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COUNCIL CONSEIL CONSEJO

**Hundred and Fifty-fifth Session
Cent cinquante-cinquième session
155.º período de sesiones**

**Rome, 5-9 December 2016
Rome, 5-9 décembre 2016
Roma, 5-9 de diciembre de 2016**

**FIFTH PLENARY MEETING
CINQUIÈME SÉANCE PLÉNIÈRE
QUINTA SESIÓN PLENARIA**

7 December 2016

The Fifth Plenary Meeting was opened at 9.40 hours
Mr Wilfred J. Ngirwa,
Independent Chairperson of the Council, presiding

La cinquième séance plénière est ouverte à 9 h 40
sous la présidence de M. Wilfred J. Ngirwa,
Président indépendant du Conseil

Se abre la quinta sesión plenaria a las 9.40
bajo la presidencia del Sr. Wilfred J. Ngirwa,
Presidente Independiente del Consejo

Please submit all corrections to Room A374. Pour toutes corrections s'adresser au Bureau A374.
Para todas las correcciones dirigirse a la Oficina A374.



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(CL 155/4; CL 155/6; CL 155/11; CL 155/13 Rev.1; CL 155/LIM/2; C 2017/6 A and B)

CHAIRPERSON

Ladies and Gentlemen, I call the Fifth Meeting of the 155th Session of the FAO Council to order.

We start our work today with item 7, *Report of the 162nd Session (23-25 May 2016), 163rd Session (2-3 November 2016) and 164th Session (7-11 November 2016) of the Finance Committee*. The documents before Council are CL 155/4; CL 155/6, CL 155/11, CL 155/13 Rev.1; C 2017/6 A and B and CL 155/LIM/2.

I would like to draw your attention to document CL 155/LIM/2, regarding the Status of Assessments and Arrears.

This document sets out the status of assessments and arrears as at 29 November 2016.

Member Nations currently owe to FAO over USD 132 million for 2016 and prior years, which clearly complicates FAO's liquidity management.

As of 29 November 2016, 20 percent of 2016 assessed contributions were still to be settled.

Forty-seven Member Nations still had arrears outstanding from 2015 and previous years, and 19 owed arrears in such amounts as would prejudice their right to vote at the next Session of the Conference in accordance with Article III.4 of the Constitution.

There is no decision to be made on this point, but the Council may wish to include a statement regarding arrears in its report on this item.

I now invite Mr Khalid Mehboob, Chairperson of the Finance Committee, to introduce this item.

Mr Khalid MEHBOOB (Chairperson, Finance Committee)

I am pleased to present the Reports of the 162nd, 163rd and 164th Sessions of the Finance Committee. These Reports are submitted to the Council in documents CL 155/4, CL 155/6 and CL 155/11. In addition, document CL 155/LIM/2 has been prepared to provide the Council with an update on the status of contributions and arrears as at 29 November 2016.

The Chair has also referred to this document in his opening remarks.

While the 164th session dealt with FAO issues, the 162nd and 163rd sessions were special sessions convened to deal with WFP matters. Our reports on WFP matters have been submitted to the WFP Executive Board for its consideration.

As agreed with the Independent Chairperson of the Council, I shall now present to you salient highlights of the report of the 164th Meeting of the Finance Committee.

First is *Monitoring Financial Position*. In reviewing the Financial Position of the Organization and recognizing that the Organization's on-going cash flow health was dependent on the timely payment of assessed contributions, the Committee urged all Member Nations to make timely and full payment of assessed contributions and requested the Secretariat to continue exploring how to encourage this. Underlining the importance of the TCP to member countries, the Committee requested the Secretariat to continue to maintain the TCP expenditure rate at a level that ensures full implementation of the TCP appropriation as approved by the Conference.

The Committee examined the FAO Audited Accounts for 2015, the second set of Accounts for FAO prepared in accordance with the International Public Sector Accounting Standards (IPSAS). The Committee welcomed the issuance of the External Auditor's unmodified opinion and expressed

appreciation for the quality of the Long Form Report. The Committee noted that the Long Form Report contained a significant number of observations and recommendations relating to internal control issues, in particular those relating to monitoring controls, processing controls, the segregation of duties and the Shared Services Centre. The Committee emphasized the importance of strengthening the internal control framework at headquarters and decentralized offices and monitoring its effective implementation and compliance. Noting the comments and clarifications provided by the External Auditor and the Secretariat, the Committee recommended that the Council submit the Audited Accounts for 2015 to the Conference for adoption. The Committee accordingly agreed to submit to the Council the draft resolution presented in paragraph 11 of CL 155/6 for forwarding to the Conference.

The Committee considered an update on the latest UN system discussions on the funding of After Service Medical Coverage (ASMC) liabilities and on efforts being made by the Secretariat to contain the costs of the scheme. The Committee encouraged the Secretariat to further review the options to address the funding gap in the context of the considerations on this matter by the United Nations General Assembly, emphasizing the importance of adopting a common approach amongst the members of the United Nations Common System. The Committee urged the Secretariat to continue its efforts to contain costs of the current medical insurance plan.

Coming to the *Budgetary Matters*, the Committee reviewed the Annual Report on Support Costs Expenditures and Recoveries covering the period from 1 June 2015 to 31 May 2016 and noted that all trust fund projects opened during the period under review had been charged at rates which fell within the approved legacy policy on support costs. The Committee further noted that, during 2016, the Secretariat was applying the new FAO policy on cost recovery to selected projects during their formulation in close collaboration with the resource partners involved and aimed for full implementation of the new policy in 2017.

Human Resources: the Committee commended the Secretariat on the achievements made in human resources management in the Organization since 2012, including in the areas of recruitment and development of employees, improved gender representation and increased efficiency in HR processes and procedures. It encouraged the Secretariat in its efforts to address the challenges ahead identified in the report, including *inter alia* on recruitment procedures, equitable geographical representation and the efficient use of non-staff human resources.

The Committee welcomed the significant improvement reported on the status of professional vacancies and the resulting vacancy rate. The Committee requested the Secretariat to adopt a standardized format when presenting information and to streamline the process for responding to requests by Members for the provision of non-sensitive information on staffing.

The Committee reviewed Recommendations and Decisions of the International Civil Service Commission and the United Nations Joint Staff Pension Board to the General Assembly (including Changes in the Salary Scales and Allowances). The Committee took note of the progress on implementation of the changes to the compensation package for the professional and higher categories and the main decisions by the UN Joint Staff Pension Board.

Oversight issues: the Committee reviewed and endorsed the Director-General's recommendation to appoint Ms Daniela Graziani as a member of the FAO Audit Committee for an initial period of three years, and that this be renewable thereafter up to a maximum of six years in total.

The Committee reviewed an updated Progress Report on Implementation of the External Auditor's Recommendations. The Committee commended the Secretariat on the significant progress made in closing recommendations of the External Auditor and urged the Secretariat to continue efforts to close the remaining outstanding recommendations.

Overall, the sessions of the Committee were very productive and, in particular, I believe that it was possible to address a number of important issues facing the Organization. On behalf of the members of the Committee, I would like to extend our appreciation to the Secretariat for its assistance in our deliberations and our gratitude to the Member Nations of FAO for providing us this opportunity to further the important work of the Organization. I would be pleased to provide any further explanations you may have regarding our reports.

Mr Khaled Mohamed EL Taweel (Egypt) (Original language Arabic)

The delegation of Egypt is talking on behalf of the Near East group and would like to focus on the following items.

First, the group confirms the necessity to pay the contributions upon deadlines and that should allow the Organization to implement its Programme of Work. It requests the Secretariat to explore new and innovative ways in order to encourage Member Nations to pay their contributions on time.

Second, the group is concerned about the rise of deficit that might reach 955 million dollars by next month and this is related to the high burdens of the past medical services. It requests the Secretariat to follow the United Nations system scheme in order to reach a solution for this issue.

Third, the group confirms the linkages between implementation of the SDGs and the technical cooperation programmes. It is imperative to make sure that the expenditure rates in the technical programmes are capable of providing the required amounts for these programmes according to the indications of the conference. We remind you that it is very important to give due attention to this request.

Fourth, in light of the importance of the technical programmes and leading up to the conference next year we call upon starting unofficial and informal negotiations in order to agree upon the recovery costs, in order to reach at least a level of 14 percent and we have to comply with the decision number 9 of 98.

Fifth, regarding the management of human resources, we can mend the achievements in this area however we are concerned about the rise of vacancies in the regional office in Cairo as it has registered the highest level across regional offices. This is deterring us from achieving the required missions. We require to increase the capacities of these offices in order to achieve the goals. We need to have better justice in the representation across the offices and Regional Bureaus.

In the end, the Near East group appreciates the efforts of Mr Khalid Mehboob, Chairperson of the Finance Committee and thanks the Secretariat as well as the member nations.

Mr Dun NIU (China) (Original language Chinese)

We highly commend the leadership of the Chairman of the Finance Committee and we also highly appreciate the work done. We endorse the Reports

We have the following comments to make. First, members should pay their contribution in a timely manner. China thinks that delaying payment is irresponsible and it also has a negative impact on countries who pay on time. Therefore China has the following two suggestions to make.

First, FAO should take necessary measures, for example, disclose on the website the names of countries who do not pay their contribution on time and make appropriate sanctions such as disqualifying them from participating in Governing Bodies meetings. Second, FAO delegations or other representative bodies should communicate in an effective manner with their countries. If they cannot pay their contribution on time, they should provide a written explanation and this should be published online.

Second, as regards to the FAO commissary, we think that it should increase its supply and sell goods which are from different regions. It should also increase the circulation of goods. In this regard, we suggest that it should increase the goods coming from developing countries, especially the white alcohol from China. Second, the goods should not be locked up otherwise customers have to ask the salesmen to unlock the products; this should be avoided as it is a hassle and it is a waste of time. Third, the commissary should clear out the goods which have not been sold for a long time.

We also think FAO should find different sources to mobilize funds; especially it should enhance its cooperation with Governments and the private sector. One suggestion would be that it should build a link with countries national strategies such as China's: a one road initiative. Moreover, it should strengthen the link with companies to promote the trade of agricultural commodities and agricultural investments so as to contribute to the achievement of 2030 Agenda and SDGs.

Sr. Benito Santiago JIMENEZ SAUMA (México)

Tomo la palabra a nombre del GRULAC.

Agradecemos al Presidente del Comité de Finanzas su presentación, así como su conducción en los trabajos del Comité.

Permítame unos comentarios sobre el centésimo sexagésimo cuarto período de sesiones del Comité.

Notamos con atención que si bien la liquidez de la Organización en el corto plazo está cubierta, la cuestión del déficit creciente del Fondo General requiere una mayor atención. Como se menciona en el documento, esto se debe al déficit de financiación para sufragar las obligaciones relativas al Plan de seguro médico después del cese en el servicio y al Plan de prestaciones por rescisión del nombramiento.

Si bien este tema va más allá de la FAO y abarca a una parte importante del Sistema de las Naciones Unidas, creemos que se debe abordar con seriedad y prontitud para evitar un mayor déficit en el futuro, por lo que respaldamos las propuestas mencionadas en el informe alentando a la Secretaría a examinar opciones viables para resolver este problema.

En cuanto al Programa de Cooperación Técnica, apoyamos plenamente el llamado del Comité de Finanzas para que la Secretaría siga manteniendo una tasa de gasto del PCT a un nivel adecuado a fin de garantizar la ejecución plena de lo consignado en el Programa de Trabajo aprobado por la Conferencia.

Tomamos nota con agrado que desde hace un año ha habido progresos importantes para cubrir las vacantes en puestos de la FAO. Esta cuestión es importante para poder mantener en buen nivel la capacidad técnica de la Organización. Alentamos a la Secretaría a mantener este ritmo para cubrir vacantes, siguiendo todos los procesos debidos de contratación y selección de personal en un marco de transparencia. También alentamos a la Secretaría a conseguir una representación geográfica más equitativa, tanto del personal contratado como de los consultores, acorde con el espíritu de universalidad de las Naciones Unidas.

Con estos comentarios, apoyamos las recomendaciones contenidas en los informes.

Mr Gustaf Daud SIRAIT (Indonesia)

Indonesia is delivering this statement on behalf of the Asia Group.

We thank the Secretariat for this comprehensive and informative document. We welcome the Report of the 164th Session of the Finance Committee and other related reports such as the Audited Accounts together with its notes as at 31 December 2015 and the External Auditor's Report. The Audited report tells us that FAO is in a stable financial position.

From the reports however, we wish to draw five important points:

The Audited Report of FAO tells us that the financial position of FAO is strong while maintaining a stable reserve. We however, note that there is a decrease of USD 129.1 million in the Cash Flow Statement which was due to a reduced Assessment of Member Nations under Regular Programme and also from a reduced amount of Voluntary Contributions. Therefore, we underscore the Finance Committee's recommendation urging the Member Nations to make timely and full payment of assessed contributions to ensure programmes are being implemented accordingly as planned.

The External Audit Report of FAO 2015 has suggested 21 recommendations for improvement of financial management and governance of FAO with priorities and timelines. We also note that the management has partially implemented recommendations by the auditors for financial year 2012-13 and 2014. This means that there is still more work to be done. Therefore, we reiterate the importance of implementing all the recommendations identified especially when it concerns strengthening the internal control framework at Headquarters and Decentralized Offices. Internal controls are the procedures put in place to help the Organization to achieve its objectives. Establishing effective internal controls for FAO means that it would be able to assist departments to operate more efficiently and effectively. We look forward to see the Progress Report on Implementation of the External

Auditor's Recommendation next year. We encourage the Finance Committee to stress on the specific timeline for all the recommendations to be implemented.

We concur with the Finance Committee's underlining the importance of the TCP to Member Nations, including towards achieving the Sustainable Development Goals, and with the Committee's request for the Secretariat to maintain the TCP expenditure rate at a level that ensures full implementation of the TCP appropriation as approved by the Conference.

We support the Finance Committee's encouraging the Secretariat in its efforts to address the challenges in Human Resources management, notably by improving recruitment procedures and ensuring equitable geographical representation.

We take note and endorse the appointment of Ms Daniela Graziani as a new member of FAO Audit Committee. As for other matters related to Budgetary, Human Resource Management and Audit Progress Report, we hereby take note and request the management to further take necessary action.

Sr. Mateo Nsogo NGUERE MICUE (Guinea Equatorial)

Guinea Ecuatorial, al igual que los otros oradores precedentes, queremos felicitar al Presidente del Comité de Finanzas por su brillante exposición y presentación del informe, así como la forma que ha orientado los debates durante la celebración de la reunión del Comité de Finanzas.

La República de Guinea Ecuatorial interviene de nuevo en nombre de los Países del Grupo Africano, los cuales manifiestan su satisfacción por los informes del 162.º, 163.º y 164.º períodos de sesiones del Comité de Finanzas de la FAO, celebrados en mayo y noviembre de este año.

El Grupo Africano valora en alto estos informes porque, recogen con objetividad las cuestiones que fueron abordadas durante dichos Comités, en tanto que son temas importantes que redundan para el buen funcionamiento de la FAO y el PMA, con el objetivo de conseguir la eficacia y la eficiencia a la hora de ejecutar sus programas y planes de acciones.

Exhortamos a los Países en cumplir con sus obligaciones financieras para el presupuesto ordinario de la FAO, pagando a tiempo sus contribuciones, a fin de que podamos tener una Organización fuerte con cuentas saludables, con el propósito de afrontar los desafíos que van surgiendo cada vez más en el contexto internacional.

Solicitamos el aumento, o en su defecto la conservación de los montos asignados a la partida presupuestaria que corresponde al fomento de las actividades de la Cooperación Técnica (PCT).

Felicitamos a la FAO por la aplicación de la política de ahorro de los gastos, consistente en la realización de actividades con el empleo de menos fondos a fin de conseguir más ahorros.

Solicitamos el cumplimiento a tiempo de las recomendaciones del Auditor Externo, para conseguir la máxima transparencia en la gestión de los recursos y evitar la opacidad en las actividades de la FAO.

Manifestamos nuestra satisfacción en el sentido de que, la creación de los tres nuevos puestos de Dirección de la FAO que se propone, no van a suponer una carga adicional al presupuesto ordinario; por lo que, tampoco ello conllevará un aumento de las cuotas por parte de los Miembros.

Queremos aprovechar esta oportunidad para felicitar al Director General de la FAO por los esfuerzos que está realizando desde el año 2012 para mejorar los aspectos administrativos y financieros de la Organización, sobre todo en lo que concierne a los recursos humanos, creando más puestos técnicos en detrimento de los puestos burocráticos; al propio tiempo que ha conseguido reducir los plazos en la contratación del personal cualificado, de igual forma ha velado por la equidad de género y la descentralización de las oficinas en los países.

Con estos comentarios, los países del Grupo Africano aprueban los informes del 162.º, 163.º y 164.º períodos de sesiones del Comité de Finanzas, así como las medidas que se proponen.

Les agradezco por la amable atención.

Sra. Mónica ROBELO RAFFONE (Nicaragua)

Mi delegación se suma a la declaración del GRULAC sobre este punto de la agenda. En particular, Nicaragua acoge con satisfacción la multitud de logros en la esfera de la gestión de recursos humanos en la Organización desde el año 2012. Destacamos los progresos realizados que han colocado a la FAO como innovadora en todo el sistema de las Naciones Unidas.

Felicitemos a la Secretaría por los resultados en materia de recursos humanos, especialmente en el ámbito de la contratación y la distribución geográfica, donde la FAO es ahora más rápida en la contratación de candidatos de buena calidad. El proceso de selección es más equilibrado y transparente.

Con esa consideración, Señor Presidente, mi delegación endosa el informe del Comité de Finanzas.

Mr Thomas DUFFY (United States of America)

The United States endorses this report and applauds FAO for managing within its means and taking a prudent, responsible approach to ensuring the proper financial and governance oversight. We welcome the increased focus on vacancy announcements in 2016 and the strides made in gender representation since the launch of reforms in 2012.

As noted at the Finance Committee, despite increased efforts to improve geographical distribution, the latest statistics reflect a decrease in representation for some regions that were already under-represented. We encourage the Secretariat to continue its focus on addressing geographic representation and balances and look forward to timely provision of updated information.

The United States thanks the Secretariat for its leadership in the UN in the After Service Health Insurance Working Group of the Finance and Budget Network. We look forward to updates on this and other potential cost implications to the Organization, as well as to the eventual implementation of the new mandatory age of separation.

We support the Finance Committee recommendation for the Secretariat to undertake another review of the Terms of Reference of the FAO Audit Committee to align them with best practices of other UN Organizations and we ask the Secretariat to present the revised draft version for future Finance Committee review.

Mr Hinrich THOLKEN (Germany)

I would like to pass the floor to the Slovak Republic before coming back for a short national statement.

Ms Zora WEBEROVÁ (Observer for Slovakia)

I am honoured to speak on behalf of the European Union and its 28 Member States, San Marino and the candidate countries to the EU, Montenegro and Serbia, align themselves with this statement.

We commend the work of the FC at its 164th Session and welcome the conclusion and advice to the Council as contained in the report on this session. We would like to limit our comments to certain points in this report.

Looking at the FAO's Financial Position, we note with satisfaction that the Organisation's liquidity is expected to be sufficient to cover operational needs through the end of 2016. However, we are slightly less satisfied with the fact that the pace of timely payment of contributions has slowed down a bit. Therefore, we endorse the Committee's appeal to Members to make timely and full payment of assessed contributions, and encourage the Secretariat to continue exploring measures to encourage such payments.

We endorse the Committee's recommendation that the Council should submit the FAO Audited Accounts 2015 to the Conference for adoption.

We appreciate the Committee's conclusions on funding After Service Medical Coverage (ASMC) Liabilities. In particular, we acknowledge again the need for the United Nations System to adopt a common approach to this issue, and therefore encourage the FAO to continue its active participation in the UN After Service Health Insurance Working Group. In the meantime the FAO should continue its efforts to contain the costs of the current medical insurance plan. As a contribution to containing

ASMC costs, the FAO should consider the expeditious implementation of the new mandatory age of separation for staff recruited prior to 1 January 2014.

Regarding Human Resources Management, we welcome the significant improvement reported in the status of professional vacancies and the resulting vacancy rate. We encourage the Secretariat to persist in its efforts to make sure that vacant posts are being filled promptly. In this context, we would like to stress the paramount importance of securing the highest standards of efficiency, fair competition, transparency and technical competence in the selection of staff. In this context, it is also crucial to ensure that the technical divisions have a full say in the selection process.

While acknowledging that some progress was achieved in the provision of timely information on human resources management, we still see a lot of room for further improvement. To this effect, we support the Committee's request to adopt a standardised format when presenting information which comprehensively covers both staff and non-staff human resources.

In the same vein, we strongly support the Committee's request to streamline the process for responding to requests by Members for the provision of non-sensitive information on staffing.

Moreover, we support the Committee's endorsement of the Director-General's recommendation to appoint Ms Daniela Graziani as a new member of the Audit Committee.

Finally, we commend the Secretariat on the significant progress made in closing the recommendations of the External Auditor and urge the Secretariat to continue efforts to close the remaining outstanding recommendations.

Mr Hinrich THOLKEN (Germany)

We fully align ourselves with the statement made by Slovakia on behalf of the European Union and I would like to come back to one issue that relates to the process of responding to requests by Members for the provisions of non-sensitive information on staffing.

We, as many other Member States, have to inform our capitals regularly on these issues. In concrete terms, this year we asked the three RBAs for certain non-sensitive information on staffing on 26 October. WFP responded by 8 November. IFAD responded by 10 November. FAO has not responded up until today, 7 December. This is very unsatisfactory. We urge the Secretariat to remedy the situation speedily.

Ms Yuri KUMAGAI (Japan)

Japan aligns itself with the Asia Group comments delivered by Indonesia earlier, particularly on urging the Member Nations to make timely and full payment of assessed contributions.

Japan would also like to highlight the following two points.

Firstly, on the issue of funding of the staff-related liabilities, especially the After Service Medical Coverage liability, Japan encourages the FAO Secretariat to continue to be actively engaged in the discussions under the United Nations Common System and to consider the options to contain the costs of those liabilities.

Secondly, Japan welcomes the Secretariat's report on the recent achievements made in human resources management, and hopes that the FAO, being a specialized agency, continues to place high value on ensuring technical competency of the staff in its recruitment process, while also taking account of geographical representation.

Mr Khalid MEHBOOB (Chairperson, Finance Committee)

There are not many questions for me, but there are two items on which I can provide further information to Members of the Council. One of the issue that many Members have raised, which is a concern even in the Finance Committee, it is the timely payment of contributions. This is not a new phenomenon. Probably, it is as old as the Organization.

In the past, there have been attempts to address this. In fact, there are some sanctions already foreseen in the Basic Text. I think they were referred to by the Chair in his opening remarks. If countries in arrears for two years, they lose their voting right. They also lose their seat in the Council. In addition,

Member Governments had approved an incentive scheme in the past that was that a certain discount that would be recommended by the Finance Committee would be given to Members who paid before 31 March.

That practice was carried on for some years, but it did not have any impact. The discount went to those countries who paid before 31 March anyway. So, the Finance Committee recommended that this incentive scheme did not serve any purpose and should be abolished and the Council had agreed.

At one point, the Finance Committee had also advised some additional sanctions in addition to the two which already exist. Yet, those recommendations did not find any support in the Council, so no action was taken.

This is an issue in which the Secretariat is involved very actively: in the follow-ups with Member Countries. In the past, once there was a proposal by some countries: it was that wherever there is an FAO Office and FAO has to convert dollars to send local currency there, perhaps the country can give local currency and the equivalent in dollars is credited to the contributions and any exchange. In that case, the loss would be covered by the country.

Perhaps later, I would ask the Director of Finance to comment on that item, whether it is used for some countries or is there some negative aspects why it cannot be extended to others or why it cannot be used widely.

However, at the moment we are involved in exploring other ways to see how Member Governments could pay early.

The second item on which I could give some information in addition to what is already in the Finance Committee is this After Service Medical Coverage. There is a UN Working Group and FAO does participate very actively. At each session, the Finance Committee gets an update on how the proceedings of this group have been.

I believe that the whole UN System is a Member of this group. Recently, there has been a report published by the Secretary-General on this issue, which is going to be considered by the fifth Committee in January 2017. And the Finance Committee at its March 2017 session will be given more information and an update on the discussions in the fifth Committee on the Secretary-General's Report.

There was one other question posed by Egypt, which raised the question of the vacancy rates in the Regional Office in Cairo. I have been provided with some information: this issue is being addressed and as of today, the vacancy rate is below 15 percent in the Cairo Office.

As for the mandatory age of separation, again, the Finance Committee is expecting an update in March 2017 on this matter. I believe the Organization is working on this. Any further information the Secretariat may give is welcome.

Mr Laurent THOMAS (Assistant Director-General, Coordinator for Technical Cooperation and Programme Management)

There was a number of comments we have noted. Particularly, those voiced by the Asia Group, GRULAC, and the Near East Group regarding the progress on the TCP expenditure. Specifically, remarks were made on the recommendation of the Finance Committee requesting the Secretariat to continue to maintain the TCP expenditure rate at a level that ensures full implementation of the TCP appropriation as approved by the Conference.

I would like to reassure the Members of the Council that the Secretariat is indeed continuing to proceed with the TCP commitment and delivery in order to follow this recommendation.

Basically, regarding the appropriation 2016-17, this appropriation that has to be spent by 2019. I am pleased to inform that as of 30 November 2016, 50 percent of the appropriation has been committed. So, it is a good progress if compared to the previous biennium. Then, it means that we are comfortable to commit all the appropriation by the end of the biennium, that is to say by the end of 2017.

Regarding the biennium 2014-15, it means that corresponding appropriation has to be committed by the end of 2017. I am pleased to report that the level of expenditure is 76 percent. Therefore, we are

well in time in terms of expenditure on related appropriation. We will continue to make sure that we pay the necessary attention in terms of management to commit and spend the funds as requested by the Council.

Finally, I want to inform you that we continue to improve with regard to the percentage of projects approved within three months of the receipt of request from government.

In fact, we are now at 76 percent of the projects activated after three months' government approval, as opposed to 72 percent of the previous biennium.

Mr Aiman Ibrahim HIJA (Director, Finance Division)

I will briefly speak on first the point raised by the Chairperson of the Finance Committee on the currency. In very few cases, I confirm that we are authorized to receive the appropriate contribution in local currency. As for the local currency contributions only, there is the case where we can use these funds within no more than a three month period for the purpose of carrying out operations in the Country Office. Otherwise, this will expose the Organization for risk of fund exchange loss.

This year, we have some countries that have some difficulties in transferring foreign currency outside the country. This is due either to a shortage of foreign currency or to the need to give the foreign currency. We talk to those countries and they requested to pay in foreign currency, in dollars and euros, at FAO bank accounts in that country. So, at least the foreign currency remains in the country as part of the overall reserve of the country and we try to convert it to local currency as we need.

We are not authorized as per our Financial Regulations established by the Members to receive the arrears in foreign local currency. Any change to that regulation, would require a change of the basic text which would have to go through the process of the High Level Committee on Management (HLCM) and the Council and the Conference.

With regard to the financial – the actual cost. I confirm that we are an active Member of the After Service Medical Insurance Task Force of the UN. This task force is basically led primarily by our Human Resources (HR) colleagues and we attend it regularly. I would like to say here one message: regardless to the final outcome of any change for the coverage, the issues between staff and Organization, a significant amount has still to be paid by the Members in the future. This is because there is a cumulative deficit results over many years. As you can see, it is expected to reach USD 950 million by the end of this year.

In general, the regular operations run by the Organization are not affected directly by this deficit, because we finance our regular operations from the regular assessments. That is why we encourage Members again to pay their dues on a timely manner to avoid this inconvenience for other organizations.

I would like to assure the Indonesia Representative that working on the Audit Recommendations is going well and we are determined to continue the work on this issue. More information will be provided soon on this matter.

CHAIRPERSON

Thank you, Mr Mehboob, and thank you, the Secretariat, for responding to the issues which have been raised by the Members. We can now conclude on Item 7 as follows.

The Council approved the Reports of the 162nd, 163rd and 164th Sessions of the Finance Committee and in particular:

On the Financial Position:

- a) urged all Member Nations to make timely and full payment of assessed contributions;
- b) welcomed the External Auditor's issuance of an unmodified opinion on the Organization's Accounts for 2015, the second set of Accounts for FAO prepared in accordance with International Public Sector Accounting Standards (IPSAS);

- c) stressed the importance, as emphasized by the Finance Committee, of strengthening the internal control framework at headquarters and decentralized offices and monitoring its effective implementation and compliance;
- d) requested the Secretariat to continue to maintain the TCP expenditure rate at a level that ensures full implementation of the TCP appropriation as approved by the Conference; and
- e) recommended the draft resolution for adoption by the Conference of the FAO Audited Accounts 2015 presented in paragraph 11 of document CL 155/6;

On Human Resource Matters:

- f) expressed its appreciation for the many achievements made in human resource management by FAO since 2012, notably the significant improvement reported on the status of professional vacancies and the resulting vacancy rate and encouraged the Secretariat to continue its efforts to pursue equitable geographical representation;
- g) requested the Secretariat to streamline the process for responding to requests by Members for the provision of non-sensitive information on staffing;

On Oversight matters:

- h) endorsed the appointment of Ms Daniela Graziani as a member of the FAO Audit Committee for an initial period of three years.

Mr Khaled Mohamed EL TAWHEEL (Egypt)

On point (f), on expressing appreciation for the decrease in the vacancy rate, we agree with that but we want to add something to also encourage the Secretariat to continue its efforts to decrease the vacancy rate, especially in the Decentralized Offices where there are high vacancy rates at the moment.

We take note of the very good feedback from the Secretariat that the vacancy rate has decreased in the Near East Regional Office, but we want this to be continued.

Ms Zora WEBEROVÁ (Observer for Slovakia)

Thank you, Mr Chairperson, for your excellent summary. We would also like to add under letter (f) on human resources, that we stress the importance of securing efficiency, fair competition, transparency, technical competence, and full say of the technical divisions in the selection process.

Ms Yuri KUMAGAI (Japan)

Thank you, Mr Chairperson, for your excellent summary. Japan fully supports the statement just made by the European Union.

CHAIRPERSON

Thank you. Let us work on these two issues. I read the new points.

(f) Expressed its appreciation for the many achievements made in human resources management by FAO since 2012, notably the significant improvement reported on the status of professional vacancies and encouraged the Secretariat to pursue its efforts particularly in respect of Regional Offices.

(g) Encouraged the Secretariat to continue its efforts to pursue equitable geographical representation while recalling the importance of securing the highest standards of efficiency, fair competition, transparency and technical competence in the selection of staff.

Mr Khaled Mohamed EL TAWHEEL (Egypt)

We would kindly ask you to add at the end of point (f), where it says “to pursue its efforts especially in regional offices”, to add “with high level of vacancy rates”. The current language it does not indicate what we want to point out here.

CHAIRPERSON

Let me read the sentence again: “(f) Expressed its appreciation for the many achievements made in the human resources management by FAO since 2012, notably the significant improvement reported on

the status of professional vacancies and encouraged the Secretariat to pursue its efforts particularly in respect of Regional Offices with high vacancy rate levels.”

Mr Abdul Razak AYAZI (Afghanistan)

Regarding this criteria of selection of staff, professional and nonprofessional staff, on the points raised by our colleague from the European Union and seconded by Japan, we would like to hear the Secretariat. In our knowledge, this criteria is already there so there is no need to repeat it.

CHAIRPERSON

Maybe it is just a reminder. That is all. I do not need the Secretariat to respond to that.

Ms Zora WEBEROVÁ (Observer for Slovakia)

Thank you for including our request as we really insist on these principles, even as only a reminder, if you want.

But I would like to add one criterion and that is “full say of technical divisions” as I requested in my previous intervention. So to read: “efficiency, fair competition, transparency, technical competence and full say of technical divisions in the selection process”.

CHAIRPERSON

I think we can leave that out, it does not make any harm.

Thank you. We have concluded that agenda item.

Item 9. Report of the 103rd Session of the Committee on Constitutional and Legal Matters (24-26 October 2016)

Point 9. Rapport de la cent troisième session du Comité des questions constitutionnelles et juridiques (24-26 octobre 2016)

Tema 9. Informe del 103.º período de sesiones del Comité de Asuntos Constitucionales y Jurídicos (24-26 de octubre de 2016)

(CL 155/2)

CHAIRPERSON

We now move on to Item 9, *Report of the 103rd Session of the Committee on Constitutional and Legal Matters*. The document before Council is CL 155/2.

Ladies and Gentlemen, may I remind you that we have agreed to consider input from the last Joint Meeting of the Programme and Finance Committees on Article XIV Bodies under this item.

I invite Ambassador Lubomir Ivanov, Chairperson of the Committee on Constitutional and Legal Matters, to introduce the Report. Ambassador Ivanov, you have the floor.

Mr Lubomir IVANOV (Chairperson, Committee on Constitutional and Legal Matters)

I have the pleasure to present the Report of the 103th Session of the Committee on the Constitutional and Legal Matters (CCLM) which took place in October this year.

The agenda of the 103th Session of the CCLM included two items:

One item concerned the issue of the procedure for the appointment of secretaries of bodies established under Article XIV of the FAO Constitution and other entities hosted in FAO; and the second item concerned issues related to decision-making procedures in bodies under Article XIV of the Constitution and other statutory bodies.

The first item on the agenda was also reviewed by the Joint Meeting of the 120th Session of the Programme Committee and 164th Session of the Finance Committee. Ambassador Serge Tomasi will report on the deliberations of the Joint Meeting on this issue.

As you know, this first item on the agenda raised much discussion. The CCLM took note of the views of the Secretariat on this matter, which are reflected in the report. The CCLM acknowledged the need to balance the functional autonomy of Article XIV Bodies with legal and administrative

responsibilities borne by the Organization for such bodies and stressed that this matter involved policy, governance and legal issues.

With regard to the second item, the CCLM noted that this was already under review a few years ago.

The CCLM confirmed that formal meetings of Statutory Bodies should be held in public and that the Director-General or a representative of the Director-General shall participate without the right to vote in all formal meetings of Statutory Bodies and their subsidiary bodies, pursuant to Article VII, paragraph 5 of the FAO Constitution.

The CCLM further underlined that this did not apply to informal meetings of Members of the Statutory Bodies.

CHAIRPERSON

Thank you Ambassador Ivanov. I would now like to invite Ambassador Tomasi, who chaired the November Joint Meeting, to present the section of the report of that meeting that deals with Article XIV bodies. Ambassador Tomasi, you have the floor.

M. Serge TOMASI (Président du Comité du Programme)

La Réunion conjointe du Comité du Programme et du Comité financier a donc abordé la question de la procédure de sélection et de nomination des secrétaires exécutifs des organes relevant de l'Article XIV des statuts de notre Organisation à sa session du mois dernier. Elle a examiné la proposition du Secrétariat décrite dans le document JM 2016.2/6, ainsi que le rapport de la 103^{ème} session du Comité des questions constitutionnelles et juridiques consacré à ce sujet.

La délibération a fait apparaître des positions divergentes entre les Membres ne permettant pas de parvenir à un consensus sur le fond de la procédure de nomination.

Le Président de séance a donc proposé de mettre en place une procédure de consultation sous l'autorité de notre Président indépendant du Conseil, en application de l'Article 1.a de la résolution 9/2009 de la 36^{ème} Conférence de la FAO. Cet article donne en effet mandat au Président indépendant du Conseil, en cas de désaccord entre les États Membres, de procéder à toute consultation permettant de rapprocher les points de vue et de construire un consensus.

Malheureusement, cette proposition a été rejetée par trois membres de la Réunion conjointe. En conséquence, dans ses conclusions la Réunion conjointe s'est limitée, d'une part, à rappeler la nécessité de parvenir à une solution équilibrée entre l'autonomie fonctionnelle des organes «Article XIV» et le respect des responsabilités du Secrétariat de la FAO, et d'autre part, la Réunion a souligné l'urgence de pourvoir les positions de secrétaires exécutif des deux organes Article XIV actuellement vacants.

CHAIRPERSON

Thank you Ambassador Tomasi. Before I proceed, I would like to invite Mr Antonio Tavares, Legal Counsel, to take the floor.

LEGAL COUNSEL

The Chairpersons of the CCLM and of the Joint Meeting of the Programme and Finance Committees have made the reference to the fact that there was no consensus on the treatment of this matter.

The Council will recall that when the Director-General delivered his statement to the Council he made a compromise proposal designed to allow the Council to find a way out of this situation in which we find ourselves.

I also note that Ambassador Tomasi has pointed out the urgency of the need to fill in two positions that are currently vacant. Before the discussions begins in the Council I wish to put forward a compromise proposal referred to by the Director-General.

This compromise proposal consists of three elements.

One of the elements would be that the Director-General would proceed with the issuance of vacancy announcements for the appointment of Secretaries of the IOTC and of the Governing Body of the

International Treaty on Plant Genetic Resources for Food and Agriculture (CGRFA). He would implement standard procedures for the appointment of FAO senior staff with inclusion of two representatives of members in interview panels. Then there would be a subsequent referral by the Director-General of one candidate to the relevant bodies for approval.

The second point is that the secretaries would be appointed for a period of two years and would be subject to confirmation by the body concerned at the end of that period.

The third point is that meanwhile the FAO Secretariat and the Independent Chairperson of the Council would carry out consultations during this period, including with the bodies themselves, with a view to agreeing and adopting a long-term solution.

This is a compromise proposal that we would wish to refer to the Council for consideration before the discussions on this topic. Of course, as I said I shall be able to provide clarifications in due course on this matter.

CHAIRPERSON

Before I open the floor to delegates I would like to say that, as you have heard from Ambassador Ivanov and Ambassador Tomasi, there have been very extensive discussions on this issue but they all turned out to be the snake chasing its own tail. There has not been any compromise or any consensus, and what is important for us today is not to go back to the discussions we have already had in CCLM and in the Joint Meeting of the Finance and Programme Committees. Otherwise it will take us a long time, as it was the case in the CCLM as well as in the Joint Meeting. So we have to use our wisdom to solve this issue.

We have a proposal from the Secretariat which does not end this problem but it ends the issue of going in cycles. At least for two years we would be able to sort out this issue while having substantive secretaries working in those bodies.

If you have another good proposal, then bring it to the Council and we will discuss it. We should not involve ourselves in the legality as we will continue debating this issue endlessly.

With these remarks, I open the floor and I hope we will get a consensus in a very short time.

Ms Cathrine STEPHENSON (Australia)

I understand the advice that you just gave us as Council Members. However, Australia feels there is some very important history to this that is important that all Council Members know. We welcome the opportunity to discuss this matter here today. We appreciated the Director-General's comments in the opening session on Monday that further explained the proposal and his perspective on it.

We would like to take the opportunity to reflect on the many *fora* in which this issue has been discussed over the last year or so. This is because we hope it will provide more understanding of our view. At the governing body of the International Plant Treaty for Genetic Resources for Food and Agriculture late last year, a proposed change to the selection and appointment process was discussed. It was a slightly different version to the one before us now, but the key parts are essentially the same.

Discussion was extensive and resulted in the governing body asking FAO to consult with its bureau to discuss the proposed changes, so that they could come up with a process that was suitable to both. At the Indian Ocean Tuna Commission (IOTC) session in May this year, as the Director-General said, FAO, through its Legal Counsel, presented a proposal to the Members to change the selection and appointment process.

Again, it was a slightly different version to the one before us now, but the key parts are essentially the same. The IOTC did not agree to the proposal as it did not support the imposition of FAO's processes over the Rules and Procedures that the Commission had legitimately adopted.

But the IOTC did acknowledge FAO's concerns and expressed its openness by considering an amendment to its Rules and Procedures. This approach would have a process that better meets the interests of FAO, while continuing the Commission's right and ability to be involved in the recruitment of its own staff.

FAO was invited to consult with the IOTC in the months after the main meeting on the development and amendments to the current Rules and Procedure.

At the Committee on Fisheries here in Rome in July this year, Members raised concerns about the selection process for the Secretary of the IOTC. The meeting report, in paragraph 142, stated that several Members expressed concerns with regard to the selection process of the IOTC Executive Secretary and its consistency with the established IOTC Rules of Procedure. Then, they called on an urgent solution that respects the legitimate rules and procedures of the IOTC.

As the Chair of the CCLM just told us, in October this year Members acknowledged the need to balance the functional autonomy of Article XIV related to bodies with the legal and administrative responsibilities borne by FAO.

The meeting report also set forth that the CCLM agreed that further consultations would be needed with wider participation, including with the bodies themselves. As the Chair of the Programme Committee just explained to us, we did discuss this matter at length at the Joint Session of the Programme Committee and Finance Committee, but I would like to correct the record.

The Chair of the Programme Committee declared that his proposal for consultation by the Independent Chairperson of the Council (ICC) was rejected by three Members. I know Australia was one of those. We rejected it because it was not something that was discussed at the Joint Session of the Programme and Finance Committee meeting. It was something that was new and was introduced during the adoption of the Meeting Report.

FAO's procedures on meeting reports reflect what was discussed in the meeting and do not open up new debate. That was the basis on which Australia rejected that proposal.

We understand some consultation has occurred with some Permanent Representatives, which has led to the current slightly modified proposal, but not with the bodies themselves. Australia appreciates the efforts made by FAO to try and find a solution that is acceptable to all parties. Yet, it is difficult to see how the proposal before us meets the requirements outlined by the IOTC, the Committee of Fisheries, and the CCLM to balance the responsibilities of the Article XIV bodies. Particularly the IOTC with those of the FAO, especially in the absence of any advice from the Article XIV bodies themselves.

Australia understands the need to provide certainty to the bodies and that the current situation is not ideal. We could have been in a position now to have reached an agreement if this consultation had occurred when it was first requested. Nonetheless, Australia's view is that it is more undesirable to impose a process on the bodies now that it does not respect their own Rules of Procedure and it has not been agreed with them.

On this basis, we cannot support a proposal that imposes a selection process on the bodies without their agreement. We encourage FAO to urgently put the revised proposal to the bodies out of session to seek their views and to hopefully achieve a swift resolution.

Mr Muhammad Rudy Khairuddin MOHD (Malaysia)

Malaysia has the honour to deliver this Joint Statement on behalf of the Asia Regional Group.

We would like to recognize the work carried out by the members of the Committee on Constitutional and Legal Matters, for their ability to consider specific legal and constitutional matters within the Organization.

The Asia Regional Group has carefully considered the existing problems incorporated in the report and wishes only to provide guidance to the Council, since it had already been comprehensively discussed by the Members of the CCLM, as well as the Joint Meeting of the Finance and Programme Committees.

On the issue of the Procedure for the selection and appointment of secretaries of bodies under Article XIV of the FAO Constitution and other entities hosted in FAO, the Asia Regional Group wishes to underline the importance of the management, in particular to conduct consultations with the Members or Parties of those Bodies established under Article XIV of the Constitution. From this point

of view, there is a strong need to balance the functional autonomy of the Article XIV Bodies with the legal and administrative responsibilities set up by the Organization for such bodies.

We welcome further updates from the management on this issue in order to urgently come into a cordial solution for the benefit of all related parties, and in accordance with the FAO idea, which in turn will contribute to the world economy and will ensure humanity's freedom from hunger.

On the issue of decision-making procedures in bodies under Article XIV of the FAO Constitution, the Asia Regional Group is in conformity with the consideration of the CCLM, and takes note that formal meetings of Statutory Bodies should be public. Likewise, the general principle reflected in Article VII, paragraph 5 of the FAO Constitution to formal meetings of the Statutory Bodies should be made applicable, and the Director-General or his representative shall participate without the right to vote at formal meetings of the Statutory Bodies and their subsidiary bodies.

With this note, the Asia Group endorses the Report of the 103rd Session of the Committee on Constitutional and Legal Matters.

M. Gabriel AHOANDOGBO (Bénin)

Le Bénin fait sienne la déclaration de l'Australie et fait cette remarque au nom du Groupe africain.

Le Groupe africain se félicite des rapports du CQCJ et tient à exprimer ses remerciements au Secrétariat. La réunion Afrique appuie fermement les orientations du CQCJ sur cette question et se félicite donc de la poursuite de la consultation sur l'Article XIV à ce sujet. Le Groupe Afrique appréciera une consultation plus large avec les groupes régionaux et les organismes concernés.

Le Groupe Afrique souhaiterait un processus démocratique dans la nomination des membres de ses organes et des parties contractantes. La qualité des candidats sélectionnés ou élus doit être bien étudiée pour le bien de l'Organisation. Et la région Afrique recommande que des consultations avec les organismes compétents soient menées et que par conséquent, cette proposition soit présentée afin que les avis puissent être examinés en fonction de leur expertise. En fait, le document, à notre avis, n'a pas suffisamment expliqué ce qui pourrait arriver au cas où les organismes concernés rejetteraient un candidat proposé, peut-être en raison du manque d'expérience ou de qualifications appropriées. Il est également nécessaire de distinguer clairement les différents types d'organes visés par l'article XIV.

L'amendement à la constitution de la FAO devrait être dans l'intérêt de l'Organisation et des des Pays Membres. Tout compromis susceptible de donner un pouvoir illimité à une personne déterminera une mauvaise préséance pour l'Organisation et nous recommandons donc toute proposition soit discutée au sein des organismes visés par l'article XIV.

Nous nous demandons si le document explique clairement encore comment les changements seraient apportés si les propositions étaient approuvées. Le Groupe Afrique note également que cette question avait été discutée dans d'autres instances pertinentes par exemple l'organe directeur du traité en octobre 2015 et en mai 2016 où les deux organes ont rejeté des propositions similaires qui leur avait été soumises par le Secrétariat. En fait, avec ces commentaires, nous attendons avec intérêt une consultation plus large avec la participation des organismes.

Sra. Perla CARVALHO SOTO (México)

Mi agradecimiento al Presidente del Comité de Asuntos Constitucionales y Jurídicos y también al Presidente de la Reunión Conjunta. Realizamos esta intervención a nombre del Grupo de Países de América Latina y del Caribe.

Agradecemos la presentación del documento CL 155/2. En lo que respecta al procedimiento de selección y nombramiento de los Secretarios de los órganos establecidos en virtud del artículo XIV de la Constitución de la FAO y otras entidades albergadas por la Organización, el GRULAC apoyó la propuesta de la Secretaría en el 103.º período de sesiones del Comité de Asuntos Constitucionales y Jurídicos, a saber, que se sigan los procesos estándar para la selección de funcionarios superiores en la selección de los Secretarios con algunos ajustes —como la inclusión de uno o dos representantes de los Estados miembros en el comité de selección— y que posteriormente se someta la candidatura propuesta a la aprobación del órgano de que se trate.

Sobre la base de dicha propuesta, visto que en su pasada sesión el CACJ reconoció la necesidad de conjugar la autonomía funcional de los órganos establecidos en virtud del artículo XIV y las responsabilidades jurídicas y administrativas de la Organización con respecto a estos órganos, y reconociendo que con la práctica llevada a cabo en la actualidad el Director General queda imposibilitado, de hecho, para desempeñar la función estatutaria que le corresponde;

Considerando que la Reunión Conjunta examinó el documento JM 2016.2/6 sobre este asunto y señaló la urgencia de ocupar los puestos vacantes para Secretarios Ejecutivos de dos de los órganos en cuestión.

En el entendido de que no existen fundamentos para celebrar elecciones en los acuerdos constituyentes pertinentes ni en la práctica del sistema de las Naciones Unidas, y que de hecho la práctica de la elección es contraria al sentido de dichos acuerdos y a lo estipulado en los textos básicos de la Organización.

A sabiendas de que el 103.º período de sesiones del CACJ convino en la necesidad de celebrar más consultas con una mayor participación, y que el tema fue visto en la Reunión Conjunta de los Comités del Programa y de Finanzas, donde se admitió que el impasse sobre el tema del procedimiento de selección y nombramiento de los Secretarios no sólo es de naturaleza técnica sino también política; y visto que entre las funciones del Presidente Independiente del Consejo está la de realizar consultas con los representantes de los Estados miembros para explorar la posibilidad de recomendar la adopción de medidas que puedan ser necesarias para facilitar y lograr un consenso;

El GRULAC acoge con satisfacción la propuesta formulada por el Director General en su intervención inaugural en esta sesión del Consejo. Consideramos que el mecanismo ad interim propuesto para la selección y nombramientos de los Secretarios de los órganos establecidos en virtud del artículo XIV de la Constitución de la FAO es una vía satisfactoria para superar los obstáculos en aras de una solución definitiva. Lo invitamos a Usted Presidente, a asumir el papel de facilitador de un proceso consultivo con los órganos directivos de los instrumentos enmarcados bajo el artículo XIV, de manera tal que dichos órganos comprendan las limitaciones que nos impone la Constitución de la FAO para que acepten como definitiva la solución ofrecida por el Director General para este tema.

Por último, con respecto a las cuestiones relacionadas con los procedimientos de adopción de decisiones en los órganos establecidos en virtud del artículo XIV de la Constitución de la FAO, el GRULAC favorece que las reuniones oficiales de los órganos estatutarios sean públicas y que el Director General, o un representante suyo, participe sin derecho a voto en las reuniones oficiales de los órganos estatutarios y sus órganos auxiliares, de conformidad con lo dispuesto en el párrafo 5 del artículo VII de la Constitución de la FAO.

Sra. Mónica ROBELO RAFFONE (Nicaragua)

Nicaragua se alinea a la declaración realizada por la distinguida delegación de México en nombre del GRULAC.

Señor Presidente, mi delegación considera que las disposiciones de la Constitución de la FAO en cuanto a la forma como el fondo se alinean a las disposiciones de los instrumentos constitutivos de otras organizaciones del sistema de las Naciones Unidas. En ese sentido, el enfoque común de las cuestiones en todo el sistema y sus mismas lógicas son reflejados en los textos fundamentales de cada una de las organizaciones. Por tanto, desde el punto de vista jurídico, es ahí donde se alinea e integra plenamente el ámbito institucional de la FAO.

En mérito al documento presentado sobre las cuestiones concernientes a la relación entre las entidades albergadas por la Organización, en especial los órganos establecidos, en virtud del artículo XIV de la Organización y la necesidad de conciliar autonomía funcional y operativa, consideramos que la relación entre FAO y dichos órganos, a pesar que estos últimos están encuadrados en el marco de la Organización, vinculados administrativamente y sujetos a las normas y procedimientos de funcionamiento de la FAO, se han ido paulatinamente desvirtuando con prácticas que afectan los principios de buena gobernanza, de transparencia y en mera contradicción con las disposiciones de los tratados, incluyendo aquellos en materia de selección y nombramientos de los secretarios.

En ese sentido queremos dejar sentados que las prácticas o malas prácticas no pueden en ningún momento convertirse en derecho consuetudinario, suplantando ipso facto las disposiciones superiores que rigen la Constitución de esta Organización. Las implicaciones incluidas a cualquier decisión derivada de dichas prácticas sentarían un mal precedente en el ordenamiento jurídico establecido.

Por otra parte, en aras de facilitar el consenso y superar el impasse, consideramos satisfactoria y acogemos la propuesta de compromiso formulada por el Director General y reiterada por el asesor jurídico para la selección y nombramiento de los secretarios.

Finalmente, mi delegación considera que la participación del Director General o de un representante por él designado en las reuniones oficiales de los órganos estatutarios y órganos auxiliares es absolutamente congruente con las disposiciones de la Constitución y en línea con la práctica establecida en todo el sistema de las Naciones Unidas. Por tanto, refrendamos las recomendaciones del comité.

Ms Yuri KUMAGAI (Japan)

Japan fully aligns itself with the statements delivered by Australia, Malaysia on behalf of the Asia Group, and Benin on behalf of the Africa Group on the issue of the procedure for the selection and appointment of secretaries of Article XIV bodies.

Japan also stresses the importance of holding wider consultations on this issue, including the Parties of the Article XIV bodies themselves, as it was recommended by the CCLM. In this regard, we do appreciate the FAO Secretariat's proposal to offer opportunities for more consultations. However, we would like to emphasize that any changes to the current selection and appointment procedure stipulated in the Basic Texts of the Article XIV bodies concerned must be effected in accordance with the Rules of Procedure provided for the amendment of those texts.

Therefore, from the legal perspective, Japan cannot accept the selection as the Secretariat's proposal to proceed with its standard recruitment process on the selection and appointment of the secretaries of the concerned Article XIV bodies, before formally amending their current Rules of Procedure.

We would also like to emphasize the need to carefully look into any negative implications of the FAO's proposal, in terms of the legal and functional autonomy of Article XIV bodies. This matter should be discussed among the Parties of the bodies themselves, as well as between the Parties and the FAO Secretariat.

Ms Susanne SCHLAACK (Germany)

I would just like to ask to pass the floor to Slovakia to speak on behalf of the European Union.

Ms Marieta OKENKOVÁ (Observer for Slovakia)

I am honoured to speak on behalf of the European Union and its 28 Member States. The candidate countries to the EU, Montenegro and Serbia, as well as the Republic of San Marino, align themselves with this statement.

The European Union and its Member States take note of the reports of the Committee on Constitutional and Legal Matters and of the joint PC/FC meetings and note that the latter was not able to reach consensus on the Secretariat proposal on the 'Procedure for the selection and appointment of secretaries of bodies under Article XIV of the FAO Constitution and other entities hosted in FAO'.

We underline the conclusions of the CCLM in stating the need to balance the functional autonomy of the Article XIV Bodies with legal and administrative responsibilities borne by the Organization for such Bodies. We also underline the need for further consultations with wider participation – including the Bodies themselves.

We would also like to recall the important diversity of Article XIV bodies and their financial autonomy. This diversity as well as the need for adherence to common principles should be taken into account when selecting Executive Secretaries. While we need to respect the FAO Basic Texts, we consider that any change of the existing Rules of Procedure of Article XIV Bodies requires adequate consultation and approval by their respective governing bodies. Any changes should also be in line with FAO's Basic Texts and should take due account of the specific nature of each Article XIV Body.

While acknowledging that prolonged tenure of Interim Secretaries is not in the long-term interest of the Bodies and the Organization, we would like to ask if it is possible to maintain the existing Interim Secretaries while the consultative process with members and the governing bodies of the respective Article XIV Bodies is taking place. If this is not possible, please can the Secretariat explain why not? This information will help us to take a final view on the ideas presented by the Secretariat.

Finally, we endorse the conclusion reached by the CCLM on the decision-making procedures in bodies under Article XIV of the FAO Constitution. Formal meetings of Statutory Bodies should be held in public, consistent with the longstanding practice of the Organization, and as recognized by the General Rules of the Organization.

Mr Godfrey MAGWENZI (Zimbabwe)

Zimbabwe makes this statement on behalf of the Africa Group.

Let me begin by clarifying that a colleague has already spoken, and you may have seen a number of African delegations coming to consult with me for this. This is because the Africa Group met last week and unfortunately the colleague who has spoken was not at that meeting and he was probably not aware that the Group had taken a very different position from the one that has been presented.

We appreciate that the Committee had to grapple with a complex and difficult issue. Most of these complexities are clearly the result of derogations from the founding treaties of the Article XIV bodies.

The Africa Group devoted an entire afternoon to this issue a week ago. Our conclusion was that the interests of all countries, especially developing countries, are best protected and guaranteed when rules are respected and followed. If rules are not followed we soon descend into Thomas Hobbes' state of nature where the strong and powerful ride roughshod over the weak and vulnerable.

I am reminded of the football matches I used to play in in the township when I was a little boy. There were no rules in those matches. The biggest boy determined what happened on the pitch. If you outran him and scored, he would say 'you were offside' and disallow the goal. If you dribbled past him and scored, again you were offside. It did not matter where you stood when you received the ball, you were always offside.

That is what happens when there are no rules or rules are not followed. The weak and powerless always get the short end of the stick. That is why we do not want to see a breakdown of the rule of law in FAO and its subsidiary bodies, including the Article XIV bodies. This is even more important when it relates to Article XIV bodies where we often have to grapple with issues of benefit sharing.

As a Group, we have therefore taken a firm and uncompromising position that the founding treaties of the Article XIV bodies should be respected. The treaties clearly stipulate the responsibilities of the Director-General and the Membership in relation to the appointment of the Secretaries of Article XIV bodies. The Director-General appoints, the Members approve. This means the process starts with the Director-General, after which the Members step in and play their own part. The reverse is simply not possible as it is not provided for under the treaties. Similarly, any procedure other than the one stipulated in the treaties, is contrary to the treaties and therefore illegal.

In our view there is no need for negotiations on this matter, which is so simple and straightforward.

However, we have taken note of the Director-General's proposal to involve members in the selection interviews. It's a good proposal and worthy of our support. We hope all delegations can support this proposal.

Mr Abdul Razak AYAZI (Afghanistan)

I fully support our colleague from Zimbabwe who spoke on behalf of the Africa Group.

Mr Dun NIU (China) (Original language Chinese)

We also approve the statement of Malaysia on behalf of the Asia Group.

The CCLM has given guidance to Council on the procedure for selection and appointment of the Secretaries for the Article XIV bodies of FAO. China believes that we should defend the authorities of the Basic Texts and the authorities of FAO. If these are totally independent bodies, why are they

hosted by FAO? Or to put it differently, since these bodies do not have a legal nature then it is obvious that the provisions that apply to the appointment of the Executive Secretaries should be followed. These bodies do enjoy a level of autonomy. They have their Membership. They may make proposals to FAO. However the final decision concerning the procedure and the actual selection should be in FAO's hands.

Since a consensus does not appear to be achievable at this stage, we think that the proposal coming from the Legal Counsel is very constructive and responsible. We welcome this proposal.

Ms Mi NGUYEN (Canada)

Canada believes that a way forward must be found which addresses the Secretariat's concerns while maintaining the autonomy of the Article XIV bodies and the Members' right to be consulted and to provide approval or countenance.

At the CCLM, the Joint Meeting and now today we have all seen that Members share a desire to find a way forward. We appreciate the Secretariat and the Director-General's efforts to come with a proposal. However, instead of rushing to a conclusion which will divide the Membership and antagonize the bodies themselves, we encourage further consultation as soon as possible including with the two Article XIV bodies most concerned.

Mr Ali Gadoom Elghali OSMAN (Sudan) (Original language Arabic)

Regarding the procedures for the selection and appointment of the Secretaries for the bodies under Article XIV of the FAO Constitution and other bodies hosted by FAO, I would like to make the following statement on behalf of my country, Sudan.

We would like to thank the Chairperson of the CCLM for the presentation of this Report which describes the efforts made by the Committee in addressing this issue. The documents referring to the procedures for the selection and appointment of secretaries in these Article XIV bodies and other bodies hosted by the Organization stipulate that the Director-General appoints the Executive Secretaries after approval of the Membership but, in the current procedure, we see that elections are being held without, or with only very limited, participation of FAO Secretariat in the process and then the outcome is submitted to the Director-General for appointment.

Now this procedure is not following the text and has no precedence neither in the text nor in the practice of other United Nations organizations. This selection is in no way involving the Director-General. The best procedure in this case would be to return to the Constitution, to the Basic Texts of these bodies and respect the provisions.

We cannot reverse what has happened in the last 15 years. We do approve the proposal for the appointment of the Secretaries of these bodies as agreed on in conformity with the procedures for the selection of human resources of this Organization that does call for the participation of the Membership of the relevant bodies and therefore there should be an announcement of the vacancies and the procedures for the appointments of high ranking officials of FAO should be followed. This would enable the selection of three candidates to be submitted to the Director-General who can then make his choice.

In this way the Secretariat of the Organization would be able to carry out consultations at the time in which the vacancies are announced to ensure consultation with the relevant bodies, taking into account also the dates of the sessions of these bodies so that the appointment of the Secretary is made in a way that enables these bodies to fulfill their role as provided for under the constitution of the Basic Texts. This would also dispel the doubts that may exist regarding favouring one or another side and ensure a higher level of transparency.

Mr Antonio Otávio SÁ RICARTE (Brazil)

I am disappointed and discouraged by the direction that this debate has taken. I share the points of view expressed by Mexico on behalf of my regional group. I also take note of the positions taken by China, the African group and others, which are consistent with our views. However, if I recognize that a compromise has been found by the Director-General and the Legal Counsel which has not been met by any moves on the parts of those who have consequently reiterate their objection to any solution to

this matter at this juncture. This is worrisome above all because I do not see a clear direction being indicated by management. In my understanding, the verb “to consult” is a ditransitive verb, meaning that it requires a subject and two objects. The direct object is: What are we consulting on? The indirect object is: Whom is this consultation addressed to? From what I hear these objects have not been defined.

In order to hold any further consultations on this matter, we should have a clear definition of the terms of reference for this consultation. For my delegation the terms of reference are those that have been outlined in the proposal that we heard from the Director-General yesterday and from the Legal Counsel this morning. Leaving the consultation process without a direct object would be aimless.

With regard to whom to consult, my understanding is that an inter-Governmental body such as the Article XIV Bodies should be addressed by another inter-Governmental body, i.e. this Council. It would not be appropriate to leave this consultation in the hands of the Secretariat who should only consult with the Secretariat's of those bodies who are the interested parties and who are the subjects of this matter. That is why we have entrusted you, Mr Chairperson, to conduct this consultation on behalf of the Council.

In order for the Council to address the Governing Bodies of the treaties under Article XIV, we need to have an object to consult on. That's the reason why it is distressing for me to hear that people say we need further consultations but in the same time do not agree on who is consulting with, and whom and on what.

M. Marc MANKOUSSOU (Congo)

Je remercie le Président du Comité du Programme qui a arrangé la Réunion conjointe sur une question difficile. Je vous remercie aussi Monsieur le Président du Conseil parce que vous avez donné une orientation qui était claire et je remercie aussi les délégués.

Nous sommes en train d'entrer dans le même débat que nous avons eu au niveau de la Réunion conjointe mais Monsieur le Président, je pense que c'est une orientation à donner. Mon groupe régional a donné la sienne. Lorsqu'on veut changer des règles des jeux, on navigue dans le flou, comme l'a bien exprimé l'Ambassadeur du Zimbabwe. C'est la position du groupe Afrique. Faisons d'abord respecter ce qui existe. Le changement, c'est un autre processus mais si l'on ne fait pas respecter ce qui existe, cela veut dire qu'un autre Conseil n'a plus sa place.

Comme l'a notifié le délégué du Brésil, on fixe des règles des jeux. Comment aller dans cette consultation ? Quelles sont les thèmes de base ? Le choix est à celui qui a l'autorité de nommer qu'il est norme et si on veut s'engager dans un procès dur de consultation. On fixe les règles du jeu et on s'engage dans le processus.

Je réitère donc la position du groupe Afrique, telle qu'elle a été exprimée par l'ambassadeur du Zimbabwe.

Mr Khalid MEHBOOB (Pakistan)

Our view is that the Constitution of FAO must be respected, particularly by one of the Governing Bodies of FAO. In this respect the Ambassador of Zimbabwe explained very elegantly what the issue is.

Therefore, we support the proposal which was put forward by the Director-General yesterday and was repeated by the Legal Counsel today.

Mr Ivan KONSTANTINOPOLSKIY (Russian Federation) (Original language Russian)

We are not members of the CCLM and we are not members of most of the bodies that are under discussion now. However, as members of the Council, as well as of the Finance Committee, we have considered this issue in light of the Basic Texts. The Basic Texts contain provisions in a section entitled, and I will read in English.

Continues in English

“Principles and procedures which should govern conventions and agreements concluded under Articles XIV and XV of the Constitution”

Continues in Russian

Paragraph 35 of that section contains a provision, and I will read it in English:

Continues in English

“Conventions and agreements establishing commissions and committees under Article XIV of the Constitution shall provide that the rules of procedure and amendments thereto adopted by such commissions and committees shall not be inconsistent with the convention or agreement establishing the body or with the Constitution.”

Continues in Russian

These provisions lead us to conclude that, from a legal point of view, the selection of the Executive Secretaries of these bodies by the Member States during the last few years was carried out inconsistently with the provisions of the FAO Constitution and with the agreements establishing these bodies. As a result, the Director-General, as Head of the administration of FAO, was deprived of the right to appoint the Executive Secretaries of these bodies, that work under the rules of the Organization and are partially under the regular budget.

In this regard, we welcome the compromise suggested by the Director-General, which attempts to respond to the concerns voiced by a number of Member States. Many of the previous speakers have mentioned the need for consultation including with the Article XIV bodies. We have no objection regarding this consultation but at the same time we consider that we have to follow the option proposed by the Director-General, at least for an interim period, so as to address this situation.

Mr Jon Erlingur JONASSON (Iceland)

I take the floor on behalf of the Nordic countries, Denmark, Finland, Iceland, Norway and Sweden to give our support to the statement made on behalf of the European Union.

I just want to highlight one important point from that statement. That is the diversity of the Article XIV bodies and their financial economy. This diversity as well as the need to adhere to the common principles should be taken into account when selecting the Executive Secretaries. While we need to respect the FAO Basic Texts, we consider that any changes of the existing rules and procedures of the Article XIV bodies does require adequate consultations and approval by the respective Governing Bodies. Any changes should also be in line with FAO Basic Texts and should fully take into account the specific nature of each Article XIV bodies.

We look forward to hear the reply from the Legal Counsel on the question raised in the European Union Statement.

M. Mongui MÉDI (Cameroun)

Monsieur le Président, sur cette question nous avons deux points sur lesquels nous pensons que le CQCJ et la Réunion conjointe se sont déjà penchés. La procédure de sélection des Secrétaires de ces organes issus des articles XIV et XV et puis la nomination de Secrétaire pour les deux postes vacants.

Pour la question des procédures nous savons très bien que ce n'est pas une question nouvelle. Nous avons coutume de la discuter de manière régulière; cela est déjà revenu plusieurs fois. Vous avez même facilité par le passé des discussions à ce sujet. Nous croyons que, pour le cas dont nous parlons maintenant, c'est sur la base du fait que aussi bien nous participons aux réunions des organes directeurs, directement ici, nous passerons également aux réunions de ces organes des Articles XIV et XV, la CITV, le Traité, la Commission du CODEX Alimentarius et en leur sein nous avons aussi parfois le même débat. Et Dieu seul sait combien de fois, Antonio, nous avons discuté de cette question. À un moment, je me rappelle lui avoir dit que ces organes constituent un caillou dans la chaussure de la FAO, parce que c'est douloureux.

Nous avons entendu beaucoup de choses, mais la position de l'Afrique telle qu'exprimée par le Zimbabwe tout à l'heure, reste celle du consensus qui a été débattu la semaine dernière et nous nous y

attachons. Nous avons suivi qu'il faut consulter les organes pour pouvoir décider, mais parfois on se demande ce que ça représente pour nous. Qu'est-ce qu'il faut faire ? Considérer l'œuf avant la poule ou la poule avant l'œuf ? Moi je pense que la FAO est quand même l'organe mère de tous ces autres organes et que ses textes doivent avoir primauté. Si l'on nous demande de consulter, je pense que le message que nous devons envoyer à ces organes, c'est qu'ils revoient leurs méthodes par rapport à l'acte constitutif de la FAO. Moi je pense qu'il n'y a pas meilleur moyen d'aborder cette question. Ce n'est pas nous qui devons nous atteler ou bien nous arrimer à leur rythme mais ce sont ces organes qui doivent considérer que la FAO est l'organe mère et eux s'atteler à la FAO. C'est mon point de vue, celui du Cameroun, et même de l'Afrique.

Je voudrais aussi considérer certaines choses qui ont été dites, c'est-à-dire, il faudrait qu'on consulte. Mais quelle forme va prendre cette consultation ? Cela va être très difficile. Quand je ne participe pas aux réunions de ces organes, moi je préfère le dire ici franchement, c'est une question de lobby. Les lobbies dans ces organes sont très puissants et ils font exercer leur puissance pour que les choses fonctionnent dans la direction que ces lobbies veulent. C'est pour cela qu'au Conseil nous avons des difficultés à trancher. Alors, est-ce que nous allons laisser à continuer fonctionner les lobbies ? Je pense que non.

Maintenant, le Président du Comité du Programme, qui a présidé la Réunion conjointe a dit quelque chose qui, à mon avis, avait beaucoup de sens, mais qui a été repris par l'Australie tout à l'heure en disant que c'est une question qui est arrivée après les discussions, lors de l'adoption du rapport. N'étant pas présent à l'adoption du rapport, je ne peux pas savoir. Comme le Président du Comité du Programme l'a dit, je suggère que l'on vous donne la possibilité de conduire les discussions sur ces questions a posteriori mais nous avons un problème à résoudre dans l'immédiat: il faut nommer les deux Secrétaires qui sont là. Le Directeur Général, nous a fait une proposition de nomination. Moi je pense qu'il faut la suivre, quitte après à suivre ce que vous avez avancé comme discussion autour de la question des procédures de manière générale. Et si la question est trop difficile, soyez assuré que nous restons vos amis. Vous pouvez donc nous inviter à une réunion entre amis afin de pouvoir trancher sur un certain nombre de questions. Donc, les Amis du Président, ce n'est pas exclu, Monsieur le Président indépendant du Conseil. Si c'est difficile, appelez-nous à côté. Nous allons essayer de discuter et de trancher la question avec vous.

Ms Cathrine STEPHENSON (Australia)

There has been a lot of discussion about the need to consult more with the Article XIV bodies themselves and about what would we consult on and what would that consultation look like. I think it is quite simple as I said in my first statement.

We would recommend that the Secretariat or the Independent Chair of the Council or the Legal Counsel, whoever the Director-General considered best placed to do it, take the current proposal that is before us today to the Chairs of the relevant bodies. It would allow them to have a discussion about whether they may wish to take the proposal to the Bureau or to have some more formal conversations across the Board and Membership of the bodies.

In particular they could address the following questions: Do you need to change your rules and procedures? Is there another solution that we can come up with together that suites both the FAO and the bodies and then get on and do it? In the meantime, we propose to let the interim appointments continue.

Ms Yuri KUMAGAI (Japan)

We ask for the floor for the second time to offer our support to the comment just made by our Australian colleague.

M. Carlos Alberto AMARAL (Observateur de l'Angola)

Il est important que la force conforme à ce qui est défini dans les textes fondamentaux ainsi qu'aux accords de la création de ces organisations afin de travailler conformément aux orientations de la Conférence. Certaines pratiques utilisées dans un passé récent devraient servir d'expérience pour que dans un prochain futur, les ajustements nécessaires aux accords soient effectués compte tenu de la nouvelle réalité.

Toutefois, comme il s'est vérifié, la pratique a montré que ces expériences non pas toujours été positives et qu'elles ont même créé quelques difficultés à l'égard de la crédibilité de l'Organisation qu'il serait important d'éviter à nouveau. Pour cette raison Monsieur le Président, nous soutenons l'intervention faite par la délégation de Zimbabwe qui a parlé au nom du Groupe africain.

De toute façon, nous pensons que pendant l'application des accords, nous encourageons le secrétariat ou la direction à engager un dialogue avec les organisations afin de définir un moyen à long terme sur la meilleure façon de travailler ensemble avec le souci d'assurer la crédibilité et la transparence de l'organisation et de veiller que les ressources naturelles soit les poissons dans le cadre des zones de pêche ou les ressources phytogénétiques dans le cadre du Traité soient gérés d'une manière durable dans le respect des accords internationaux tout comme celui des intérêts des pays et de la région respective.

Mr A. Haruna-Rashid KROMAH (Observer for Liberia)

Liberia is intervening on this Agenda item as member and Vice-Chair of the Committee on Constitutional and Legal Matters.

My delegation welcomes the CCLM Report and wishes to express thanks and appreciation to the secretariat. Though we welcome the report, we however regret to say that some arm twisting was deployed during the discussion which in our view did not represent a democratic process.

Liberia supports the guidance of the CCLM on this matter and therefore requests a wider consultation on Article XIV with the bodies concerned and the regional groups. We need further discussion on this proposal.

Liberia believes in the rule of law and thereby encourages a democratic process in the nomination of the executive secretary of these bodies and the contracting parties. The performance by candidates selected must be well vetted for the good of the Organization and therefore the input of contracting Member Nation to the Treaties is indeed in the right direction for the benefit of Member Nations.

Respecting Treaties currently in place would require the current rules and procedure to be followed, meaning any changes to implement the Director-General's proposal will require consultation.

There are mechanisms for possible consultation going forward: through the intersessional period with the *ad interim* Commission Chair, FAO should work out a process for consulting intersessionally with members for transparency and accountability to achieve good governance. This could also be done at the next scheduled meeting.

The document in our view has not adequately explained what may happen in case the relevant bodies were to reject a proposed candidate. Will there be an opportunity for further dialogue with the bodies involved or there will be an imposition of the nominee chosen? Also, there is a need to clearly distinguish between the different types of Article XIV bodies.

The "consultation" held by the DG last week did not appear to involve many countries that are likely interested in this from Capital, as contracting parties to some of these bodies.

Amendment to FAO Constitution should be in line with the basic rules and procedures which we fully respect. Any compromise that may give unrestricted power to one party will set a bad precedence for the Organization and we therefore recommend that any proposal brought forward should be discussed within the Article XIV bodies as parties to the agreement. Hence the need for consultation.

We also take note that this issue has already been discussed at other relevant bodies, such as the Governing Body of the Treaty in October 2015 and the IOTC in May 2016, where both bodies rejected similar proposals that were brought before them by the Secretariat.

For example, at the 32nd Session of COFI in July 2016 it was stated, and I quote paragraph 142 of the report: "Several Members expressed concern with regards to the selection process of the Indian Ocean Tuna Commission (IOTC) Executive Secretary and its consistency with the established IOTC rules of procedure and called for an urgent solution that respects the legitimate rules and procedures of IOTC".

To conclude, Liberia would like that the ODG actively engage with the relevant bodies and consult to find a solution. We also want to add that we subscribe to the statement made by Benin.

With these comments Liberia welcomes the Report.

Mr Mafizur RAHMAN (Observer for Bangladesh)

I am an observer, but listening to the Members on this Agenda Item, I would like to make a short comment: as it was said by Brazil, Cameroon, and others, the discussion is not in a single trend.

The basic question is the appointment of the Secretaries in the bodies created under Article XIV. If it is clearly mentioned in the Article of the Basic Texts, then there should not be any problem. However, if the Basic Texts are not clear enough, we need a proposal, such as the compromise proposal made by the Legal Counsel.

My recommendation is the following, as Australia proposed: We should have a single direction discussion, in order to be able to come up with a solution. In that case, as an interim process, we could take the proposal made by the Legal Counsel for the time being. Then we will have a discussion in the respective bodies, where we could take the time necessary to tackle the issue. We should not have this kind of endless discussion.

LEGAL COUNSEL

As the Members know, and I know some mention of the Legal Counsel has been made recently, I try to avoid having to take the floor for a long time in meetings of the Organization. This may not be the case now. In any case, I will try to be reasonably short.

We had received noticed of a number of questions that were asked in this debate and before you adjourn, I would ask you to allow me to address some of these points. Then when we will resume, we may perhaps be able to have another perspective on some of the points.

We in the Secretariat feel that there continues to be some misunderstanding about this issue. Although we take note that an evolution has taken place, one of the observations that is made is that the Secretariat is not taking up this matter in its proper forum. Such statements have, in fact, already been made at the Joint Meeting in very strong terms by some Members. Some Members (I forgot who they were) even said that we were discourteous by discussing this matter at Headquarters rather than with the bodies themselves, without informing them, without consulting them, without discussing the matter with them.

This is the first point I am presenting here on behalf of the Director-General. I cannot leave any ambiguity regarding the fact that we did take this matter to the bodies. We did take this matter to the bodies, and if the Members are to retain any specific points of our discussion, at least they should know that we did take the matter to the bodies.

In the case of IOTC, since last year we voiced concerns with an appointment procedure that was not in line with the treaties, which politicized what was and should remain a professional appointment, and which had resulted in serious reputational risks for the Organization and its Members.

We also drew attention to the fact that this procedure was unheard of in the United Nations System for the implementation of similar provisions.

Earlier this year, we sent a detailed communication to the Chairperson of IOTC. We explained our concerns and our proposals. This letter was circulated to each and every Member of the IOTC; Members who are present in this room.

We did send a substantial Delegation in size to the IOTC Session, which took place last May in the French island of La Réunion in the Indian Ocean. As you know, FAO tries to reduce the number of representatives to meetings. The FAO Delegation at this meeting included *inter alia* the Assistant Director-General, Arni Mathiesen. As an expression of the interest that the Director-General attached to this matter, an Attaché de Cabinet, Raschad also travelled to La Réunion. Annick van Houtte sitting next to me and I, personally, also travelled to La Réunion.

I made very detailed presentations of our concerns and proposals and we invited the Commission to consider the matter. I personally left after two days, but my colleagues remained and the matter continued to be under discussion.

There cannot be the slightest doubt, Mr. Chairman, that for a period of some six days, we tried our best to convince IOTC Members to face their responsibilities.

We can make available to the Council a verbatim extracted from the audio recordings of the session of the IOTC and this verbatim record would allow the Council to have an idea of what was done at the Session and the degree of detail with which we submitted the matter to the Commission.

At the end of the Session, the IOTC Members decided to let the situation continue. The Commission still decided on that occasion to take up the matter with the 32nd Session of the Committee on Fisheries in July 2016.

We note that this point is reflected in the report but at no moment, at no moment was the Secretariat approached to discuss the issue.

It is erroneous and misleading to mention that the FAO Secretariat has not taken up the matter with the bodies. The Secretariat, and I will have the occasion to provide further details on this, has been taking up this matter with the bodies for a substantial period of time.

We find it very strange, therefore, that some Members who have prevented the discussion, or do not allow a discussion to take place within the IOTC should now be saying that we must discuss the matter with the bodies. What does this mean?

Does this mean that we are going to have the same situation as we have witnessed up until now? We believe that there is a serious governance issue in this matter. It is not a Secretariat issue.

On the occasion of the Joint Meeting there were references to a letter from the European Commissioner in charge of fisheries who followed this matter with the Director-General on a number of occasions. He drew the attention to the Director-General to the urgency of the need to find a solution to the appointment of the Secretary.

And if I mention this letter here in this meeting, it is because there were references in the Joint Meeting to this correspondence. Indeed, the Director-General received a letter stressing the need to have a solution and stressing the urgency of a solution for this matter. But we realize that the European Union, and I shall be discussing and addressing a number of questions raised by the European Union – decided to let this current situation continue.

So we would call upon your sense of responsibility and the sense of responsibility of Member States to allow us to find a solution to this matter.

I would also recall, Mr. Chairperson, that both IOTC and the International Treaty on Plant Genetic Resources for Food and Agriculture, as well as other Article 14 bodies are subsidiary bodies of FAO. They act through the Organization and are subject to a principle of hierarchy of rules, which is recognized and applied in respect of all treaties concluded within the United Nations System.

Maybe one day some of these bodies will be outside the framework of FAO and they can certainly adopt such rules as they would wish.

This is in fact very clearly stated in the Principles and Procedure adopted by the Conference and which apply to Article XIV bodies, and I note that the Representative of Russia has specifically referred to this provision. It would be legally correct; it would be open to the Council, it would be within the authority of the Council to take a decision on this matter and to prescribe a particular course of action on this matter.

And of course the IOTC and the bodies would be required to reconsider their procedures.

IOTC Members and parties to the treaties are the same as those which are here. There is a principle of unity in the representation of States without which it is difficult to imagine international relations. We have difficulties that we should have countries here taking a different position in other fora, especially if these fora are FAO bodies.

We would expect that when a Delegation sits behind the nameplate of a country, that Delegation presents a corporate position of its country and from this angle, we wonder if we are not in the presence of a governance issue that is a cause of concern for the Organization.

I would also wish to address the specific question that was asked by the Representative of Slovakia and was pursued by the Representative of Iceland. This question is why does FAO consider the current situation where there are interim secretaries unsatisfactory? Why does FAO not let the current arrangements proceed?

In fact, it is true that we have consistently stated that we shall ensure continuity in the function of these bodies. Why do we not let the current situation to continue?

Let me start once again by saying that we find this question, with all due respect, a bit strange. Indeed, as regards the situation that we have now, we did not receive only one letter. We did receive several letters from Members saying that the current situation was unsatisfactory, that it is not appropriate to have the offices in charge for such an extended period of time.

Let me quote one among several of the letters that we received. And I quote – it is a letter to the Director-General. “As you are undoubtedly aware, the absence of a properly appointed Secretary is affecting the day-to-day management of the Secretariat and the fulfilment of the IOTC objectives. I do hope that a solution that meets our respective objectives can be found as soon as possible.”

Members have drawn attention to the situation that we have, and have criticized us. And we have now the opposite question, why do you not let the state of affairs continue?

So on the substance, let me say for the benefit of all Members, because we realize that there is a deficit of information in this forum, that we have had in IOTC and abnormal situation since at least March 2015.

We have had a situation which is not a normal one for some years. We have a secretary under investigation, whose efficiency and credibility was seriously impaired, and this was known through a number of Members’s interventions and reports.

We have had uncertainty as to the status of that Secretary for a long period of time. There were doubts as to the extent of the Director-General’s authority to take action *vis-à-vis* that particular official and then we have had an Interim Secretary designated by the Director-General. A situation of this nature has inherently a number of shortcomings.

There are inconveniences in a situation where you have an officer in charge who is designated by the Director-General on an *ad hoc* basis and is essentially a caretaker. That appointment was not approved by the Commission. This cannot be a lasting solution.

We have a Secretary who is not fully operational, with limited ability to take important decisions, and the Organization has been criticized for that. We have a Secretary who is denied legitimacy, and I will give you a specific example of this, to take important decisions. We do not think that it is in the interest of the statutory bodies, nor in the interest of the administration to maintain this situation for a protracted period of time.

And if the situation is not addressed now, we do not know when it will be addressed. This is a situation, as we mentioned in the proceedings, that concerns the IOTC, which concerns also the Secretary of the Treaty.

The merit that we see in the proposal that was made, the compromise proposal is that it would allow for the appointment of an effective Secretary and at the same time it would allow the members within two years to confirm that Secretary. Meanwhile there would be a possibility of looking further into the matter and trying to come up with a long-term solution for this.

This would respect the views and positions of both parties.

I wish to make two final observations. I know that I am taking longer than usual, but I wanted to give through you, Mr Chairperson, to the Council, a tangible and practical example of the shortcoming of the situation. There are a number of lower-level, technical positions of officials at the IOTC Secretariat that need to be filled.

A letter was received by FAO about one week ago from one Member together with a request for circulation of that letter to all IOTC members. The letter says that since there is no Secretary, it would

be appropriate to submit the proposed appointments for lower ranking technical officials of the Secretariat to all IOTC Members for confirmation.

So it is indicated that since there is no Secretary, the appointment should be made by the Commission itself which should confirm this appointment.

We have difficulties with this proposal that is a direct consequence of the absence of a full Secretary. This proposal is incompatible with the international nature of the UN Secretariat. By joining FAO, Members have accepted to respect the independence and international nature of the Secretariat and refrain from intervening with its autonomous character and the autonomous character of the selection procedures.

The second point that I wanted to mention and I shall be finishing my intervention, is that if IOTC Members wish to leave the framework of FAO and of the United Nations system, it is their right to do so. We have stated that point several times and we do not even know if the discussions in this Plenary, and this extended body, will facilitate this process.

As long as IOTC is under the framework of FAO, we consider that we are duty-bound to ensure that it adheres to proper standards. We feel that it is our duty vis-à-vis our Members to ensure that the Commission operates efficiently. We consider that the countries concerned about illegal, unreported, and unregulated fishing should also be concerned with this situation.

At the beginning of the session, the Director-General drew attention to an article published in the New York Times last Sunday written by a former EU Commissioner underlining the need to ensure proper management of southern blue fin tuna.

We feel that we are duty-bound to take steps within our reach to ensure that the IOTC, which for the time operates under the framework of the United Nations System and for which FAO is responsible, should function adequately.

Should one day the Commission cease to be, and be outside of FAO and outside the United Nations System, we would of course not express any reservations about this. This is why, Mr Chairman, we believe that it is neither in the interest of the IOTC nor in the interest of IOTC Members, nor in the interest of FAO Members to allow the state of affairs to continue.

Just a final word because I know that some other questions were asked, but some Members continue to be concerned with the fact; they continue to ask the question which was extensively discussed at CCLM, at the Joint Meeting, what happens if the body does not confirm an appointment?

But throughout the United Nations System, Heads of Agency, the Secretary-General has been confronted with situations of this nature. And if we have in FAO, situations of Staff Members who are confirmed by the Council, we have some of our colleagues whose appointments were confirmed by the Council. So if for some reason we don't have an approval of a candidate, of course the Director-General will have to reconsider his proposal.

That is why we also, in order to ensure the regularity of the procedure and to give comfort to the Members, would have two Representatives of the Members taking part in the selection panel and then if for some reason, in its wisdom, the Commission decided not to confirm the candidates, we would of course have to make an alternative proposal.

I will stop here for the time being and maybe this afternoon we could resume our discussions on this topic. And I apologize if I was long.

M. Serge TOMASI (President du Comité du Programme)

Je voulais effectivement faire deux commentaires. Un pour répondre à un point de procédure soulevé par la délégation de l'Australie à qui je voudrais dire très amicalement qu'être membre du Conseil de la FAO induit des droits mais aussi des devoirs et à commencer par respecter les prérogatives des organes de gouvernance de la FAO. Le Président d'un comité comme tout membre du comité peut faire toutes propositions concernant des projets de décisions tant que la décision n'a été adoptée par ledit comité. D'ailleurs je vous signale que cet après-midi, nous parlerons de la coopération entre les agences et la décision de la session conjointe comprend deux amendements qui ont été introduits lors

de la séance de clôture qui n'avaient pas fait l'objet de débat pendant la réunion de la session conjointe. Et d'ailleurs, sur cette question de la consultation, il y a bien un autre membre du Comité, je crois que c'était la Pologne, qui avait proposé aussi un processus de consultation permettant d'aboutir avant cette session à un compromis, mais il ne proposait pas de clarifier qui devait mener cette consultation. Moi, j'avais proposé qu'elle soit conduite par notre Président indépendant du Conseil en application des règles émises par notre conférence qui s'imposent à tous.

Sur mon deuxième point, je voudrais souligner l'importance de ce qu'a dit M. Tavares. Je crois qu'il nous met quand-même un peu face à nos responsabilités. Ça fait deux ans que nous échangeons sur ce dossier avec toujours les mêmes arguments et les mêmes débats sans avancer et on voit bien que ça commence à mettre notre Organisation et sa réputation dans une situation délicate. Je crois que si nous voulons vraiment avancer, il faut travailler sur des propositions concrètes. Il faut clarifier et formaliser les options sur le thème. Il y a une proposition du Directeur général, si elle ne fait pas consensus, il faut peut-être proposer des amendements à celle-ci ou une autre proposition, mais il faut travailler sur des choses concrètes. Et sur le processus de consultation, je rappelle ce que j'avais dit pendant la session conjointe. Il ne sert à rien de parler de consultation, il faut dire comme l'a dit le Brésil, qui consulte qui et sur quoi ? J'ai quand-même une difficulté que je voudrais partager avec vous. Est-ce que vous rendez compte de ce que cela veut dire quand vous appelez le secrétariat à consulter un organe de gouvernance d'un organe extérieur à la FAO ? Le secrétariat, il doit consulter son organe de gouvernance qui est ce Conseil et qui est la Conférence. Alors, s'il doit avoir des consultations entre les organes de gouvernance, j'en reviens à ma proposition, ça ne peut-être conduit que par le Président du conseil. Et ensuite, ça peut-être, comme certains l'ont proposé, avec un groupe des amis du président. Ça peut-être avec l'appui du Président du Comité des questions constitutionnelles et juridiques, avec l'appui du secrétariat mais il me semble vraiment étrange que le secrétariat soit invité par son Conseil à mener des consultations avec un organe de gouvernance externe à notre Organisation.

SECRETARY-GENERAL

I would like to remind delegates of the Side Event on *The Role of Agriculture in National Adaptation Planning after COP22*, which will take place in the Iran Room from 12:30 to 13:30.

Then, from 13:30 to 14:30 in the Sheikh Zayed Centre will take place the side event *Launch of the FAO publication: "The future of food and agriculture: trends and challenges"*.

We will resume here this afternoon our Council Session at 14:45 hours.

I was also asked to announce that there will be an EU Coordination Meeting immediately after this Session in the German Room.

CHAIRPERSON

Thank you. We will resume at 14:45 hours.

The meeting rose at 12:41 hours

La séance est levée à 12 h 41

Se levanta la sesión a las 12.41