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COUNCIL

Hundred and Thirty-second Session

Rome, 18-22 June 2007

PROCESS FOR A CHANGE IN THE NATURE OF A STATUTORY BODY OF FAO CONSTITUTION INTO A BODY OUTSIDE THE FRAMEWORK OF FAO (CHANGE IN THE STATUS OF THE INDIAN OCEAN TUNA COMMISSION)

1. This document provides information on some developments which occurred after the adoption of the Report of the Eighty-first Session of the CCLM (CL 132/5) as concerns the sub-item entitled “*Process for a change in the nature of a statutory body of FAO established under Article XIV of the FAO Constitution into a body outside the framework of FAO (Change in the status of the Indian Ocean Tuna Commission)*”.
2. The Indian Ocean Tuna Commission (IOTC) held its Eleventh Session in Mauritius from 13 to 18 May 2007. The Commission was informed of the position of the Organization, as reflected in paragraph 7 of document CL 132/5, as well as of the conclusions reached by the CCLM as set out in paragraphs 9 to 10 of that document. A number of documents, including the report of the CCLM, document CCLM 81/3 on the basis of which the CCLM reviewed the matter, and exchanges of correspondence between the Chairperson of IOTC and the Director-General were also made available to the delegates to the IOTC session.
3. The Commission was informed of the CCLM’s conclusion that the situation was complex and unprecedented and, therefore, that it was essential to make a complete review of the matter, keeping in mind all the implications of any proposed option, including the fact that any decision in this respect will establish a precedent in international law which may have an impact upon other organizations of the United Nations system. In order for it to be able to review the matter and make a recommendation to the Council, the CCLM requested that an informal group of legal experts of all the IOTC Members, CCLM Members, as well as representatives of relevant organizations of the United Nations as might be deemed appropriate, should examine the matter. The CCLM would subsequently review the work of the informal group and provide its advice to the Council. The CCLM requested that the informal group should meet as soon as feasible taking

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into account the calendar of the relevant sessions of the Governing Bodies of FAO, and subject to availability of funds.

4. After a debate, IOTC adopted the statement reproduced in Appendix I hereto inviting the FAO Council and the Director General to take action on the draft amendments to the Agreement agreed at the 3rd Special Session of IOTC in 2006 to allow the Commission to consider those draft amendments at its 12th Session in 2008 and instructing the Chairperson to send copies of the statement to the FAO Director-General, the FAO Council and to all Members of the Commission.

5. At the time of the adoption of the statement, the representative of FAO placed on record that the statement was without prejudice to the current process of review of the matter within FAO's relevant Governing Bodies, to the duties and prerogatives of the Director-General and such Governing Bodies, and to FAO's position that the process under way regarding IOTC could not be handled under Article XX of the IOTC Agreement, nor, *a fortiori*, under Article XX, paragraph 4 of that Agreement.

6. The Organization is taking preparatory steps to convene the informal group of legal experts of all the IOTC Members, CCLM Members, as well as representatives of relevant organizations of the United Nations as soon as practicable, but taking into account the need for proper preparation of its work, including the preparation of the necessary documentation, and the need to ensure effective participation of legal experts of all IOTC Members. The Organization is making every effort in order to be able to convene the meeting in the autumn of 2007.

Annex

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**STATEMENT
CONCERNING ACTIONS BEING TAKEN TO ACHIEVE A MORE EFFECTIVE AND
EFFICIENT COMMISSION**

The Indian Ocean Tuna Commission (IOTC)

RECALLING that at the 9th Session of the Commission all Members agreed to convene a special session to explore ways to achieve a more effective and efficient organisation, notably through a change in the relationship between the IOTC and the FAO;

RECALLING FURTHER that at the 3rd Special Session of the Commission the Members present reached consensus on the text of the draft amendments to the Agreement for the establishment of the IOTC to reflect the most appropriate way to achieve a more effective and efficient organisation and proposed to adopt them at the 11th session of the Commission;

NOTING that, on instruction from the Members present at the Special Session and on their behalf, the Chairperson sent a letter dated 22 December 2006 to the Director General of the FAO requesting him to circulate the draft amendments to all Members of the Commission in accordance with the provisions of Article XX of the Agreement;

TAKING NOTE that the Director General of FAO did not circulate the draft amendments as requested, and that he, in his letters to the Chairperson dated 5 February 2007 and 9 May 2007, presented his reasons for not circulating the draft amendments to all Members of IOTC and expressed his unreserved commitment to facilitate the process that the Commission has decided to accomplish;

CONFIRMS that the conservation of tuna and tuna-like species in the Indian Ocean necessitates an effective and efficient functioning of the Commission, not excluding a change in the relationship between the IOTC and the FAO;

REITERATING the importance of continued cooperation between the Commission and the FAO in the conservation of tuna and tuna-like species in the Indian Ocean;

STATES that:

1. The FAO Council and the FAO Director General are invited to take immediate action on the draft amendments to the Agreement agreed at the 3rd Special Session to allow the Commission to consider those draft amendments at its 12th Session.
2. The draft amendments will be considered by the Commission at the 12th Session following the circulation of those draft amendments by the Director General of FAO no less than 120 days before the date of that session.
3. The Chairperson is instructed to send copies of this statement to the FAO Director General, the FAO Council and to all Members of the Commission.