaries of bodies under Article XIV of the Constitution as already examined by the CCLM and Council, and recommend that a few issues regarding staff in the General Service category, contractual arrangements for personnel and other contractual arrangements be further reviewed by the units concerned (paragraphs 53 to 59 refer);
- k) endorse the proposal that special criteria and rules regarding official correspondence by secretaries of bodies under Article XIV be prepared (paragraphs 60 to 62 refer);
- l) indicate whether the issue of the relations with donors should be referred to other bodies of the Organization (paragraphs 63 to 66 refer);
- m) advise on the issue of the authority of the secretaries of bodies under Article XIV to travel (paragraphs 67 to 69 refer);
- n) 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 (paragraphs 71 to 76 refer);
- o) indicate whether the issue of the translation of documents for meetings of bodies under Article XIV of the Constitution should be pursued as mentioned in the document (paragraphs 77 to 81 refer);
- p) recommend that pending the formulation and adoption of new policies on participation in meetings of representatives of non-governmental organizations and other stakeholders, secretaries of bodies under Article XIV of the Constitution could seek to implement, in close consultation with the chairpersons of the bodies in question, *ad hoc* informal measures for inviting such representatives (paragraphs 82 to 87 refer);
- q) advise on how the issue of the reporting relationship between the statutory bodies and FAO could be addressed in light of the developments presented in this review (paragraphs 88 to 91 refer).

## APPENDIX

### MAIN CHARACTERISTICS OF BODIES ESTABLISHED UNDER ARTICLES VI AND XIV OF THE FAO CONSTITUTION

| Article VI Bodies   | Article XIV Bodies   |
|---|--|
| <p style="text-align: center;"><b>Authority for Establishment</b></p> <p>1. Established by the Director-General of FAO on the authority of the council and/or Conference.</p> <p style="text-align: center;"><b>Membership</b></p> <p>1. Open to Member Countries of the Organization.<br/>2. Some members could also be selected by the Director-General of FAO.</p> <p style="text-align: center;"><b>Source of Financing</b></p> <p>1. Entirely financed by FAO except the participation of members in meetings.<br/>2. Partly covered by extra budgetary support, if available.</p> <p style="text-align: center;"><b>Secretariat</b></p> <p>1. Secretary appointed by the Director-General.</p> <p style="text-align: center;"><b>Powers</b></p> <p>1. Have wide advisory role, with powers to adopt recommendations on management issues, but no regulatory powers.<br/>2. Not potentially binding recommendations.<br/>3. Can create subsidiary bodies, subject to the availability of funds in the relevant approved budget.<br/>4. Can establish rules of procedure for subsidiary bodies but the latter must be in conformity with the Rules of Procedure of the parent body and the General Rules of the Organization, and approved by the Director-General on the authority of FAO Council.</p> | <p style="text-align: center;"><b>Authority for Establishment</b></p> <p>1. Established through international agreement under the auspices of FAO.</p> <p style="text-align: center;"><b>Membership</b></p> <p>1. Non-members of the Organization can be members but must contribute towards the expenses incurred by the Organization with respect to the activities of the body.</p> <p style="text-align: center;"><b>Source of Financing</b></p> <p>1. Members have contractual obligations and three financing possibilities exist:<br/>- as for Article VI body;<br/>- body may undertake cooperative projects financed by members;<br/>- have autonomous budget.</p> <p style="text-align: center;"><b>Secretariat</b></p> <p>1. Secretary appointed by Director-General but in some cases after consultation with or with the approval or concurrence of members of the body concerned.</p> <p style="text-align: center;"><b>Powers</b></p> <p>1. Have wide advisory role and in addition have regulatory powers relating to fisheries management.<br/>2. Capable of formulating recommendations of a potentially binding nature.<br/>3. Can create subsidiary bodies, subject to the availability of funds in the relevant approved budget.<br/>4. Can establish rules of procedure for subsidiary bodies, but the latter must be in conformity with the Rules of Procedure of the parent body and the General Rules of the Organization, but on the strength of the amended Part R of the FAO Basic Texts any amendments to these Rules do not need to be approved by the Director-General.</p> |