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Selection and Appointment of Secretaries of Article XIV Bodies - Interim Report

Queries on the substantive content of this document may be addressed to:

Mr Khalid Mehboob
Independent Chairperson of the Council
E-mail: Khalid.Mehboob@fao.org

Introduction

1. The procedures for the selection and appointment of Secretaries of Article XIV Bodies was first brought to the attention of the FAO Governing Bodies in 2016, when it was noted that three specific Bodies had developed election procedures for the recruitment of their Secretaries. This was considered inconsistent with the Basic Texts and FAO's recruitment procedure and the provisions of the establishing treaties. The Legal Counsel noted that there was no basis for elections in the relevant establishing agreements, nor in the practice of the United Nations System.¹

2. The Council, at its 155th Session in December 2016, therefore mandated the Independent Chairperson of the Council (ICC) to consult with the concerned Article XIV Bodies with a view to developing a proposal on the long-term procedure. At this Session, the Council also agreed to apply an interim procedure for the appointment of the Secretaries of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) and the Indian Ocean Tuna Commission (IOTC) which were vacant at that time. The Council, at its 160th Session, considered the matter again and agreed that the interim procedure² be followed until a lasting solution is found.³

3. The ICC held a number of consultations during his term of office and provided regular updates to Members during Sessions of the Committee on Constitutional and Legal Matters (106th, 110th and 111th) and the Council (160th), as well as through informal monthly meetings with the Chairpersons and Vice-Chairpersons of the Regional Groups. Such consultations have been lengthy due to the need for the Chairpersons of Article XIV Bodies to consult with their Members on FAO's proposals. As the Bureaux or Governing Bodies of Article XIV Bodies meet only at specific times during the year, consultations have been drawn out.

4. At a recent informal meeting, Members noted that if a solution agreeable to both FAO Management and related Article XIV Bodies is not achieved, the matter should be returned to the FAO Council for its consideration, particularly in light of the extensive resources used by the Secretariat on this issue due to the work involved by multiple FAO units.

5. The decision of the 8th Session of the Governing Body of the Treaty on this matter was referred to the FAO Management for its consideration in early 2020. At the same time, the ICC proposed an outline of a possible compromise proposal which allowed for greater involvement of the Article XIV Bodies in the recruitment procedure than the interim procedure currently in place (see Annex 1). FAO Management's response in May 2020 noted that the proposal by the Governing Body of the Treaty was unacceptable *inter alia* as it involved an imbalanced Interview Panel. However, FAO Management accepted the compromise proposed procedure,⁴ which provided for the involvement of the relevant Article XIV Body in every step of the recruitment process:

- a) after the Vacancy Announcement is drafted by FAO, it would be shared with the Chairperson of the Article XIV Body, with an invitation to provide views thereon;
- b) a review of candidates is undertaken by a panel consisting of two representatives from FAO and two representatives from the Article XIV Body, to establish a shortlist of candidates for interview;
- c) an Interview Panel is established consisting of two representatives from FAO and two representatives from the Article XIV Body, as well as an external member;
- d) the Interview Panel conducts the interviews and prepares a Panel Report which identifies a minimum of three and a maximum of five qualified candidates;
- e) both the shortlist of candidates for interview as well as the three to five candidates submitted to the Director-General are compiled with due regard to gender and geographic balance in line with the policy of the Organization. If this balance is not achieved, the Panel Report must contain a justification for this;

¹ CL 155/2, paras. 5-9.

² Annex 1, CCLM 107/3.

³ CL 160/REP, para 13.

⁴ Annex 1, CL 165/12, Report of the 111th Session of the CCLM.

- f) the Panel Report is submitted for consideration by the Director General;
- g) the Director-General identifies one proposed candidate for appointment, whose name and CV will be referred to the Article XIV Body for its approval;
- h) should there be non-approval, the Director-General shall propose another candidate for approval by the Article XIV Body.

6. The involvement of the Article XIV Body is therefore foreseen in every step of the recruitment process, namely in the review of the Vacancy Announcement, shortlisting of candidates for interview, interviewing candidates, preparing the Panel Report, listing recommended candidates, and final approval of the candidate.

7. This compromise proposal was considered by the Committee on Constitutional and Legal Matters (CCLM) at its 111th Session, which confirmed that the procedure was consistent both with the Basic Texts of the Organization as well as the relevant treaties establishing the Article XIV Bodies.

8. This compromise proposal was communicated to the Chairpersons of the Article XIV Bodies concerned in June 2020. The ICC also held videoconference meetings with the respective Chairpersons and with the Legal Counsel, to provide background on the proposal in terms of the legal basis and provisions as outlined in the Basic Texts of the Organization, as well as the issue of the accountability of the Director-General with respect to the Article XIV Bodies and their Secretaries.

9. In particular, it was noted that the Director-General is accountable to FAO's Governing Bodies under the Financial Regulations to ensure the effective financial administration and economic use of resources and for the accuracy and reliability of financial operations and related Financial Statements. He is also accountable for the performance of the Secretaries who are staff members of FAO. The Article XIV Bodies do not have autonomous legal personality but operate within the framework of the Organization. The Director-General is responsible for reporting to the Governing Bodies on the work and functioning of the Article XIV Bodies and is responsible for approving the Financial Statements before their submission to the External Auditor. The Basic Texts specify that it is the Director-General of FAO who appoints the Secretaries of Article XIV Bodies and includes the provision where, for Bodies funded by an autonomous budget, the Director-General shall appoint the Secretary after consultation with, or with the approval or concurrence of, the Members of the Body concerned. It was further explained that issues have arisen in the past with regard to transparency, use of funds, conflict of interest, performance management and travel and the Director-General is accountable for all such matters.

The General Fisheries Commission for the Mediterranean (GFCM)

10. The Chairperson of the General Fisheries Commission for the Mediterranean (GFCM) responded to the proposed procedure on 15 October 2020 informing that following internal consultations, the prevailing opinion of the GFCM Membership was in favour of maintaining the procedure outlined in the Rules of Procedure of the GFCM. This procedure, however, involves the practice of elections and is in contravention of the Basic Texts of the Organization, as noted by the Legal Counsel during the 103rd Session of the CCLM in 2016. FAO Management is therefore unable to accept such a procedure.

Indian Ocean Tuna Commission (IOTC)

11. The IOTC, at its 24th Session in November 2020, discussed the compromise proposal. The IOTC was unable to agree to the compromise proposal and submitted a revised procedure which i) excludes the provision for an external member on the Interview Panel, ii) requested a summary of the reference checks be provided to the three representatives of the IOTC who will keep such information confidential, and iii) includes three representatives of the IOTC and three representatives of FAO to take part in selecting candidates for interview and on the Interview Panel itself. FAO Management was unable to accept this proposal in light of the following considerations.

12. The external member is a standard procedure in FAO recruitment practices and ensures the transparency of the process by offering an external, independent perspective by a technical expert. This external member would not be connected to FAO or the Article XIV Body concerned in order to ensure impartiality, and would provide the requisite technical expertise and independence in the Interview Panel. The inclusion of the external member responds to the call from Members to ensure integrity and professionalism in the working processes of the Organization, including selection procedures. In the hope of alleviating any concerns, the compromise proposal provided that the external member may be decided by the Interview Panel itself upon suggestion of two or three candidates submitted by the Office of Human Resources.

13. Regarding reference checks, the review of a candidate's references is a professional and administrative function undertaken by the Office of Human Resources supporting the recruitment process. It is a standard exercise for all procedures for the recruitment of senior level officials carried out as a matter of due diligence, and it does not have any bearing on the substantive assessment of candidates by the Interview Panel. Furthermore, reference checks take place under conditions of strict confidentiality as it concerns questions of personal performance and integrity. As such, it is appropriate to retain this process as an administrative function undertaken by the Office of Human Resources only. This is in line with the standards of FAO and of the UN System as a whole.

14. Finally, with regard to the proposed three-plus-three composition of representatives of FAO and the Article XIV Body in the Panel selecting candidates for interview and in the Interview Panel, FAO Management was of the opinion that an increase of members in the panel from five to seven would lead to a cumbersome and lengthy selection procedure.

International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty)

15. In July 2017, the Chairperson of the Treaty suggested to follow procedures used by the United Nations Environment Programme (UNEP) for the appointment of the Secretary-General of the CITES⁵. Indeed the Convention could be a possible procedure the Treaty could follow with regard to the appointment of its Secretary. This procedure provides for only two representatives of CITES and an unspecified number of representatives from UNEP are included in the Selection Panel, the Executive Director of UNEP appoints the candidate without the need for approval by CITES.

16. However, although FAO Management was initially agreeable to such a procedure, the Treaty was unable to accept it following internal consultations.

17. At the time of writing this note, the Treaty is undergoing its internal consultations and has yet to respond to the compromise proposal.

Suggested action by the Council

18. The Council is invited to consider the proposed compromise procedure, as outlined in Annex 1 of this document and provide any further guidance it may deem appropriate.

⁵ Convention on International Trade in Endangered Species of Wild Fauna. This is a Treaty body, similar to an Article XIV Body under the FAO Constitution.

Annex 1**Compromise Proposal of the Independent Chairperson of the Council**

1. A Vacancy Announcement is drafted by technical departments with support of the Human Resources Division (“CSH”) as is done for all senior (D1 and above) staff positions. The draft Vacancy Announcement is shared with the Chairperson of the Body concerned who is invited to provide views thereon.
2. The Vacancy Announcement is issued and posted for 30 days.
3. A first review and screening of candidates is undertaken by CSH based on the minimum criteria and qualifications set out in the Vacancy Announcement.
4. A second review is undertaken by the offices of the relevant Deputy Director-General and the relevant Director (D2) and the two representatives of the Members of the Article XIV Body to establish a shortlist of candidates for interview. The interview shortlist must contain at least ten candidates.
5. An Interview Panel is established, which is composed of:
 - a) the relevant Deputy Director-General or Director (D2);
 - b) one Senior FAO officer;
 - c) two representatives of the Members of the Article XIV Body;
 - d) one external member, to be selected by the Interview Panel from among three candidates proposed by CSH; and
 - e) one representative of CSH (for process support).
6. Interviews of shortlisted candidates are conducted by the Interview Panel which will prepare a report. The Panel Report will identify a minimum of three and a maximum of five qualified candidates.
7. Both the shortlist of candidates for interview as well as the three to five candidates submitted to the Director-General is compiled with due regard to gender and geographic balance in line with the policy of the Organization. If this balance is not achieved, the Panel Report must contain a justification for this.
8. The Panel Report is submitted for consideration by the Director-General.
9. Reference checks are undertaken by CSH.
10. The Director-General identifies one proposed candidate for appointment, whose name and *curriculum vitae* are referred to the relevant Article XIV Body for approval in accordance with the provisions of the treaty concerned.
11. Upon approval of the Body, an offer is issued to the candidate. Should there be non-approval, the Director-General will propose to the Body another candidate recommended for appointment.
12. Upon acceptance, the Director-General appoints the candidate.