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منظمة  
الغذية والزراعة  
للأمم المتحدة

# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Second Session

Rome, 14 - 16 March 2016

### A World Fisheries University - Proposal of the Republic of Korea (for information)

## I. INTRODUCTION

1. This Note provides information on the proposal by the Ministry of Oceans and Fisheries of the Republic of Korea ("Korea") for the establishment of a FAO World Fisheries University ("the University") under Article XV of the Constitution.
2. The proposal is to establish an international post-graduate education and research institution hosted by the Republic of Korea and mandated to deliver, *inter alia*, post-graduate degree and diploma programmes in the fields of fisheries and aquaculture. It is intended, in particular, to strengthen the capacities of developing countries in these fields.

## II. PROCESSES

3. The Republic of Korea has indicated its desire that the proposal be considered by the Conference at its next Session in June 2017. It is, therefore, anticipated that the proposal will be presented to the Committee on Constitutional and Legal Matters ("the Committee") for substantive consideration at its Session in October 2016, following consideration of the proposal by the Programme and Finance Committees and the Committee on Fisheries.
4. In preparation for the submission of the proposal to the Governing Bodies, a draft Article XV agreement, a draft host country agreement and a draft charter for the University have been developed, and will be the subject of negotiations between FAO and the Government of Korea. The progress of these negotiations may have some impact on the substantive consideration of the proposal by the Committee and, accordingly, will be reported to the Committee. These instruments would be considered by the Committee as part of its deliberations on this item in accordance with Rule

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XXXIV(7)(c), by which it considers “*the formulation, adoption, entry into force and interpretation of agreements to which the Organization is a party under Articles XIII and XV of the Constitution*”.

### III. BACKGROUND TO THE PROPOSAL

5. This Note is presented to highlight certain issues in advance of the Committee’s substantive consideration of this matter due to the very limited number of precedents for this proposal in FAO, as well as the complex issues that will need to be addressed by the Committee, as well as the other Governing Bodies.

6. The Republic of Korea had initially proposed the establishment of the University as an organ of FAO, drawing upon the example of the World Maritime University of the International Maritime Organization. Such a *sui generis* institution would be placed entirely within the FAO framework and the Organization would, thus, exercise full control over its activities, while also bearing full responsibility for it, including from a legal and financial perspective.

7. However, after consideration of various options that might exist to establish the University under the FAO legal framework,<sup>1</sup> the Republic of Korea submitted a formal proposal to establish the University as an institution falling under Article XV(1) of the Constitution, which 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*”.<sup>2</sup>

### IV. PRELIMINARY ELEMENTS FOR CONSIDERATION

#### A. FAO Policy and past experience relating to Article XV bodies

8. Three Article XV institutions have been established in the history of FAO: The Latin American Forest Research and Training Institute established by an agreement with Venezuela approved by the 8<sup>th</sup> Session of the Conference in 1955;<sup>3</sup> the Near East Forest Research Center and the Near East Forest Rangers’ School, established by agreements with Syria approved by the Conference at its 9<sup>th</sup> Session in 1957.<sup>4</sup> None of these institutions continue to operate under FAO auspices.<sup>5</sup>

9. These precedents – despite involving regional, rather than global, bodies – highlight elements that the Members may wish to consider when they assess whether a permanent or long-term institution should be established.

10. These institutions were all, at an initial stage, established on an interim basis. In the case of the Latin American Institute, the Conference approved the Article XV agreement on the basis that the Institute would operate under its terms for a provisional period of two years, with a view to revision of

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<sup>1</sup> These options included a step-by-step approach, commencing with a partnership arrangement. In line with the current practice in this area, the Organization and the Government could establish a partnership within the framework of a project and resourced through a trust fund. Within this framework, academic programmes would be developed and delivered (in collaboration with existing academic institutions), based on voluntary contributions and entailing short-term obligations for all the parties concerned. In light of the experience gained under this framework over a number of years, an assessment could be made by the Members as to whether steps should be taken to establish a more permanent institution under the auspices of FAO.

<sup>2</sup> Korea also draws upon the example of the University of Peace, which is a “United Nations mandated university” established under an international agreement and which operates in accordance with a Charter endorsed by the United Nations General Assembly.

<sup>3</sup> Resolution 37/55.

<sup>4</sup> Resolution 49/57.

<sup>5</sup> The Latin American Forest Research and Training Institute continues to exist as a national institute. The Near East Forest Research Center and the Near East Forest Rangers’ School now operate under the auspices of the League of Arab States.

the provisions of the agreement “in the light of experience”.<sup>6</sup> In the case of the Near East Forest institutions, in accordance with a direction from the Conference when approving the agreements, the institutions operated on an interim basis pursuant to a protocol concluded at the time of the signature of the agreements.<sup>7</sup>

11. The fact that these institutions were established on an interim basis may have been due to the fact that, while FAO has over the years supported various outside institutions in delivering training courses and issuing university degrees, the Members approached the matter of the actual operation of a fully-fledged academic institution on a permanent basis with extreme caution.<sup>8</sup>

12. Thus, FAO has generally refrained from accepting a level of engagement of this nature. Rather, it has accepted to provide support to teaching institutions, universities, and to ad hoc training activities. Since the cessation of operation of the above-mentioned Article XV bodies, it has not entered into permanent commitments to support delivery of courses with any given institution.

13. As regards the Organization’s policies, it is considered that the FAO Policy regarding Assistance in Establishing Regional Research and Training Institutes (“the FAO Policy”) reflects principles and procedures that are directly relevant and applicable to Korea’s proposal.<sup>9</sup> In preparing the instruments referred to in paragraph 4 above, and the formal submission of the proposal to the Committee, careful attention is being paid to the FAO Policy.

14. In that regard, it is observed that in its Report accompanying the *Guiding Principles with Respect to Agreements under Article XV of the Constitution for the Establishment of International Institutions dealing with questions relating to Food and Agriculture* (“the Guiding Principles”, which form part of the FAO Policy), the Council advised *inter alia* that a fundamental condition for FAO support, and participation in a research or training institution is that “*that the purpose of the proposed institute is in accordance with the aims and objectives of the Organization and that the technical standards of research to be applied will make a continuing contribution to the development of knowledge in the field in which the institute is to operate*”.<sup>10</sup> It is submitted that it is implicit that the assessment to be made by the Membership is not only whether the proposal as presented appears to meet these standards but also whether it is assured that these standards will be met in the long-term.

15. Bearing this guidance in mind, the Membership will need to make a determination as to whether it would be in the long-term interest of the Organization to support or participate in the proposed World Fisheries University. While this matter is not essentially legal in nature, the Membership’s conclusions on these policy considerations will condition all of the future work on this matter by the Committee.

## **B. The status of FAO**

16. It is submitted that the Committee’s consideration of this proposal will also need to be undertaken in light of the Organization’s status as a Specialized Agency of the United Nations.

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<sup>6</sup> Resolution No. 37/55, adopted by the Conference at its Eighth Session.

<sup>7</sup> Paragraph 518, Report of the 9th Session of the Conference.

<sup>8</sup> The Conference particularly expressed its concerns regarding financial sustainability, having regard to the fact that these institutions were to be financed from assessed contributions. At its 9<sup>th</sup> Session, the Conference “*stressed that if the Latin-American Forest Research and Training Institute, Mérida (Venezuela) is to fulfil its proper role, and in order to assure its stability in future, it must have the full and tangible support of Member Governments in the region in the form of systematic and sustained financial contributions*”. Similarly, at the same session, when approving the agreements for the Near East institutions, the Conference “*stress[ed], however, that regional undertakings of this kind could only be viable if all the Member Governments concerned were ready to defray a proportionate share of the expenses involved*”.

<sup>9</sup> Section P of *The Basic Texts* (2015 edition).

<sup>10</sup> Paragraph 4(c)(i) of the FAO Policy.

Furthermore, the Council's guidance when approving the Strategy for Partnerships with the Private Sector and the Strategy for Partnerships with Civil Society Organizations, could be borne in mind. In approving those Strategies, the Council "*emphasized the need to maintain FAO's neutrality, impartiality and transparency, as well as the interests of Member Nations*".<sup>11</sup>

17. More specifically, when it undertakes its substantive consideration of the proposal, the Committee may wish to be guided by the Organization's role as a provider of authoritative, impartial technical and policy guidance to its Members, and as a convenor and facilitator in the negotiation and implementation of voluntary and binding international instruments in areas related to its mandate.

18. In this context, the nature of the relationship between the University and FAO is a significant factor. The FAO Policy clarifies that any Article XV agreement must stipulate that "*the institute is to be recognized as an international foundation and is to have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted it by the agreement. It should also contain a clause stipulating that FAO does not assume any civil, financial, or other responsibility other than those provided for in the agreement*".<sup>12</sup>

19. However, even if legally autonomous, if the University was to be established with a formal, and very visible, relationship with the Organization as has been proposed, mechanisms for safeguarding the Organization's interests — and that of its Membership at large — and its status would need to be put in place.

20. The linkage of FAO with the University, taken together with the autonomy of the University, may place the Organization in a dilemma. While endowed with autonomy, the institution would be perceived by the "outside world" as "representing" FAO and FAO's policies. Thus, in its activities and engagements with third parties, the University could, effectively, commit the Organization and its Membership to certain actions and positions through the very visible fact of FAO's association with it.

21. The perceptions that would arise from the association of FAO with the University would imply that FAO should exercise a meaningful form of control over the activities of the University. The University would have to deliver technically sound and impartial academic and training programmes, consistent with the policies and norms adopted by the Organization. It would also be essential that the University have a visibly multilateral character. Moreover, to comply with the standards that were laid down by the Council, as reflected in paragraph 14 above, the University would need to operate under the policy guidance of the Organization, and its governance frameworks would have to ensure that it functions in a manner consistent with the policies, aims and activities of the Organization.

22. Thus, with a view to safeguarding its status, the Members would need to assess whether the Organization would wish to exercise that tight control, and whether – from the perspective of resources, expertise and experience – it is possible to do so. These considerations may explain the cautious approach taken, so far, by the Organization in respect of long-term commitments relating to academic courses. The Committee's work in relation to the proposal would be guided by the conclusions of the other Governing Bodies on these significant matters.

### **C. Legal capacity and privileges and immunities**

23. The securing of appropriate privileges and immunities for the University and persons associated with its activities would be an essential pre-requisite to safeguarding of the interests and status of the Organization.<sup>13</sup> As an intergovernmental treaty body formally associated with the

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<sup>11</sup> CL 146/REP, paragraphs 14(d) and 25(d).

<sup>12</sup> Paragraph 8 of the Guiding Principles.

<sup>13</sup> This is consistent with the underlying purpose of the privileges and immunities granted to international organizations. See, for example, the records of the 1945 negotiation of the United Nations Charter concerning the privileges and immunities of the future United Nations Organization. In particular, these records reflect that: "*The terms privileges and immunities indicate in a general way all that could be considered necessary to the*

Organization, the University would need to conclude an appropriate and comprehensive agreement with the host country. It is the opinion of the Legal Office that the content of such an agreement would be an important consideration for the Committee when determining whether to recommend approval of the proposal to establish an Article XV body, under the auspices of FAO, by the Conference.

24. In this regard, it is understood that the adoption of specific legislation by the National Assembly of the Republic of Korea may be required to meet the conditions of the Organization so far identified by reference to the FAO Policy, that is, the establishment of an international foundation having independent legal personality, and the approval of a host country agreement that is not limited to replicating the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947. Clarifications of the position of Korea on this matter received at the time of preparation of this paper are of a preliminary nature, and more detailed information would be called for. As noted above, the progress of negotiations on a host country agreement (as well as other legal instruments) will be reported to the Committee.

#### **D. Sustainable resources**

25. The Legal Office has, to date, addressed this proposal on the understanding that, if established, the University should not impose any new financial burden on the Organization, nor draw upon the contributions made by Members to the Regular Programme and Budget of the Organization unless explicitly approved by the Conference. In this context, for the University to be sustainable there is a need for an open-ended commitment to cover all expenditures related to the operation of the University, as well the cost of support to be provided by FAO (including in the context of oversight by the Organization). In this regard, it is noted that all of three Article XV institutions that were established ceased to operate under FAO auspices largely due to limited financial resources. All three institutions were to be funded through assessed contributions by States participating in their activities; in all cases, there were significant arrears in the payment of such contributions, severely limiting the capacity of these institutions to meet their objectives.

26. From an operational and reputational perspective, the Governing Bodies would need to consider the availability of long-term, sustainable resources to maintain the University when determining whether to recommend approval of the proposal.<sup>14</sup> Thus, the concrete commitment of the Members to make contributions, independent and in addition to their contributions to the Organization and, in particular, the commitment of the Republic of Korea to provide resources, would be an important factor.<sup>15</sup>

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*realization of the purposes of the Organization, the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. ....". The United Nations Conference on International Organization, Doc. 933, IV/2/42(2), 12 June 1945, Commission IV (Judicial Organization), Committee 2 (Legal Problems), Report of the Rapporteur of Committee IV/2 as approved by the Committee, at page 705.*

<sup>14</sup> It is recalled, in this context, that the Members have confirmed that the establishment of new Statutory Bodies that are not sustainable is to be avoided.

<sup>15</sup> The operation of permanent academic institutions imply a significant financial commitment. By way of example, the secretariat's research has found that the total budget of the IMO's World Maritime University ("WMU")— an organ of the IMO – in 2011 was approximately EUR 8 million, of which about one-third was provided by the Government of Sweden, the host country. The overall budget of the United Nations University ("UNU") in 2012 was USD 71.4 million. While both these institutions are authorised to meet their operating costs from a variety of sources, the host countries are committed to provide substantial and long-term financial support. The offer by the Government of Japan when seeking to host the UNU "involving full capital costs for the Centre and a contribution of \$US 100 million towards the endowment fund" was a significant consideration for the UN General Assembly. Funding mechanisms that rely on *ad hoc* contributions have not proved to be successful. The WMU, which has a trust fund to receive voluntary contributions, has experienced financial difficulties and the IMO has been called upon at times to provide funding from its technical assistance budget.

27. Furthermore, all the Governing Bodies considering this proposal would need to assess the scope of any resource commitment or implication for the Organization, including the implications arising from the provision of technical support and guidance which – unless specific provision is made – would, in effect, be funded through the Regular Programme and Budget.

28. It also noted that private sector and other non-public sources of funding for the University have been proposed by Korea. In light of the Organization's status, and consistent with the Strategies approved by the Members referred to in paragraph 16, careful consideration would be required as to whether such funding sources would be acceptable to the Organization and, if so, on what conditions.

## V. GENERAL OBSERVATIONS

29. The paragraphs above address, in broad terms, certain over-arching considerations that the Committee may wish to take into account when it addresses the proposal. It is observed, however, that the proposal gives rise to a wide range of complex matters, many of which will determine whether the University could operate in a manner consistent with the elements outlined above. For example, to name but a few, the University would require a legal framework addressing: the composition and procedures of the University's organs; the regulations and rules governing financial, budgetary and administrative matters; staffing and recruitment policies; policies governing the selection of the student body and other participants at training events; and policies governing relations with other public or private institutions.

30. In effect, by establishing a new intergovernmental institution, the University would require internal rules governing its day-to-day operations similar to those of the Organization, albeit on a smaller scale. In addition, the nature of its activities would call for additional internal rules relating to the delivery of research and teaching programmes, quality assurance and accreditation. When assessing the proposal, the Committee, and the other Governing Bodies, may wish to consider how to ensure that any internal rules developed are in alignment – or not inconsistent – with those of the Organization. Moreover, detailed guidance will need to be developed managing the relationship between the Organization and the University, addressing matters such as, for example, the use of the Organization's name and emblem.

## VI. CONCLUSION

31. The elements outlined above represent a few of the many matters that the Governing Bodies, including the Committee, will need to address when they give substantive consideration to the proposal. As reflected above, the proposal raises a number of complex policy issues which, in turn, would need to be addressed in binding legal instruments.

32. It is submitted that these preliminary policy aspects have to be addressed and considered comprehensively as an initial step and that the conclusions on such aspects will inform future actions relating to the proposal.

33. As regards the specific role of the Committee in this context, it will be called upon, *inter alia*:

- (a) to recommend whether, in light of the legal status and interests of the Organization, the University should be established;
- (b) if so, to assess whether it could be established under Article XV, or under any other legal mechanism; and,
- (c) to provide guidance on the content of any legal instrument(s) with a view to maintaining the legal status and interests of the Organization.

34. In its deliberations, the Committee may wish to be guided by the Organization's status, as addressed in Section IV(B) above, which would define the fundamental characteristics of a University to be formally established under its auspices, although legally independent from it. It is reiterated that, with the Organization's status in mind, the University would have to be multilateral in nature – as demonstrated by an appropriate governance structure, the entitlement of all Members of the Organization to participate in a constitutive instrument, as well as the rules governing its operations – and function under the Organization's policy guidance and in a manner consistent with the policies, aims and activities of the Organization.