
**INFORMATION RELATING TO AGENDA ITEM 4 – CONSIDERATION
OF ACTIONS TO ACHIEVE A MORE EFFECTIVE AND EFFICIENT
COMMISSION**

The following documents have been provided by FAO:

1. The report of the Informal Group of Legal Experts on the Process for a change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO (possible change in the status of the Indian Ocean Tuna Commission) and the report of the CCLM forwarding it to the Council
2. An extract of the relevant parts of the report of the 133rd Session of the Council of November 2007
3. The verbatim records of the debates at the Council. These records reproduce the statements made by the delegates at the session of the Council. The statements are in the original language.

October 2006



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
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Food
and
Agriculture
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of
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Organisation
des
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Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
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Unidas
para la
Agricultura
y la
Alimentación

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COUNCIL

Hundred and Thirty-third Session

Rome, 14-16 November 2007

**REPORT OF THE EIGHTY-SECOND SESSION OF THE
COMMITTEE ON CONSTITUTIONAL AND
LEGAL MATTERS (CCLM)**

Rome, 25 October 2007

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I. INTRODUCTION

1. The Eighty-second Session of the Committee on Constitutional and Legal Matters (CCLM) was held on 25 October 2007. The Session was chaired by Mr. Emmanuel R. Fernandez (Philippines). The following Members of the Committee were represented:

Czech Republic, Gabon, Guatemala, Philippines, Syrian Arab Republic and United States of America.

II. REVIEW OF THE WORK OF THE INFORMAL GROUP OF LEGAL EXPERTS ON THE PROCESS FOR A CHANGE IN THE NATURE OF A STATUTORY BODY UNDER ARTICLE XIV OF THE FAO CONSTITUTION INTO A BODY OUTSIDE THE FRAMEWORK OF FAO (POSSIBLE CHANGE IN STATUS OF THE INDIAN OCEAN TUNA COMMISSION)

2. The CCLM took note of the report of the Informal Group of Legal Experts on the Process for a change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO (Possible change in status of the Indian Ocean Tuna Commission) and decided to forward it to the Council as an Annex to this Report.

3. The CCLM noted that while not all legal issues involved had been thoroughly examined, no further legal analysis on the procedure to be followed for the removal of IOTC from FAO and its consequences would be productive at this stage, since fundamental decisions on issues of principle had to be taken by the Indian Ocean Tuna Commission and its Members.

4. The CCLM also noted that a number of other issues concerning the relationship between FAO and bodies established under Article XIV of the FAO Constitution needed to be examined. In this connection, the CCLM noted that those issues were of a complex nature, that they could not be seen in isolation from extensive past practice of the Organization and decisions of the Governing Bodies and that the matter had also been raised in the context of the Independent External Evaluation (IEE). The CCLM noted that this could be the subject of future review in the light of all pertinent circumstances.

III. OTHER MATTERS

5. The CCLM noted that the issue of access by Members to reports of the Inspector-General was still pending. The CCLM recommended that the Council may wish to provide guidance on the matter taking into account related recommendations contained in the report of the IEE.

ANNEX

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS
Eighty-second Session
Rome, 25 October 2007
REPORT OF THE INFORMAL GROUP OF LEGAL EXPERTS ON THE PROCESS FOR A CHANGE IN THE NATURE OF A STATUTORY BODY UNDER ARTICLE XIV OF THE FAO CONSTITUTION INTO A BODY OUTSIDE THE FRAMEWORK OF FAO (POSSIBLE CHANGE IN STATUS OF THE INDIAN OCEAN TUNA COMMISSION) Rome, 23-24 October 2007

1. A meeting of the Informal Group of Legal Experts on the process of a change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO (Possible change in the status of the Indian Ocean Tuna Commission), hereinafter referred to as the Informal Group, was held in Rome on 23 and 24 October.
2. The list of participants is given in Appendix II hereto.
3. The Informal Group elected Mr. M. K. Rao (India) as Chairperson.
4. The Informal Group was convened in accordance with a decision of the Council of FAO at its Hundred and Thirty-second Session held in Rome from 18 to 22 June 2007. The Council examined the report of the Committee on Constitutional and Legal Matters which, at its Eighty-first Session in April 2007 had examined a document entitled "*process for a change in the nature of a statutory body of FAO established under Article XIV of the Constitution into a body outside the framework of FAO (change in status of the Indian Ocean Tuna Commission)*". The CCLM could not reach a conclusion on options under discussion. The Council endorsed the conclusions of the CCLM that the situation which had arisen 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 possible option, including the fact that any decision in that respect would set a precedent in international law impacting upon other organizations of the United Nations System. The Council endorsed the CCLM request 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 System as appropriate, should examine the matter. The CCLM would subsequently review the work of the informal group and provide its advice to the Council.

5. The Council noted the concerns voiced during the debates regarding the efficiency and the effectiveness of IOTC which were the stated reasons for the process under way. The Council concluded that such concerns and reasons should be addressed, as a matter of priority, through discussions between the FAO Secretariat and concerned IOTC Members, and that the Secretariat would report on the outcome of such discussions to the CCLM and any other appropriate body.

6. The Informal Group had before it various documents and reports, including document CCLM/81/2, the report of the Eighty-first Session of the CCLM, the Report of the Hundred and Thirty-second Session of the Council, document CL132/LIM/4 providing information on developments subsequent to the CCLM session, including on the deliberations of the Eleventh Session of IOTC held in May 2007 in Mauritius.

7. The Group of 77 and China submitted to the Meeting a position paper (Appendix I forming an integral part of this Report), according to which they hold their view that if the IOTC Members could reach consensus on the withdrawal of IOTC from FAO, the solution proposed below by FAO is the only legally correct option in solving the issue of delinkage. They reiterated that the withdrawal procedure shall be in conformity with FAO Constitution and shall give each Member of IOTC the right to determine its course of action through national ratification procedures.

8. The Informal Group discussed the document prepared by the FAO Secretariat entitled "*Supplementary Observations on the proposals for a change in the nature of the Indian Ocean Tuna Commission*".

9. The FAO Secretariat reiterated its legal advice on the procedure for the removal of IOTC from the framework of FAO involving the convening of a conference of plenipotentiaries for the adoption of a new agreement, the implementation of a simultaneous process of withdrawal and termination of the existing agreement and acceptance of a new agreement, as well as the implementation by FAO of such transitional arrangements as required if the Members so wished. While the process could take some time, inconveniences would be minimized by the operation of IOTC by FAO during the interim period and the implementation of transitional measures. If there was indeed consensus as to the removal of IOTC from the framework of FAO there was no reason to consider that the process of entry into force of the new agreement would be a lengthy one.

10. In presenting its legal advice, the FAO Secretariat recalled that the IOTC Agreement was not a "*stand alone*" agreement. It had been concluded by the Council of FAO and placed by the Members within the framework of FAO, an organization of the United Nations System. It was operated under that framework and through FAO. The change in status of the IOTC concerned FAO as a whole and had to be handled as the establishment of a new entity. No procedure had been foreseen, either in the constituent agreement or in the Basic Texts to handle the situation, and the matter could concern potentially other agreements not only within FAO, but also within other organizations of the System. It was essential that the matter be addressed in a proper legal manner, also in order to ensure clarity in the future situation of IOTC in the interest of all concerned parties. Through the proposed procedure every sovereign Member of IOTC, irrespective of its status, would be able to make a determination as to the course of action that it wished to take and this would be materialized through an instrument of withdrawal of the existing agreement and acceptance of the new one. Furthermore, the FAO Secretariat stressed that this procedure was based exactly on the same principles as were followed when agreements outside FAO were brought within the framework of FAO under Article XIV of its Constitution.

11. The FAO Secretariat also recalled that the amendment procedure of Article XX of the IOTC Agreement had an inherent limitation as it could only concern amendments to an agreement within the framework of FAO and retaining that character, and an amendment procedure designed to allow for the modification of an agreement within FAO could not be used to establish a new agreement outside the framework of FAO and set up a distinct legal entity. This was the use of a procedure for a purpose other than that for which it was designed.

12. Subsidiarily, the FAO Secretariat pointed out that it was proposed to follow a simplified amendment procedure applicable to routine, technical amendments not involving new obligations. It recalled, in this connection, that the criteria formulated by its Governing Bodies for determining whether or not amendments involved new obligations had been applied out of context, since they were never formulated for a situation as the one at hand. The proposed amendments seemed to involve indeed new obligations, as confirmed, *inter alia*, by the need for internal ratification procedures that some countries have to follow and which defeated the very purpose of the process under way.

13. The legal experts of the European Community stated that the following option could be considered:

14. Under this option the IOTC was free to amend the IOTC Agreement under Article XX (4) of that Agreement in order to move the organization out of the FAO framework. This view emphasized the sovereign right of Contracting Parties to an international agreement to interpret, apply and amend the agreement within the limits laid down therein. Therefore, it is the sole right of the Contracting Parties to IOTC to interpret the meaning of Article XX of the IOTC Convention and in particular of the notion "*amendments not involving new obligations*". There is nothing in the IOTC Agreement or in the FAO Constitution or Rules which would impair the IOTC members' rights to amend the IOTC Agreement under Article XX (4) in order to delink the IOTC from FAO considering that such amendment does not involve new obligations.

15. Furthermore, no legal texts contain provisions which limit the use of the simplified amendment procedure to routine, technical amendments. Finally, ratification requirements under domestic law have no bearing on the interpretation of provisions of the IOTC Agreement.

16. The fact that IOTC has administrative links with FAO does not prevent the change of status through an amendment of the IOTC Agreement. However, the existence of those links necessitates the involvement of FAO in the process, in particular through the conclusion of an agreement between FAO and IOTC in which transitional administrative arrangements in relation to the change of status are made.

17. The advantage of this procedure is that no new agreement has to be concluded nor a new legal body to be established. Therefore, it avoids a lengthy negotiating and ratification procedure with grave risks for the effective conservation of tuna species in the Indian Ocean.

18. The Group of 77 and China considered that the above, presented from paragraphs 14 to 17, did not constitute a valid option.

19. The Informal Group took note of the position paper of the Group of 77 and China States Members of IOTC declaring, *inter alia*, their commitment to address actively the issue of the efficiency and effectiveness of IOTC within the framework of FAO. The Informal Group also noted that many participants had made repeated statements that this should be done as a matter of urgency. The Informal Group noted that the FAO Secretariat will be holding discussions with all concerned IOTC Members in order to devise an appropriate formula for improving the efficiency and effectiveness of IOTC for consideration by the IOTC at its forthcoming session.

Appendix I**Informal Group of Legal Experts on change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO (Possible change in the status of the Indian Ocean Tuna Commission)****Position of the G-77 and China States Members of IOTC**

1. The Group of 77 and China, Rome Chapter (G-77) Members of IOTC support the proposal of the FAO secretariat to the 81st Session of the Committee on Constitutional and Legal Matters regarding the process for a change in the status of the Indian Ocean Tuna Commission should the Members wish that IOTC be removed from the framework of FAO. They note that there is clearly no consensus as to whether IOTC should be removed from the framework of FAO.
2. For the G-77 Members of IOTC the change in the nature of IOTC as a statutory body of FAO into a body outside FAO cannot be treated as a mere amendment to the existing IOTC Agreement. It should involve the convening of a conference of plenipotentiaries for the adoption of a new IOTC agreement; the implementation of a concomitant process of withdrawal and termination of the existing agreement and, more importantly, the entry into force of the new agreement through the deposit of instruments to that effect by each Member. The G-77 Members of IOTC emphasize that a process along such lines safeguards the right of each sovereign State, irrespective with its size, status, stage of development or nature, as coastal or non coastal State, and in accordance with the principle of sovereign equality of the United Nations, to make a determination as to the course of action that it wishes to take. They note that under this scheme FAO could implement such transitional arrangements as required thus allowing IOTC to operate smoothly during the interim period.
3. The G-77 Members of IOTC also hold the view that a qualification of the proposed amendments as not involving new obligations is erroneous and not in accordance with the criteria established by the Governing Bodies of FAO, which are being used out of context, as confirmed by additional research. They hold the view that obligations of the legal personality of FAO will have to be borne by the members. The G-77 Members of IOTC note, furthermore, that a number of Members have indicated that the proposed amendments need to be referred for internal ratification procedures which are incompatible with the process of adoption of amendments not involving new obligations.
4. **In conclusion, the G-77 Members of IOTC support the approach which gives each Member the right to determine its course of action through national termination and ratification procedures. This is a legally correct approach, based on applicable principles of international law, past practice of FAO and is consistent with the status of IOTC as a statutory body of FAO. It is furthermore a solution that will avoid setting a negative precedent for the United Nations System.**
5. The G-77 Members of IOTC are mindful that the meeting of the Informal Group deals with legal issues only regarding the process for the change in nature of IOTC. They cannot lose sight of the policy implications of the process under way and, in this context, wish to emphasize three points.

- 5.1. The Council at its session of June 2007 took note of the concerns voiced regarding the efficiency and effectiveness of IOTC which were the stated reasons for the process under way. The Council concluded that such concerns and reasons should be addressed through discussions between the FAO Secretariat and concerned IOTC Members, and that the Secretariat would report on the outcome of such discussions to the CCLM and any other appropriate body. The G-77 Members of IOTC note that because of constraints associated with this particular period of a Conference year, it has not been possible to hold such discussions, **but urge the Secretariat and all IOTC Members concerned to initiate them as soon as possible**. They note that informal arrangements within IOTC were developed a few years ago and believe that there might be room for improvement of such arrangements.

- 5.2. The G-77 Members of IOTC view with concern a proposal which, although presented as a means of improving the efficiency and effectiveness of IOTC, would in fact place the high value Indian Ocean Tuna stock under the direct control of a limited number of Members carrying out large-scale operations in the region. They note that a commission outside the United Nations System would not offer the same guarantees of sovereign equality of all Members, independence, impartiality, objectivity and multilateralism.

- 5.3. The G-77 Members of IOTC consider that their participation in the meeting of the Informal Group, as well as their proposals regarding the process to be followed, are without any prejudice to their position of principle that they do not wish IOTC to be removed from the framework of FAO and that any concerns regarding the efficiency and effectiveness of IOTC must be addressed under its current status.

Appendix II**INFORMAL MEETING OF LEGAL EXPERTS (IOTC)
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14 November, 2007



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
and
Agriculture
Organization
of
the
United
Nations

Organisation
des
Nations
Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COUNCIL CONSEIL CONSEJO

Hundred and Thirty-third Session
Cent trent-troisième session
133° período de sesiones

Rome, 14-16 November 2007
Rome, 14-16 novembre 2007
Roma, 14-16 de noviembre de 2007

FIRST PLENARY SESSION
PREMIÈRE SÉANCE PLÉNIÈRE
PRIMERA SESIÓN PLENARIA

14 November 2007

The First Plenary Meeting was opened at 10:15 hours
Mr Mohammed Saeid Noori-Naeini,
Independent Chairman of the Council, presiding

La première séance plénière est ouverte à 10 h 15
sous la présidence de M. Mohammed Saeid Noori-Naeini,
Président indépendant du Conseil

Se abre la primera sesión plenaria a las 10.15 horas
bajo la presidencia del Sr Mohammed Saeid Noori-Naeini,
Presidente Independiente del Consejo

Please submit all corrections to Room A-371. Pour toutes corrections s'adresser au Bureau A-371.
Para todas las correcciones dirigirse a la Oficina A-371.

groups, we have the following proposals for the three posts of vice-chairpersons. Ambassador Agnes Van Ardenne Van der Hoeven of the Netherlands; Ambassador Mohammed Ashraf Gamal Eldin of Egypt, and Mr Yohannes Tensue of Eritrea. If is there no objection, I wish to congratulate these three personalities on their appointment as vice-chairpersons of the Council. I myself feel I am in good hands, with good assistance from the three vice-chairs. For the Drafting Committee, the regional groups have proposed Mr Richard of the United Kingdom as chairperson, and the following countries as members in alphabetical order: Australia, Bangladesh, Brazil, Canada, Chile, China, Ethiopia, Egypt, France, Gabon, Japan, Netherlands, Oman and Ukraine. Are there any objections to these nominations? Thank you. So I congratulate the chairpersons and members of the Drafting Committee.

Before we move on to our next item, may I take this opportunity to call upon your cooperation in our joint efforts to keep to the timetable for this Session. We have just today and tomorrow to get through the agenda. So time management is going to be essential if we are to adopt the report of the Session on Friday, 16 November. It is important that we start each meeting on time. Please ensure you are here in the Red Room at the time indicated in the Order of the Day. I should also like to remind you that the full written text of your interventions may be submitted for inclusion in the verbatim records of this Session, and a shorter version delivered orally. Whenever such texts are submitted for inclusion in the verbatim records of any meetings, an announcement to this effect will be made from the podium. Furthermore, may I also request that you give a copy of any statement you intend to make to the Secretariat in advance to assist interpreters and the verbatim records staff in their work. The Order of the Day gives an e-mail address where such written interventions may be sent.

IV. CONSTITUTIONAL AND LEGAL MATTERS
IV. QUESTIONS CONSTITUTIONNELLES ET JURIDIQUES
IV. ASUNTOS CONSTITUCIONALES Y JURÍDICOS

10. Report of the 82nd Session of the Committee on Constitutional and Legal Matters (Rome, 25-26 October 2007)

10. Rapport de la quatre vingt-deuxième session du Comité des questions constitutionnelles et juridiques (CQCJ) (Rome, 25-26 octobre 2007)

10. Informe del 82º período de sesiones del Comité de Asuntos Constitucionales y Jurídicos (Roma, 25 y 26 de octubre de 2007)

CHAIRMAN

We now move on to Item 10. Report of the 82nd Session of the Committee on Constitutional and Legal Matters, CCLM. Please ensure you have before you the relevant document which is CL 133/5. The report of the CCLM deals almost entirely with the Report of the Informal Group of Legal Experts and the process for a change in the nature of a statutory body under Article 14 of the FAO Constitution into a body outside the framework of FAO, which is a possible change in status of the Indian Ocean Tuna Commission. I invite Mr Emmanuel Fernandez, from the Philippines, who chaired the last session of the Committee on Constitutional and Legal Matters, to introduce the item. Mr Fernandez welcome to the podium and you have the floor.

Emmanuel R. FERNANDEZ (Chairman, CCLM)

The Committee on Constitutional and Legal Matters held its 82nd Session last October 25, 2007. Document CL 133/5 contains our report on what was part of and what was decided during that session. Allow me to briefly present the main points of our report. As you can see, there were only two items on our agenda for that Session and since the first of these two items was the only substantive one, if I may say so, I wish to allow some time after my report on the first agenda item for any discussion that it may elicit. The first item on our agenda was a review of the output of the Informal Group of Legal Experts which was convened last October 23 and 24 pursuant to a decision made by the FAO Council during its immediately preceding Session. The said Informal Group of Legal Experts was asked to examine the process for a change in the nature of the

statutory body under Article 14 of the FAO Constitution into a body outside the framework of FAO. Specifically, it was tasked to examine the possible change in the status of the Indian Ocean Tuna Commission from a body within the framework of FAO to one outside of it. After taking note of the Report of the Informal Group of Legal Experts, the CCLM decided to forward it to the Council. We have therefore, Mr Chairman, appended the full text of the Informal Group's report as an annex to our own report and the said report forms an integral part of document CL 133/5. The CCLM reserved that one and all legal issues involved had been thoroughly examined. No further legal analysis under the procedures to be followed for the removal of IOTC from FAO would be productive at this stage, since fundamental decisions and issues in principle have to be taken by the Indian Ocean Tuna Commission and its members.

The CCLM also noted that a number of other issues concerning the relationship between FAO and bodies established under article 14 of the Constitution needed to be examined. The CCLM arrived at the view that: 1) those issues were of a complex nature, 2) they could not be seen in isolation from the extensive past practice of the Organization and from the previous decisions of the Governing Bodies, and 3) that the matter had in fact been likewise raised in the context of the Independent External Evaluation. The CCLM, therefore, concluded that this matter could be the subject of a future review in the light of all pertinent circumstances. If the Chairman so pleases, I shall now pause, to make room for any discussion on this particular item of our Agenda.

CHAIRMAN

Thank you Mr Fernandez, for the introduction of this report and now the floor is open for any interventions, comments or questions. I have Australia, European Community, United States of America, Malaysia and Indonesia. We will start with this, so I give the floor to Australia.

Ms Judy BARFIELD (Australia)

Australia would like to make a statement in relation to the item on the IOTC and Australia would firstly like to express its concern with the delays in reconfiguring the IOTC to ensure its effective functioning. This matter has been discussed since the Seventh Annual Session of the IOTC in 2002 and there are many issues that remain to be resolved. Australia would like to reiterate that the IOTC is an organization mandated to ensure the sustainable management of the tuna and tuna-like species in the Indian Ocean. This is impossible without a Commission capable of managing effectively all fishing activities of tuna and tuna-like species in the Indian Ocean. Currently, much of the fishing activity for these species is not and cannot be regulated by the IOTC. The consequences of not managing all fishing activity could be a serious depletion of tuna stocks which will have detrimental affects particularly on the coastal states of the region and most particularly on the Small Island Developing States whose economies rely heavily on these fisheries. Decisions regarding the functioning of the IOTC are the responsibility of the members of the IOTC Commission. Australia considers that the IOTC agreement generates for its members a range of rights and obligations under international law, including the right to make decisions regarding amendments to the IOTC agreements. That said, we recognize that FAO has a key role in supporting the members of the IOTC in coming to a decision. We would remind participants that IOTC members at the Eleventh Annual Session unanimously agreed to issue a statement inviting FAO to take immediate action on the draft amendments in preparation for their further consideration at its Twelfth Session. Australia is seriously concerned that suggestions to establish a separate process to negotiate a new agreement, further long delays that could be caused by a new process, would further jeopardize the already precious fish stocks. To negotiate a new IOTC agreement could take many years and unfortunately that is time we do not have, if we are to sustain and protect the region's tuna and tuna-like fisheries.

Renaud-François MOULINIER (European Community)

I am speaking on behalf of the European Community and its 27 Member States. The candidate countries to the EU, Croatia and Turkey, associate themselves with this statement. The European Community acknowledge the conclusions of the informal meeting of legal experts on the process for a change in nature of the Indian Ocean Tuna Commission (IOTC), an Article XIV FAO Body,

into a Body outside the framework of FAO and those of the Eighty-Second session of the Committee on Constitution and Legal Matters (CCLM). The European Community would like to point out that, in its view, the main IOTC objective set out in its convention, which is the sustainable management of the Indian Ocean tuna and tuna like species is currently not being attained, as this Organization is not in a position of operating in an efficient and effective manner. The European Community, recalling the provisions of the United Nations General Assembly Resolution 61/105 on Sustainable Fisheries adopted in December 2006, which requires that the Regional Fisheries Management Organizations perform and implement sound management for the conservation of fisheries resources. The European Community will then await until the conclusions, report and recommendations of the IOTC Performance Review and then will re-define its position on the future functioning and structure of the IOTC.

Lee A. BRUDVIG (United States of America)

The United States has just a few points to make First of all we strongly encourage FAO to work closely with the Indian Ocean Tuna Commission to resolve any issues and concerns that may affect the effectiveness and the efficiency of the IOTC. We continue to hope that efforts to adjust the IOTC Charter to make the IOTC a more effective body will succeed in the end. As currently constituted, the IOTC faces some significant impediments. More broadly, The United States supports further examination of the relationship between FAO and Article XIV bodies, particularly in light of the findings and recommendations of the Report of the Independent External Evaluation.

Dato' Zulkfli Bin IDRIS (Malaysia)

Malaysia wishes to express our appreciation to the FAO Secretariat for providing document CL 133/5 and would like to thank FAO for inviting Malaysia to the informal group of Legal Experts Meeting for a change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO 2007, which was held on 23 to 24 October 2007 in Rome. Malaysia concurs with the last Council session's decision, that the efficiency and the effectiveness of IOTC should be addressed as a matter of priority through discussions between the FAO Secretariat and concerned IOTC members, and that the Secretariat should report on the outcome of such discussions to the Committee on Constitutional and Legal Matters as well as other appropriate bodies. Based on the Informal Group of Legal Experts meeting, it seems there was no consensus among the IOTC members regarding the withdrawal of the IOTC from FAO. Secondly, the issues concerning the relationship between FAO and bodies established under Article XIV of the FAO constitution is of a complex nature and this has been raised in the Final Report of the Independent External Evaluation of the FAO. This would need further review by the governing bodies. Malaysia is of the opinion that the withdrawal of IOTC from FAO is not the only solution in resolving the problems and concurs with the Informal Group of Legal Experts that the FAO Secretariat should discuss further with all concerned IOTC members in finding innovative means to improve the efficiency and effectiveness of IOTC for consideration by the IOTC at its forthcoming session.

Susanto SUTOYO (Indonesia)

On behalf of the Indonesian Delegation, I would like to welcome the report of the Eighty-second Session of the Committee on Constitutional and Legal matters; and I express our support to the outcome of the review that no further analysis on the procedures to be followed for the removal of the IOTC from FAO and its consequences is needed at the moment. We fully agree that it is the IOTC's itself that has to deliberate and make the decision on the issue of removal of the Commission from FAO. They might wish to seek legal expert advice on the legal consequences of the removal, if they so wish, but we shall not dwell upon issues which may or may not arise. Indonesia wishes to reiterate its position that we do not wish IOTC to be removed from the framework of FAO and that any concern regarding the efficiency and effectiveness of IOTC must be addressed under its current status.

Ramalingam PARASURANAM (India)

The important item on IOTC and its continuation within the overarching framework of the arrangements under FAO was discussed at the meeting of the Informal Group of Experts late last month. This meeting, specifically 25 October 2007, decided that the matter needs further deliberations as has been noted in paragraph 19 of the Report of the Informal Group which is appended to the agenda item. In our view this is necessary and India would like to lend support to this view which has also been expressed on behalf of G77 Asian group by Malaysia and Indonesia.

HU YAN'AN (People's Republic of China) (Original language Chinese)

First of all the Chinese delegation would like to welcome the report by this expert group. On this issue IOTC for the change of their status, China expresses its position. Now, we would like to reiterate our position and also we support India's statement. This issue is a very complicated one and we are of the view that it should be discussed within the framework of FAO and, second, the Chinese Delegation believes that IOTC's withdrawal from FAO is not the best solution. However, the efficiency and effectiveness as mentioned by other delegates are important and China would like work together with other countries to improve this in this direction.

CHAIRMAN

Are there any other requests from the floor to speak on this item. I do not see any, so I will go back to Mr Fernandez, Mr Pucci, Legal Counsel of FAO and also Mr Tavares, Secretary of CCLM, if they want to add anything to the debate.

Emmanuel FERNANDEZ (Chairman, CCLM)

Mr Chairman, there is a second part to our report. Agenda item number 2 captures those other matters dealt with the issue of members' access to the reports of the Inspector General. The CCLM noted that this issue was still pending. The CCLM then decided to recommend that the Council provide guidance on the matter, taking into account the related recommendations contained in the Report of the IEE. Another item, had been on the agenda of the past sessions of the CCLM, mainly the issue of the representation of the Near East Region in the Finance Committee. The CCLM did not examine this issue during its Eighty-second Session. As you all know the Near East Region wishes to have a second seat in the Finance Committee. In its previous sessions the CCLM held the view that informal consultations among the regional groups were necessary before a review of this particular issue could be conducted. In its June 2007 session the Council noted that informal consultations among regional groups had been initiated but that further time was needed for them to reach a common position. The CCLM therefore stands ready to examine this issue as soon as a common position is reached. Thank you very much Mr Chairman, that ends my report.

CHAIRMAN

Thank you very much Mr Fernandez. You went beyond the item and introduced another item as well, so again the floor is open if anyone wants to talk on the second part of the Report of the CCLM. I do not see any, so I again come back to the podium to see if there are some explanations, comments. Yes Mr Pucci, you have the floor.

LEGAL COUNSEL

I do not think that there is any question to be answered from a legal point of view. The only thing that I wish to say is that as far as the Secretariat is concerned, we have taken due note of the wishes of the Council and of the IOTC and its Members.

We shall start discussions with IOTC Members as soon as possible, I would say immediately after the Conference, and I would ask the Members of IOTC to help us in this task. The Secretariat shall surely start, immediately after the Conference, the discussion with IOTC Members in order to improve the efficiency of the IOTC.

CHAIRMAN

Thank you Mr Pucci. So the Secretariat has taken note of your statements. With this I take it that the Council endorses the report of the CCLM.

It was so decided

Il en est ainsi décidé

Así se acuerda

This item is concluded.

11.2 Applications for Membership in the Organization

11.2 Demandes d'admission à la qualité de membre de l'Organisation

11.2 Solicitudes de ingreso en la Organización

CHAIRMAN

We now move on to sub-item 11.2, Application for Membership in the Organization. Given that sub-item 11.1, Invitation to Non Member Nations to attend FAO sessions was deleted from the Agenda earlier this morning, and the item numbering will be adjusted in the Final Report.

The Council was informed at its previous sessions of the applications made by Andorra and Montenegro for membership in the Organization. I now wish to inform the Council that in June 2007 the Director General received an application from the Pharaoh Islands for associate membership to FAO. Secret ballots on all three applicants are to be held on Saturday 17 November, that is the first day of the 34th Session of the FAO Conference.

11.3 Change in the Name of the Committee for Inland Fisheries of Africa

11.3 Changement du nom du Comité des pêches continentales pour l'Afrique

11.3 Cambio de la denominación del Comité de Pesca Continental para África

This item was purely for your information and we now move on to Sub-item 11.3 Change in the name of the Committee for Inland Fisheries of Africa. Please ensure you have document CL 133/7 before you.

I now invite the Legal Counsel to introduce this sub-item.

LEGAL COUNSEL

I think that this issue is a very straightforward one. Let me put this Committee in its legal context. As is said in the document, this is a body established by the Council under Article VI.2 of the FAO Constitution. Why a simple question such as that of changing the name is reported to the Council for approval? It is a practice that is always followed. In view of the fact that this Committee was established by the Council, whatever change we may have to make, either to its name or to its functions, has to be reported and approved by the Council and we have done so on various occasions.

For the time being, the Committee is requesting only the approval of the change to its name in order to reflect the present situation, the situation which exists already. It is not excluded that in future we may come back to the Council if the Committee decides to adjourn in one way or another, also its terms of reference. But for the time being it is only the question of the change in the name to reflect what the Committee is doing now, to include also aquaculture in its work. It is a formal matter not having any substantive impact, but it is important that the body who established the Committee should also approve whatever changes the Committee may suggest to its name.

CHAIRMAN

The Council is now invited to endorse the proposed change in name. May I take it that the change is endorsed?

REPORT

OF THE COUNCIL OF FAO

Hundred and Thirty-third Session
Rome, 14-16 November 2007



CONSTITUTIONAL AND LEGAL MATTERS

REPORT OF THE 82ND SESSION OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS (ROME, 25 OCTOBER 2007) ¹⁴

44. The Council examined the Report of the Eighty-second Session of the Committee on Constitutional and Legal Matters.

Review of the work of the Informal Group of Legal Experts on the Process for a Change in the Nature of a Statutory Body under Article XIV of the FAO Constitution into a Body Outside the Framework of FAO (Possible Change in Status of the Indian Ocean Tuna Commission)

45. The Council noted the report of the Informal Group of Legal Experts on the process for a change in the nature of a statutory body under Article XIV of the FAO Constitution into a body outside the framework of FAO which was an annex to the CCLM Report. The Council agreed with the CCLM that while not all legal issues involved had been thoroughly examined, further analysis on the procedure to be followed for the separation of IOTC from FAO would not be productive at this stage. Fundamental decisions on issues of principle had yet to be taken by the Indian Ocean Tuna Commission and its Members.

46. The Council took note of statements of many Members stressing the need to address the long-standing issue of improving the efficiency and effectiveness of IOTC, as well as of the commitment of Members to deal actively with the matter. The Secretariat informed the Council that immediately after the sessions of the Conference and Council, it would initiate discussions in that connection with IOTC Members. The Council underlined the urgent need to bring this matter to a successful conclusion in order to ensure the sustainable management of tuna and tuna-like species in the Indian Ocean. The Council urged the Secretariat and all Members concerned to devise an appropriate formula for consideration by the IOTC to improve its efficiency and effectiveness at its forthcoming session in 2008.

47. The Council endorsed the view of the CCLM that the issue of the relationship between FAO and bodies established under Article XIV of the Constitution needed to be examined in future, taking into account all pertinent circumstances, including past practice of the Organization and the decisions of its Governing Bodies.

Other Matters

48. The Council noted that the issue of access by Members to reports of the Inspector General was still pending, that the matter had also been addressed in the context of the Independent External Evaluation and that guidance would need to be provided on this matter in future.

49. The Council was informed that the issue of allocating a second seat for the Near East region in the Finance Committee had not been examined as informal consultations among regional groups had not been resolved. The Council noted that the CCLM was ready to examine the matter in future once a common position had been reached.

OTHER CONSTITUTIONAL AND LEGAL MATTERS ¹⁵

Applications for Membership in the Organization

50. The Council was informed of the applications for membership received from the Government of the Principality of Andorra and the Government of the Republic of Montenegro

¹⁴ CL 133/5; CL 133/PV/1; CL 133/PV/4.

¹⁵ C 2007/10; CL 133/PV/1; CL 133/PV/4.