



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Twelfth Session

Rome, 8-10 March 2021

### Procedures for the appointment of Secretaries of bodies under Article XIV of the Constitution

#### I. Introduction

1. At its 165th Session, the Council “*requested the ICC to continue his consultations on the revised procedure for the selection and appointment of Secretaries of Article XIV Bodies, as set out in Annex 1 to document CL 165/12, with a view to finding a lasting solution agreeable to the concerned Article XIV Bodies and the FAO Management, and submit a paper to the 166th Session of the Council outlining areas where consensus cannot be reached, along with information on any alternative proposals made*”.<sup>1</sup>

2. This document provides an update on the consultations by the Independent Chairperson of the Council (ICC) with the Chairpersons of the concerned Article XIV Bodies regarding the revised procedure for the selection and appointment of Secretaries of Article XIV Bodies, as set out in Annex 1 to document CL 165/12.

3. The concerned Article XIV Bodies are the Agreement for the Establishment of the Indian Ocean Tuna Commission (“IOTC” or “the Commission”), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Agreement for the Establishment of a General Fisheries Commission for the Mediterranean (GFCM).

#### II. Background

4. This matter has been the subject of lengthy consideration by the Governing Bodies and the concerned Article XIV Bodies, as well as extensive consultations between the ICC and those Article XIV Bodies and FAO Management, as reflected in CCLM document 111/3.

5. In particular, it is recalled that a temporary procedure for the selection of the Secretaries of Article XIV Bodies was endorsed by the Council at its 155th Session in December 2016. At that time, the Council stressed the urgency of filling vacant positions of the Secretaries of IOTC and the ITPGRFA. It mandated the Director-General, “*on an exceptional basis and without setting any*

<sup>1</sup> CL 165 Report, paragraph 28 c).

*precedent*”, to issue Vacancy Announcements for these positions for a term of “*two years subject to confirmation by the concerned Body of the appointment at the end of that period*”.<sup>2</sup> In December 2016, there was no urgency *vis-à-vis* the GFCM, whose Executive Secretary had been appointed in 2015 for a second term of five years.<sup>3</sup> It is further noted that the focus was on these three Article XIV Bodies because they had adopted practices for selection and appointment of Secretaries which were inconsistent with the Basic Texts of the Organization and their constituent treaties.

### III. The ICC’s Consultations

6. The 165th Session of the Council considered the proposed revised procedure circulated to the Chairpersons of the Article XIV Bodies in June 2020 with some minor adjustments. Following the Council’s meeting, the ICC circulated the revised procedure contained in Council document CL 165/12 to the Chairpersons of the GFCM, IOTC and ITPGRFA (as set out in **Annex 1**). The ICC clarified that, taking into account the comments received from the Article XIV Bodies on an initial version of this procedure circulated to them in June 2020, revisions had been made: reducing the duration for issuing and posting of Vacancy Announcements from 46 days to 30 days; no longer requiring an external company to review the managerial capabilities of shortlisted candidates; and adjusting the number of candidates to be submitted by the Interview Panel from a minimum of three and a maximum of five candidates. The ICC clarified that the revised procedure, as set out in **Annex 1**, ensured adherence to the Organization’s human resources procedures and UN System best practices. Informal meetings between the ICC, the Legal Counsel and the Article XIV Bodies concerned were also held.

7. The ICC continues to engage extensively in this matter. Until a mutually agreed process is finalized, selections for the Article XIV Bodies concerned will be conducted in accordance with the selection procedure endorsed by the Council at its 155th Session.<sup>4</sup> This would be the case for the selection of a new Executive Secretary of the GFCM, as the term of office of the current incumbent will expire in November 2021.

8. A summary of the areas of concern raised in the individual communications of the Article XIV Bodies concerned which the ICC has received so far are set out below.

#### A. *The IOTC*

9. The ICC and the Legal Counsel attended the 24<sup>th</sup> Session of the Commission and the proposed revised procedure was the subject of extensive deliberations. The Commission ultimately adopted a further revised version of the proposal for the recruitment of the IOTC Executive Secretary, in accordance with its Rules of Procedure.<sup>5</sup> This version includes, most notably: the exclusion of an external member on the Interview Panel; the inclusion of three representatives of the IOTC and the Organization, respectively, in the panel which selects candidates for interview and conducts the interviews, thereby increasing the total number of panellists to six; and the provision of a summary of reference checks undertaken by the Human Resources Division (CSH) of the candidates, shortlisted after the interviews, to the IOTC representatives on the Interview Panel.<sup>6</sup>

10. The IOTC forwarded the revised version adopted at its 24th Session to the ICC for his concurrence. In his reply, the ICC, exercising his role as intermediary, informed the IOTC Chairperson that, following consultation with FAO Management, the revised version could not be accepted for the following reasons. The inclusion of the external member on the Interview Panel was a best practice

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<sup>2</sup> CL 155 Report, paragraphs 27 b) and c).

<sup>3</sup> Mr Chris O’Brien and Mr Kent Nnadozie were appointed respectively as secretary of the IOTC (July 2017) and ITPGRFA (June/2017).

<sup>4</sup> CL 155 Report, paragraph 27 b).

<sup>5</sup> IOTC Report, IOTC-2020-S24-R[E], paragraph 12.

<sup>6</sup> IOTC Report, Annex 5, “*Adopted procedure for the selection and appointment of the IOTC Executive Secretary*”.

feature which responded to the call from Members to ensure integrity and professionalism in the working processes of the Organization, including selection procedures. Furthermore, this practice ensured the transparency of the process and offered an independent perspective by an external technical expert. With respect to the reference checks, this administrative function to carry out due diligence checks is undertaken by the Human Resources Division at FAO, under conditions of strict confidentiality, as a standard exercise for the procedures for the recruitment, particularly of senior level officials. Reference checks are undertaken only at the final stage of the selection process, once the top candidates for the position are identified by the Interview Panel and agreed by the Director-General. As a professional function, the checks do not interfere with the substantive assessment of candidates. The FAO practice of reference checks is in line with the UN standard practice. Lastly, the proposed increase in the number of panel members by the IOTC would lead to a particularly cumbersome selection procedure.

11. The ICC, the Legal Counsel and the IOTC Chairperson held a meeting on 9 February 2021, during which the selection procedure adopted by the IOTC at its 24th Session was further discussed and reviewed. The meeting offered the opportunity for both the IOTC Chairperson and the ICC to express views on the points of difference between the revised procedures as set out in **Annex 1** and the IOTC procedure adopted at its 24th Session. A further consultation will take place before the 166th Session of the Council.

#### B. *The GFCM*

12. In October 2020, the GFCM Chairperson informed the ICC that the GFCM Members did not consider the revised proposal set out in **Annex 1** favourably because of the limited role of the GFCM in the selection procedure. The ICC expressed disappointment at this development because the revised procedure ensured the involvement of GFCM representatives in every step of the recruitment process, including giving the GFCM Members the authority for the final approval of the candidate. The ICC also noted that the GFCM selection processes reflected in Annex 2, Part II and III, of the Rules of Procedure of the GFCM (**Annex 2**) did not comply with the Basic Texts of the Organization and the status of the GFCM in the Organization's legal framework. He also informed the GFCM Chairperson that, in the absence of an agreement between the GFCM and the Organization on appropriate selection procedures, the temporary procedure endorsed by the Council at its 155th Session in 2016 would apply for the appointment of a new Executive Secretary this year, in line with the decision of the Council at its 160th Session.<sup>7</sup>

13. The ICC held a videoconference meeting with the Chairperson of the GFCM on 22 January 2021. The Chairperson of the GFCM informed that a virtual consultation among the Contracting Parties of the GFCM is scheduled for March/April 2021, to discuss the revised proposed procedure further and to provide the ICC with issues of concern and disagreement in order to expedite the consultations. The ICC and the Legal Counsel communicated their willingness to attend the meeting to provide clarifications, as necessary.

#### C. *The ITPGRFA*

14. The Governing Body of the ITPGRFA, at its 8th Session in November 2019, provided guidance to its Bureau for consultations with the ICC on the procedures for the selection and appointment of its Secretary.<sup>8</sup> This guidance provides for, *inter alia*, four representatives of ITPGRFA and three representatives from FAO to sit on the Interview Panel. This proposal was communicated to FAO Management, which considered it was not acceptable in view of the accountabilities and responsibilities that are vested in the Director-General and the Organization by the Basic Texts and the Article XIV treaties. The FAO Management, instead, communicated its willingness to compromise by endorsing the ICC's proposal whereby two representatives of the Article XIV Body and

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<sup>7</sup> CL 160/REP, paragraph 13 c).

<sup>8</sup> IT-GB-8/19/Report, Appendix D.

two representatives of FAO partake in the selection of candidates to be interviewed and in the Interview Panel.

15. At the time of preparation of this document (February 2021), the ICC has yet to receive a response to the revised proposal from the ITPGRFA Chairperson. Consultations are on-going and a videoconference convened by the ICC with the Chairperson and the Legal Counsel was held on 10 February 2021. The Chairperson and her team were informed about the outcome of the discussions of the 165th Session of the Council. The Chairperson reported that the ITPGRFA is in the final stages of its consultations, and that a response will be communicated shortly, including any requests for clarifications on the proposed procedure.

#### IV. Legal considerations and the position of FAO Management

16. FAO Management has indicated its view that the current proposal set out in **Annex 1** of this document is consistent with the Basic Texts and the constituent instruments of the Bodies concerned. It has also underlined the necessity that the selection and appointment process reflect the responsibilities of the Director-General to the Governing Bodies and to the Statutory Bodies concerned. In particular, the number of representatives of the Article XIV Bodies during the successive steps of the selection procedure, including in the interview panel, cannot outweigh the number of representatives of FAO Management to reflect the balance of responsibilities arising from the Basic Texts and relevant treaties.

17. With regard to the selection and recruitment proposal set out in **Annex 1** of this document, it is noted that representatives of the Article XIV Bodies participate in the selection and recruitment process *ab initio* in reviewing the applications (**Annex 1**, step 4) until the end of the process, as the candidate selected by the Director-General from the shortlist is recommended to the Bodies for approval prior to confirming the appointment (**Annex 1**, step 11).

18. In its engagement in the ICC's consultation process, FAO Management has continuously expressed the following considerations:

- a) Notwithstanding the measure of functional autonomy enjoyed by Article XIV Bodies in implementing their programmes of work, they are nevertheless administratively integrated within the Organization, operate within the legal framework of the Organization, and commit the Organization and all of its Members in all their activities, whether or not their programmes of work are funded entirely by their Membership.
- b) This functional autonomy must be balanced, in particular, against the legal and administrative responsibilities and accountability of the Director-General of the Organization who, *inter alia*:
  - i. is responsible for the appointment of the Secretary of each body;<sup>9</sup>
  - ii. is responsible for carrying out duties with regards to conventions and agreements laid down in the General Rules of the Organization<sup>10</sup> and Part O of Volume II of the Basic Texts of the Organization entitled "*Principles and Procedures which should govern Conventions and Commissions and Committees established under Article VI of the Constitution*";
  - iii. is accountable to Governing Bodies of the Organization under the Financial Regulations for any liabilities arising from the activities of Article XIV Bodies; and
  - iv. bears full legal responsibilities for any binding legal arrangement which Article XIV Bodies may enter into.

<sup>9</sup> Basic Texts, Section O, paragraph 32 (iii) of the Appendix.

<sup>10</sup> General Rules of the Organization, Rule XXXVIII 2 (e).

## V. Suggested actions by the Committee

19. The Committee may wish to welcome the constructive engagement of the ICC, the IOTC, the GFCM, the ITPGRFA and FAO Management, aimed at reaching a consensus on a lasting arrangement for the selection and appointment of Secretaries of Article XIV Bodies. The CCLM is invited to make any observations or recommendations it may have on this matter, taking into account that the Council noted at its 165th Session that this matter “*has been the subject of review by FAO Governing Bodies for a number of years and taken up consultations by the ICC since 2016*”.<sup>11</sup>

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<sup>11</sup> CL 165 Report, paragraph 28 a).

**ANNEX 1****Revised proposed procedure for the selection and appointment of Secretaries of Article XIV Bodies**

1. A Vacancy Announcement is drafted by technical departments with support of the Human Resources Division (“CSH”) as is done for all senior (D1 and above) staff positions. The draft Vacancy Announcement is shared with the Chairperson of the Body concerned who is invited to provide views thereon.
2. The Vacancy Announcement is issued and posted for 30 days.
3. A first review and screening of candidates is undertaken by CSH based on the minimum criteria and qualifications set out in the Vacancy Announcement.
4. A second review is undertaken by the offices of the relevant Deputy Director-General and the relevant Director (D2) and the two representatives of the Members of the Article XIV Body to establish a shortlist of candidates for interview. The interview shortlist must contain at least ten candidates.
5. An Interview Panel is established, which is composed of:
  - a) the relevant Deputy Director-General or Director (D2);
  - b) one Senior FAO officer;
  - c) two representatives of the Members of the Article XIV Body;
  - d) one external member, to be selected by the Interview Panel from among three candidates proposed by CSH; and
  - e) one representative of CSH (for process support).
6. Interviews of shortlisted candidates are conducted by the Interview Panel which will prepare a report. The Panel Report will identify a minimum of three and a maximum of five qualified candidates.
7. Both the shortlist of candidates for interview as well as the three to five candidates submitted to the Director-General is compiled with due regard to gender and geographic balance in line with the policy of the Organization. If this balance is not achieved, the Panel Report must contain a justification for this.
8. The Panel Report is submitted for consideration by the Director-General.
9. Reference checks are undertaken by CSH.
10. The Director-General identifies one proposed candidate for appointment, whose name and curriculum vitae are referred to the relevant Article XIV Body for approval in accordance with the provisions of the treaty concerned.
11. Upon approval of the Body, an offer is issued to the candidate. Should there be non-approval, the Director-General will propose to the Body another candidate recommended for appointment.
12. Upon acceptance, the Director-General appoints the candidate.

**ANNEX 2****Rules of Procedure of the GFCM****Requirements for the selection, appointment and term of office of the Executive Secretary**

[...]

**Part II – Procedure for the selection of the Executive Secretary**

2. The procedure, for the selection of the Executive Secretary, shall be as follows:

(a) The Commission shall agree to a text for the vacancy announcement, including the required qualifications and the job description for the post of Executive Secretary.

(b) The Director-General shall post the vacancy announcement on the Organization and GFCM websites and also publicize it elsewhere, as appropriate, in accordance with guidelines as may be agreed upon by the Commission.

(c) The closing date for applications shall be six weeks from the date of announcement of the vacancy notice.

(d) A Selection Committee shall be established to review the applications and rank candidates. It shall comprise:

(i) the Chairperson and two Vice-Chairpersons of the Commission;

(ii) the Chairperson of the Committee on Administration and Finance;

(iii) the Chairperson of the Compliance Committee;

(iv) two representatives of the Director-General;

(v) one representative from EU Member States; and

(vi) one representative from non EU Member States; and

(vii) other member(s) at the discretion of the Commission.

(e) The Selection Committee shall meet within four weeks of the date of closure of the receipt of applications, and shall, with the assistance of the Organization Secretariat identify a maximum of 20 candidates that meet or exceed the required qualifications for the post.

(f) The Executive Secretary shall communicate to the Contracting Parties a list of all applicants and shall identify those which have been selected as candidates in accordance with these procedures.

(g) Within four weeks of receipt of the communication from the Executive Secretary under paragraph f, each Contracting Party shall rank five candidates by order of preference, taking into account the required qualifications set out in Part I of this Appendix, on a scale of one (lowest) to five (highest), and shall notify the Secretariat of such designation.

(h) The Selection Committee shall compile the rankings and notify the Contracting Parties the names and relevant information on the five candidates that scored the highest number of points.

(i) The Chairperson shall invite the five candidates designated pursuant to paragraph h to be interviewed at the regular or extraordinary session of the Commission, as determined by the Commission.

(j) The Chairperson shall preside over the interviews, which shall be conducted at the session by the representatives of the Contracting Parties designated in accordance with Article 6 of the Agreement. Interpretation in the languages of the Organization shall be made available.

(k) The Chairperson, with the approval of the representatives of the Contracting Parties, shall prepare five questions to be used as a basis for the interview.

(l) The interview of each candidate shall have a maximum duration of 50 minutes.

3. The voting for the Executive Secretary shall take place at the same session at which the interviews were conducted, and shall proceed as follows:

(a) Balloting shall take place as follows until one candidate attains the required majority of more than half of the votes cast:

(i) A first ballot shall be held for all five candidates. The two candidates receiving the least votes shall be eliminated from the selection process.

(ii) A second ballot shall be held for the remaining three candidates. The candidate receiving the least votes shall be eliminated.

(iii) A third ballot shall be held between the remaining two candidates. The candidate receiving the most votes shall be selected.

(b) If, during the course of a ballot, two candidates receive the same number of votes, a separate round of voting shall be held to eliminate one candidate.

(c) In accordance with Rule IX(8) of these Rules, matters not specifically provided for in this procedure are governed, *mutatis mutandis*, by the provisions of Article XII of the General Rules of the Organization.

### **Part III – Appointment**

4. The Chairperson shall transmit the name of the candidate selected by the Commission in accordance with the above procedures to the Director-General for appointment.