

**Annex 2 - Formalization of the  
Global Soil Partnership  
into a statutory body of the Food and  
Agriculture Organization of the United  
Nations:  
An analysis of legal implications**

April 2022

## Table of Contents

### **Executive Summary**

<b>A. Introduction .....</b>	<b>4</b>
<b>B. Methodology .....</b>	<b>6</b>
<b>1. Scope .....</b>	<b>6</b>
<b>2. Main Criteria for Analysis .....</b>	<b>6</b>
<b>C. The Global Soil Partnership .....</b>	<b>7</b>
<b>D. Options for Establishing GSP as a FAO Statutory Body .....</b>	<b>9</b>
<b>1. Article VI Body .....</b>	<b>9</b>
<b>2. Article XIV Body .....</b>	<b>15</b>
<b>3. COAG Sub-committee .....</b>	<b>20</b>
<b>E. Conclusion.....</b>	<b>25</b>
<b>F. Next Steps .....</b>	<b>27</b>
<b>Annex 1 (Summary of Options) .....</b>	<b>28</b>
<b>Annex 2 (Processes for Establishing Statutory Bodies) .....</b>	<b>30</b>

## Executive Summary

Given the standing policy of the Conference against establishing new statutory bodies except when strictly necessary, any proposal to establish a new statutory body must clearly identify the objectives that are to be achieved by such establishment. Assessment of all available options, including maintaining the status quo, must and will be made in light of such objectives. The determination that the establishment of a new statutory body is justified must also be made based on the factors identified by the Conference, as set forth in the Introduction section below — see “Basic Considerations”.

The three options available in order to formalize the activities of the Global Soil Partnership (GSP) under the purview of a FAO statutory body are as follows: (1) a commission or committee under Article VI of the Constitution (an Article VI Body), (2) a commission or committee under Article XIV of the Constitution (an Article XIV Body), and (3) a subsidiary body of the Committee on Agriculture (a COAG Sub-committee).

There is nothing that prohibits the GSP from maintaining its current structure alongside a newly-created statutory body. However, such structure, unless certain of its components (for instance the Intergovernmental Technical Panel on Soils (ITPS) and the Regional Soil Partnerships (RSPs)) are allowed to become formal subsidiary bodies of the newly-created statutory body, will have to remain outside of the FAO legal system, which means, among others, that they would still have to be funded from voluntary contributions of GSP members.

With respect to **participation of non-State stakeholders**, upon formalization of the GSP as a statutory body, non-State stakeholders may only participate in the meetings of the statutory body as observers and only after satisfying certain requirements.

With respect to **decision-making**, there might be limitations on the types of activities that the statutory body could undertake. For instance, the activities of an Article VI Body must be consistent with its mandate which, under the Constitution, is limited to (i) with respect to commissions, advising on the formulation and implementation of policy and coordinating the implementation of policy, and (ii) with respect to committees and working parties, studying and reporting on matters pertaining to the purpose of the Organization. With respect to a COAG Sub-committee, its activities are limited to the mandate of COAG. An Article VI Body may have the competence to adopt international or regional standards, guidelines and codes of practice as non-binding voluntary instruments, until adopted by national legislation. However, any recommendations made by the Article VI Body must nevertheless be referred to the Conference or Council, as appropriate, and their reports should be circulated to Members, through the Director-General. On the other hand, an Article XIV Body may adopt regulatory measures directly binding upon its Members (i.e., the signatories to the international agreement or convention which created the Article XIV Body). With respect to a COAG Sub-committee, any of its recommendations affecting the programme or finances of the Organization or concerning legal or constitutional matters must be reported to the Council with the comments of the appropriate subsidiary committees of the Council. The frequency and duration of sessions

would be restricted, normally to one regular session each biennium. All decisions and actions of the body are subject to the General Rules of the Organization which apply mutatis mutandis to the body.

With respect to **funding**, any changes to funding coming from the Regular Programme for a new statutory body would have to be approved by the FAO Conference. It is noted that, in recent biennia, the Organization has normally maintained a flat nominal budget, with no change in the level of assessed contributions, and Members have often underlined the need for new initiatives to be funded from extrabudgetary resources.

With respect to the **ITPS**, it appears that the Basic Texts would allow the ITPS to become a subsidiary body of an Article VI Body or an Article XIV Body. It would not be allowed as a subsidiary body of a COAG Sub-committee in its current form where the ITPS members act in their personal capacity because membership in a subsidiary body of a COAG Sub-committee is restricted to FAO Members.

With respect to **RSPs**, although without precedent, there is nothing in the FAO Basic Texts that would seem to prevent this regional mechanism from becoming a formal sub-body of an Article VI Body, Article XIV Body or COAG Sub-committee and, with the appropriate approvals, receive funding from the Organization.

With respect to **national focal points**, this mechanism could remain in its current form, i.e., designated mostly by GSP Members and without remuneration but often are official channel designees.

In the event that a decision is made in favor of formalization, the proposal for its establishment, including its constitutive documents, would have to be submitted for approval/endorsement by COAG, then the Council (through its Committees) and, if applicable, the Conference.

## A. Introduction

1.1. During its 7<sup>th</sup> meeting in June 2019,<sup>1</sup> the Global Soil Partnership (GSP) Plenary Assembly welcomed the proposal to consider the formalization of the GSP within the structure of the Food and Agriculture Organization of the United Nations (FAO) so as to move from a voluntary partnership to a formal body of FAO.

1.2. It was suggested that an evaluation of the GSP performance including the request of formalization of the GSP be conducted.<sup>2</sup> In response, the GSP Secretariat commissioned an independent stocktaking exercise. The evaluation's main recommendation related to the formalization was:

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<sup>1</sup> <http://www.fao.org/3/ca5983en/ca5983en.pdf>

<sup>2</sup> <http://www.fao.org/3/ca5983en/ca5983en.pdf>.

*Recommendation 3:* “Undertake consultations involving the relevant departments up to the senior leadership of FAO, on the prospects for elevating the GSP to a more formal statutory body or subcommittee under the aegis of [the Committee on Agriculture (COAG)], and submit the necessary background documents for consideration by COAG and further organs as appropriate”.<sup>3</sup>

1.3. At its 27<sup>th</sup> session, COAG acknowledged the findings of the evaluation of the GSP and requested the GSP Secretariat to carry out a detailed analysis of the legal and financial implications, including on the involvement of non-state stakeholders, the decision-making process, the roles of the Regional Soil Partnerships and national focal points in case of an institutionalization of the GSP as a FAO statutory body. COAG requested that the findings of the assessment be submitted at its 28th Session in July 2022.<sup>4</sup>

#### 1.4. Basic Considerations

It should be noted that the Conference emphasized (in 1997 and re-affirmed in 2015) that new statutory bodies (which includes a commission or committee under Article VI of the Constitution, a commission or committee under Article XIV of the Constitution and a subsidiary body of COAG) should be established **only where strictly necessary** and where the work to be undertaken cannot be carried out by ad hoc groups.<sup>5</sup>

Any proposal to establish a new statutory body must also be able to adequately justify the necessity for such establishment on the basis of the following factors:

- a) Centrality of the proposed body to the FAO mandate and the Organization's current priorities as expressed by FAO Members and reflected in planning documents;
- b) Clarity of the definition of the proposed body's task, which should normally be of limited duration;
- c) Positive impact of the proposed body's work at the level of FAO Members;
- d) FAO's comparative advantage, thereby avoiding overlap and creating synergy with the work of other bodies;
- e) Proportion of the FAO Membership to which the work of the proposed body is of importance with due regard to the economic capacity of less-advantaged members, including least developed countries and small-island developing states; and

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<sup>3</sup> [http://www.fao.org/fileadmin/user\\_upload/GSP/eighth\\_PA/GSPPA\\_VIII\\_2020\\_2.pdf](http://www.fao.org/fileadmin/user_upload/GSP/eighth_PA/GSPPA_VIII_2020_2.pdf).

<sup>4</sup> <http://www.fao.org/3/ne021en/ne021en.pdf>.

<sup>5</sup> Resolution No. 13/97 of the Twenty-ninth Session of the Conference (18 November 1997), *Review of FAO Statutory Bodies*, Addendum IV to Part O of the Basic Texts, *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*; Confirmed by Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V to Part O of the Basic Texts, *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*.

f) Willingness of their Members to contribute financially and through non-monetary inputs to the work of the proposed body, especially where the proposed body will serve a more limited number of countries, with due regard to the economic capacity of their less advantaged members and the availability of other financial support.<sup>6</sup>

Moreover, with respect to a proposal to establish a commission or committee under Article VI of the Constitution or a commission or committee under Article XIV of the Constitution, such proposal must be drafted and accompanied by a document setting forth in detail the following: (a) the objectives that are to be achieved through the establishment of the body; (b) the manner in which the body will carry out its functions and any impact that its creation may have on current or future programmes of the Organization; (c) the financial implications of the establishment of the body for the current biennium, as well as a forecast of the financial implications for the future biennia; (d) a specific assessment of whether the objectives of the proposed statutory body could be met through a different type of working arrangement, such as the organization of ad hoc technical consultations or other task-oriented and time-bound arrangements; and (e) whether there are any existing statutory bodies covering the same, similar or related fields as those to be addressed by the proposed new statutory body.<sup>7</sup>

## **B. Methodology**

### **1. Scope**

1.1. This report is limited to an analysis of the legal implications of the GSP becoming a FAO statutory body, including a sub-committee of COAG. While it discusses certain aspects relating to funding of the various statutory bodies, the report does not include an analysis of the financial implications of the GSP becoming a FAO statutory body.

1.2. The analysis only covers the following options: (i) a commission or committee under Article VI of the Constitution (an “Article VI Body”), (ii) a commission or committee under Article XIV of the Constitution (an “Article XIV Body”), and (iii) a subsidiary body of COAG under Rule XXXII of the General Rules of the Organization (a “COAG Sub-committee”).

1.3. The analysis takes into account the following:

- a) FAO Basic Texts;
- b) Relevant documents of various FAO governing bodies;
- c) Documents and information relating to selected statutory bodies; and
- d) Responses received from the secretariats of the selected statutory bodies.

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<sup>6</sup> Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V to Part O of the Basic Texts, *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*; Resolution No. 13/97 of the Twenty-ninth Session of the Conference (18 November 1997), *Review of FAO Statutory Bodies*, Addendum IV to Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*.

<sup>7</sup> Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V of Part O of the Basic Texts, *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*.

**Note:** Certain other secondary sources, e.g., consultant report relating to a statutory body provided by the secretariat thereof, are also used as information resources.

## 2. Main Criteria for Analysis

2.1. As agreed with the GSP Secretariat, the main criteria to be used for this legal analysis are as follows:

Comparing with the status quo, what are the implications, with respect to each resulting FAO statutory body, to:

- (a) the participation of non-State stakeholders;
- (b) the decision-making processes;
- (c) the funding of certain aspects of the resulting body;
- (d) the regional soil partnerships and national focal points; and
- (e) the current GSP governance structure.

## C. The Global Soil Partnership (GSP)<sup>8</sup>

1.1. In May 2012, the Committee on Agriculture (COAG) endorsed the initiative for the establishment of the GSP. The terms of reference of the GSP were approved by the Council at its 145<sup>th</sup> Session in December 2012.<sup>9</sup>

1.2. The GSP is a voluntary initiative and does not create any legally binding rights or obligations for its partners or for any other entity under domestic or international law. Its mandate is to improve governance of the limited soil resources of the planet in order to guarantee healthy and productive soils for a food secure world, as well as support other essential ecosystem services, in accordance with the sovereign right of each State over its natural resources. The GSP is also intended to develop awareness and contribute to the development of capacities, build on best available science, and facilitate/contribute to the exchange of knowledge and technologies among stakeholders for the sustainable management and use of soil resources.<sup>10</sup>

1.3. The governance structure of the GSP is as follows:

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<sup>8</sup> <https://www.fao.org/global-soil-partnership/en/>.

<sup>9</sup> CL 145/REP, page 6.

<sup>10</sup> Terms of Reference of GSP, Appendix F, CL 145/REP.



#### 1.4. Membership

The GSP is a voluntary partnership, whose members include governments, United Nations (UN) agencies, other international and regional intergovernmental organizations, universities, civil institutions, research centers, soil science societies, non-governmental organizations (NGOs), private companies, farmer associations, donors, and other stakeholders. Prior to their admission as members, all new GSP partners, except FAO Members, are reviewed and approved by the Partnerships Division following FAO risk assessment and due diligence procedures.<sup>11</sup>

#### 1.5. Decisions

The GSP Plenary Assembly comprises all the GSP members and the experts of the Intergovernmental Technical Panel on Soils (ITPS; see below). The Plenary Assembly meets once a year. Expenses of members to attend the sessions of the Plenary Assembly are borne by them. The Plenary Assembly has met every year since 2013. All GSP decisions are taken by consensus during the Plenary Assembly. Decisions that may require follow up by national governments are solely decided upon by “GSP partners which are FAO members.”<sup>12</sup>

#### 1.6. Intergovernmental Technical Panel on Soils (ITPS)

The Intergovernmental Technical Panel on Soils (ITPS) provides scientific and technical advice on global soil issues to the GSP. It is composed of twenty seven (27) leading soil experts representing all the regions of the world, appointed by the Plenary Assembly (not by each Member Nation or a group of them). The members of the ITPS act in their personal capacity and do not represent their country or the region where they come from.

<sup>11</sup> Terms of Reference of GSP, Appendix F, CL 145/REP; Rules of Procedure of the GSP, Rule II.

<sup>12</sup> Rules of Procedure of the GSP, Rule V.



## 1.7. Secretariat

FAO leads the GSP implementation process and provides a full-time Professional staff member and General Service support staff resourced from its Regular Programme in order to host and support the GSP Secretariat<sup>13</sup>. The Secretariat organizes meetings related to the implementation of GSP activities and provides the necessary administrative and technical support, facilitates the work of the ITPS and the Regional Soil Partnerships (RSPs), and promotes, organizes and facilitates awareness-raising activities.<sup>14</sup>

All the work of the Secretariat (currently composed of 28 project and other non-staff personnel), the ITPS, and the RSPs are performed with extra-budgetary resources mobilized by the GSP Secretariat.

## 1.8. Regional Soil Partnerships (RSPs)

RSPs are established among interested stakeholders in the regions. RSPs work in close coordination with FAO Regional Offices and their activities are supported by the GSP Secretariat. RSPs establish an interactive consultative process with national soil entities and relevant regional institutions. A Regional Steering Committee is established and provides strategic direction to the relevant RSP and advise the RSP Chair regarding decision-making and reporting to the GSP.

## 1.9. National Focal Points

National focal points are designated by FAO Members. They are usually personnel from national soil institutions, Ministries or, in some but very few cases, soil experts from academia. They are not remunerated for this role, which has implications on their level of engagement. The national focal points act as liaison between the GSP and the country. They represent the FAO Member in the Plenary Assembly and the meetings of the RSPs. They are in charge of nominating experts for different working groups, technical networks, etc. In some cases, the national focal points are connected with the Permanent Representations to FAO while many lack this connection.

## 1.10. GSP Activities

The GSP implements different types of activities, including those related to normative tools, awareness raising (World Soil Day, World Soil prizes, advocacy) and technical documents. There is also a focus on implementing capacity development activities in all aspects of soils. There are also projects on the ground including helping farmers adopt good practices, for mapping soil' properties, for training soil laboratories, for donating equipment, and others. All these activities are reported to the Plenary Assembly. The funding comes particularly from trust

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<sup>13</sup> [CL 145/REP para 24](#) and appendix F

<sup>14</sup> Terms of Reference of GSP, Appendix F, CL 145/REP.

funds identified through the GSP Secretariat's resource mobilization efforts using the FAO's Healthy Soils Facility. Some other projects are under the FAO Technical Cooperation Programmes at national or regional levels, UTFs and GEF/GCF sources.

## D. Options for Establishing GSP as a FAO Statutory Body

### 1. Article VI Body

#### 1.1. Basic Considerations

As mentioned in the Introduction, the Conference emphasized (in 1997 and re-affirmed in 2015) that new statutory bodies should be established **only where strictly necessary** and where the work to be undertaken cannot be carried out by ad hoc groups.<sup>15</sup>

In fact, the last Article VI Body that was established, by the Council in 2004 (almost two decades ago), is the South West Indian Ocean Fisheries Commission,<sup>16</sup> and the last one prior to that was in 1987 (almost four decades ago), i.e., the Commission on Livestock Development for Latin America and the Caribbean.

For this analysis, the Commission on Genetic Resources for Food and Agriculture (CGRFA) will be used as the primary example.<sup>17</sup>

It is important to note that this option assumes that the GSP in its current form will be replaced by the Article VI Body (as explained in the subsequent section).

#### 1.2. Authority to Establish Article VI Body

Under Article VI of the FAO Constitution, the Conference or Council has the authority to establish **commissions** to advise on the formulation and implementation of policy and to coordinate the implementation of policy. Also, the Conference, the Council, or the Director-General on the authority of the Conference or Council has the authority to establish **committees and working parties** to study and report on matters pertaining to the purpose of the Organization. Please see [Annex 2](#) for the process for establishing an Article VI Body.

#### 1.3. Participation of Non-State Stakeholders

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<sup>15</sup> Resolution No. 13/97 of the Twenty-ninth Session of the Conference (18 November 1997), *Review of FAO Statutory Bodies*, Addendum IV to Part O of the Basic Texts, *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*; Confirmed by Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V to Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*.

<sup>16</sup> CL 127/REP (2004).

<sup>17</sup> <https://www.fao.org/cgrfa/en/>.

Commissions may only consist of Member Nations and Associate Members while committees and working parties may consist of Member Nations and Associate Members or of individuals appointed in their personal capacity because of their special competence in technical matters.<sup>18</sup>

Membership in commissions, committees or working parties is not open to non-member nations of the Organization.<sup>19</sup>

It follows that non-State stakeholders may not be members of an Article VI Body.

However, one category of non-State stakeholders is allowed to participate in the proceedings of an Article VI Body but only as observers. These are entities that meet the criteria to be categorized as international non-governmental organizations (INGOs).<sup>20</sup>

The following note from the Committee on Constitutional and Legal Matters (CCLM) is relevant in that regard:

“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.<sup>21</sup> 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 [non-governmental organizations (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

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<sup>18</sup> Constitution, Article VI, paragraphs 1 and 2; General Rules of the Organization, Rule XXIV, paragraph 4. An “Associate Member” refers to a territory or group of territories which is not responsible for the conduct of its international relations. (Constitution, Article II, paragraph 11)

<sup>19</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, paragraph 23.

<sup>20</sup> The relations between an Article VI Body and other international organizations are governed by Article XIII of the Constitution and Rule XXIV, paragraph 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 rules include the “Statement of principles relating to the granting of observer status to nations,” and the general rules regarding relationships between the Organization and governmental and non-governmental organizations.

<sup>21</sup> Parts L, M and N in the current version of the Basic Texts.

Food). Still a broader comprehensive policy in respect of NGOs and civil society organizations has not yet been formulated.”<sup>22</sup>

At present, the legal regime of participation of non-State stakeholders in FAO meetings is of a dual nature. On the one hand, there is a set of well-defined and rather restrictive rules contained in the Basic Texts<sup>23</sup> (which only refer to INGOs, representing a small fraction of non-State stakeholders) and, on the other hand, there are a number of practices and ad hoc procedures which have been developed over the years.

For example, the Council endorsed a procedure proposed by the CCLM whereby the Director-General would inform the Council in advance, whenever possible, of the names of the INGOs without status with FAO which he/she intended to invite on an ad hoc basis to specific FAO meetings. When such prior notification to the Council was impracticable, the Director-General would invite such INGOs to attend, and report this action *ex post facto* to the Council. In each case, the Director-General would indicate the circumstances that led him to issue such invitations.<sup>24</sup>

In 2009, the Committee on World Food Security (CFS) underwent a process of reform leading to a *sui generis* regime. The enhanced involvement of non-State stakeholders (both civil society organizations (CSOs) and the private sector) in CFS work and activities has been one of its major outputs. They can participate in sessions of the Committee either as participants or observers. However, whereas participants can take the floor in debates “without having to wait until Members have intervened,” observers can intervene in the Plenary only upon invitation by the Chairperson. Only CFS Members (i.e., Member Nations) have decision-making authority.<sup>25</sup>

Around 2014, the CCLM worked on a draft “Rules and Procedures for Participation of Civil Society Organizations and Private Sector Representatives in FAO Meetings.”<sup>26</sup> The Council, at the recommendation of the CCLM, mandated the Independent Chairperson of the Council (ICC) to hold consultations with the regional groups, open to all Members, with a view to reaching agreement on the proposed rules and procedures.<sup>27</sup> That process was not completed, however, because a consensus position did not emerge.<sup>28</sup>

The CCLM recalled that pending the establishment of new rules for participation of civil society organizations and private sector representatives in FAO meetings, the Organization would

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<sup>22</sup> CCLM 88/3 (2009), paragraph 85.

<sup>23</sup> Parts L, M and N of the Basic Texts.

<sup>24</sup> CL 49/REP, paragraph 45.

<sup>25</sup> CCLM 97/8, paragraphs 24 and 25.

<sup>26</sup> CCLM 99/4 (2014).

<sup>27</sup> CL 150/REP.

<sup>28</sup> CL 154/INF.8; CL 154/REP.

continue on-going practices in respect of invitations of civil society organizations and private sector representatives to meetings of the Organization.<sup>29</sup>

There is work currently being undertaken by the CCLM in 2022 in connection with this issue. Any rules and procedures adopted by the CCLM for this purpose will require approval by the Conference.<sup>30</sup>

With respect to CGRFA, which is being used as an example in this analysis, the legal framework with respect to participation in meetings by non-State stakeholders as contained in the Basic Texts is being strictly followed.<sup>31</sup>

One other way that non-State stakeholders are able to feed into the work of the CGRFA is through an email-based network managed by the CGRFA called the Biodiversity for Food and Agriculture Network (BFA-Net), which provides a platform for discussion of issues relevant to the management of the biodiversity that underpins the world's agri-food systems. It is open to all types of entities, including those in the private sector and other non-State stakeholders.

#### 1.4. Decisions of an Article VI Body

Article VI bodies do not have a life of their own and, from a legal and institutional point of view, are fully integrated within FAO. Article VI bodies do not have legal personality, i.e., the capacity to enjoy rights and assume obligations of their own and, therefore, they act through FAO or draw on the legal capacity of FAO, and follow its regulations, rules, policies and procedures, including with respect to concluding arrangements with other entities, procurement and internal and external controls. Similarly, it is FAO and the Director-General, as its legal representative, that would have to address any liabilities arising from the activities of Article VI bodies.

Article VI bodies may adopt their own rules of procedure and amendments thereto, which come into force upon approval by the Director-General.<sup>32</sup>

The activities of an Article VI Body must be consistent with its mandate which, under the Constitution, is limited to (i) with respect to commissions, advising on the formulation and implementation of policy and coordinating the implementation of policy, and (ii) with respect to committees and working parties, studying and reporting on matters pertaining to the purpose of the Organization.<sup>33</sup>

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<sup>29</sup> CL 150/2.

<sup>30</sup> Constitution, Article XIII, paragraph 4; also as an example, see Conference Resolution No. 44/57 on Observer Status in Respect of International Organizations.

<sup>31</sup> Parts L, M and N of the Basic Texts. Email from Ms Irene Hoffman, CGRFA Secretary, 2 February 2022.

<sup>32</sup> Constitution, Article VI, paragraph 3.

<sup>33</sup> Constitution, Article VI, paragraphs 1 and 2; General Rules of the Organization, Rule XXIV, paragraph 4.

The constituent instrument of an Article VI Body with a global mandate may vest it with competence to adopt international or regional standards, guidelines and codes of practice within their areas of competence. These products are adopted by the Article VI Body as non-binding voluntary instruments, until adopted by national legislation.<sup>34</sup> However, any recommendations made by the Article VI Body must nevertheless be referred to the Conference or Council, as appropriate, and their reports should be circulated to Members, through the Director-General. For example, in the case of CGRFA, its Statutes provide that it reports to the Director-General, who will bring to the attention of the Conference through the Council any recommendations adopted by CGRFA which have policy implications or which affect the programme or finances of the Organization.<sup>35</sup>

It is noted that the Conference, at its 14<sup>th</sup> Session in 1967, decided that in the case of new Article VI bodies, or subsidiary bodies established by it, a provision should be included in the statutes or rules of procedure, as appropriate, limiting the frequency and duration of sessions of such bodies.<sup>36</sup> For example, CGRFA normally holds one regular session each biennium. It may also decide to convene extraordinary sessions as necessary, but subject to the approval of the FAO Council.

With regard to how decisions are made, with CGRFA, for example, all decisions are taken by consensus unless another method of arriving at a decision is reached. The General Rules of the Organization apply *mutatis mutandis* to all matters not specifically dealt with under the CGRFA rules of procedure.<sup>37</sup>

### 1.5. Option for ITPS under the Article VI Body

Article VI bodies may establish subcommissions, subcommittees and subsidiary working parties. The statutes of the Article VI Body must make the establishment of subsidiary bodies subject to the availability of necessary funds in the relevant approved budget. When the related expenses are to be borne by the Organization, the determination of such availability is made by the Director-General.<sup>38</sup> Unless other specific arrangements are made, the expenses incurred by individuals invited in a personal capacity to attend sessions of committees of experts will be defrayed by the Organization in accordance with its travel regulations.<sup>39</sup>

The ITPS could be established as a subcommittee or subsidiary working party of the Article VI Body.

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<sup>34</sup> For example, Codex Standards are adopted by the Codex Alimentarius Commission pursuant to Rule XII of the Rules of Procedure and the Procedures for the Elaboration of Codex Standards and Related Texts.

<sup>35</sup> CGRFA Statutes, Article 7; CGRFA Rules of Procedure, Rule XI.

<sup>36</sup> Addendum II of Part O of Basic Texts, Resolution No. 21/67 of the Fourteenth Session of the Conference.

<sup>37</sup> CGRFA Rules of Procedure, Rules VII and XV.

<sup>38</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, Appendix, paragraphs 18 and 20.

<sup>39</sup> General Rules of the Organization, Rule XXXVI, paragraph 4.

In 2013, CGRFA formed a Team of Technical and Legal Experts of Access and Benefit-sharing, with each region appointing up to two representatives with expertise in access and benefit-sharing and preferably in genetic resources for food and agriculture. The team of experts was tasked to coordinate to help prepare the intergovernmental technical working group meetings, and, based on input from their regions, prepare written materials and propose guidance for the intergovernmental technical working groups.<sup>40</sup>

## 1.6. **Certain Budgetary Implications relating to an Article VI Body**

The statutes of an Article VI Body must specify that:

- i. the financial operations of such bodies shall be governed by the appropriate provisions of the Financial Regulations of the Organization, and on the condition that expenses borne by the Organization shall be determined and paid within the limits of the relevant item of the budget of the Organization as approved by the Conference;
- ii. the expenses of members of the Article VI Body or of experts attending its sessions as government representatives are to be borne by the respective governments and the expenses of experts attending in their individual capacity are to be borne either by the budget, if any, of the Article VI Body, or by the Organization; and
- iii. the Secretary of each body shall be appointed by the Director-General and shall be administratively responsible to him.<sup>41</sup>

It should be noted that contributions, donations or assistance received by an Article VI Body, including for cooperative projects, are administered in accordance with the financial rules and procedures of the Organization and all financial and administrative transactions are carried out through the accounts of the Organization. FAO is accountable to donors for the management and use of any contributions received.<sup>42</sup> In certain cases, FAO establishes a trust or special fund into which these contributions are paid.

Staff of Article VI bodies are officials of FAO appointed by the Director-General and are subject to the Staff Regulations and Rules of the Organization, as well as to the authority of the Director-General. Similarly, other personnel employed by an Article VI Body are recruited by the Organization, and in accordance with its rules and procedures.<sup>43</sup>

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<sup>40</sup> CGRFA-14/13/Report (2013), paragraph 40.

<sup>41</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, Appendix, paragraphs 32 and 33. Also, General Rules of the Organization, Rule XXXVI, paragraph 4.

<sup>42</sup> CCLM 103/3.

<sup>43</sup> CCLM 103/3.

Article 8 of the CGRFA Statutes provide that the expenses of the Secretariat of the Commission shall be determined and paid by the Organization within the limits of the relevant appropriations in the approved budget of the Organization. Secretariat services for each CGRFA Sectoral Working Group are provided by the relevant technical division of FAO as part of its annual programme of work. Expenses incurred by representatives of members of the Commission and its Working Groups, their alternates and advisers, when attending sessions of the Commission, its Sectoral Working Groups or other Subsidiary Bodies, as well as the expenses of observers at sessions, are borne by the respective governments or organizations.

With respect to CGRFA for example, staff and meeting costs are covered by the Organization's Regular Programme budget and all other expenses are funded from extra-budgetary resources.<sup>44</sup>

### **1.7. Option for Regional Soil Partnerships (RSPs) under the Article VI Body**

While there appears to be no precedent for it, RSPs could be established as subcommissions or subcommittees of the Article VI Body. Obviously, this would entail additional expenses and decisions would have to be made on the appropriate sources of funding.

There is nothing preventing an Article VI Body from organizing voluntary regional mechanisms to assist in its mandate, like the current RSPs. However, funding for such voluntary mechanisms would normally not be covered by the Organization's Regular Programme budget.

### **1.8. Option for National Focal Points under the Article VI Body**

There is also nothing that would prevent an Article VI Body from establishing a national focal point mechanism. Funding for such a mechanism would normally not be covered by the Organization's Regular Programme budget.

CGRFA has a system of national focal points or coordinators. These focal points are nominated by Member countries. They coordinate and facilitate the preparation of country reports and the implementation of the Commission's action plans and decisions and monitor the implementation and reporting back to the Commission.<sup>45</sup>

### **1.9. GSP governance structure under the Article VI Body**

In addition to the implications as set out in Sections 1.3 through 1.8 above, noting the assumption under this first option that GSP in its current form would be replaced in its entirety by the Article VI Body, the GSP Plenary Assembly would then cease to exist.

## **2. Article XIV Body**

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<sup>44</sup> Emails from Irene Hoffman, CGRFA Secretary, 2 February 2022 and 9 February 2022.

<sup>45</sup> <https://www.fao.org/cgrfa/overview/nfp/en/>.



## 2.1. Basic Considerations

The express purpose of multilateral agreements established under Article XIV of the Constitution is to create contractual obligations for those who become parties to them. It follows directly from this principle that any agreement concluded under Article XIV of the Constitution among Member Nations of the Organization should entail financial or other obligations going beyond those already assumed under the Constitution of the Organization. Failing this, there would be no grounds for such an agreement, at least not in the legal form prescribed under Article XIV of the Constitution. Hence, any multilateral agreement between Member Nation Governments may undoubtedly provide for the establishment of a commission or an executive body, but this should not be an end in itself since under Article VI of the Constitution, the Conference and the Council are empowered to establish such bodies merely by a decision on their part. Consequently, the setting up of a commission or a committee by a multilateral agreement is justified only when such agreement presupposes the assumption of specific obligations going beyond mere participation in the work of the body thus established.<sup>46</sup>

As mentioned in the Introduction, the Conference emphasized (in 1997 and re-affirmed in 2015) that new statutory bodies should be established **only where strictly necessary** and where the work to be undertaken cannot be carried out by ad hoc groups.<sup>47</sup>

In fact, the last Article XIV Body that was established, by the Council in 2010 (more than a decade ago), is the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission. Prior to that was the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture which was adopted by the Conference in 2001.

For this analysis, the Indian Ocean Tuna Commission (IOTC) will be used as the primary example.<sup>48</sup>

It is also important to note that this option assumes that the GSP in its current form will be replaced by the Article XIV Body.

## 2.2. Authority to Establish Article XIV Body

The Conference may, by a two-thirds majority of the votes cast, approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture,

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<sup>46</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, paragraphs 5 and 6.

<sup>47</sup> Resolution No. 13/97 of the Twenty-ninth Session of the Conference (18 November 1997), *Review of FAO Statutory Bodies*, Addendum IV to Part O of the Basic Texts, *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*; Confirmed by Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V to Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*.

<sup>48</sup> <https://www.iotc.org>.

which could include the establishment of a commission or an executive body.<sup>49</sup> Please see [Annex 2](#) for the process for establishing an Article XIV Body.

### 2.3. Participation of Non-State stakeholders

Only FAO Members, 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, may become members of an Article XIV Body.<sup>50</sup>

The statutes of the Article XIV Body must contain provisions regulating the question of observer status for non-member nations of the Organization in accordance with the statement of principles relating to the granting of observer status to nations.<sup>51</sup>

As far as national institutions or private persons are concerned, only the Conference has the authority to make rules laying down the procedure to be followed to secure proper consultation with governments in regard to relations between the Organization and such national institutions or private persons.<sup>52</sup> No such rules have been adopted by the Conference.

It follows that non-State stakeholders may not be members of an Article XIV Body.

However, one category of non-State stakeholders is allowed to participate in the proceedings of an Article XIV Body but only as observers. These are entities that meet the criteria to be categorized as international non-governmental organizations (INGOs).<sup>53</sup>

At present, the legal regime of participation of non-State stakeholders in FAO meetings is of a dual nature. On the one hand, there is a set of well-defined rules contained in the Basic Texts<sup>54</sup> (which only refer to INGOs, representing a small fraction of non-State stakeholders) and, on the

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<sup>49</sup> Constitution, Article XIV, paragraph 1.

<sup>50</sup> Constitution, Article XIV, paragraph 3(b).

<sup>51</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, paragraphs 26 and 27.

<sup>52</sup> Constitution, Article XIII.

<sup>53</sup> The relations between commissions or committees established by conventions and agreements under Article XIV of the Constitution and other international organizations shall be governed by Article XIII of the Constitution and Rule XXIV, paragraph 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 rules include the “Statement of principles relating to the granting of observer status to nations,” and the general rules regarding relationships between the Organization and governmental and non-governmental organizations.

<sup>54</sup> Parts L, M and N of the Basic Texts.

other hand, there are a number of practices and ad hoc procedures which have developed over the years.<sup>55</sup>

As an example of actual practice, IOTC has over 50 observers which are NGOs and intergovernmental organizations, whose credentialed representatives may speak at IOTC sessions after Members have spoken. They may submit policy statements as information documents. They may table documents outside the meeting room and they may invite members to side meetings. In working parties (where no credentials are required), non-State stakeholders attend in their capacity as experts and participate like the members. All observers have to submit a letter to the Commission which can be challenged by any Member.<sup>56</sup>

#### 2.4. Decisions of an Article XIV Body

Article XIV 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 their Members and may have autonomous budgets. The secretaries of these bodies are appointed by the Director-General and in certain cases, when the Article XIV body has an autonomous budget, such appointment is made in consultation with or with the agreement of their Members. In some cases, the bodies in question approve their budget and programme of work and the secretaries are directly accountable to their Members for the execution of the budget and the work programme.<sup>57</sup>

Article XIV instruments are only binding upon Member Nations that ratify them, i.e., adherence to such instrument is not automatic for all FAO Members.

Nonetheless, these 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 functional 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 and, therefore, they have to act through FAO or draw on its legal capacity as confirmed by a review of the matter by the Council. The secretary and the staff of these bodies are officials of

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<sup>55</sup> See discussion under Section 1.4 for more details on the practices and ad hoc procedures that have evolved.

<sup>56</sup> IOTC Agreement, Article VII, paragraph 3; IOTC Rules of Procedure, Rule XIV, paragraphs 5, 8 and 9; Email from Chris O'Brien (IOTC Executive Secretary), 31 January 2022.

<sup>57</sup> CCLM 88/3 (2009), paragraph 11.

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.<sup>58</sup> Such bodies are expected to adhere to FAO and UN System practices.

Thus, while Article XIV bodies may enjoy a variable measure of functional autonomy for the purpose of discharging the programme of work approved by them, administratively they are fully integrated with and in FAO. As foreseen in the treaties, the rules of procedure and related working procedures of these bodies should not be inconsistent with the Constitution of FAO and the operating procedures of the Organization.<sup>59</sup>

It is noted that the Conference, in its 14<sup>th</sup> Session in 1967, decided that in the case of new Article XIV bodies, or subsidiary bodies established by it, a provision should be included in the convention or agreement limiting the frequency and duration of sessions of such bodies.<sup>60</sup> For example, IOTC holds annual regular sessions but special sessions may also be convened at the request of at least one-third of its Members.<sup>61</sup>

With regard to how decisions are made, with IOTC, for example, each Member has one vote, and, in general, decisions and recommendations are taken by a majority of the votes cast. A majority of the Members constitutes a quorum.<sup>62</sup>

## 2.5. Option for ITPS under the Article XIV Body

The texts of all conventions or agreements establishing an Article XIV Body must specify whether such commissions or committees may establish subsidiary bodies. The convention or agreement must make the establishment of subsidiary bodies subject to the availability of necessary funds in the relevant approved budget. When the related expenses are to be borne

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<sup>58</sup> CCLM 88/3 (2009), paragraph 13.

<sup>59</sup> CCLM 103/3, paragraph 7.

<sup>60</sup> Addendum II of Part O of Basic Texts, Resolution No. 21/67 of the Fourteenth Session of the Conference.

<sup>61</sup> IOTC Agreement, Article VI, paragraphs 4 and 5.

<sup>62</sup> IOTC Agreement, Article VI, paragraph 2.

by the Organization, the determination of such availability is to be made by the Director-General.<sup>63</sup>

The ITPS could be established as a subsidiary body of an Article XIV Body.

For example, IOTC has a permanent Scientific Committee which acts as an advisory body. It is composed of scientists, with each Member of the Commission having the right to appoint a representative and an alternate, both with suitable scientific qualifications, who may be accompanied by experts and advisers. Furthermore, the Commission may invite experts, in their individual capacity, to enhance and broaden the expertise of the Scientific Committee and of its working parties.<sup>64</sup>

## 2.6. **Certain Budgetary Implications relating to an Article XIV Body**

The discussion in Section 1.6 above apply to an Article XIV Body.

As an example, the expenses of IOTC are paid out of its autonomous budget except those relating to such staff and facilities as can be made available by FAO. The expenses to be borne by FAO are determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of FAO. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission, its sub-commissions and its committees, as well as the expenses incurred by observers at sessions, are borne by the respective governments or organizations. The expenses of experts invited by the Commission to attend, in their individual capacity, meetings of the Commission or its sub-commissions or committees are borne by the budget of the Commission.<sup>65</sup>

Each IOTC Member has a legal obligation to contribute annually its share of the autonomous budget in accordance with a scale of contributions adopted by the IOTC. A Member which is in arrears in the payment of its financial contributions may lose its voting rights.<sup>66</sup>

It should be noted that there are international agreements adopted pursuant to Article XIV of the Constitution that do not create a commission like the IOTC and do not have autonomous budgets. One example is the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which was approved by the Conference at its Thirty-sixth Session (2009) and entered into force on 5 June 2016. Typically, bodies that do not have an autonomous budget and are resourced from Regular Programme resources enjoy less autonomy than those with autonomous budgets (e.g. their secretaries are appointed

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<sup>63</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, Appendix, paragraphs 19 and 20.

<sup>64</sup> IOTC Rules of Procedure, Appendix IV, The Scientific Committee – Terms of Reference and Rules of Procedure.

<sup>65</sup> IOTC Agreement, Article VIII, paragraphs 3 and 4.

<sup>66</sup> IOTC Agreement, Article XIII,

by the Director-General without any requirement to consult or seek the approval of the Article XIV bodies).

## **2.7. Option for Regional Soil Partnerships (RSPs) under the Article XIV Body**

While there appears to be no precedent for it, RSPs could be established as subsidiary bodies of the Article XIV Body. Obviously, this would entail additional expenses and a decision would have to be made about the appropriate source of funding.<sup>67</sup>

There is nothing that prevents an Article XIV Body from organizing voluntary regional mechanisms to assist in its mandate, like the current RSPs. However, funding for such voluntary mechanisms would normally not be covered by the Organization.

## **2.8. Option for National Focal Points under the Article XIV Body**

There is also nothing that would prohibit an Article XIV Body from establishing a national focal point mechanism. However, funding for such mechanism would normally not be covered by the Organization.

For example, the Central Asian and Caucasus Fisheries and Aquaculture Commission (CAC-FISH), an Article XIV body, has a national focal points mechanism. Each Member of the Commission designates a National Focal Point who facilitates communication between the Member of the Commission and the Secretariat. The National Focal Point is a high level, experienced fishery scientist/manager who has access to his/her country's main fishery information. The National Focal Point is normally the Representative of the Member Nation at the Commission sessions.<sup>68</sup>

## **2.9. GSP governance structure under the Article XIV Body**

In addition to the implications set out in Sections 2.3 through 2.8 above, noting the assumption under this Option 2 that GSP in its current form would be replaced in its entirety by the Article XIV Body, the GSP Plenary Assembly would then cease to exist.

# **3. COAG Sub-committee**

## **3.1. Basic Considerations**

The Committee on Agriculture (COAG) is a Governing Body of FAO which reports to the Conference and to the Council.

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<sup>67</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution, Part O of the Basic Texts, Appendix, paragraphs 19 and 20.*

<sup>68</sup> Rules of Procedure, Rule VI.

The General Rules of the Organization and the Rules of Procedure of COAG provide that the decision to create a subsidiary body of COAG must be made **on an exceptional basis**, and based on the criteria that such establishment (i) is conducive to facilitating its own work, and (ii) will not adversely affect the multidisciplinary consideration of questions submitted to COAG for examination.<sup>69</sup>

Recently, COAG established its first subsidiary body, the Sub-committee on Livestock, which was endorsed by both the Council (in 2020) and the Conference (in 2021).<sup>70</sup> The Committee on Forestry has no subsidiary bodies. The Committee on Fisheries (COFI) has two subsidiary bodies, namely: the COFI Sub-committee on Aquaculture (established in 2001) and the COFI Sub-committee on Fish Trade (established in 1985). The Committee on Commodity Problems has several subsidiary bodies, which are as follows:

- (i) Consultative Sub-committee on Surplus Disposal (established in 1954)
- (ii) Intergovernmental Group on Rice (established in 1955)
- (iii) Intergovernmental Group on Grains (established in 1957)
- (iv) Intergovernmental Group on Citrus Fruits (established in 1959)
- (v) Intergovernmental Group on Jute, Kenaf and Allied Fibres (established in 1963)
- (vi) Intergovernmental Group on Oilseeds, Oils and Fats (established in 1965)
- (vii) Intergovernmental Group on Bananas and Tropical Fruits (established in 1999)
- (viii) Intergovernmental Group on Hard Fibres (established in 1966)
- (ix) Intergovernmental Group on Tea (established in 1969)
- (x) Intergovernmental Group on Meat and Dairy Products (established in 1970).

It is also important to note that this option assumes that the GSP in its current form will be replaced by the COAG Sub-committee.

### 3.2. Authority to Establish COAG Sub-committee

The Committee on Agriculture (COAG) has the authority to establish a sub-committee (the “Sub-committee”) which decision shall be made on an exceptional basis based on the criteria that such establishment (i) is conducive to facilitating its own work, and (ii) will not adversely affect the multidisciplinary consideration of questions submitted to COAG for examination.<sup>71</sup>

Based on the process followed in establishing the COAG Sub-committee on Livestock, endorsement from the Council and the Conference would be required. Please see [Annex 2](#) for the full process for establishing a COAG sub-committee.

### 3.3. Participation of Non-State stakeholders

Only Member Nations and Associate Members of the Organization may become Members of the Sub-committee. The Council may also admit to membership of the Sub-committee States

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<sup>69</sup> General Rules of the Organization, Rule XXXII, paragraph 12; Rules of Procedure of the Committee on Agriculture (COAG), Rule VII, paragraph 1.

<sup>70</sup> C 2021/21; CL 165/REP, paragraph 18.a); C 2021/REP, paragraph 47. <https://www.fao.org/COAG/sub-committee>.

<sup>71</sup> General Rules of the Organization, Rule XXXII, paragraph 12; Rules of Procedure of the Committee on Agriculture (COAG), Rule VII, paragraph 1.

which, while not Member Nations or Associate Members of the Organization, are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency.<sup>72</sup>

It follows that non-State stakeholders may not be members of a COAG Sub-committee.

However, one category of non-State stakeholders is allowed to participate in the proceedings of a COAG Sub-committee but only as observers. These are entities that meet the criteria to be categorized as international non-governmental organizations (INGOs).<sup>73</sup>

In the Report of its 27th Session to the Conference, COAG stressed the importance of collaborating with specialized organizations and existing multiple stakeholder partnerships, and invited the Global Agenda for Sustainable Livestock (GASL) [a voluntary multi-stakeholder platform] to report regularly on its work to the COAG Sub-committee on Livestock.<sup>74</sup>

Using the practice of the COFI Sub-committee on Fish Trade (COFI-FT) as an example, individual private (for profit) companies are not allowed to participate in Sub-committee meetings, even as observers. However, they could be represented through industry INGOs such as the International Conference on Fisheries and Aquaculture, the Marine Ingredients Organisation and the Global Sustainable Seafood Initiative and also as part of country delegations. There are no multi-stakeholder platforms (involving non-State stakeholders) formed under the aegis of COFI or COFI-FT and/or whose work feeds into the the Sub-committee's work, but industry associations are regularly consulted together with other stakeholders during relevant consultations on specific issues.<sup>75</sup>

The current practice of COAG for admitting non-State stakeholders as observers is to follow an internal clearance process which normally includes a reputational risk assessment. The participation of private sector entities in FAO Governing Body Sessions has been considered by the CCLM at its 115<sup>th</sup> Session in March 2022, which made recommendations<sup>76</sup> to the 170<sup>th</sup> Session of the FAO Council that will take place on 13-17 June 2022. In this context, the definition of the "private sector" may also be addressed.

### 3.4. Decisions of COAG Sub-committee

COAG and its subsidiary bodies do not have legal personality, i.e., the capacity to enjoy rights and assume obligations of their own and, therefore, they have to act through FAO or draw on the legal capacity of FAO, and follow its regulations, rules policies and procedures, including

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<sup>72</sup> Rules of Procedure of COAG, Rule VII, paragraph 1.

<sup>73</sup> Rules of Procedure of COAG, Rule III, paragraph 1. For example, Conference Resolution No. 39/57, *Establishment of liaison status for international non-governmental organizations*, and Conference Resolution No. 44/57, *Observer Status in Respect of International Organizations*.

<sup>74</sup> C 2021/21, paragraph 20.

<sup>75</sup> Email from Audun Lem (Deputy Director/NFI, in charge of COFI Sub-Committee on Fish Trade), 31 January 2022.

<sup>76</sup> Report of the 115th Session of CCLM, <https://www.fao.org/3/ni703en/ni703en.pdf>



with respect to concluding arrangements with other entities, procurement and internal and external controls.

Any recommendation adopted by COAG (and any of its sub-committees) affecting the programme or finances of the Organization or concerning legal or constitutional matters must be reported to the Council with the comments of the appropriate subsidiary committees of the Council. The reports of COAG must also be placed before the Conference.<sup>77</sup>

With regard to how decisions are made, the Rules of Procedure of COAG would apply, which provides that each Member has one vote, and, if a vote is required, most decisions are made by majority vote (i.e., more than one half of the votes cast).<sup>78</sup>

The frequency of meetings of the Sub-committee would be limited to correspond to the frequency of meetings of COAG. For example, the Rules of Procedure of the recently-established Sub-committee on Livestock provide as follows:

In any case, the Sub-Committee shall hold no more than one session per biennium and the session shall be held with timing that enables the Committee to take into consideration the report of the Sub-Committee.

### 3.5. **Option for ITPS under the COAG Sub-committee**

The ITPS in its current form, with experts attending in their personal capacity, cannot be a formal subsidiary body of the Sub-committee, unlike for an Article VI and Article XIV statutory body — because the membership of subsidiary bodies of COAG (and its subsidiary bodies like the Sub-committee) is composed of Members of the Organization or of other UN agencies. If the ITPS is to become a formal subsidiary body of the Sub-committee, its membership will not be composed of individuals acting in their personal capacity but as representatives of the Member Nations which designated them.

If the ITPS is to be established as a formal body under the Sub-committee, it should be taken into account in the report of the Director-General on the administrative and financial implications of establishing the Sub-Committee. It should also be set out in the terms of reference and rules of procedure of the Sub-committee.

If the ITPS is to continue as a panel of individual experts acting in their personal capacity, it will have to be created as an *informal* body attached to the Sub-committee, which implies that no funding will be available from the Organization.

### 3.6. **Certain Budgetary Implications relating to COAG Sub-committee**

According to the Secretariat of the COFI Sub-committee on Fish Trade (COFI-FT), FAO's regular programme budget provides funding for COFI-FT work, which goes towards inter-

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<sup>77</sup> General Rules of the Organization, Rule XXXII, paragraph 9.

<sup>78</sup> Rules of Procedure of COAG, Rule V; General Rules of the Organization, Rule XII.

sessional work, following up on the requests from the previous COFI-FT session and preparing for the next session. The expenses are mostly for consultancy fees and, if necessary, workshop expenses. All other costs are borne by the country hosting the meeting (including expenses for interpretation, translation and travel support for developing countries).<sup>79</sup>

COFI-FT has inter-sessional activities, e.g., catch documentation schemes, certification guidelines, ongoing guidance on sustainable aquaculture, which are funded from extra-budgetary resources from Members.<sup>80</sup>

### 3.7. **Option for Regional Soil Partnerships (RSPs) under the COAG Sub-committee**

There seems to be no precedent for a subsidiary body of a Technical Committee like COAG to have formal regional mechanisms. But there appears to be no express restriction against it, other than the general limitation that the decision to establish a subsidiary body of COAG must be made **on an exceptional basis**, and based on the criteria that such establishment (i) is conducive to facilitating its own work, and (ii) will not adversely affect the multidisciplinary consideration of questions submitted to COAG for examination.<sup>81</sup>

The proposal for the creation of the Sub-committee could include regional mechanisms and this should be taken into account in the report of the Director-General on the administrative and financial implications of establishing the Sub-Committee. The creation of such regional mechanisms should also be set out in the terms of reference and rules of procedure of the Sub-committee. It should be noted that, like the sub-committee itself, membership in any subsidiary regional mechanism is restricted to Member Nations and Associate Members of the Organization.

There is nothing that prevents the Sub-committee from establishing informal regional mechanisms, like the current RSPs, which necessarily means that funding will not be available for such mechanisms from the Organization and will have to be sourced elsewhere.

### 3.8. **Option for National Focal Points under the COAG Sub-committee**

Nothing prevents the Sub-committee from establishing an informal national focal points system. In fact, it seems to be organically created with respect to Technical Committees like COAG (and by extension, any subsidiary body thereof).

As an example, COFI is attended by around 600 to 700 delegates per session, with most of them coming from the capitals but also the permanent representation in Rome. The more established countries in fisheries or aquaculture normally send high-level experts from their capitals. They may also have NGO and industry representatives as part of their delegations, especially at COFI. The COFI sub-committees are less political and more technical and the

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<sup>79</sup> Email from Audun Lem (Deputy Director/NFI, in charge of COFI Sub-Committee on Fish Trade), 31 January 2022.

<sup>80</sup> Email from Audun Lem (Deputy Director/NFI, in charge of COFI Sub-Committee on Fish Trade), 10 February 2022.

<sup>81</sup> General Rules of the Organization, Rule XXXII, paragraph 12; Rules of Procedure of the Committee on Agriculture (COAG), Rule VII, paragraph 1.

representatives may come from the technical ministries, the fisheries or aquaculture agency, etc.<sup>82</sup>

### 3.9. **GSP governance structure under the COAG Sub-committee**

In addition to the implications as set out in Sections 3.3 through 3.8 above, noting the assumption under this Option 3 that GSP in its current form will be replaced in its entirety by the COAG Sub-committee, then the GSP Plenary Assembly will cease to exist.

The activities of a COAG Sub-committee are also limited by the mandate of COAG.<sup>83</sup> Therefore, current activities of the GSP which do not fall under any of the above items may have to cease.

## **E. Conclusion**

Given the standing policy of the Conference against establishing new statutory bodies except when strictly necessary, any proposal to establish a new statutory body must clearly identify the objectives that are to be achieved by such establishment. Assessment of all available options, including maintaining the status quo, must and will be made in light of such objectives. The determination that the establishment of a new statutory body is justified must also be made based on the factors identified by the Conference, as set forth in Section A.1.4 above. The three options available in order to formalize the activities of the GSP under the purview of a FAO statutory body are as follows: (1) an Article VI Body, (2) an Article XIV Body, and (3) a COAG Sub-committee.

There is nothing that prohibits GSP from maintaining its current structure alongside a newly-created statutory body. However, such structure, unless certain of its components (for instance the Intergovernmental Technical Panel on Soils and the Regional Soil Partnerships) are allowed to become formal subsidiary bodies of the newly-created statutory body, will have to remain outside of the FAO legal system, which means, among others, that they would still have to be funded from voluntary contributions of GSP members.

The following are particular considerations when making a determination whether or not to establish a new statutory body:

1. **Participation of non-State** stakeholders: With formalization, non-State stakeholders will be limited to participating as observers and must technically meet FAO's criteria to be considered as international non-governmental organizations in order to be admitted as such. Although, as noted in the discussion under Section D.1.4, D.2.4 and D.3.4, current practice appears to be more liberal requirements set forth in the Basic Texts.

2. **Decision-making:** There might be limitations on the types of activities that the statutory body could undertake. For instance, the activities of an Article VI Body must be consistent with

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<sup>82</sup> Email from Audun Lem, Secretary, COFI Sub-committee on Fish Trade, 5 February 2022.

<sup>83</sup> General Rules of the Organization, Rule XXXII, paragraph 6.

its mandate which, under the Constitution, is limited to (i) with respect to commissions, advising on the formulation and implementation of policy and coordinating the implementation of policy, and (ii) with respect to committees and working parties, studying and reporting on matters pertaining to the purpose of the Organization. With respect to a COAG Sub-committee, its activities are limited to the mandate of COAG.

An Article VI Body may have the competence to adopt international or regional standards, guidelines and codes of practice as non-binding voluntary instruments, until adopted by national legislation. However, any recommendations made by the Article VI Body must nevertheless be referred to the Conference or Council, as appropriate, and their reports should be circulated to Members, through the Director-General. On the other hand, an Article XIV Body may adopt regulatory measures directly binding upon its Members (i.e., the signatories to the international agreement or convention which created the Article XIV Body). With respect to a COAG Sub-committee, any of its recommendations affecting the programme or finances of the Organization or concerning legal or constitutional matters must be reported to the Council with the comments of the appropriate subsidiary committees of the Council.

In general, operations of statutory bodies must still follow FAO regulations, rules, policies and procedures, although there might be exceptions — for instance, there are Article XIV bodies which have more autonomy.

The frequency and duration of sessions would be restricted. For example, CGRFA normally holds one regular session each biennium. In order to convene extraordinary sessions, approval from the Council is required. The same would be true for a COAG Sub-committee.

All decisions and actions of the body are subject to the General Rules of the Organization which apply *mutatis mutandis* to the body.

3. **Funding:** Additional funds may be required, in particular related to securing resources to cover simultaneous interpretation and translation of documents for the Plenary sessions (currently estimated at USD 100 000 per year). Additional funds may also be necessary to ensure more robust participation from developing countries in technical discussions on soil. It is expected that these costs will be covered by extra-budgetary contributions for which a resource mobilization proposal will be developed. Any changes to funding coming from the Regular Programme for a new statutory body would have to be approved by the FAO Conference.

4. **ITPS:** It appears that the Basic Texts would allow the ITPS to become a subsidiary body of an Article VI Body or an Article XIV Body. It would not be allowed as a subsidiary body of a COAG Sub-committee in its current form where the ITPS members act in their personal capacity because membership in a subsidiary body of a COAG Sub-committee is restricted to FAO Members.

5. **Regional soil partnerships:** Although without precedent and, there is nothing in the FAO Basic Texts that prevent this mechanism from becoming a formal sub-body of an Article VI Body, Article XIV Body or COAG Sub-committee and, with the appropriate approvals, receiving funding from the Organization. See discussion under Sections D.1.7, D.2.7 and D.3.7 above.

6. **National focal points:** This mechanism could remain in its current form.

## 7. **Other considerations**

7.1 It provides a formal, dedicated and coherent intergovernmental mechanism to discuss soil matters, which currently does not exist elsewhere, and to provide input into the Organization's Programmes of Work. Being a formal body would allow for a more stable, long-term forum continuing the progress already made thus far. COAG would presumably also have more time to discuss high-level strategic and policy issues, rather than technical points.

7.2 Government representatives and observers attending the sessions of the new statutory body could be distinctly different from those attending sessions of the COAG. The establishment of the new body may therefore expand the expertise that FAO could draw upon and thereby strengthen its capacity to deal with all soil-related matters.

## **F. Next Steps**

The next step is for the GSP Plenary Assembly to decide whether or not to make the following recommendations for COAG's decision:

- a) to proceed with submitting a proposal to formalize GSP into a FAO statutory body; and
- b) if the decision is to proceed with the formalization proposal, which option would be proposed (see Section D.1 (Article VI Body), Section D.2 (Article XIV Body), and Section D.3 (COAG Sub-committee)).

The GSP Plenary Assembly may also recommend to COAG to consider whether or not GSP should be maintained largely in its current form as a voluntary multi-stakeholder platform alongside the newly-created statutory body providing input into the work of such new statutory body. In that context, the Assembly will need to identify the specific objectives of such a proposal and assess whether these objectives can be met through formalization.

In the event that a decision is made in favor of formalization, the next step is to draft the proposal for its establishment, including its constitutive documents, which would have to pass through the GSP Plenary Assembly, then COAG, then the Council (through its Committees) and, if applicable, the Conference. It should be noted that such processes typically take two years at the very least, bearing in mind the cycle of Governing Body Sessions. For more information on the process, please refer to [Annex 2](#).

<b>ANNEX 1 — Summary of Options</b>			
<b>Criteria</b>	<b>Article VI Body</b>	<b>Article XIV Body</b>	<b>COAG Sub-Committee</b>
Participation of non-State stakeholders	<ul style="list-style-type: none"> <li>Limited to observer status and technically only international NGOs are allowed to become observers but practice is more lax and allows other non-State stakeholders as observers</li> </ul>	<ul style="list-style-type: none"> <li>Limited to observer status and technically only international NGOs are allowed to become observers but practice is more lax and allows other non-State stakeholders as observers</li> </ul>	<ul style="list-style-type: none"> <li>Limited to observer status and technically only international NGOs are allowed to become observers but practice is more lax and allows other non-State stakeholders as observers</li> </ul>
Decision-making	<ul style="list-style-type: none"> <li>Operations must follow FAO regulations, rules, policies and procedures</li> <li>Activities must be consistent with its mandate which, under the Constitution, is limited to (i) with respect to commissions, advising on the formulation and implementation of policy and coordinating the implementation of policy, and (ii) with respect to committees and working parties, studying and reporting on matters pertaining to the purpose of the Organization</li> <li>The constituent instrument of an Article VI Body with a global mandate may vest it with competence to adopt international or regional standards, guidelines and codes of practice within their areas of competence. These products are adopted by the Article VI Body as non-binding voluntary instruments, until adopted by national legislation. However, any recommendations made by the Article VI Body must nevertheless be referred to the Conference or Council, as appropriate, and their reports should be circulated to Members, through the Director-General.</li> <li>The frequency and duration of sessions would be restricted. For example, CGRFA normally holds one regular session each biennium. In order to convene extraordinary sessions, approval from the Council is required.</li> </ul>	<ul style="list-style-type: none"> <li>Has the most autonomy among all options (and more so, if it has a fully autonomous budget) — for instance, it may adopt regulatory measures directly binding upon its Members</li> <li>But still under the framework of FAO and retain very close links with the Organization, even in situations where they enjoy considerable autonomy</li> <li>The frequency and duration of sessions would be restricted</li> </ul>	<ul style="list-style-type: none"> <li>Activities are limited to the mandate of COAG</li> <li>Operations must follow FAO regulations, rules, policies and procedures</li> <li>Any recommendation adopted by COAG (and any of its sub-committees) affecting the programme or finances of the Organization or concerning legal or constitutional matters must be reported to the Council with the comments of the appropriate subsidiary committees of the Council. The reports of COAG must also be placed before the Conference.</li> <li>The frequency and duration of sessions would be restricted, to coincide with COAG (i.e., biennium)</li> </ul>
Funding	<ul style="list-style-type: none"> <li>Secretariat and meeting costs usually covered from Organization's regular programme budget; all</li> </ul>	<ul style="list-style-type: none"> <li>Expenses are paid out of body's autonomous budget except those relating to such staff and facilities as</li> </ul>	<ul style="list-style-type: none"> <li>Using the COFI Sub-committee on Fish Trade (COFI-FT) as an example, FAO's regular programme budget provides funding for COFI-</li> </ul>

<b>ANNEX 1 — Summary of Options</b>			
<b>Criteria</b>	<b>Article VI Body</b>	<b>Article XIV Body</b>	<b>COAG Sub-Committee</b>
	other expenses funded from extra-budgetary resources	can be made available by the Organization from its regular programme budget	FT work, which goes towards inter-sessional work, following up on the requests from the previous COFI-FT session and preparing for the next session. The expenses are mostly for consultant fees and, if necessary, workshop expenses. All other costs are borne by the host country (including expenses for interpretation, translation and travel support for developing countries).
Regional soil partnerships	<ul style="list-style-type: none"> <li>While there is no precedent, there seems to be no prohibition from establishing RSPs as formal subsidiary bodies of the Article VI Body, if administrative and financial implications found acceptable by the appropriate decision-making FAO governing body</li> </ul>	<ul style="list-style-type: none"> <li>While there is no precedent, there seems to be no prohibition from establishing RSPs as formal subsidiary bodies of the Article VI Body, if administrative and financial implications found acceptable by the appropriate decision-making FAO governing body</li> </ul>	<ul style="list-style-type: none"> <li>While there is no precedent, there seems to be no prohibition from establishing RSPs as formal subsidiary bodies of the Article VI Body, if administrative and financial implications found acceptable by the appropriate decision-making FAO governing body</li> </ul>
National focal points	<ul style="list-style-type: none"> <li>No prohibition to maintain (there are precedents) but funding for the mechanism will normally not come from the Organization</li> </ul>	<ul style="list-style-type: none"> <li>No prohibition to maintain (there are precedents) but funding for the mechanism will normally not come from the Organization</li> </ul>	<ul style="list-style-type: none"> <li>There are no precedents, but there is no prohibition to maintain — funding for the mechanism will normally not come from the Organization</li> </ul>
Others	<ul style="list-style-type: none"> <li>Easier to establish than an Article XIV Body but harder than a COAG Sub-committee, because of policy issues and the governing body with authority to establish</li> <li>GSP Plenary Assembly will cease to exist</li> </ul>	<ul style="list-style-type: none"> <li>Harder to establish than an Article VI Body or COAG Sub-committee as it requires an agreement or convention accepted by a minimum number of Member Nations before taking into effect</li> <li>GSP Plenary Assembly will cease to exist</li> </ul>	<ul style="list-style-type: none"> <li>Easier to establish than an Article VI or Article XIV Body</li> <li>ITPS cannot exist in its current form (experts acting in their personal capacity) if made a sub-body of the sub-committee</li> <li>GSP Plenary Assembly will cease to exist</li> </ul>

## ANNEX 2 — Processes for Establishing the Different Statutory Bodies

### A. Process to Establish Article VI Body

In order to establish an Article VI Body, the following steps have to be followed:

a) A proposal to establish an Article VI statutory body must be drafted and accompanied by a document setting forth in detail the following: (a) the objectives that are to be achieved through the establishment of the body; (b) the manner in which the body will carry out its functions and any impact that its creation may have on current or future programmes of the Organization; (c) the financial implications of the establishment of the body for the current biennium, as well as a forecast of the financial implications for the future biennia; (d) a specific assessment of whether the objectives of the proposed statutory body could be met through a different type of working arrangement, such as the organization of ad hoc technical consultations or other task-oriented and time-bound arrangements; and (e) whether there are any existing statutory bodies covering the same, similar or related fields as those to be addressed by the proposed new statutory body.<sup>84</sup> Most of these information would normally be part of the draft Statutes for the proposed Article VI Body.

b) The proposal to establish an Article VI Body must take into account the following factors:

- i. Centrality to the FAO mandate and the Organization's current priorities as expressed by FAO Members and reflected in planning documents;
- ii. Clarity of the definition of the task, which should normally be of limited duration;
- iii. Positive impact of the Body's work at the level of FAO Members;
- iv. FAO's comparative advantage, thereby avoiding overlap and creating synergy with the work of other Bodies;
- v. Proportion of the FAO Membership to which the work of the proposed body is of importance with due regard to the economic capacity of less-advantaged members, including least developed countries and small-island developing states; and
- vi. Willingness of their Members to contribute financially and through non-monetary inputs to the work of the Body, especially where the Body will serve a more limited number of countries, with due regard to the economic capacity of their less advantaged members and the availability of other financial support.<sup>85</sup>

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<sup>84</sup> Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V of Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*.

<sup>85</sup> Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V to Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution*; Resolution No. 13/97 of the Twenty-ninth Session of the Conference (18 November 1997), *Review of FAO Statutory Bodies*, Addendum IV to Part O of the Basic Texts, *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*.



c) The matter must be submitted to the Committee on Constitutional and Legal Matters (CCLM) which will consider specific items referred to it (by the Council or the Director-General) arising out of the establishment of an Article VI Body, including their proposed membership, terms of reference, reporting procedures and rules of procedure.<sup>86</sup>

For example, in connection with the proposal to establish the South West Indian Ocean Fisheries Commission in 2004 (the latest Article VI Body established by the FAO governing bodies), the CCLM reviewed the draft Council Resolution and the Statutes of the proposed Article VI Body and forwarded the the same for adoption by the Council at its 127<sup>th</sup> Session.<sup>87</sup>

d) The proposal will also have to follow the standard process for matters to be submitted for approval by the Council (including its Committees) or, if applicable, the Conference.<sup>88</sup>

e) Such commissions and committees may adopt their own rules of procedure and amendments thereto, which will come into force upon approval by the Director-General.<sup>89</sup> Rules of procedure of subcommissions, subcommittees or subsidiary working parties of an Article VI Body are approved by the Article VI Body and must be in conformity with its rules of procedure and the General Rules of the Organization.<sup>90</sup>

## B. Process to Establish Article XIV Body

In order to establish the Article XIV Body, the following steps have to be followed:

- a) The proposal to establish an Article XIV statutory body must be accompanied by a document setting forth in detail the following: (a) the objectives that are to be achieved through the establishment of the body; (b) the manner in which the body will carry out its functions and any impact that its creation may have on current or future programmes of the Organization; (c) the financial implications of the establishment of the body for the current biennium, as well as a forecast of the financial implications for the future biennia; (d) a specific assessment of whether the objectives of the proposed statutory body could be met through a different type of working arrangement, such as the organization of ad hoc technical consultations or other task-oriented and time-bound arrangements; and (e) whether there are any existing statutory bodies covering the same, similar or related fields as those to be addressed by the proposed new statutory body.<sup>91</sup>

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<sup>86</sup> General Rules of the Organization, Rule XXXIV, paragraph 7.

<sup>87</sup> CL 127/21 (2004).

<sup>88</sup> Constitution, Article VI, paragraph 3.

<sup>89</sup> Constitution, Article VI, paragraph 3.

<sup>90</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, paragraph 36.

<sup>91</sup> Resolution No. 11/2015 of the Thirty-ninth Session of the Conference (13 June 2015), *Review of FAO Statutory Bodies*, Addendum V of Part O of the Basic Texts, *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*.

- b) Before a technical meeting or conference (comprising Member Nations) participates in the drawing up of a draft convention or agreement for submission to the Council or Conference, such technical meeting or conference must consider the document referred to in paragraph a) above.
- c) Where, after consideration of such document, the technical meeting or conference suggests to the Conference or Council that the convention or agreement be approved and submitted to Member Nations concerned for acceptance, the Conference or Council must consider the document referred to in paragraph a) above, appropriately revised as necessary, before approving the convention or agreement.<sup>92</sup>
- d) The draft convention or agreement must contain, among others, the following information:
  - i. Who may become parties thereto;
  - ii. the number of acceptances by Member Nations necessary to bring such convention or agreement into force and thus to ensure that it will constitute a real contribution to the achievement of its objectives;<sup>93</sup> and
  - iii. whether the Article XIV Body may establish subsidiary bodies, which establishment must be subject to the availability of necessary funds in the relevant approved budget. (When the related expenses are to be borne by the Organization, the determination of such availability is to be made by the Director-General. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Article XIV Body must have before it a report from the Director-General on the administrative and financial implications thereof.)<sup>94</sup>

**Note:** The convention or agreement must 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.<sup>95</sup>
- e) The draft convention or agreement will be submitted to the Conference or Council through the Director-General on behalf of a technical meeting or conference.

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<sup>92</sup> Resolution No. 12/79 of the Twentieth Session of the Conference (27 November 1979), *Procedures for the Establishment and Abolition of Statutory Bodies*, Addendum III to Part O of the Basic Texts, *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*.

<sup>93</sup> Constitution, Article XIV, paragraph 3.

<sup>94</sup> *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution*, Part O of the Basic Texts, Appendix, paragraphs 19 and 20.

<sup>95</sup> Constitution, Article XIV, paragraph 3.

- f) To secure proper consultation, the Director-General must notify Member Nations and Associate Members of any proposal for a convention, agreement, supplementary convention or agreement under Article XIV of the Constitution, not later than the time when he dispatches the agenda of the session of the Conference or Council at which the matter is to be considered.
- g) The Director-General must, at the same time as he is requesting Member Nations and Associate Members for their comments on the proposed convention or agreement, consult the United Nations and other specialized agencies and, at his discretion, other international organizations in respect of any provision of the proposed convention or agreement which relates to the activities of such organizations or agencies.
- h) The Conference or the Council, after having considered any representations that may have been made to it or comments submitted by Member Nations and Associate Members, and any comments from the United Nations, any specialized agency, or other international organization, may approve only such conventions and agreements as contain provisions to the effect that:
  - i. any international body or machinery to be set up or any activity to be undertaken under such convention, agreement, supplementary convention or agreement is within the framework of the Organization; and
  - ii. recommendations adopted and reports on activities carried out by any such body shall be transmitted to the Director-General of the Organization.<sup>96</sup>
- i) The proposal to establish any international body under Article XIV of the Constitution must take into account the factors set out in this Annex 2, Section A.b) above.
- j) The CCLM considers specific items referred to it by the Council or the Director-General which may arise out of the formulation, adoption, entry into force and interpretation of multilateral conventions and agreements concluded under Article XIV of the Constitution.<sup>97</sup> For example, the CCLM reviewed the draft Agreement on the Central Asian and Caucasus Fisheries and Aquaculture Commission (CAC-FISH), the latest Article XIV Body established by the governing bodies, together with a draft Council Resolution, and found them to be in proper legal form and decided to forward them to the Council for approval under Article XIV, paragraph 2 of the Constitution.<sup>98</sup>
- k) The proposal will also have to follow the procedures for matters to be submitted for approval by the Council or, if applicable, the Conference, including prior submission to the Programme Committee and Finance Committee.

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<sup>96</sup> General Rules of the Organization, Rule XXI, paragraph 1.

<sup>97</sup> General Rules of the Organization, Rule XXXIV, paragraph 7.

<sup>98</sup> CL 137/5 (2009).

### C. Process to Establish COAG Sub-committee

In order to establish the Sub-committee, the following steps have to be followed:

- a) The proposal to establish the Sub-committee must take into account the factors set out in this [Annex 2](#), Section A.b) above.  
  
**Note:** For an example, please see COAG 2020/7 on the proposal to establish the Sub-committee on Livestock.
- b) Before taking a decision on the establishment of the Sub-committee, COAG must examine the administrative and financial implications of such decision, in the light of a report to be submitted by the Director-General.<sup>99</sup>
- c) COAG will define the terms of reference, composition and, as far as possible, the duration of the mandate of the Sub-committee.<sup>100</sup>
- d) Using the process followed for the establishment of the COAG Sub-committee on Livestock, (a) the proposal is submitted to COAG, (b) then it is submitted to the Programme Committee and Finance Committee,<sup>101</sup> and the CCLM,<sup>102</sup> and (c) thereafter, the matter is submitted to the Council and then to the Conference for endorsement.<sup>103</sup>
- e) The Sub-committee may adopt its own rules of procedure, which must be approved by COAG and be consistent with the Rules of Procedure of COAG.<sup>104</sup>

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<sup>99</sup> General Rules of the Organization, Rule XXXII, paragraph 12; Rules of Procedure of COAG, Rule VII, paragraph 2.

<sup>100</sup> General Rules of the Organization, Rule XXXII, paragraph 12; Rules of Procedure of COAG, Rule VII, paragraph 3.

<sup>101</sup> See JM 2020.2/INF/1 (9 November 2020).

<sup>102</sup> While this is not explicitly stipulated in the Basic Texts, experience has shown that reference of such matters to the CCLM, under General Rules of the Organization, Rule XXXIV, paragraph 7, is desirable, given the need to ensure alignment of any terms of reference with the Basic Texts, as well as other rules and practices of FAO.

<sup>103</sup> See CL 165/9; C 2021/21, paragraphs 19-22; C 2021/REP, paragraph 47.

<sup>104</sup> General Rules of the Organization, Rule XXXII, paragraph 14.