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American Bar Association Section of International Law and Practice Report to the House of Delegates - Food and Agriculture Organization

Jay M. Vogelsson

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SECTION RECOMMENDATIONS AND REPORTS

American Bar Association Section of International Law and Practice Report to the House of Delegates† Food and Agriculture Organization*

RECOMMENDATIONS

BE IT RESOLVED, that the American Bar Association recommends that the United States government take the actions listed below:

- (a) Continue to give strong support to the Food and Agriculture Organization of the United Nations (FAO), including its activities in setting international standards and providing technical assistance in drafting and implementing appropriate national legislation;

†The following Recommendations and Reports are two of six developed by the Section's International Institutions Committee through its Working Group on United Nations Specialized Agencies. The remaining four reports—on the International Labor Organization, the International Atomic Energy Agency, the U.N. Educational, Scientific and Cultural Organization, and the World Health Organization—will be published in the Fall 1996 issue of *The International Lawyer*.

*This Recommendation and Report was approved by the House of Delegates in August 1995.

H. Francis Shattuck, Jr., Chair, Ellen S. Kern, Co-Rapporteur, Sompong Sucharitkul, Co-Rapporteur, John H. Knox, Hurst Hannum, and Louis B. Sohn were principally responsible for this report.

- (b) Encourage FAO in its efforts to restructure itself, streamline its operations, and strengthen its transparency and accountability;
- (c) Endorse stronger coordination efforts within the United Nations system which clarify the mandate, roles and tasks, especially at field level, of FAO and the organizations (UN, governmental and nongovernmental) with which it works most closely.

REPORT

Introduction and Background

Congress is now in the midst of arriving at appropriations for the U.N. Specialized Agencies for FY 1996. H.R. 2076 includes assessed contributions for international organizations. As passed by the House, this total amount is \$870 million, \$76 million below the Administration's request of \$934 million. There is not yet a Senate appropriations bill. In the present fluid state of affairs with regard to appropriations it is important that the ABA urge the U.S. government to continue support of the Food and Agriculture Organization of the United Nations ("FAO"). As soon as the Senate appropriations bill is introduced, voting could occur at any time.

The American Bar Association ("ABA") has a clear interest in supporting FAO which, among other things, plays a key role in the development of legal standards worldwide.

This report on FAO was developed by the Section of International Law and Practice, International Institutions Committee, through its Working Group on United Nations (UN) Specialized Agencies. One of the several reports prepared for the ABA, it is a contribution to the 50th Anniversary of the United Nations in fulfillment of the ABA's Goal VIII: to advance the rule of law in the world.

FAO is one of the largest of the specialized agencies of the United Nations. The U.S. has been involved in FAO since its inception when President Roosevelt convened the UN Conference on Food and Agriculture in the U.S. in 1943.¹ FAO was founded with the adoption of its Constitution on October 16, 1945.

FAO is governed by a 171-member² Conference which meets biennially and a 49-member Council which meets four times in each biennium. The Conference sets FAO policy and the Council oversees operations and budget. The Secretariat, headed by the Director General, administers FAO's day-to-day operations. Standing committees of the Council, such as the Committees on Agriculture (COAG),

1. S. MARCHISIO & A. DiBLASE, *THE FOOD AND AGRICULTURE ORGANIZATION*, 1991.

2. There are 169 member nations, one member organization (European Community) and one associate member (Puerto Rico). The USSR could have become an original member by accepting the FAO Constitution. It never did. The Russian Federation continues the rights of the former USSR and is entitled to become an original member by accepting the FAO Constitution. Source: G. Moore, FAO Legal Counsel, communication dated July 13, 1995.

Fisheries (COFI), Forestry (COFO) and World Food Security (CFS), meet to review operations and technical aspects of FAO's work for the governing bodies. A process is continuing to improve both cost-efficiency and effectiveness of FAO's governing bodies.³ Member nations are usually represented at FAO by their agriculture and foreign ministries.

I. FAO'S Aims, Functions, Mandate and Priorities

A. AIMS

The Preamble to FAO's Constitution defines FAO's aims as:

1. raising levels of nutrition and standards of living;
2. securing improvements in production and distribution of food and agricultural products;
3. bettering the conditions of rural populations; and
4. contributing towards an expanding world economy and ensuring humanity's freedom from hunger.⁴

B. FUNCTIONS

Under Article 1(2) of the FAO Constitution, FAO's main functions are:

1. to collect, analyze, interpret and disseminate information on nutrition, food and agriculture;
2. to promote and recommend national and international action with respect to—
 - a. scientific, technological, social and economic research;
 - b. the improvement of education and administration relating to nutrition, food and agriculture;
 - c. the conservation of natural resources and the adoption of improved methods of agricultural production;
 - d. the improvement of the processing, marketing and distribution of food and agricultural production;

3. *Report of the Council of FAO*, 107th session, Rome, 15-24 November 1994, at paragraphs 196-204 ("CL 107/REP").

4. Article 1(1) confirms that agriculture and its derivatives include not only cereals and vegetables but also fisheries, marine products, forestry and primary forestry products. This Report uses the term "agriculture" in this all-inclusive sense. The way in which FAO actually operates, however, is that agriculture, forestry and fisheries are three separate program areas. Council Committees, such as COAG, COFI, COFO and CFS, established under Art. V.6 of the FAO Constitution do the bulk of FAO's technical work. Other standing committees which assist FAO in performing its functions as Secretariat are the Committee on Constitutional and Legal Matters (CCLM-7 members), Committee on Commodity Problems (CCP), Finance Committee (9 members) and Program Committee (9 members) and the World Food Program (WFP)'s Committee on Food Aid Policies and Programs as well as the WFP Subcommittee on Projects. Five Regional Conferences also facilitate FAO's work: Asia and the Pacific, Africa, Europe, Latin America and the Caribbean, and the Near East. References in this Report to FAO's Constitution and governing documents are taken from the compilation of *Basic Texts of the Food and Agriculture Organization of the United Nations*, 1980 edition.

- e. the adoption of policy for providing adequate agricultural credits; and
- f. the adoption of international policies on agricultural commodity arrangements.

Under Article 1(3), FAO also furnishes such technical assistance as governments may request and organizes, with the cooperation of concerned governments, such missions as may be needed to assist them to fulfill the obligations arising from the acceptance of the recommendations of the UN Conference on Food and Agriculture and of the FAO Constitution.

C. MANDATE

FAO is the core UN agency on food and agriculture issues. Food is a basic human need and freedom from hunger is viewed increasingly as a fundamental human right.⁵ The satisfaction of this basic human need promotes world peace.

FAO serves as a forum for the resolution of food and agricultural issues of importance to its member nations.⁶ FAO also serves as Task Manager within the UN system to promote international action related to Chapters 10 (Integrated approach to the planning and management of land resources), 13 (Sustainable mountain development) and 14 (Sustainable Agriculture and Rural Development) of Agenda 21⁷ in close collaboration with the Commission on Sustainable Development and in partnership with other international organizations.⁸ By virtue of this role and by chairing the work of the Subcommittee on Rural Development of the UN's Administrative Committee on Coordination (ACC), FAO's mandate to improve not just agricultural production or productivity but rural development as a whole appears to be recognized within the UN system.

D. PRIORITIES

Within FAO's three major ongoing work programs in agriculture, fisheries and forestry, its governing bodies set FAO's five major priorities for work during the 1993-1995 biennium as:

1. environment and sustainable development;
2. policy advice;

5. The phrase "freedom from hunger" was added to the FAO Constitution in 1965 in response to Article 11 of the then draft Covenant on Economic, Social and Cultural Rights (States Parties to the Covenant recognize the fundamental right of everyone to be free from hunger). The United States is not a party to this Covenant. *See also*, Art. 25, 1948 Universal Declaration of Human Rights (everyone has right to adequate standard of living, including food).

6. *Report of the 13th Session of the Committee on Agriculture*, Rome, 27-31 March 1995, at paragraph 21 (reported to the 108th session of the Council, held 5-16 June 1995) ("COAG—CL 108/9").

7. Agenda 21 was adopted as a plan of action for sustainable development by the countries attending the United Nations Conference on Environment and Development (UNCED), which was held in Rio de Janeiro, Brazil, in June 1992.

8. COAG—CL 108/9, at paragraph 49.

3. people in development;
4. poverty alleviation, nutrition and food security; and
5. technical and economic cooperation among developing countries.⁹

Like other actors in the field of international development, FAO has attempted to streamline its operations to focus on those areas in which it feels it has a comparative advantage and where it can play a catalytic role. Areas in which FAO feels it has a comparative advantage include providing high quality global agricultural statistics, information, analysis, national policy advice and national technical assistance.¹⁰

FAO also participated actively in the preparation of the United Nations Conference on Environment and Development (UNCED), held in June 1992. Like other development organizations and UN specialized agencies, FAO's structure, strategy, priorities and programs were profoundly shaped by the decisions at UNCED and by the continuing follow-up program within the UN system as a whole through the work of the UN's Commission on Sustainable Development (CSD).

II. Achievements of FAO

FAO's efforts in collaboration with other UN specialized agencies and its member nations have enabled the world to produce, distribute and consume more and better food than was possible at the end of World War II. In addition to these development achievements, FAO, especially through its distribution of food for the World Food Program (WFP), has played a significant role in famine relief in the Sahel, Somalia, Rwanda and Bosnia, among other countries.

Past efforts by FAO and its member nations have improved the food security and nutrition situation at global, national, regional and household levels. FAO has fulfilled its role through collection and dissemination of information, promotion of appropriate international and national action, and provision of technical assistance. FAO's achievements have come in areas where it has the best specialized technical competence and a normative role. Its normative role manifests itself in the formulation and implementation of harmonized¹¹ standards and international agreements in the fields of food and agriculture. Notable areas of achievement are highlighted below.

9. C 93/REP, at paragraph 172. See also COAG—CL 108/9 at paragraph 9 (overriding priorities are food security and SARD).

10. See, COAG—CL 108/9, at paragraph 20; COFI—CL 108/7, at paragraphs 50 and 52 (FAO's role especially important to build capacity at national and regional levels); and *Report of the 12th Session of the Committee on Forestry*, Rome, March 13-16, 1995, at paragraph 28 (reported to the 108th session of the Council, held 5-16 June 1995) ("COFO—CL 108/8").

11. The word "harmonized" means similar or consistent but not uniform.

A. COLLECTION AND DISSEMINATION OF INFORMATION ON NUTRITION, FOOD AND AGRICULTURE

Over the past fifty years, FAO has excelled in its function to collect, analyze, interpret and disseminate information on nutrition, food and agriculture. Information developed by FAO is disseminated freely, especially to member nations, and this practice has multiplied the impact of this information.

1. *Statistical Databases and Technology for Monitoring Trends in and Improving Food and Agriculture*

FAO is the world's leading organization for statistics and computer software on matters related to nutrition, food and agriculture. The well-known Global Information and Early Warning System (GIEWS), jointly operated by FAO with the World Meteorological Organization (WMO), provides timely warnings of impending food shortages through a continuous flow of reliable and up-to-date information on the supply of basic foodstuffs.¹² Other programs provide information on agriculture (WAICENT),¹³ water management (AQUASTAT),¹⁴ and irrigation (SIMIS).¹⁵ A major goal of FAO's information gathering system is to improve the quality of national information provided by its member nations.

2. *National Legislation*

FAO collects and disseminates information on legislation related to food and agriculture in its member nations.¹⁶ It maintains a central databank consisting of about 118,000 legislative texts, indexed by subject and by country. FAO annually publishes summaries of the year's most important national legislation in the periodical, *Food and Agricultural Legislation*.

3. *Reports on the State of Food and Agriculture*

FAO's reports on the state of food and agriculture to the Conference, the world's agricultural summit, are invaluable benchmarks used in the evaluation

12. GIEWS also helps monitor climate changes, assisting member nations to take appropriate actions to deal with food shortages. Over 100 countries now participate in GIEWS, which has been operating since 1975.

13. The Council has urged FAO to provide electronic access to the information sources, strengthen capacities of member countries in accessing the information, develop national systems so that national data could be readily transferred to the World Agricultural Information Centre (WAICENT) system, and consult with information users of WAICENT. COAG—CL 108/9, at paragraph 31.

14. AQUASTAT is a global database on water use in rural development which will contribute to better water management by consolidating and making available information on irrigation, water drainage, environmental impact of water resources development and water balance in rural areas worldwide.

15. Scheme Irrigation Management Information System (SIMIS) is designed to help reduce water losses in irrigation.

16. Under Art. XI.i of the Constitution, all member nations and associate members are required to communicate regularly to the Director-General the texts of published laws and regulations pertaining to matters within the competence of the Organization which the Director-General considers useful for the purposes of the Organization.

of not only agriculture and rural development in the world but also global economic and social development.¹⁷

B. PROMOTION AND RECOMMENDATION OF NATIONAL AND INTERNATIONAL ACTION IN ITS SPECIFIED SPHERE OF COMPETENCE

FAO has fulfilled its function to promote and recommend national and international action not only by developing international and national law on these matters but also by mobilizing international cooperation and funding within its sphere of competence through proposed action programs and international conferences.

1. *Development of Standards and International Agreements Concerning Food and Agriculture*

FAO contributes directly to the evolution of international law regarding food and agricultural matters through the formulation and adoption, under its auspices, of influential nonbinding legal instruments and proposed international agreements. Through its participation in joint programs with other UN agencies and its function as secretariat for important international programs, FAO also influences the codification of international standards. In addition, FAO's Conference may make nonbinding recommendations to members concerning questions relating to food and agriculture.¹⁸ Conference resolutions represent careful negotiation by governments of member nations and are binding mandates for the governing bodies of FAO. A member nation's acceptance, through its usual ratification or other national procedure, makes these agreements, standards and recommendations legally binding on that particular nation.¹⁹

a. International Agreements Regarding Food and Agricultural Matters

FAO has actively assisted the development of international law regarding food and agricultural matters. Under its auspices, member nations have successfully negotiated binding international agreements.²⁰ These include the Agreement to Promote Compliance with International Conservation and Management Measures

17. See, e.g., CL 107/REP, at paragraphs 7-11 (considering the State of Food and Agriculture 1994, report of the 19th session of the Committee on World Food Security, 22-25 March 1994, Rome, which notes that the global food security situation deteriorated further in 1994 and that commitments of external assistance to agriculture had declined in real terms in recent years).

18. Art. IV.3 of the FAO Constitution.

19. International agreements adopted under Art. XIV of the FAO Constitution are accepted by member nations through their usual ratification procedures. Standards adopted by the Codex Alimentarius Commission, whether or not they have been accepted by member nations, are recognized under Article 3(2) of the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures ("WTO's SPS Agreement") (April 15, 1994) as valid and do not constitute nontariff trade barriers.

20. Under Art. XIV of the FAO Constitution, the Conference or the Council may adopt, by a two-thirds majority vote, conventions and agreements concerning questions relating to food and agriculture. These become binding on member nations once they have been ratified by the members concerned.

by Fishing Vessels on the High Seas ("Compliance Agreement")²¹ and the International Plant Protection Convention.²² Other agreements have fostered technical progress and cooperation on food and agricultural matters.²³

b. Food Safety Standards

The Codex Alimentarius, a trade standardization program jointly proposed and planned by FAO and WHO, sets nonbinding²⁴ international food product safety and quality standards for pesticides and bacterial residues, food additives and food preservation methods.²⁵ These codes of practice, guidelines and other recommended measures, particularly MRLs for pesticides or veterinary drugs in food, are widely used by developing countries, especially in the absence of national legislation, to guide their policy, legal and enforcement actions to protect the health of their consumers and ensure fair practices in the food trade.

c. Codes of Conduct

Nonbinding instruments such as the International Undertaking on Plant Genetic Resources and the International Code of Conduct on the Distribution and Use of Pesticides,²⁶ have been very influential among member nations once approved by the Council and adopted by the Conference. While these instruments are voluntary, they are widely adhered to and FAO's Development Law Service

21. Approved in November 1993 by the 27th session of the FAO Conference, the Compliance Agreement is not yet in force. As of January 1995, the Compliance Agreement had been ratified by Canada, Georgia, Madagascar, Myanmar, Norway, St. Kitts and Nevis, and Sweden.

22. The International Plant Protection Convention (IPPC) came into force in 1952 and was revised in 1979, by Resolution 14/79 at the 20th session of the FAO Conference. As of September 1994, 102 countries, including the U.S., were parties to the IPPC which guides member nations in plant quarantine matters. Like the Codex Alimentarius Commission's standards, phytosanitary standards adopted by the FAO Conference under its established IPPC procedures are also recognized under WTO's SPS Agreement as valid and do not constitute nontariff trade barriers.

23. Examples include the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia and the Pacific, the Agreement for the Establishment of the General Fisheries Council for the Mediterranean, numerous regional fisheries agreements, and regional plant protection agreements such as the Agreement for the Asia and Pacific Plant Protection Commission.

24. As noted above, note 19, while not binding, the Codex standards have some indirect legal force under the WTO's SPS Agreement.

25. A joint secretariat operates the program under the intergovernmental guidance of the joint FAO/WHO Codex Alimentarius Commission (CAC), which was set up under Art. XVI of the FAO Constitution. To date, 200 standards, 40 codes of practice and guidelines, and 2000 maximum residue limits (MRLs) have been finalized.

26. Others include the International Code of Conduct for Plant Germplasm Collecting and Transfer (adopted by the FAO Conference at its 27th session in November 1993); the International Code of Conduct on the Import and Release of Exotic Biological Control Agents (approved by COAG for forwarding to the Council for approval and to the Conference for adoption in 1995; *see*, COAG—CL 108/9, at paragraph 52); and the most recent, the International Code of Conduct on Responsible Fishing which was drafted under the auspices of FAO and is on a fast track for approval by the FAO Conference in October-November 1995. Certain provisions of the latter will have been given legal effect by means of other binding legal instruments among the parties, such as the Compliance Agreement discussed above.

actively assists member nations, especially developing countries, to implement their provisions in national legislation.

2. *Improvement of Education and Administration Relating to Nutrition*

The FAO-organized International Conference on Nutrition (ICN) in December 1992 adopted specific goals on nutrition for the world's population. The main responsibility for followup activities under this World Declaration and Plan of Action for Nutrition lies with the governments of member nations. To enable member nations to fulfill the ICN's goals, FAO has established two new Special Action Programs which build on past support²⁷ and strengthen FAO's capacity to assist member nations in developing, implementing and monitoring food security and nutrition plans and programs.²⁸ In addition, the Council has approved a special program for pilot projects to assist low-income food-deficit countries in attaining a higher degree of food self-reliance by developing local food production in support of food security.²⁹

3. *Improvement of Methods of Production, Conservation and Distribution of Food*

Over the past fifty years FAO has enabled member nations to steadily improve methods of animal and plant production and conservation as well as distribution of food. Three means of doing so, improvements in disease control, protection of genetic resources, and sustainable development, are highlighted below.

a. Control of Diseases

Improved control methods developed by FAO and the development of forms of immunization by FAO as a means of combatting animal diseases have been adopted in many regions of the world. Research pioneered and supported by FAO led to the development of environmentally benign methods of tsetse eradication and control. FAO's ongoing regular and field programs have led to improved long-term prevention and control programs. In addition, FAO's programs in plant, pest and animal disease control have mobilized national and multilateral responses to transboundary disease emergencies, thus protecting U.S. and non-U.S. agriculture from potentially costly losses.³⁰

27. Support in the past has come under the Food Security Assistance Scheme (FSAS). FSAS was set up in 1976 to help developing countries map out their national food security policies, identify projects and mobilize funds. Projects financed under FSAS were directed mainly towards setting up or expanding food storage facilities at national level, training to improve food stock management and establishing and improving national early warning systems.

28. C 93/REP, at paragraph 71.

29. *Director-General's [September 1994] Report on Implementation of Decisions Taken by the Council at its 106th Session*, at paragraphs 4-10 (reported to the 107th session of the Council, held in Rome from 15-24 November 1994) ("DG—CL 107/14").

30. In the 1970s FAO stopped the spread of swine fever in the Dominican Republic which prevented the decimation of the swine industry in the U.S. The eradication efforts cost approximately US \$25 million and saved several billion US dollars. Fifty years of progress in the field enabled

b. Improvement and Protection of Genetic Resources

Research and assistance from FAO has resulted in the wide and increasing use of high-yielding varieties of crops, leading to greater food security. FAO plays a fundamental role in improvement of production, conservation and distribution of food crops through its Global System for the Conservation and Sustainable Use of Plant Genetic Resources and its implementation of the International Undertaking on Plant Genetic Resources. It is expected that these will be expanded to include animal genetic resources.³¹

c. Sustainable Development of Food and Agriculture

FAO's work programs and budgets have subsumed, under the term "sustainable development," FAO's specific mandates in improving food and agriculture, adopting improved methods of agricultural production, conserving natural resources, and improving the processing, marketing and distribution of food and agricultural production. The FAO Conference launched the International Cooperative Framework for Sustainable Agriculture and Rural Development (ICPF/SARD) in November 1991 to assist and encourage the sustainable development of agriculture. While FAO has begun responding to its governing bodies' requests for better analytical information, benchmarks and program implementation criteria for the ICPF/SARD, the success of this framework has yet to be evaluated fully. Other FAO programs have benefited rural farmers with the conservation and utilization of plant genetic resources, the prevention of land degradation, the restoration of productivity of degraded lands, the promotion of integrated plant nutrient systems, and the increased efficiency of water management and use for agricultural purposes.

C. PROVISION OF TECHNICAL ASSISTANCE

FAO has assisted countries with policy, technical and legal advice as well as training on nutrition, food and agricultural matters. The Development Law Service within FAO's Legal Office is the focal point for the legal aspects of the development process within FAO's mandate. It offers a broad range of legal advice on agriculture and renewable natural resources management to both member governments and in-house FAO technical units. The Service also advises and assists its member nations, especially developing countries, with the review,

FAO's Council recently to approve the Emergency Prevention System (EMPRES) for Transboundary Animal and Plant Pests and Diseases, focusing on locusts and rinderpest. The desert locust component of EMPRES will implement early warning and survey activities in the Horn of Africa and Arabia in 1995. The animal diseases component will strengthen FAO's capacity for global monitoring of rinderpest and the causal virus with the eventual goal of global rinderpest eradication. DG—CL 107/14, at paragraphs 11-18.

31. See, CL 107/REP, at paragraphs 86-92.

analysis and drafting of appropriate national legislation in a particular field of natural resources management. The Service also conducts training, collects and disseminates legal information, performs legal research and writing, and contributes to the development of international legal instruments. Approximately thirty countries in any one year receive assistance with the drafting of laws to manage forest, water, food, land, animal, plant, environment, fish and other resources.

III. Shortcomings of FAO

The world's major problems in food, nutrition and sustainability require coordinated action, both immediate and long-term, at national and international levels in order to attack the root causes of persistent food insecurity. It is not surprising that FAO has failed to achieve or make progress on some of its broad aims which, by definition, require extensive and intensive coordination with other bodies. FAO has recently taken steps to address problems perceived in its management, personnel and budgetary practices which have limited its capacity to deliver its program and project services. Finally, FAO has found itself diverting scarce development resources to sometimes duplicative humanitarian and emergency relief.

A. IMPROVING COORDINATION AND AVOIDING DUPLICATION OF FUNCTIONS

There is a continuing need for a broad participation of multilateral, bilateral, donor agencies and nongovernmental organizations to fulfill FAO's mandate as the core agency for food and agriculture.³² Too often, however, statements of cooperation do not translate into consolidation, synthesis or coordination in practice. Duplication of efforts, whether resulting from lack of coordination or institutional infighting, waste time and money on the part of FAO and of the institution within a member nation which executes an FAO project. In addition, coordination, especially in response to emergencies, is sometimes done at the UN level by interagency representatives at the expense of rapid action at the country and field levels.

Particularly close cooperation is needed between the three Rome-based food and agriculture organizations of the UN system, in view of their related and

32. FAO formally coordinates its work with, among others, UN Economic and Social Council (ECOSOC) on food aid, restructuring and Women in Development; GATT/WTO and UNCTAD on free trade, economic development and commodity prices or agreements; WHO on Codex Alimentarius, ICN and AIDS; IAEA on food irradiation; and WMO on global early warning systems. For recommendations on consolidation, synthesis and coordination within the UN system to meet the need for a wider support base, see generally, Childers and Urquhart, *Renewing the United Nations System* (1994) ("Renewing the UN System").

complementary mandates: FAO, IFAD³³ and WFP.³⁴ The Conference has also highly recommended that FAO strengthen its cooperation on funding issues within the UN system. Specific cooperative agreements have been reached with UNDP and the World Bank for work on food security and, with the latter, also on investments.³⁵

Past efforts have been made to address organizational overlap and duplication in the UN system by sharing information and consultants among various agencies, e.g., among FAO, UNEP, the World Bank and environmental NGOs in the field of environment and natural resources management.³⁶ Member governments and UN agencies can do more, however, to avoid duplication, ensuring that mandates do not overlap and are mutually reinforcing.

B. OVERCOMING MANAGEMENT AND PERSONNEL PROBLEMS AND AN INABILITY TO TRANSLATE INFORMATION EFFECTIVELY INTO THE FIELD

With the election of a new Director-General in November 1993, FAO entered a long-awaited period of reform directed at a role as a decentralized, efficient, transparent and accountable provider of expertise and advice on food and agricultural matters. FAO's new Director-General has initiated, and the FAO Council has approved, far-reaching proposals to streamline, restructure and progressively

33. The Agreement establishing the International Fund for Agricultural Development (IFAD) as a specialized agency with capital funding operations was adopted on June 13, 1976, by a Conference of Plenipotentiaries, based on Resolution XIII of the World Food Conference in November 1974. After high-level consultations, the Director-General expected a 25% expansion in the joint program of work for FAO and IFAD in 1994. *See*, CL 107/REP, Appendix D "Statement by the Director-General."

34. The World Food Program (WFP) is the UN system's largest single source of grant assistance. FAO handles distribution of food for WFP. The regular pledging target for WFP's biennium is recommended by governments in the Committee on Food Aid Policies and Programs (CFA) and separately endorsed by the FAO Council for approval by the Conference and by ECOSOC for approval by the UN General Assembly. Both FAO and ECOSOC select members of WFP's standing committees. WFP accounts for about half of total grant expenditure for operational activities in Africa, was the largest provider of grant assistance for environmental activities in developing countries and the largest purchaser of food and services from them. Concern has been expressed that the balance of WFP resources has swung increasingly toward emergency operations with a corresponding decrease in development projects. *See*, C 93/REP, at paragraphs 217-220.

35. The existing cooperation program with the World Bank was reviewed in April 1994. Under the program, FAO's Investment Center assesses proposed investment projects of development banks, such as the World Bank and the Asian Development Bank, in the agricultural sector. As of November 1994, FAO was involved in 55 investment projects in 38 countries. *See*, CL 107/REP, at paragraph 104 and Appendix D, "Statement of the Director-General."

36. *See also*, Resolution 7/93, adopted by the 27th session of the Conference of FAO, C 93/REP, at paragraphs 105-108 (the Conference directed FAO through the Commission on Plant Genetic Resources to harmonize the International Undertaking on Plant Genetic Resources with the provisions of the Convention on Biological Diversity in a manner which does not duplicate the work of the governing body of that Convention) and COAG—CL 108/9, at paragraph 62 (FAO's Council recently directed FAO to collaborate closely with UNEP in developing a legally binding instrument on the Prior Informed Consent (PIC) procedure which would be consistent with GATT principles).

decentralize FAO's operations.³⁷ The process of formulating, adopting and implementing these changes has been slowed by extensive consultations with member nations and within FAO³⁸ and by management decisions such as the one to fill post vacancies and, recently, consultancies only with qualified candidates from unrepresented countries. FAO's governing bodies should continue to scrutinize this reorganization to ensure that it meets needed goals.

One of FAO's strengths is the sheer breadth of available human expertise on a range of technical subjects which have as their objective the sustainable satisfaction of basic human needs in rural areas. FAO's effectiveness depends on attracting and retaining high quality and dedicated professionals in these specialized fields through improved personnel practices, especially recruitment and advancement, on the basis of capability and performance. The success or failure of ongoing reorganization, restructuring and decentralization initiatives should be monitored continuously to ensure that FAO's information is maintained, updated, disseminated in the field and, most importantly, transferred through training and capacity-building to member Governments and others in the field.

C. REDRESSING WEAK BUDGETARY PRACTICES

The FAO Conference approves FAO's budget. Like other UN specialized agencies, FAO receives comments on its budget from the ACC, which is composed of the UN Secretary-General and the heads of the specialized agencies and IAEA. Since the UN Charter and Article XIV of the Agreement between the United Nations and FAO provide for close budgetary and financial relationships with the United Nations, more transparent budgetary approval procedures and greater governing body oversight should be encouraged within the context of overall reform of the UN system.

From July 1994 on, the Director-General initiated an internal audit of all Regional Offices, FAO Country Representations and Liaison Offices, "perhaps the most comprehensive internal audit undertaking ever performed within the UN system."³⁹ This internal audit permitted the evaluation of FAO's operations to date and contributed to the formulation of the streamlining discussed above. Although there is a progressive trend,⁴⁰ it is too early to tell whether significant downsizing and cost-

37. See, DG—CL 107/14, at paragraphs 19-24 (changes include internal restructuring of key FAO divisions; strengthening of regional offices; establishment of a cadre of national professional officers in country representation offices; and redeployment of staff in joint divisions with the UN Regional Economic and Social Commissions).

38. Due to budgetary constraints, posts have been frozen effectively for several years now and new hiring is at a virtual standstill. Numerous divisions are understaffed and human resources are not available to fulfill redirected regular program activities or additional tasks to follow up UNCED and the International Conference on Nutrition.

39. DG—CL 107/14, at paragraph 32.

40. See, CL 107/REP, at paragraphs 196-204 (as part of a continuing process to improve both cost-efficiency and the effectiveness of FAO's governing bodies, the Council endorsed generally proposals made in the Director-General's Review of the Working Methods of the Conference streamlining future meetings in timing, duration and agenda).

saving measures will be implemented. FAO's governing bodies should continue to monitor carefully implementation of the recommendations from this internal audit.⁴¹

Despite timely payments in recent years, U.S. arrears, accumulated in the mid-1980s, amount to almost one year's dues. Since the U.S.'s contribution is 25% of FAO's budget, the failure to pay dues in full and on time has serious consequences for FAO's regular program.⁴² That program is approved and adopted by FAO's governing bodies with U.S. participation. More fundamentally, this failure violates the U.S.'s legal obligations under the FAO Constitution. It also starts to place the U.S. at risk of losing its vote in the FAO Conference. The FAO Constitution provides that members who are two years or more in arrears lose their right to vote.⁴³ For all of these reasons, the U.S. Congress should appropriate the full amount of the U.S. contribution, and the U.S., like all other FAO members in arrears, should continue to pay off its arrears as soon as possible.

A January 1994 report by GAO stressed the need for additional governing body oversight of the technical cooperation program.⁴⁴ Since the GAO report, a Technical Cooperation Department has been established within FAO to implement the operational side of its project activities. Progress in reforms and responses to GAO recommendations should continue to be monitored.

D. MONITORING, EVALUATING, FOLLOWING THROUGH AND FOLLOWING UP ACTIVITIES

Some of FAO's activities have either not been implemented in a satisfactory manner or cannot be evaluated for lack of monitoring and evaluation criteria.⁴⁵

41. The Office of Internal Audit, Inspection and Management Control is attached directly to the Director-General's Office within FAO's administrative structure. This office undertook the internal audit. A separate audit report by the External Auditor who is appointed by the Council which reviewed the financial statements of the regular program and UNDP for the biennium 1992-93 highlighted the need to balance delegation of authority to the field offices and retain adequate control and review by headquarters, particularly during the proposed internal changes. FAO intends to publish a manual of financial rules and procedures which would reflect both the authority and powers delegated at each level and the corresponding levels of responsibility and accountability. Controls were recommended to identify cases of noncompliance with headquarters policy and procedures. Additional training for field personnel in financial reporting requirements, adequate use of imprests and administrative procedures was recommended. See, CL 107/REP, at paragraphs 150-154.

42. See, CL 107/REP, at paragraphs 140-149.

43. See, CL 107/REP, at paragraphs 205-209.

44. See, *Foreign Assistance: U.S. Participation in FAO's Technical Cooperation Program*, GAO/NSIAD-94-32, January 1994.

45. For example, after a reevaluation of FAO's activities in following up the 1980 World Conference on Agrarian Reform and Rural Development (WCARRD), FAO's current activities emphasize improving monitoring and evaluation (to redress the failure to develop a meaningful database from the years of country reports to date); implementing the Minimum Plan of Action in Africa (to remedy through training WCARRD's technical failures in Africa); and continuing regular program activities to implement WCARRD's goals (to provide research and extension and to assist with policy formulation, especially in rural land markets). See, "Report of the Expert Consultation on Reorganization of Agrarian Structures in Rapidly Changing Economic Environments," FAO, Rome, 12-14 December 1994.

Some member nations have stressed the need for a better balance between regular program and field activities. More flexible project design, effective monitoring and frequent review of implementation are needed.⁴⁶ Separate Program Implementation and Evaluation Reports, introduced to the FAO Conference in 1993, are an important step in redressing this shortcoming.⁴⁷

Other activities cannot be evaluated or monitored because of inadequate information gathering and dissemination. FAO's overreliance on member nations' official figures and statistics is one factor and communications with FAO are another. Steps are being taken to improve FAO's communications⁴⁸ and national capacities in this respect. Additional programs to address this shortcoming are new cooperation agreements for the use of experts for Technical Cooperation among Developing Countries (TCDC), cooperation among countries in transition in Central and Eastern Europe and cooperation with academic and research institutions in the developed countries.⁴⁹ Further upgraded communication and computer technology to support member nations and put more timely information on line should be considered.

E. AVOIDING DIVERSION OF RESOURCES FROM DEVELOPMENT TO HUMANITARIAN AND EMERGENCY RELIEF

Because of its core mandate in food, FAO continues to play an essential role in the coordinated efforts of the UN system to provide humanitarian and emergency assistance and in the continuum from relief to rehabilitation and development.⁵⁰ FAO's role includes assessing needs for food as well as for agricultural relief and rehabilitation, especially in areas affected by war or civil strife. Crop and food supply assessment missions carried out jointly by FAO and WFP as well as GIEWS are crucial to fulfilling this role. However, meetings and reports on coordination of humanitarian assistance to which FAO has been called upon to contribute have increased considerably and such emergency actions have a high cost. FAO is not a famine relief organization. Its efforts to sustain funding for development in human resources, institutions and infrastructure, which could help prevent emergencies and disasters, should be emphasized instead.

46. COFO—CL 108/8, at paragraph 37.

47. C 93/REP, at paragraphs 145-151.

48. The project concerning field information technology infrastructures, aiming at providing Wide Area Network services to all FAO office locations, is proceeding "according to schedule." Internal coordination, physical deployment and training are being addressed. DG—CL 107/14, at paragraphs 35-37.

49. CL 107/REP, at paragraphs 118-120. *See also*, Appendix D, "Statement by the Director-General," CL 107/REP (as of November 1994, twenty-six (26) member nations had signed the TCDC agreement).

50. For a discussion of recommendations to strengthen the UN system's capacities to respond to humanitarian emergencies, *see*, *Renewing the UN System*, *supra* note 32, at Chapter VII (Humanitarian Emergency Capacities).

IV. Conclusions and Recommendations

Continued U.S. support to FAO benefits the U.S. directly. Enhancing food security and nutrition, especially in developing countries, through sustainable agriculture and rural development contributes to overall economic development in those countries. This decreases future dependence of those countries on financial resources of the U.S. In addition, countries which sustain agriculture and rural development become potential trading partners and export markets for the U.S. FAO also promotes activities around the world that are extremely important to the U.S. such as standardization of food product safety which benefits the U.S. in particular as a country whose food exports are expected to exceed US \$42 billion in 1995.

The American Bar Association therefore recommends that the U.S. government continue to support FAO strongly including its activities in setting international standards and providing technical assistance in drafting and implementing appropriate national legislation, encourage its restructuring, strengthen its transparency and accountability, and endorse the clarification of its role within the UN system.

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Respectfully submitted,
Jay M. Vogelson