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# COUNCIL

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**Indian Ocean Tuna Commission - Communication from FAO Secretariat -  
Consultation towards the development of a proposal for a permanent  
procedure to select the Executive Secretary**

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***CIRCULAR COMMUNICATION TO IOTC MEMBERS***  
***(IOTC CIRCULAR 2017-078 ISSUED ON 19 SEPTEMBER 2017)***

**Twenty First Session of the Indian Ocean Tuna Commission**  
**Yogyakarta, Indonesia, 22-26 May 2017**

**(Consultation towards the development of a proposal for a permanent procedure  
to select the Executive Secretary)**

The Director-General of the Food and Agriculture Organization of the United Nations (FAO) presents his compliments to the Members of the Indian Ocean Tuna Commission (“IOTC” or “the Commission”) and, on behalf of the FAO Secretariat, refers to the deliberations of the Commission at its Twenty-first Session under the item “*consultations towards the development of a proposal for a permanent procedure to select the Executive Secretary*”. The following views are presented as a contribution to the process under way.

As the Commission is aware, this matter was most recently considered by the FAO Council at its Hundred and Fifty- Fifth Session in December 2016, following deliberations by subsidiary committees of the Council. At that Session, the Council decided, *inter alia*, that the Independent Chairperson of the Council and the FAO Secretariat would consult with the concerned Article XIV bodies with a view to developing a proposal on procedures for the appointment of Secretaries of concerned Article XIV bodies acceptable to the bodies and to be submitted to the FAO Council by the end of 2018. At that time the Council also approved an exceptional procedure for the appointment of two secretaries of Article XIV bodies.

The FAO Secretariat has taken due note of the deliberations of the Commission on this matter at its Twenty-first Session following the statement by the Independent Chairperson of the Council. In this context, the FAO Secretariat finds it appropriate to recall some applicable principles deriving from the nature of IOTC as a statutory body of FAO, a Specialized Agency of the United Nations System, and operating within FAO and that System, especially as the matter will be further considered in 2018 on the occasion of the referral of the matter to the Council of the Organization. The FAO Secretariat recalls that this position was elaborated in detail in document JM 2016.2/6 and CCLM 103/2 “*Procedure for the selection and appointment of Secretaries of Article XIV does and of other entities hosted in FAO*” (Internet link).

The FAO Secretariat observes that, while Article XIV bodies enjoy a measure of functional autonomy in implementing their programme of work, administratively they are integrated with and in FAO, operate under the framework of FAO, and commit FAO and all of its Members in all their activities, whether or not their programmes of work are funded entirely by their membership. Their constituent instruments do not vest the bodies with legal personality. Treaties under Article XIV are negotiated and adopted within FAO, in accordance with procedures set forth in the Constitution, the General Rules of the Organization (“GRO”) and the Principles and Procedures adopted by the FAO Conference.<sup>1</sup> While these bodies may adopt and amend their Rules of Procedures and Financial Regulations, they must be consistent with the institutional framework of FAO. These bodies operate under, and in accordance with, the FAO’s general policies. Any amendments to the constituent agreements must be reported to the Council or the Conference, which have the power to disallow them if they find that the amendments are inconsistent with the objectives and purposes of FAO or the provisions of the FAO Constitution.

The FAO Secretariat recalls, furthermore, that staff of Article XIV bodies are officials of FAO appointed by the Director- General and are subject to FAO Staff Regulations and Rules, as well as to

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<sup>1</sup> The 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, *Basic Texts*, Section O, page 177.

the authority of the Director-General, notwithstanding any autonomy which they may enjoy in technical matters for the discharge of their functions for the bodies concerned. It is FAO, and the Director-General as its legal representative, that must address any liabilities arising from the activities of Article XIV bodies and any grievances of the personnel employed to support them. It is FAO, and its membership, which must meet any costs arising in connection with those responsibilities and liabilities. The privileges and immunities enjoyed by Article XIV bodies and their personnel are the privileges and immunities of the Organization.

Thus, for example, any fiscal or other exemptions from which these bodies may benefit for their activities are those granted to FAO; there is no independent or separate entitlement to such treatment.

The FAO Secretariat wishes to recall a few specific considerations related to Article XIV bodies under this framework in light of some practices that have developed:

(a) The Treaties provide for two parties (the Director-General and the body concerned) to have a role in the appointment process. The practice of holding elections, whereby the FAO Secretariat and the Director-General were *de facto* eliminated from the appointment process, is considered to be inherently incompatible with the provisions of the various treaties. The provisions of the relevant Article XIV treaties are similar to those of the GRO concerning the appointment of Deputy Directors-General, who are appointed by the Director-General, subject to confirmation of the Council and these never resulted in elections for the positions of Deputy Directors-General. It is up to the Council to accept or reject the proposed appointment. The same should apply to Article XIV bodies, with the Director-General and the Body concerned each remaining within their respective roles, with the body concerned having a final say by deciding whether to approve or reject the candidate presented by the Director-General. This approach reflects a general practice throughout the United Nations System in the implementation of similar provisions which are, in no way, specific to the IOTC Agreement.

(b) While FAO and the Director-General have been excluded from the processes of some Article XIV Bodies to select the Secretaries, they have remained fully responsible and accountable for the performance and conduct of the Secretaries. Under the FAO institutional framework, it is FAO and the Director-General, as the ultimate legal representative of FAO and of the Article XIV bodies concerned, who are compelled to address, and respond to, the consequences of shortcomings and deficiencies in the performance or conduct of the Secretaries. This accountability arises notwithstanding the fact that, they had limited or no involvement in the assessment and selection of the Secretaries through elections or voting processes.

(c) The appointment of Secretaries of Article XIV bodies must be primarily seen as a professional selection process, allowing for an assessment of the qualifications of the candidates, for proper reference checks, and for any assessment of all the candidates from the perspective of their integrity and conduct. These verifications are normal and important elements of the process related to any professional appointment in the United Nations System. A plain reading of the treaties concerned confirms that the role of the Director-General in such selections is more than simply administrative or advisory.

(d) The practice that has developed of holding elections (or voting) to select the Secretaries of some Article XIV bodies has had the practical consequence of undermining the impartiality, independence and autonomy which should characterize the activities undertaken by the Organization, including its Article XIV bodies, and their multilateral nature. Secretaries are entrusted with assisting Article XIV bodies to carry out their functions. However, in seeking election, or having been elected, officials will tend to regulate their conduct taking into account the positions of those who elected them or who might do so in the future, rather than discharging their functions on an impartial independent basis. This conduct is incompatible with the obligation of loyalty of a staff member vis-à-vis the Organization (and through the Organization, the body concerned), as well as the Standards of Conduct of the International Civil Service.

As a contribution to the ongoing process, the FAO Secretariat invites IOTC Members to consider the standard procedures for the appointment of Senior Staff in FAO as adjusted to recent appointments of Secretaries of Article XIV bodies, attached to the present communication. In line with the decision of the Council at its Hundred and Fifty-Fifth Session in December 2016, this procedure applied to the selection and appointment of the current IOTC Secretary with the participation of two representatives of IOTC Members. It is the considered view of the FAO Secretariat that this procedure is reasonable and appropriate and would provide a sound basis for the establishment of a permanent procedure for the appointment of the Secretariat of the IOTC, in light of its current status of a statutory body of FAO, a United Nations Specialized Agency. The recent process that followed this model was, in the opinion of the FAO Secretariat fully transparent, objective, efficient and ensured the selection of a candidate endorsed as suitable by FAO and the Commission's representatives for the Commission's approval.

### **Process for selection and appointment of Secretaries of Article XIV Bodies<sup>2</sup>**

Following the guidance of the 155<sup>th</sup> Session of the FAO Council, the appointment of the Secretaries will follow the procedures for appointment of FAO Senior Staff.

Accordingly, the following procedure as per usual practice, with a few adjustments, will be undertaken:

- 1) Vacancy Announcement drafted by technical departments with support of the Office for Human Resources;
- 2) Issuance of Vacancy Announcements for the positions of Executive Secretary. Vacancy Announcements closed after 46 days, in line with standard timing and practice;
- 3) First review and screening of candidates by the Office of the Human Resources based on minimum criteria and qualifications as outlined in the Vacancy Announcement;
- 4) Second review by the offices of the relevant Deputy Directors-General and Assistant-Directors-General to identify shortlist for interviews;
- 5) Interview shortlist to contain at least 10 candidates, with at least 1 female candidate
- 6) Interview panel composition: Chairperson (from the office of the Deputy Director-General, Coordinator for Climate and Natural Resources), 2 Senior FAO officers, 1 external member, and 1 Human Resources representative (for process support). In addition, exceptionally for recruitment of secretaries of Article XIV bodies, the interview panel will include 2 representatives of Members designated by the bodies, in line with the decision of the Council;
- 7) Interviews of shortlisted candidates by the interview panel;
- 8) Submission of the report of the panel for consideration by the Director-General. The report will contain a minimum of 5 candidates, including at least one female candidate. If there is no female candidate, the panel report must contain relevant justification for this omission;
- 9) Reference checks are undertaken by the Office for Human Resources and the managerial capabilities of the listed candidates are reviewed by an external company;
- 10) The Director-General selects one candidate who is referred to the relevant Article XIV Body, or to the Members of the Body, for confirmation;
- 11) Confirmation of the candidate, as appropriate;
- 12) Appointment.

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<sup>2</sup> This process applies only to Article XIV bodies whose Secretaries, under the constituent instruments, are appointed by the Director-General with the approval of the body concerned.