
COMMUNICATION FROM THE DIRECTOR-GENERAL – FAO TO THE CHAIRPERSON
IOTC DATED 9 MAY 2007

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The Director-General

LEG-DG/07/540

Rome, 9.5. V. 2007

Dear Mr. Spencer,

I wish to refer to your letter of 23 April 2007 on the proposed amendments to the Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC), which you asked me, in your letter of 22 December 2006, to circulate to IOTC Members with a view to their adoption at the forthcoming Session of the Commission.

With regard to the fact that I did not circulate these amendments to IOTC Members under Article XX, paragraph 2 of the IOTC Agreement, it is difficult to understand your surprise, since my response of 5 February 2007 to your letter of 22 December 2006 contained a detailed exposition of the reasons for which I decided that, prior to circulating the proposed amendments to IOTC Members, the matter be referred to the Committee on Constitutional and Legal Matters (CCLM) and the Council of FAO.

These reasons were later expanded in document CCLM 81/3 "*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)*" submitted to the Eighty-first Session of the CCLM, held on 4 and 5 April 2007. This document is available from the FAO Website.

The conclusion that the CCLM reached after reviewing, *inter alia*, the "alternative" which you allude to for the process under way, has shown clearly that the only correct course of action which I could take in response to your letter of 22 December 2006, as Director-General of FAO, was precisely to seek the views of the relevant Governing Bodies of the Organization on an unprecedented process concerning FAO as a whole, with potential implications for the entire United Nations system.

It is important to stress that the above alternative was presented in a comprehensive manner by the Chairperson of the CCLM, speaking as representative of Belgium, on the basis of a note that was subsequently handed over to the secretariat, for reflection in the report. This position is fully reflected in paragraph 8 of the report for the benefit of all parties.

The CCLM, with the concurrence of all its members and its Chairperson, concluded that the situation was complex and unprecedented and that, therefore, it was essential to make a complete review of the matter, keeping in mind all the implications of any proposed option, including the fact that any decision would set a precedent in international law impacting upon other organizations of the United Nations system. In order for the Committee to be able to review the matter and make a recommendation to the Council, the CCLM requested that the matter be examined by an informal group of legal experts of all the IOTC Members and CCLM Members, as well as representatives of relevant organizations of the United Nations as deemed appropriate. Subsequently, the CCLM would review the work of the informal group and provide its advice to the Council. The CCLM requested that the informal group meet as soon as feasible, taking into account the calendar of the relevant sessions of the Governing Bodies of FAO and subject to availability of funds.

In accordance with the request of the CCLM, the FAO secretariat shall be taking all the necessary steps to convene the informal group as soon as possible, taking into account the need for a proper preparation of its work, including the necessary documentation, as well as for the effective participation of the experts of IOTC Members and representatives of other organizations of the United Nations system.

The Chairperson of the CCLM, speaking as representative of Belgium, expressed the view that the informal group should hold its meeting prior to the forthcoming Session of IOTC. However, in spite of all the best efforts of the FAO secretariat to expedite the process, it will not be possible to hold such a meeting before September 2007, at the earliest.

There are two other issues to which I wish to draw your attention. First, you refer in your letter to the fact that the IOTC examined various legal alternatives. It must be noted, however, that none of its reports reveals that the Commission ever made a complete assessment of possible alternatives, including their implications.

Second, I also note your references to the political nature of the process which will certainly be a matter for assessment both by IOTC Members and FAO Governing Bodies. In this respect, I can assure you that all IOTC Members, as Members of FAO, shall be able to examine all the relevant issues involved in the process under way at the relevant sessions of the Governing Bodies of the Organization.

Finally, I take this opportunity to inform you that Mr. Jean-François Pulvenis de Séligny, Director, Fisheries and Aquaculture Economics and Policy Division, shall be my representative at the forthcoming session of the Commission. A senior official of our Legal Office will also travel to Mauritius for a detailed presentation of the legal position of the Organization, including any related documents, and answer completely any questions that you or any IOTC Members will certainly wish to ask.

I should like to reiterate FAO's commitment to ensuring that the wishes of the IOTC Members prevail and that the ensuing process is carried out in a proper legal manner, safeguarding the rights and interests of all the parties concerned.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of vertical and diagonal strokes, ending in a long horizontal line that extends to the right.

Jacques Diouf