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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Review of procedures for the establishment and abolition of Statutory Bodies - Implementation of Conference Resolution 13/97

I. Background

1. The item has been placed on the provisional agenda of the Committee on Constitutional and Legal Matters (CCLM), in light of the considerations described in this document.
2. The Conference and the Council have, from time to time, expressed their concern about the proliferation of Statutory Bodies established under Articles VI and XIV of the FAO Constitution. Both Governing Bodies have underlined that *ad hoc* arrangements, which are time-limited, are preferred to the establishment of permanent bodies, and that existing Statutory Bodies should be kept under review to assess whether they are inactive or have outlived their usefulness.
3. In considering whether a Statutory Body is the appropriate vehicle to discharge a particular mandate, it is essential to be clear as to the nature of such Bodies. Statutory Bodies are normally established to address technical and scientific matters. There are, nevertheless, significant differences in the legal nature, purpose and authority of the Statutory Bodies established under Article VI and Article XIV of the Constitution:¹
 - a. Article VI bodies are normally fully integrated within FAO,² they are normally entrusted with the development of recommendations and advice for the Governing Bodies and the individual Member States and, in general, at least in part, on funding from the FAO

¹ See document PC 104/9, paragraph 8: “As a general rule, bodies established under Article VI are part of the Organization. They do not have a ‘life of their own’. Article XIV, on the other hand, makes provision for the negotiation within meetings convened by, or on behalf of the Director-General, and the subsequent adoption by the Conference or the Council of conventions and agreements. These instruments are said to have a ‘life of their own’ and usually provide for obligations extending beyond those set out in the Constitution and the other Basic Texts of FAO. For instance, these bodies may adopt regulatory measures directly binding upon the Members of the concerned body and may have autonomous budgets”.

² There are a few significant exceptions to this general proposition, such as the Codex Alimentarius Commission, which exercises considerable autonomy.



Regular Programme. Article VI bodies are established by a decision of the Conference, the Council, or the Director-General under the authority of the Conference or Council.

- b. Article XIV bodies have some level of autonomy from FAO, they may create legally binding obligations for those Members that adhere to the constitutive instrument, and part or all of their budgets may be funded from sources outside the Regular Programme, for example, through assessed contributions which Members are legally obliged to pay under the constitutive instrument. As stated by the Conference, “*any agreement concluded under Article XIV of the Constitution among Member Nations of the Organization should entail financial or other obligations going beyond those already assumed under the Constitution of the Organization. Failing this, there would be no grounds for such an agreement, at least not in the legal form prescribed under Article XIV of the Constitution*”.³ An Article XIV Body is established through the lengthy, often complex and politicized, negotiation of a new international agreement which, following adoption by the Conference, enters into force only when a prescribed number of Members have deposited instruments of adherence with the Depositary.

4. It is relevant to note that, in recent years, a number of entities have been established within FAO that do not fall within either Article VI or Article XIV. These have, for example, taken the form of partnerships, which are voluntary initiatives and do not create any legally binding rights or obligations for the partners. Such partnerships do, nevertheless, require some form of concrete commitment by the Members who participate in them. Some of these initiatives have been endorsed by the Governing Bodies.⁴ Such fora may have mixed composition, not limited to Members, and may be resourced from the Regular Programme, as well as from extra-budgetary sources. *Ad hoc* meetings or consultations may also be suitable vehicles to address matters which require discussions that, by their nature, are time-limited or aimed at achieving specific outcomes. Such mechanisms may be flexible, cost effective and can avoid the introduction of a political dimension into an essentially technical or scientific discussion, which almost automatically comes with the establishment of a Statutory Body. Moreover, their very nature may minimize the risk of working practices inconsistent with FAO practices and norms.

II. Purpose of the present document

5. The purpose of this document is to seek the Committee’s guidance on the possible actions that could be taken:

- a. to review the existing Statutory Bodies to ascertain their continued necessity, in light of their viability and purpose;
- b. to ensure that the establishment of new Statutory Bodies is kept the minimum necessary; and
- c. to explore the use of more flexible, task-specific or time-limited mechanisms to address particular tasks.

6. Section III of this document sets out the resolutions and guidance provided by the Conference and the Council concerning the establishment and abolition of Statutory Bodies; resolutions and guidance which are not included in the *Basic Texts* are set out in Annex I. Section IV of the document outlines the issues for consideration in relation to the existing Statutory Bodies, and Section V summarizes those issues arising in connection with the establishment of new Statutory Bodies. Possible future actions are presented for consideration by the Committee in Section VI. Section VII presents the suggested action by the Committee. Annex II summarises the recent experience and practice of the International Labour Organization (ILO) and the United Nations Educational, Scientific

³ See paragraphs 5 and 6 of the *Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution* (“the Principles”), reproduced in Part O of the *Basic Texts*.

⁴ For example, the Global Soil Partnership, endorsed by the Council (see Report of the 145th Session at page 6).

and Cultural Organization (UNESCO), which have faced similar issues related to prioritisation and consistency in the context of bodies established under their auspices.

III. Decisions of the Conference and Council concerning the establishment and abolition of Statutory Bodies

7. At its Thirteenth Session (1965), the Conference requested the Council to undertake a four-year review of all FAO Expert Committees, Working Parties, and Panels of Experts on the one hand, and of Committees and Working Parties of Government representatives on the other, to ensure that they are maintained only for the length of time required to accomplish their main purpose and to avoid proliferation and duplication of functions.⁵

8. At its Fourteenth Session (1967), addressing its continued concern with the proliferation of FAO Statutory Bodies, the Conference established criteria for the establishment of new Statutory Bodies (set out in Annex I).⁶ The criteria include, *inter alia*, assessing whether the problem that the body is intended to address is persistent or recurring, and whether there is insufficient existing machinery within or outside FAO in the relevant area of work. The comments to the criteria contained in the Conference's Report consistently recommend the use of *ad hoc* fora to address specific problems. The Conference declared that the same criteria should be kept in mind when establishing Subsidiary Bodies under Articles V, VI and XIV of the Constitution and drew attention to the alternative possibilities of convening *ad hoc* conferences and consultations under Article VI, paragraph 5, of the Constitution, where there was insufficient evidence of the need for a permanent body to deal with technical matters.

9. At its Fifty-first (1968) and Fifty-second (1969) Sessions, the Council stressed that the criteria adopted by the Conference "*should apply not only to any proposals for the establishment of new bodies but also in considering the continuation of existing ones, with a view to achieving a gradual but substantial reduction in the number of such bodies and in the overall number of FAO meetings*".⁷

10. At its Fifty-fifth Session (1970), the Council requested the Director-General to continue to ensure a strict application of the criteria established by the Fourteenth Session of the Conference when considering the establishment of new FAO Commissions, Committees and Working Parties and when considering the maintenance or abolition of existing ones (set out in Annex I).⁸ The Council also approved four additional criteria for establishing or maintaining Statutory Bodies. These criteria confirm that "[c]onvening in most cases of *ad hoc* meetings or seeking assistance from consultants would be preferable to the establishment of bodies of a permanent nature". They also specify that, before new bodies are proposed, it should be ascertained if other bodies covering the same or related fields could be abolished.

11. At its Twentieth Session (1979), in its Resolution 12/79, the Conference adopted Procedures for the Establishment and Abolition of Statutory Bodies. In addition to laying down procedures, the Conference requested:

"the Director-General to keep the activities of bodies established under Articles VI, XIV or XV under review in the light of their reports, and, if he is of the opinion that such a body is either inactive or has outlived its usefulness, to recommend that the Council or Conference:

- a. *exercise its authority to abolish bodies established under Article VI or subsidiary bodies thereof,*
- b. *invites States, parties to conventions or agreements concluded under Article XIV or XV, to consider terminating such convention or agreement by withdrawal in accordance with the relevant provisions thereof,*

⁵ Report of the 13th Session, paras. 426-427.

⁶ Report of the 14th Session, paras. 613-617.

⁷ Report of the 51st Session, paragraph 237; recalled in the Report of the 52nd Session, paragraph 187.

⁸ Report of the 55th Session, paragraph 208.

- c. *exercise its authority to effect the withdrawal of the Organization from bodies established under Article XV.*"

12. At its Twenty-ninth Session (1997), the Conference adopted Resolution 13/97 on the Review of Statutory Bodies and Panels of Experts (set out in Annex I). In this Resolution, the Conference affirmed "*the continuing need to enhance the efficiency of the Organization and its governance in a time of financial challenge, to eliminate Statutory Bodies that are obsolete, to ensure more flexible task-oriented and time-bound working arrangements for those that remain and to limit the creation of new Bodies to those that are strictly necessary*".

13. In the same Resolution, the Conference decided that "*in future, Statutory Bodies should be established only where strictly necessary and where the work to be undertaken cannot be carried out by ad hoc groups, and that the Terms of Reference of all new Bodies created should provide for a periodic review of their usefulness*". The Conference laid down "*factors to be taken into account in establishing new technical Bodies and in the establishment of new Subsidiary Bodies*", as follows:

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

14. The Conference and the Council have, thus, been consistent that new Statutory Bodies "*should be established only where strictly necessary and where the work to be undertaken cannot be carried out by ad hoc groups*", and that there is a need to "*ensure more flexible task-oriented and time-bound working arrangements for those [Statutory Bodies] that remain*".

IV. Issues for consideration: established Statutory Bodies

15. Efforts undertaken pursuant to Resolution 13/97 to abolish Statutory Bodies that are inactive, or which face difficulty in discharging their mandates, have not always been successful. This is of concern in light of certain trends or developments, as described in this Section.

A. Strategic and policy matters

1. Securing consistency with FAO norms and practices

16. Even when a Statutory Body efficiently and effectively discharges its mandate, difficulties may arise in securing consistency of approach with FAO norms and practices. A number of Statutory Bodies have proposed the adoption of working practices that are at variance with the GROs or that, while not contravening the formal rules, introduce innovations which could set precedents. For example, proposals have been made in the recent past to introduce new voting methods as well as new means by which to "participate" in a meeting (for example, in the absence of a Member, through the delegation of voting rights to other Members present).

17. Proposals to depart from the established norms of FAO have required intervention when they come to light. However, bearing in mind the diverse locations of the secretariats of many Statutory Bodies, particularly those which are regional or sub-regional in nature, FAO Headquarters may only become aware of such proposals at a late stage and after they have been the object of considerable

discussion between the Members concerned. Matters of this nature are particularly sensitive to address when policy and political discussions amongst the Members are at an advanced stage.

18. In this regard, Statutory Bodies established under Article XIV raise particular concerns because of their specific legal status and their relative autonomy.⁹ The relationship with the Article XIV bodies is complex and, as observed by the Governing Bodies, has a particular dynamic. While established under the Constitution, some Article XIV Bodies emphasize the semi-autonomy that results from their legal framework. There is a need to balance legitimate requests for autonomy and, at the same time, adherence to FAO procedures as they remain organs of FAO.

19. Certain Article XIV Bodies have proposed the adoption of procedures that depart significantly from the GROs. Efforts to ensure consistency of approach between the recommendations or decisions of the primary organs of Article XIV Bodies with the FAO legal and policy framework may be time-consuming and politically sensitive. At a time when streamlining of operations and cost-efficiency are paramount, the complexities of dealing with *ad hoc* situations are of particular concern.

20. In addition to consistency with the formal rules of the Organization, consistency with the policies adopted by the Governing Bodies is also necessary. Concerns arise in the context of conclusion of agreements. FAO is the entity vested with legal personality to enter into legally binding agreements and is ultimately liable for their proper implementation. The Statutory Bodies do not have independent legal personality. All legally binding agreements to be concluded in the name of FAO are subject to the Organization's rules and policies, including when the activities to be undertaken pursuant to such agreements are addressed to a specific Statutory Body. The signature of agreements which are inconsistent with the applicable rules and policies may present a legal and reputational risk to the Organization. Consequently, in order to ensure compliance with these policies, all agreements — including cooperation agreements, relationship agreements and donor agreements — are subject to review and clearance at FAO Headquarters prior to signature. However, there is no guaranteed means of ensuring that FAO Headquarters is made aware of proposed collaborative arrangements before they have been the subject of extensive negotiation, or even signature.

2. *Mandates that could be discharged through other mechanisms*

21. It has become apparent that a number of Statutory Bodies have been mandated with functions that could more appropriately be discharged through alternative mechanisms of the kind described at paragraph 4 above, such as *ad hoc* consultations. This is particularly the case where the matter to be addressed is scientific or technical, and is time-limited or limited to the achievement of a specific goal.

22. The vesting of functions that could be performed, from an operational and constitutional perspective, by the technical departments of FAO or by a separate *ad hoc* forum coordinated and supported by these departments raises additional concerns in the case of Article XIV Bodies. As observed by the Conference, “*the procedure of multilateral agreements has been used on several occasions to establish commissions and committees entrusted with specific tasks which fall within the general terms of reference of the Organization*”.¹⁰ In this regard, the Conference has underlined that “*any agreement concluded under Article XIV of the Constitution among Member Nations of the Organization should entail financial or other obligations going beyond those already assumed under the Constitution of the Organization. Failing this, there would be no grounds for such an agreement, at least not in the legal form prescribed under Article XIV of the Constitution*”.¹¹ It is apparent,

⁹ As observed at paragraph 8 of the *Principles*: “*The Conference noted that the provisions of the statutes of certain bodies were a cause of confusion regarding their legal status. There was some doubt as to whether these bodies should be considered as entirely independent entities with only working relations with the Organization or as bodies having been established within the framework of the Organization under Articles VI, XIV or XV of the Constitution. The lack of clarity regarding the relationship of these entities with the Organization and, consequently, the extent and character of the responsibility of the Organization with respect to these bodies were a cause of concern to the Conference.*”

¹⁰ Paragraph 4 of the *Principles*.

¹¹ Paragraph 5 of the *Principles*.

therefore, that Article XIV Bodies should not be established to discharge functions that fall squarely within the general terms of reference of the Organization.

3. *Decline in participation in meetings and inactivity*

23. Certain Statutory Bodies have experienced a decline in participation in their meetings. Reduced participation may result from a number of factors including, but not limited to, disinterest of the Members or the lack of resources to support participation in such meetings. In particular, it is increasingly evident that, in a number of cases, Members do not attend meetings in sufficient numbers when voluntary funds are not available to support the participation of delegates.

24. The consequence of diminished participation in meetings is significant. It results in the adoption of policies that may not reflect the views of the entire membership. In addition, the lack of a quorum for valid decision-making renders such bodies unable to either move forward by modifying their programmes and mandates or to take decisions to abolish the Body concerned. Consequently, an “institutional *impasse*” results.

25. This institutional *impasse* is compounded by the difficulty in securing agreement from some Members to withdraw from a dormant Statutory Body in order to enable its abolition. Experience had demonstrated that certain Members prefer to allow a dormant Body to continue to exist rather than to take steps for its abolition.

B. Operational matters

1. *Support of the work of Statutory Bodies*

26. In the context of the Work Programme and Budget, the Conference, at its 38th Session, “*requested the Director-General to put measures in place to achieve further efficiency gains and other savings in 2014-15*” and “*emphasized that these efficiency gains and savings should be driven by the goal of ensuring the most efficient and effective use of resources within a renewed FAO and not at the expense of the delivery of the Programme of Work*” (emphasis added).¹²

27. Against this background, it is essential to recognise that resources are required to support the operation of Statutory Bodies, whether such Bodies are dynamic and effective, or dormant. These resources include not only technical, secretariat and administrative support for the meetings of these Bodies (and their subsidiary bodies, working groups, etc.), but also in the delivery of the programmes and plans of action that such Bodies may have adopted. This support, in respect of Bodies established under Article VI, is provided by FAO personnel specifically assigned to provide secretariat services, as well as by the technical departments and other units at FAO Headquarters.

28. In addition, for those secretariats of Statutory Bodies located outside Headquarters, FAO may be called upon to address legal and institutional matters related to their operation.

29. The trend in reducing resources may call for consideration of whether a particular Statutory Body is the most appropriate mechanism to address a particular issue. In this regard, it is noted that, under the existing practice, issues related to each Statutory Body are addressed on an individual basis.

2. *Coordination*

30. The implementation of constitutional provisions and policy directives leads to a number of practical, operational tasks. Thus, for example, as indicated at paragraph 20 above, all agreements must be reviewed for the purpose of ensuring compliance with FAO’s rules and policies, as well as for the protection of its interests. The task of ensuring consistency with FAO norms and practices is a complex, and not always successful. In the case of Statutory Bodies, the Organization’s capacity to coordinate and ensure such consistency in such day-to-day operational matters is restricted, particularly for those whose secretariats are located outside Headquarters.

¹² Report of the 38th Session, paragraph 101.

31. Furthermore, as observed at paragraph 18 above, lack of clarity about the relationship between FAO and Article XIV Bodies gives rise to particular complexities in coordination. Their semi-autonomy may lead to initiatives in day-to-day operational matters that are not consistent with the established FAO rules and policies and which, while operational in nature, have wider policy implications.¹³

3. *Financial and budgetary matters*

32. As at December 2013, arrears in contributions for Article XIV Statutory Bodies amounted to approximately USD 5 million. Of this, approximately USD 3.2 million related to three of the Desert Locust Commissions alone. This level of arrears is extremely high, bearing in mind the relatively small budgets of these Statutory Bodies. This has a significant impact on the implementation of the programmes that are approved by them and affects their capacity to operate effectively to discharge their mandates.¹⁴ FAO is increasingly requested to intervene.

33. It is noted that even the more active Article XIV Statutory Bodies may experience difficulties in securing payment of contributions that are due and it is a matter of concern that, in some cases, approved autonomous budgets are unfunded with the consequence that programmes cannot be implemented in the absence of the necessary resources.¹⁵

V. **Issues for consideration: new Statutory Bodies**

34. A number of proposals for the establishment of new Statutory Bodies have recently been put forward. A matter of particular concern is the lack of coordination to ensure that a proposal for a new Statutory Body meets the criteria set down by the Governing Bodies for the establishment of new Statutory Bodies. Recent experience has also demonstrated that new proposals may not have reached the necessary level of informal consensus before a formal proposal is made.

¹³ Thus, for example, questions have been raised as to whether an Article XIV body can adopt and use its own emblem alongside that of FAO on documentation and other materials. Similarly, questions have arisen as to whether Article XIV Bodies can have their own domain names for their websites.

¹⁴ For example, in 2011, the Desert Locus Control Committee (DLCC) Trust Fund received payments from only 11 countries out of a total of 35. The global balance of arrears increased from approximately USD 1.4 million at the end of 2007 to approximately USD 1.7 million at December 2013. Arrears continue to accumulate as, when contributions become due, they are not paid; for the fiscal year 2011/2012, USD 92,981 was received for the DLCC Trust Fund, whereas the amount due was USD 207,780. To address this significant shortfall, for the 2012-2014 Budget and Workplan, two budgets were presented, one based on contributions due and the payment of a portion of arrears and the other only based on contributions due, with a differing level of activities for each. See *International Trust Fund 9161: Contributions/Expenditures 2008-2011 and Workplan 2012-2014*, Desert Locust Control Committee, 40th Session, 19-22 June 2012 (document AGP:DLCC/2012/7).

¹⁵ See, for example, *Report of the Eighteenth Session of the Indian Ocean Tuna Commission*, 1-5 June 2014 (document IOTC-2014-S18-R[E]):

“81. *The Commission NOTED that the cumulative total of outstanding contribution payments has increased from US\$1,069,802 as of December 31st 2012, to US\$1,425,893 as of December 31st 2013, an increase of US\$356,091 (33.3%) with 11 Members having payments in arrears (excluding minor outstanding payments resulting from bank charges and differences in currency exchange rates).* ...

83. *The Commission REQUESTED that all Members with overdue IOTC contributions finalise payment of those contributions as soon as possible so as not to hinder the operation of the IOTC. To facilitate this process, the Chair of the Commission, with the assistance of the Secretariat and the FAO Legal Department, shall conduct bilateral discussion with each of the CPCs with contributions in arrears totalling more than the previous two years, with a view to recover the outstanding contributions and further assess their interest of continued involvement in the IOTC. Responses from those CPCs should be circulated by the Secretariat to all CPCs for consideration at the 12th Session of the SCAF.”*

35. It is also noted that there is minimal, if any, assessment as to whether a particular function could be equally (or more) effectively discharged by a mechanism that is not a statutory body before a formal submission is made to the Governing Bodies of FAO. Consideration could be given, for example, to adopting the types of mechanisms described at paragraph 4 above.

VI. Possible future actions

36. The Committee is invited to consider possible actions that could be undertaken to address the various issues identified above and, *inter alia*, to fully implement Resolutions 12/79 and 13/97.

A. Consideration of existing Statutory Bodies

37. Bearing in mind the desire of the Governing Bodies to limit the number of Statutory Bodies to those that are strictly necessary, it may be appropriate to consider each of the existing Statutory Bodies in light of the following questions:

- a. Is the particular Statutory Body dormant or otherwise unable to discharge its mandate? For example, are there longstanding and substantial arrears in contributions from Members, or consistently insufficient participation at meetings for a quorum, which preclude the Statutory Body from operating effectively and efficiently?
- b. Is the Statutory Body the appropriate mechanism to discharge the functions reflected in its mandate? For example, do the functions include the development of technical papers containing recommendations to be forwarded to the Council and/or the Conference which readily fall within the existing mandate, capacity and expertise of the technical departments or which could be prepared by an *ad hoc* forum?

38. The Committee is invited to consider whether it would be appropriate to recommend that the Director-General be vested with an enhanced role in the review of existing Statutory Bodies and the implementation of Resolution 13/97, with a view to making recommendations to the Council and, as appropriate, the Conference. Such a recommendation would be consistent with, and build upon, paragraph 3 of Resolution 12/79. This would also serve to continue the work that has already been undertaken in implementation of Resolution 13/97, as reported to the Council in June 1999.¹⁶

39. A review under the direction of the Director-General could encompass the two elements identified under paragraph 37 above, that is: (i) identify those Statutory Bodies which are dormant and could be considered for abolition; and (ii) identify those Statutory Bodies whose activities could be carried out by the technical departments of FAO or under time-bound *ad hoc* arrangements (including Members, independent external technical experts, and others, as appropriate) established by the Director-General, coordinated and supported by the technical departments and other units of FAO. In the case of a recommendation that the activities of a specific Statutory Body could be undertaken by a different type of mechanism or forum, the Director-General could be requested to put forward proposals for the particular type of mechanism.

40. The Committee is also invited to consider whether to recommend that, where a Statutory Body has consistently had insufficient participation at its meetings to secure a quorum, the Director-General be mandated not to convene a future meeting when it is apparent that there will not be a quorum, for example, when voluntary funding is not available to support travel and related participation costs. The Director-General could be mandated to organize *ad hoc* meetings to address technical matters falling within the mandates of such Bodies instead of convening the formal meetings. Moreover, when meetings are to be held, consideration could be given to reviewing the duration and timing of such meetings, to try to achieve cost savings.

¹⁶ See *Final Report on Implementation of Conference Resolution 13/97: Review of FAO Statutory Bodies*, document CL 116/INF/16, presented to the Council at its 116th Session.

B. Consideration of proposals to establish new Statutory Bodies

41. In light of the directions of the Conference and Council, the Committee is invited to consider recommending that the Council and/or the Conference confirm the continued need to ensure that the criteria established by the Conference and the Council for the establishment of new Statutory Bodies are fully adhered to.

42. The Committee is also invited to consider whether to recommend that the procedures contained in Resolution 12/79 be supplemented by establishing a requirement that the document referred to in paragraph 1(i) of the resolution:

- a. includes a specific assessment of why the purposes for which the proposed Body is to be established cannot be met by the technical departments of FAO or under time-bound *ad hoc* arrangements (including Members, external technical experts, and others, as appropriate) established by the Director-General, coordinated and supported by the technical departments and other units of FAO;
- b. if the assessment under (a) above concludes that the establishment of a new Statutory Body is appropriate, contains an evaluation as to whether the Body must be permanent or whether it could be established for a fixed duration or for a duration linked to the achievement of a specific goal;
- c. identifies other bodies covering the same or related fields which could be abolished if the new Statutory Body is established, as directed by the Council at its Fifty-fifth Session (1970) (see Annex I); and
- d. confirms that any proposal to establish a new Article XIV Statutory Body reflects a clear expression that (i) the Body will be within the FAO framework and will adhere to the FAO norms and procedures; and (ii) that the financial and other obligations of the Members of the Body in question are unequivocal and the resource requirements of the Body will not be met from the Regular Programme budget.

43. The Committee may also wish to assess whether it would be appropriate to recommend introducing a practice by which the Council and, as appropriate, the Conference (through appropriate bodies), is provided with the opportunity to undertake substantive consideration of a new proposal to establish a Statutory Body with a global mandate, based upon comprehensive information, before a draft instrument is formally presented for adoption. In this initial consideration, the Council and, as appropriate, the Conference may also provide precise directions as to the nature of the instrument, if any, is to be developed. This would be consistent with the formal procedures of ILO and UNESCO, summarized in Annex II, when new bodies are proposed. Both organizations have faced issues of prioritisation and promoting consistency. Such procedures facilitate informed decision-making by the Members and can also serve to confirm whether there is sufficient consensus prior to the formal submission of a specific proposal.

44. With respect to proposals to establish new regional Statutory Bodies, the Committee may wish to consider whether it would be appropriate to recommend that the Council or the Conference encourage the relevant regional organs to ensure that proposals to establish new regional Statutory Bodies are comprehensively reviewed, taking into account the needs of the region and existing mechanisms.

VII. Suggested action by the Committee

45. The Committee is invited to review this document and endorse the following approach:

- a. The Council or the Conference could invited recall earlier decisions concerning Statutory Bodies, and affirm their continued validity. The Secretariat could be requested to take an active role in the review of existing Statutory Bodies with a view to identifying Bodies that the Council or Conference may wish to abolish because they are inactive or are mandated to discharge functions that could be undertaken by other mechanisms.

- b. The Council or the Conference could also be invited to mandate the Director-General to explore methods to enhance cost efficiencies for the Statutory Bodies, in particular, in relation to the meetings of such bodies. The Director-General could also be authorised to decide not to convene meetings of such Bodies when, in his judgement, a quorum will not be achieved and, instead, to organize *ad hoc* technical consultations to address matters falling within the mandates of such Bodies.
- c. With regard to proposals to establish new Statutory Bodies, the Council or the Conference could be requested to supplement the procedures contained in Resolution 12/79 by establishing a requirement that the document referred to in paragraph 1(i) of the Resolution include specific assessments of whether the objectives of that Body could be met through a different type of forum, and identifying other existing bodies covering the same or related fields.
- d. Consideration could also be given to inviting the Council or the Conference to approve a process by which, before a draft instrument for the establishment of a new global Statutory Body is formally presented for adoption, they assess the desirability of a new instrument addressing a specific problem on the basis of comprehensive information submitted by the Director-General, and, if the conclusion is affirmative, they identify the type of instrument by which this should be achieved. In the case of the proposal to establish a new regional Statutory Body, the relevant regional organs could be encouraged to comprehensively assess the proposals in light of the needs of the region and existing mechanisms.

46. If the Committee is in a position to endorse the approach set out above, the Committee is requested to provide guidance as to whether the Conference or the Council would be the appropriate the Governing Body to take the requested action, and whether a Resolution would be the appropriate mechanism by which to implement this approach.¹⁷

¹⁷ Should the Committee consider that a Conference Resolution would be the appropriate instrument, the Resolution could be reviewed and endorsed by the Committee in October 2014, for subsequent discussion and approval by Council, and eventual consideration and adoption by Conference in June 2015.

ANNEX I

RESOLUTIONS AND DECISIONS OF THE CONFERENCE AND THE COUNCIL NOT INCLUDED IN THE BASIC TEXTS

I. Report of the 14th Session of the Conference (1967)

c) Criteria for the establishment of FAO commissions, committees, working parties and panels of experts

613. The Conference declared itself concerned with the proliferation of FAO Statutory Bodies. The Conference accordingly drew attention to the alternative possibilities of convening *ad hoc* conferences and consultations under Article VI, paragraph 5, of the Constitution, where there was insufficient evidence of the need for a permanent body to deal with technical matters.

614. Where a permanent body seemed desirable, the Conference concurred with the proposal that the establishment of such bodies be given thorough consideration by the establishing organ under the following constitutional provisions:

(a) World-wide commissions or regional commissions of Member Nations - (Article VI-1; Article XIV)

(b) Committees and working parties of selected Member Nations - (Article VI-2)

(c) Committees of experts, working parties of experts, and panels of experts, comprising individuals selected in personal capacity - (Articles VI-2 and VI-4)

615. The function of the bodies described above is normally to permit an exchange of information between government delegates or experts and to tender advice to the Director-General who brings relevant issues to the attention of the Council and Conference. In the case of subsidiary bodies, they transmit their reports through the parent body.

616. In the light of the foregoing considerations, the Conference adopted the following criteria:

Criteria	Comments
(i) That there is an identifiable problem of sufficient importance in the subject matter field.	If the problem is of a general nature, it can usually be handled by another body, such as a regional commission, the Council of the Conference (including technical Committees of the Conference).
(ii) That the problem or problems are of persistent character or of a recurring nature and one that requires continuing consultation between governments or by experts.	If the problem is not persistent or is not likely to recur, the use of <i>ad hoc</i> conferences or consul consultations should be considered.
(iii) That there are insufficient existing machinery and facilities within or outside the Organization in the relevant area of work.	Alternative solutions to the problem should first be considered e.g. by correspondence - by the secretariat - by use of consultants - by other existing bodies or panels of experts - by <i>ad hoc</i> conferences or consultations
(iv) That it is reasonable to believe that useful results	The type of action required will determine

can be achieved by consultation between governments or with experts.	whether it is to be an intergovernmental or expert body.
(v) That the body proposed is so composed as to provide adequate opportunity to all those interested and those able to make an effective contribution to participate in the work of the body; and that there are reasonable prospects of active participation by the members of the body.	Consideration should be given to the type of body to be established (worldwide, regional, selected governments, or experts appointed in a personal capacity) in the light of this criterion.
(vi) That the matters to be considered require the attention of specialists in the given field.	If specialists in the given field are not available or are not likely to attend sessions, then a more general body could handle the matter (e. g. a regional commission, a regional conference, the Council or the Conference).
(vii) That the results of the work of the body will be of immediate or long-range benefit to a reasonable number of the interested Member Nations of the Organization.	

617. The same criteria should be kept in mind when establishing subsidiary bodies under Articles V, VI and XIV of the Constitution.

II. Report of the Fifty-fifth Session of the Council (1970) Paragraph 208

The Council *requested* the Director-General to continue to ensure a strict application of the criteria established by the Fourteenth Session of the Conference when considering the establishment of new FAO Commissions, Committees and Working Parties and when considering the maintenance or abolition of existing ones. It also *approved* the following new criteria proposed by the Programme Committee at its Seventeenth Session:

- a) Maintenance or abolition of statutory bodies should be considered essentially in the light of their achievements.
- b) Requirements of regions, particularly those consisting of developing countries, should be taken into account when establishing and reviewing statutory bodies.
- c) Convening in most cases of *ad hoc* meetings or seeking assistance from consultants would be preferable to the establishment of bodies of a permanent nature.
- d) Before new bodies are proposed to the Conference and the Council for establishment it should be ascertained if other bodies covering the same or related fields could be abolished.

III. Resolution 13/97 adoption by the Conference at its Twenty-Ninth Session (1997) [Excluding Annexes]

THE CONFERENCE,

Conscious of the continuing need to enhance the efficiency of the Organization and its governance in a time of financial challenge, to eliminate Statutory Bodies that are obsolete, to ensure more flexible task-oriented and time-bound working arrangements for those that remain and to limit the creation of new Bodies to those that are strictly necessary,

Recognising the importance of moving towards increased self-financing for Statutory Bodies that have regional focus, and of enhancing the responsiveness of those bodies to the needs of their Members:

1. *Decides* to abolish the Bodies listed in Annex A to this Resolution;
2. *Recommends* to the parent Bodies concerned that their Subsidiary Bodies listed in Annex B be abolished and calls on those parent Bodies to take the necessary action unless they consider, taking into account the financial and programme implications, that there are overriding reasons for retaining any such Bodies in existence and to report to the Council through the Programme and Finance Committees on the actions taken and, where appropriate, on the reasons for retaining any of the Subsidiary Bodies recommended for abolition;
3. *Requests* the Director-General to consult with the organizations listed in Annex C with a view to securing alternative arrangements for, or the abolition of, the joint Bodies listed in that Annex as deemed appropriate and authorises their abolition, as appropriate;
4. *Recommends* to the Codex Alimentarius Commission that it continue its review of the usefulness of its Subsidiary Bodies set out in Annex D;
5. *Encourages* regional commissions established under Article VI of the Constitution to seek more extra-budgetary resources to supplement the resources made available to them under the FAO Regular Programme Budget, taking into account the economic capacity of the regions concerned and of their Members;
6. *Calls* on the Contracting Parties to Conventions and Agreements establishing regional bodies under Article XIV of the Constitution to seek where appropriate, increasingly to provide such Bodies with their own financial resources, whether through cooperative programmes or other voluntary contributions, or through the establishment of autonomous budgets financed from mandatory contributions;
7. *Decides* that in future, Statutory Bodies should be established only where strictly necessary and where the work to be undertaken cannot be carried out by *ad hoc* groups, and that the Terms of Reference of all new Bodies created should provide for a periodic review of their usefulness;
8. *Further* decides that, to this end, the following factors should be taken into account in establishing new technical Bodies and in the establishment of new Subsidiary Bodies
 - a) Centrality to the FAO mandate and the Organization's current priorities as expressed by FAO Members and reflected in planning documents;
 - b) Clarity of the definition of the task, which should normally be of limited duration;
 - c) Positive impact of the Body's work at the level of FAO Members;
 - d) FAO's comparative advantage, thereby avoiding overlap and creating synergy with the work of other Bodies;
 - e) Proportion of the FAO Membership to which the work of the proposed body is of importance with due regard to the economic capacity of less-advantaged members, including least developed countries and small-island developing states; and

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- f) Willingness of their Members to contribute financially and through non-monetary inputs to the work of the Body, especially where the Body will serve a more limited number of countries, with due regard to the economic capacity of their less advantaged members and the availability of other financial support.
9. *Requests* all Statutory Bodies to examine how their Rules of Procedure and working methods could be streamlined to facilitate positive inter-action among participants at meetings, to promote a task-orientation and to strengthen the involvement of civil-society partners;
10. *Further requests* the Secretariat to prepare information notes to facilitate review by the Council, following discussion in the Programme and Finance Committees, of (a) possibilities for streamlining procedures and avoiding repetitious discussion in Bodies at various levels, taking full account of the experience of other international organizations; and (b) modalities for greater civil society involvement;
11. *Decides* that, in general, Executive Committees should cease to be listed as formal Statutory Bodies in the Directory of FAO Statutory Bodies, except for the Executive Committee of the Codex Alimentarius Commission.

(Adopted on 18 November 1997)

ANNEX II

THE PRACTICES OF OTHER ORGANIZATIONS

1. A review has been undertaken of the mechanisms adopted by ILO and UNESCO, which face similar issues of prioritisation and consistency with respect to bodies established under the auspices of their Constitutions. Processes that may be relevant to FAO are summarized below.

A. The International Labour Organization

2. ILO is mandated to develop and promote the application of international labour standards to achieve the Organization's objectives. This is achieved through, *inter alia*, the adoption of conventions, recommendations and other types of instruments. Since the 1990s, ILO has devoted considerable attention to improving its standards-related activities.

3. Of relevance to FAO may be the adoption of an "integrated approach", ILO having concluded that standards-related activities should be considered "*within an overall vision of the role of those activities in promoting the Organization's objectives*".¹⁸ This approach is intended to examine "*families*" or clusters of instruments in a given area, and to focus on coherence and relevance.¹⁹ Unanimously approved by the Governing Body of ILO, this approach is a three-stage process, as follows:

- a) The Office – ILO's secretariat – makes "*a complete inventory of existing standards in a given area The inventory [reviews] existing standards in the light of the needs identified in the area under examination, including needs for revision, with a view to determining the objectives. The inventory [takes] into account all the other means and instruments available to the Organization for achieving its goals and responding to needs, as well as the way in which those means have been applied to implement the relevant standards. The Office [collects] relevant data, with the aid of the services in the field, to enable the competent bodies to formulate an informed opinion. ... [T]he inventory should lead to a more accurate assessment of the following points: (i) whether and to what extent existing ILO or other international standards in the area examined leave gaps in coverage that need to be filled; (ii) the object of the revisions decided, in principle, by the Governing Body ...; and (iii) where applicable, whether and to what extent in the area examined standards would overlap (for example, general standards and sectoral standards) which might call for 'consolidation'*".²⁰
- b) The Office's report is referred by the Governing Body to a Conference technical committee for a general discussion with a view to developing an integrated plan of action. This discussion is intended to reach, *inter alia*, "*a clear, if tentative, idea of the type of standard setting best suited to the desired goal (Convention, Protocol or Recommendation ...)*". The discussion could also, if necessary, identify questions which, because of their technical nature or owing to the speed of technological development, are not suitable for treatment in Conventions and Recommendations and should be addressed in other instruments, such as codes of practice or handbooks".²¹

¹⁸ Possible improvements in ILO standards-related activities, GB.279/4, 279th Session, Governing Body, November 2000, paragraph 3.

¹⁹ The "*notion of coherence refers to the relation between existing and future standards, the concept of relevance refers to the degree to which standards reflect the Organization's constitutional objectives, on the one hand, and actual conditions, on the other*". The "*best guarantee of relevance is the broadest possible consensus among the ILO's constituents concerning the utility of the proposed activity. This explains the importance of seeking the widest possible consensus with regard to new or revised standards*". *Ibid* at paragraphs 11 and 12.

²⁰ *Ibid* at paragraph 14.

²¹ *Ibid* at paragraph 15.

- c) Finally, the Governing Body draws specific conclusions from the general discussions and identifies “*in particular with regard to when and in what terms a given subject should be placed on the Conference agenda with a view to the adoption of an instrument*”.²²

4. The integrated approach may be relevant to FAO, in the context of new global instruments, insofar as, formally, there is to be a determination by the Member States, based on information on all existing relevant activities and instruments, of the type of instrument that is “*best suited to the desired goal*”, which can include identifying “*questions which, because of their technical nature or owing to the speed of technological development, are not suitable for treatment in Conventions and Recommendations*”.

B. The United Nations Educational, Scientific and Cultural Organization

5. In order to realize its objectives, UNESCO may develop agreements or conventions, which are legally binding.²³ It may also adopt recommendations in which “*the General Conference formulates principles and norms for the international regulation of any particular question*” and in respect of which Member States are invited to adopt national measures.²⁴

6. According to the decision adopted by the General Conference, any new proposal for “*the regulation on an international basis of any question by the adoption by the General Conference of an international convention or a recommendation*” is subject to the following procedure:²⁵

- a. The preparation of a preliminary study of the technical and legal aspects of the question to be regulated at the international level. This study is submitted by the Director-General for consideration to the Executive Board, which proposes the inclusion of the proposal in the agenda of the General Conference.
- b. The General Conference then decides on the desirability of the regulation contemplated and on the form which such a regulation should take (convention or recommendation).
- c. The Director-General is then instructed to prepare a preliminary report on the problem to be regulated and the possible scope of the regulating action proposed. Member States are invited to present their comments on this report. In the light of these comments, the Director-General prepares a final report containing one or more drafts of the convention or recommendation, which is communicated to Member States. This final report is submitted either directly to the General Conference or to a special committee of governmental experts.
- d. The General Conference considers the draft text and, if it sees fit, adopts the instrument.

7. As in the case of ILO, the formal UNESCO procedures to address proposals for new conventions and recommendations may be relevant to FAO, in the context of global instruments, insofar as an informed initial decision is to be taken by the Member States on the desirability of the regulation proposed and on the form which it should take before a formal text is developed for the proposal.

²² *Ibid* at paragraph 16.

²³ See Article IV, paragraph 4, of the UNESCO Constitution.

²⁴ UNESCO has also developed a practice of adopting declarations and charters which are non-binding. See *Legal Framework for the Elaboration, Examination, Adoption and Follow-up of Declarations, Charters and Similar Standard-setting Instruments adopted by the General conference and not covered by the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the Terms of Article IV, paragraph 4, of the Constitution*, General Conference, 33rd session, document 33 C/20, 4 August 2005.

²⁵ Article 1(b) of the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution*.