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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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THE COMPOSITION OF THE COMMISSION'S INTERGOVERNMENTAL TECHNICAL SECTORAL WORKING GROUPS AND THE PARTICIPATION OF OBSERVERS/ALTERNATES

TABLE OF CONTENTS

	Paragraphs
I. Introduction.....	1 - 3
II. The composition of existing Sectoral Working Groups	
a. Existing Sectoral Working Groups.....	4 - 7
b. FAO Governing Bodies.....	8 - 20
c. Changing the composition of the Sectoral Working Groups.....	21 - 22
III. The participation of observers/ alternates in sessions of Sectoral Working Groups	23
a. Observers.....	24 - 26
b. Alternates	27 - 31
IV. Guidance sought	32

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I. INTRODUCTION

1. At its Fourteenth Regular Session, the Commission on Genetic Resources for Food and Agriculture (the Commission) considered the composition of its intergovernmental technical sectoral working groups (“Sectoral Working Groups”), including their legal basis, the composition of subsidiary bodies of other Statutory Bodies of FAO with geographically balanced membership, and options to modify the composition of the Commission’s Sectoral Working Groups. The Commission decided to maintain the composition of its Sectoral Working Groups, to discuss the matter further at its next session, and requested the Secretary to provide information on possible criteria for the composition of the Sectoral Working Groups. The Commission also agreed to consider the issue of the attendance of observers and alternates at the sessions of the Sectoral Working Groups¹.
2. In response to the Commission’s request, this document considers the composition of the Commission’s Sectoral Working Groups and the procedure to change the composition. The document also provides a succinct analysis of the legal framework governing the Sectoral Working Groups and discusses possible criteria for the composition of the Sectoral Working Groups in the light of criteria applied by other bodies of FAO, including the Conference, Council, FAO’s Technical Committees, and the Committees of the Council, with a particular focus on those bodies the composition of which is based on the principle of balanced geographical representation.
3. In addition, the document provides information on the rules currently applying to the attendance of alternates and observers to the sessions of the Sectoral Working Groups, and discusses different options to address the replacement of Members of the Working Groups.

II. THE COMPOSITION OF THE EXISTING SECTORAL WORKING GROUPS

a. Existing Sectoral Working Groups

4. According to Article 3 of its Statutes², “*the Commission may establish Sectoral Working Groups, with appropriate geographical balance, to assist it in the areas of plant, animal, forestry and fisheries genetic resources. The purpose of the Sectoral Working Groups shall be to review the situation and issues related to agrobiodiversity in the areas under their respective competences, to advise and make recommendations to the Commission on these matters and to consider the progress made in implementing the Commission’s programme of work, as well as any other matters referred to them by the Commission. The composition and terms of reference for each Sectoral Working Group shall be established by the Commission*”.
5. Thus, Article 3 of the Statutes of the Commission sets out only one criterion for the composition of the Sectoral Working Groups: their composition has to reflect an “*appropriate geographical balance*”. However, the Statutes do not provide specific guidance as to what an appropriate geographical balance is, leaving a margin of discretion to the Commission.
6. In practise, when establishing a Sectoral Working Group, the Commission appears to have determined the regional distribution of seats in a pragmatic way. Neither the reports of the sessions at which the Commission established its Sectoral Working Groups, nor the pre-session documentation prepared for these sessions, provide any substantive information regarding the criteria applied in determining the geographical balance reflected in the composition of the Sectoral Working Groups.
7. The Commission established three Sectoral Working Groups: the Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture; the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture; and the

¹ CGRFA-14/13/Report, paragraph 122.

² See also Rule VIII of the Commission’s Rules of Procedure.

Intergovernmental Technical Working Group on Forest Genetic Resources³. The Members of the Sectoral Working Groups are elected at each regular session of the Commission⁴ and serve until the next regular session of the Commission. Each Sectoral Working Group is composed of twenty-seven Member Nations from the seven regions, as follows⁵:

Region	Members in the Sectoral Working Groups
Africa	5
Europe	5
Asia	5
Latin America and the Caribbean	5
Near East	2
North America	2
Southwest Pacific	2

b. FAO Governing Bodies

8. The FAO Governing Bodies are the Conference, the Council, the Programme Committee, the Finance Committee, the Committee on Constitutional and Legal Matters, the Technical Committees referred to in Article V, paragraph 6(b), of the Constitution⁶ and the Regional Conferences⁷. All FAO Governing Bodies are intergovernmental in nature. Membership of the Governing Bodies is either open to all the Member Nations and Associate Members of the Organization or restricted to a predetermined number of Member Nations.

9. FAO's Conference and its Technical Committees (the Committee on Commodity Problems, the Committee on Fisheries, the Committee on Forestry and the Committee on Agriculture) are open to all Member Nations of FAO⁸. Similarly, membership of the existing subsidiary bodies of the Technical Committees – namely the intergovernmental commodity groups of the Committee on Commodity Problems and the sub-committees of the Committee on Fisheries – is open to all Member Nations and Associate Members of the Organization⁹.

10. The Council and its Committees (the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Affairs) consist of a *numerus clausus* of Members, elected taking into account the principle of balanced geographical representation.

³ The Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture and the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture were established by the Commission at its Seventh Regular Session in 1997 (CGRFA-7/97/REP, paragraph 10). The Intergovernmental Technical Working Group on Forest Genetic Resources was established by the Commission at its Twelfth Regular Session in 2009 (CGRFA-12/09/Report, paragraph 55).

⁴ In accordance with Rule VIII, paragraph 3, the Sectoral Working Groups, where established, hold no more than one regular session annually.

⁵ See Article II of the respective Statutes of the three existing Sectoral Working Groups.

⁶ In accordance with Article V, paragraph 6(b), of the Constitution, “[the Council shall be assisted] by a Committee on Commodity Problems, a Committee on Fisheries, a Committee on Forestry, and a Committee on Agriculture which shall report to the Council on programme and budget matters and to the Conference on policy and regulatory matters”.

⁷ Basic Texts, Volume II, Part B on *Definition of Governing Bodies*.

⁸ See FAO Constitution, Article III, paragraph 1, and Rules XXIX, XXX, XXXI and XXXII of the General Rules of the Organization (GRO).

⁹ In accordance with Rule XXIX, paragraph 10, of the GRO, the membership of intergovernmental commodity groups established by the Committee on Commodity Problems is open to all Member Nations and Associate Members of the Organization. In the same vein, with respect to the subsidiary bodies of the Committee on Fisheries, Rule VII.2 of the COFI Rules of Procedure expressly provides that membership of COFI Sub-Committees is open to all Member Nations and Associate Members of the Organization

11. In the Council, the Programme Committee and the Finance Committee, the principle of balanced geographical representation is rather given effect through a specific pattern of distribution of the seats among the regions. Each member of the Committee on Constitutional and Legal Affairs (CCLM) is elected from, and represents, one region¹⁰.

12. The distribution of seats of the Council, the Programme Committee and the Finance Committee among the seven FAO regions are outlined below.

Balanced geographical representation in the composition of the Council

13. The principle of balanced geographical representation of the Council membership was introduced in the *Rules of Procedure of the Food and Agriculture Organization* (nowadays General Rules of the Organization, GRO) by the Third Session of the Conference in 1947¹¹. In 1953, by resolution No. 43, the Seventh Session of the Conference added two more principles to the principle of balanced geographical distribution. The current principles for selection of Council members read as follows:

“In selecting Members of the Council the Conference shall give due consideration to the desirability of:

(a) including in its membership a balanced geographical representation of nations interested in the production, distribution and consumption of food and agricultural products;

(b) ensuring the participation in the work of the Council of such Member Nations as contribute in a large measure towards the success of the Organization;

(c) giving to the greatest possible number of Member Nations an opportunity, by rotation of membership, to serve the Council”.¹²

In addition, according to Rule XXII, paragraph 5, no Member Nation shall be eligible for election to the Council if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.

14. At its Seventh Session, the Conference also adopted, for the first time, a general pattern for distribution of Council seats among the seven regions. The “travaux préparatoires” and the report of the Seventh Session of the Conference highlight that the distribution of Council seats had traditionally been determined through consultations and negotiations among the Members in the General Committee¹³.

¹⁰ In accordance with Rule XXXIV, paragraph 3(c), of the GRO “*the Council shall elect one Member of the Committee from each of the following regions: Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, Near East, North America, and Southwest Pacific*”.

¹¹ At its First Session in 1946, the Conference determined the composition of the FAO Executive Committee (nowadays, the Council) and elected its Members with a view to “representing a wide diversity of experience” (Report of the First Session of the Conference, Part I). Later, at its Third Session in 1947, the Conference introduced the principle of balanced geographical representation and amended the *Rules of Procedure of the Food and Agriculture Organization of the United Nations* accordingly. Rule XXIV, paragraph 4 (nowadays, Rule XII of the GRO), of the Rules of Procedure of the Food and Agriculture Organization of the United Nations, as amended at the third Session of the Conference, read as follows: “*In selecting members of the Council due consideration shall be given to the inclusion in its membership of a balanced geographical representation of nations interested in the production, distribution, and consumption of food and Agricultural Products*”.

¹² GRO, Rule XXII, paragraph 3.

¹³ At its Seventh Session in 1953, the Conference, on the recommendation of the General Committee, decided that the 24 seats of the Council should be distributed among the regions as follows: 1 seat to the African region; 5 seats to Asia and the Far Eastern region; 1 seat to the South West Pacific region; 7 seats to the European

15. In subsequent sessions, the Conference and the Council examined the criteria for electing Council members and allocating its seats among the seven regions with a view to guaranteeing the most equitable distribution of seats.

16. The criteria for distribution of Council seats were examined by the Council at its Twentieth Session in September-October 1954. After having considered a detailed study prepared by the Director-General, the Council noted that “*any attempt to set down hard and fast rules on such matters as the rotation of Council seats, re-eligibility, etc. would not only create many difficulties but tend to defeat the very purpose of the principles adopted by the Conference. (...) The Council therefore recommended to the Conference that prior to any future election of Council Members the General Committee of the Conference should formally draw the attention of the delegations to all four principles enunciated [in Rule XXII of the GRO]*”¹⁴. The Council’s recommendation was adopted by the Eighth Session of the Conference in 1955¹⁵.

17. Since then, the geographical distribution of Council seats among the seven regions has been determined by the Member States through negotiation and taking into account the principles set out in Rule XXII of the GRO.

18. As of today, the Council has 49 members, whose seats are distributed among seven geographical regions, as follows:

Africa: 12 Council seats
Asia: 9 Council seats
Europe: 10 Council seats
Near East: 6 Council seats
Latin America and the Caribbean: 9 Council seats
North America: 2 Council seats
*Southwest Pacific: 1 Council seat*¹⁶.

Geographical distribution in the composition of the Committees of the Council

19. The Finance Committee and the Programme Committee were established in 1949 and 1951, respectively¹⁷. Both of them were originally composed of individuals serving in their personal capacity. In 1975, the Conference, in consultation with the Council, the CCLM and the *Working Party on the Composition and Terms of Reference of the Council, the Programme Committee, the Finance Committee and the CCLM* established by the Council for this purpose, undertook a review of the terms of reference and composition of the Finance and Programme Committee Committees and the modalities for election of their respective members¹⁸.

20. This process of reform culminated in 1977 when, on the recommendation of the Seventy-first Session of the Council, the Nineteenth Session of the Conference decided that “*the Programme and Finance Committees should be composed of representatives of Member Nations*”¹⁹. Furthermore, for

region; 5 seats to the Latin American region; 3 seats to the Near Eastern region; and 2 seats to the North American region (Report of the 7th Session of the Conference, paragraphs 348-356).

¹⁴ Report of the Twentieth Session of the Council, CL20/REP, paragraph 143

¹⁵ Report of the Eight Session of the Conference, Resolution 29/55.

¹⁶ The distribution of seats and composition of the Council as presently in force was enacted by the Nineteenth Session of the Conference in 1977 (*See* Report of the Nineteenth Session of the Conference, C77/REP, Resolution 16/77).

¹⁷ The establishment by the Council of a Programme Committee (originally Co-ordinating Committee) was provided in Article V, paragraph 4, of the FAO Constitution, as amended by the Conference at its 3rd Session in 1947. The Finance Committee (originally Committee on Financial Control) was established in 1946, when the 1st Session of the Conference adopted the Financial Regulations of the Organization.

¹⁸ CL71/REP, Conference Resolution 3/75. *Cfr.* the Report of the Working Party on the Composition and Terms of Reference of the Council, the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Matters, CL 71/12.

¹⁹ Report of the 19th Session of the Conference, C77/REP, paragraph 280(a).

the purpose of ensuring balanced geographical distribution of seats, the Conference introduced a two-stage mechanism for electing the members of the Programme and Finance Committees. The rules adopted in 1977 are still in force today. They are set out in paragraph 3(c) of Rules XXVI and XXVII of the GRO, respectively, which provide as follows:

“The Council shall elect the Members of the Committee, as follows:

- i. two members from each of the following regions: Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, and Near East;*
- ii. one member from each of the following regions: North America and Southwest Pacific”²⁰.*

c. Changing the composition of Commission’s Sectoral Working Groups

21. The Commission's authority to establish Sectoral Working Groups under Article 3 of the Commission's Statutes implies the right to change the composition of existing Sectoral Working Groups. Any change in the composition should be reflected in the Statutes of the Sectoral Working Groups, which the Commission may amend by consensus.

22. Under Article 6 of its Statutes, the establishment of any Sectoral Working Group shall be subject to the determination by the Director-General that the necessary funds are available in the relevant chapter of the budget of FAO or from extra-budgetary sources. Before taking any decision involving expenditure in connection with the establishment of Subsidiary Bodies, the Commission shall have before it a report from the Director-General on the programme, administrative and financial implications thereof. It is arguable that these requirements might also apply to the change of the composition of an existing Sectoral Working Group, insofar as such a change may involve an adjustment in the level of expenditure for that Sectoral Working Group. The Commission would need to determine whether such implications are present²¹.

III. THE PARTICIPATION OF OBSERVERS/ ALTERNATES IN SESSIONS OF SECTORAL WORKING GROUPS

23. At its Fourteenth Regular Session in 2014, the Commission agreed “*to consider the issue of the attendance of observers and alternates at the sessions of the intergovernmental technical working groups*”²². In addressing this matter, it is important to distinguish between alternates and observers.

a. Observers

24. The Statutes of each of the existing Sectoral Working Groups contain the following rule on

²⁰ Rules XXVI, paragraph 3(c), and Rule XXVII, paragraph 3(c), of the GRO. It is worth recalling that the principle of equitable geographical representation in the composition of the Programme and Finance Committees is complemented by the requirements of specific skills, experience and expertise. Members of the Programme Committee are required to appoint as their representatives “*individuals who have shown a continued interest in the objectives and activities of the Organization, have participated in Conference or Council sessions and have special competence and experience in economic, social and technical matters pertaining to the various fields of the Organization's activities*” (Rule XXVI, paragraph 1, of the GRO). Similarly, the Members of the Finance Committee are required to appoint as their representatives “*individuals who have shown a continued interest in the objectives and activities of the Organization, have participated in Conference or Council Sessions and have special competence and experience in administrative and financial matters*” (Rule XXVII, paragraph 1, of the GRO).

²¹ According to Article 8(iii) of the Commission's Statutes, expenses incurred by representatives of members of Sectoral Working Groups, their alternates and advisers, when attending sessions of the Sectoral Working Groups, shall be borne by the respective governments. An increase or decrease of the number of members of the Sectoral Working Groups would therefore not *per se* have financial implications.

²² CGRFA-14/13/Report, paragraph 122.

*Observers*²³:

“1. Members of the Commission which are not Members of the Working Group may participate, upon request to the Commission Secretariat, in the work of the Working Group in an observer capacity.

2. The Working Group, or the bureau on behalf of the Working Group, may invite experts, as well as representatives of specialized international organizations, to attend its meetings”.

25. In adherence to the above mentioned rule, only Members of the Commission, experts and representatives of international organizations (IGOs) may participate in Sectoral Working Groups’ meetings in an observer capacity. Nevertheless, over the years, a practice has been developed whereby also International Non-Governmental Organizations (INGOs) are allowed to attend those meetings as observers. In this connection, it is worth noting that the FAO Policy concerning Relations with International Non-Governmental Organizations is currently under review, with a view to considering the possibility for other entities – such as Civil Society Organizations (CSOs) and the Private Sector representatives – to attend FAO meetings in an observer capacity.²⁴

26. With respect to the participatory rights of observers, the principles and rules set out in the *Statement of Principles Relating to the Granting of Observer Status to Nations*²⁵, the Conference Resolution 44/57 on *Observer Status in Respect of International Organizations*²⁶, and the *FAO Policy concerning Relations with International Non-Governmental Organizations*²⁷ apply *mutatis mutandis* to the Sectoral Working Groups. Further information is available on the subject matter in the document entitled *Recent developments with regard to observers attending meetings of FAO*, prepared for this session of the Commission.²⁸

b. Alternates

27. The Members of the Sectoral Working Groups are elected by the Commission and serve until the next regular session of the Commission. Commission Members that are not members of a specific Sectoral Working Group may attend sessions of that Working Group, but only in an observer capacity. The question may therefore arise whether/ under which conditions a country that is not a member of a Working Group may take the seat of a Member of the Working Group that is, for example, unable to attend the session and is therefore willing to resign from the Working Group. May country A take over country B’s membership of a Sectoral Working Group with the result that country A participates as a full Member of the Working Group instead of country B that was originally elected by the Commission?

28. The Statutes of the Commission’s Sectoral Working Groups make no provision for the replacement of a Working Group Member no longer able to serve as member of a Sectoral Working Group. However, rules on the replacement of individual officers exist for many FAO bodies, including

²³ Article VI of the Statutes of the Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture; Article VI of the Statutes of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture; Article VI of the Statutes of the Intergovernmental Technical Working Group on Forest Genetic Resources.

²⁴ See document, *Recent Developments with Regard to Observers Attending Meetings of FAO*, CGRFA- 15/15/22.

²⁵ The *Statement of Principles Relating to the Granting of Observer Status to Nations* was adopted by the Conference at its 9th Session in 1957, by resolution 43/57, and is contained in Part I of the Basic Texts, Volume II.

²⁶ Resolution 44/57 was adopted by the Conference at its 9th Session in 1957 and is contained in Part N of the Basic Texts, Volume II.

²⁷ Basic Texts, Volume II, Part M.

²⁸ CGRFA-15/15/22.

for the Commission Bureau²⁹ and the Bureaus of the Sectoral Working Groups³⁰. The rules of some bodies allow in addition for the replacement of an officer from one country by an officer from another country from the same region. Under the Rules of Procedures of the Commission on Phytosanitary Measures, for example, FAO regions shall nominate replacements for members of the Bureau and submit them for election. If a member of the Bureau resigns, the replacement will substitute the member of the Bureau. The replacement does not have to be from the same member country, but should be from the same region as the member of the Bureau being replaced.³¹

29. The Commission may wish to consider the following two options for appointing substitute members to the Sectoral Working Groups:

- Option 1: The Commission may wish to consider the option of co-optation, i.e. a mechanism that would allow the Working Groups to replace a Working Group Member, upon the Working Group Member's resignation, by another Commission Member from the same region.
- Option 2: Alternatively, the Commission, in electing the members of the Sectoral Working Groups, may wish to elect a list of alternate members which may substitute a Working Group Member, upon its resignation, in the order in which they appear on the list.

30. Both options exist in various variations in several bodies and subsidiary bodies of FAO even though they usually apply to the replacement of individual members, rather than member nations. As mentioned above, the Rules of Procedures of the Commission on Phytosanitary Measures require FAO regions to nominate, in the election of the Bureau, replacements for members of the Bureau and submit them for election. If a member of the Bureau resigns, the replacement will substitute the member.

31. Option 1 offers maximum flexibility to the Working Groups as it delegates the power to appoint alternate members to the Working Groups. Working Groups could replace members of the Working Group without being bound by a list of alternates adopted by the Commission. The disadvantage of Option 1 is that it requires a decision of the Working Group for each replacement. This may be a disadvantage where Members of the Working Group are invited to provide comments or any other inputs prior to the session of the Working Group. While Option 2 offers less flexibility for the Working Groups – it is the Commission which would elect a list of alternate members – it has the advantage of providing an alternate the moment a Working Group member has resigned from the Working Group. While the options could further distinguish between permanent and temporary unavailability of a Working Group Member, such distinction does not seem to be really necessary given that the main task of Working Group Member is the participation in the 3-day meeting of the Working Group. *Appendix I* to this document provides draft amendments to the Statutes of the Working Groups reflecting both options.

IV. GUIDANCE SOUGHT

32. The Commission is invited to:

- (i) review the composition of its Sectoral Working Groups in the light of the information provided; and
- (ii) consider the replacement of Sectoral Working Group Members that have resigned and the options for amending the Statutes of the Sectoral Working Groups, as provided in *Appendix I* to this document.

²⁹ Rules of Procedure of the Commission on Genetic Resources for Food and Agriculture, Rule III.6

³⁰ Statutes of the Sectoral Working Groups, Article IV.2

³¹ CPM Rules of Procedure, Annex I, Rule 4.

APPENDIX I

DRAFT AMENDMENTS TO THE STATUTES OF THE INTERGOVERNMENTAL
TECHNICAL SECTORAL WORKING GROUPSOption1 :

Current text	Amended text
<p style="text-align: center;">Article III - Election and term of office of Members</p> <p>The Members of the Working Group shall be elected at each regular session of the Commission and serve until the next regular session of the Commission. They will be eligible for re-election.</p>	<p style="text-align: center;">Article III - Election and term of office of Members</p> <p>The Members of the Working Group shall be elected at each regular session of the Commission and serve until the next regular session of the Commission. They will be eligible for re-election.</p> <p><i>Where a Member of the Working Group resigns from the Working Group and has informed the Secretariat accordingly, the Working Group may replace that Working Group Member by an Alternate Member from the same region, provided that the Working Group Members from the same region agree with the replacement.</i></p>

Option 2:

Current text	Amended text
<p style="text-align: center;">Article III - Election and term of office of Members</p> <p>The Members of the Working Group shall be elected at each regular session of the Commission and serve until the next regular session of the Commission. They will be eligible for re-election.</p>	<p style="text-align: center;">Article III - Election and term of office of Members</p> <p>The Members of the Working Group shall be elected at each regular session of the Commission and serve until the next regular session of the Commission. They will be eligible for re-election.</p> <p><i>In addition, the Commission shall elect at each regular session a list of Alternate Members for each region. Alternate Members replace, in the order in which they appear on the list, Members of the Working Group which have resigned from the Working Group and have informed the Secretariat accordingly.</i></p> <p><i>Members and Alternate Members will be eligible for re-election.</i></p>