



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

Продовольственная и
сельскохозяйственная
организация
Объединенных
Наций

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COUNCIL

Hundred and Thirty-fifth Session

Rome, 17 – 18 November 2008

REPORT OF THE EIGHTY-THIRD SESSION OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS (CCLM) Rome, 29 – 30 September 2008

I. INTRODUCTION

1. The Eighty-third Session of the Committee on Constitutional and Legal Matters (CCLM) was held on 29 and 30 September 2008. All the Members of the Committee, as listed below, were represented:

Chile, Gabon, Indonesia, Lesotho, Netherlands, Syrian Arab Republic,
United States of America

II. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

2. The Committee elected Mr. Julio Fiol (Chile) as Chairperson and Mr. Theo van Banning (Netherlands) as Vice-Chairperson.

3. The Committee decided to open the meeting to silent observers. It was agreed to apply strictly the rule of silence for observers. It was noted further that, on a case-by-case basis, the Committee might have to decide in future not to open meetings to observers for the discussion of specific topics.

III. PRELIMINARY REVIEW OF AMENDMENTS TO THE BASIC TEXTS FOR THE IMPLEMENTATION OF THE IMMEDIATE PLAN OF ACTION FOR THE FOLLOW-UP TO THE INDEPENDENT EXTERNAL EVALUATION OF FAO

4. The CCLM recognized that it would have an important role to play in reviewing proposed amendments to the Basic Texts for the implementation of the Immediate Plan of Action for the Follow-Up to the Independent External Evaluation of FAO and that it was important that its work should be organized in an efficient manner as to make the most of available time and resources throughout 2009.

5. The CCLM noted the information provided in document CCLM 83/2 which was examined in conjunction with the draft Immediate Plan of Action under negotiation.

6. The CCLM addressed first a number of general issues that need to be fully appreciated by the Council and the membership at large. The CCLM noted that what is commonly referred to as “*Basic Texts*” is in fact a rather comprehensive set of legal instruments of different nature contained in two volumes. Volume I comprises the Constitution of FAO, the General Rules of the Organization, the Financial Regulations, as well as the Rules of Procedure of the Council and committees of the Council whereas Volume II includes a number of resolutions and decisions of the Conference on important matters.

7. The implementation of the actions of the Immediate Plan of Action may result eventually in the amendment of many provisions in both Volumes of the Basic Texts in the context of an adjustment of all instruments involving the relevant competent bodies. There will be a need to distinguish between matters that have to be addressed as soon as possible after the Special Session of the Conference either because of their importance, or because of any decisions of the Conference that some amendments should be adopted as a matter of priority, or where the Basic Texts as they stand could constitute impediments to the implementation of agreed actions, and matters that could be addressed subsequently.

8. The Committee noted also that there is hierarchy between the instruments which form part of the Basic Texts, the Constitution being the most important one. The General Rules of the Organization and the Financial Regulations implement the basic provisions of the Constitution and must be consistent with constitutional provisions. The Rules of Procedure of the Council and of the committees must also be consistent with that framework. The CCLM stressed that this could imply in some cases a particular sequence in the process of amendment of the Basic Texts.

9. While noting that the structure of FAO was a complex one, that it included many governing and other statutory bodies with differentiated terms of reference, as well as the fact that many provisions of the Basic Texts were the result of a long evolution, the CCLM recommended that, as far as possible, every effort be made with a view to simplifying a number of provisions. References were made, as an example, to Rule XXIV of the General Rules of the Organization regarding the functions of the Council. The secretariat advised that as far as possible it would seek to provide information on the underlying philosophy of some provisions as well as on their history. The CCLM also recommended that consistent with good legal practice, any amendments to the Constitution should be drafted in a short and concise manner. Amendments to other instruments should be drafted also adhering to principles of coherence and consistency, as well as transparency.

10. The CCLM also noted that there were distinct procedural requirements for the amendment of the Basic Texts with particular reference to the Constitution, the General Rules of the Organization and the Financial Regulations which were explained in detail in document CCLM 83/2. In this regard, the CCLM emphasized that, under Article XX, paragraph 4 of the Constitution, no proposal for amendment of the Constitution may be included in the agenda of any session of the Conference unless notice thereof had been despatched by the Director-General to Members at least 120 days before the opening of the session. Therefore, in order for the Conference to be able to adopt any amendments to the Constitution in November 2009 notice of such amendments would have to be despatched by the Director-General to the membership at the latest in July 2009. In order for this deadline to be met the CCLM underlined that it would be desirable that any required proposed amendments to the Constitution should be examined as early as possible in 2009. The CCLM considered that, as far as practicable, all amendments should be ready for review by the Council at its session of June 2009.

11. The CCLM welcomed the proposal under negotiation that a Conference Committee for Implementation of the Immediate Plan of Action be established under Article VI, paragraph 1 of the Constitution by the Conference at its forthcoming Special Session. The Conference Committee would provide policy oversight and guidance to the process of review of the amendments to the Basic Texts in line with the changes provided for in the Immediate Plan of Action. The CCLM noted that the Conference Committee, whose functions would be without prejudice to the statutory responsibilities of the Council and the CCLM, would allow the CCLM to receive appropriate guidance on issues that might arise, including for the clarification of some matters, as required.

12. The CCLM also noted, in this connection, that there would be a need for flexibility in the organization of its proceedings throughout 2009. The CCLM concurred with a proposal of the secretariat that, with a view to making the most of available time and resources, it would be preferable for it to hold as many short sessions as required to review the proposed amendments to the Basic Texts.

13. The CCLM examined document CCLM 83/2- Add.1 prepared in response to concerns voiced in the course of discussions held so far within the Conference Committee for the Follow-up to the Independent External Evaluation of FAO and its Working Groups, as to the possibility that the Basic Texts, as they stand at present and prior to their amendment at the session of the Conference in November 2009, might constitute impediments to the implementation of some actions which it is proposed to implement immediately after the adoption of the Immediate Plan of Action. Two specific issues were brought to the attention of the secretariat i.e. the issue of the reporting lines of the technical committees of the Council and that of the proposed change in the budget process and structure.

14. As regards **the issue of the reporting lines of the technical committees of the Council**, the CCLM noted that such reporting lines are set forth in Article V, paragraph 6 of the Constitution whereby the Council is assisted by the technical committees and that these committees report to the Council. It is proposed that the recommendation that they should report on programme and budget matters to the Council and on policy and regulatory matters to the Conference be implemented immediately, notwithstanding the provisions of the Constitution.

15. The CCLM noted that document CCLM 83/2-Add. 1 examined two options to address this matter. Under one of the options, given the proposed schedule of sessions of the technical committees during the first part of 2009, of the Council in June 2009 and of the Conference in

November 2009, no difficulties would arise in practice as it would be possible anyway to refer the reports to the Council and to the Conference through the Council. Under another option, pending the adoption of an amendment to Article V, paragraph 6 of the Constitution, the committees would report directly both to the Council and the Conference on the respective areas concerned, provided that this should be explicitly mentioned in the Conference resolution under negotiation.

16. The CCLM noted that under Article IV, paragraph 5 of the Constitution the Conference may review any decision taken by the Council or by any commission or committee. Therefore, the CCLM recommended that, for the sake of clarity, it would be preferable that the Conference resolution under discussion make provision for the technical committees to report immediately to the Conference on policy and regulatory matters and to the Council on programme and budget matters.

17. As regards the issue of **the immediate implementation of changes to the Programme of Work and Budget process**, the CCLM noted that it was envisaged that the Organization should develop during the course of 2009 a Strategic Framework, a Medium-Term Plan 2010-13 and a Programme of Work and Budget 2010-11 under the new integrated results-based framework. The CCLM noted that an issue of a legal nature arose insofar as, at present, the General Rules of the Organization, and to a lesser extent, the Financial Regulations make provision for a two-step procedure for the preparation of the Programme of Work and Budget through the submission of a summary Programme of Work and Budget and a draft Programme of Work and Budget for review by the Programme and Finance Committees, the Joint Meetings of the Programme and Finance Committees and the Council. The question had been raised as to whether this two-step procedure must be followed until the adoption of the relevant amendments to the General Rules of the Organization and the Financial Regulations.

18. The CCLM reviewed the matter in the light of the information provided in document CCLM 83/2-Add. 1. The CCLM noted that past changes to the Programme of Work and Budget process had been implemented on an experimental basis pending the adoption of the required amendments to the Basic Texts, in accordance with decisions of the Conference. This had been the case both with the introduction of the outline Programme of Work and Budget, which was implemented in 1989 and 1991, prior to the amendment of the General Rules of the Organization in November 1991 and the introduction of the summary Programme of Work and Budget implemented in 1973 pending the adoption of amendments to the General Rules of the Organization by the Conference in 1975. The CCLM concluded that the same approach should be followed in respect of the implementation of the new Programme of Work and Budget 2010-11. Therefore, the CCLM recommended that the proposed changes to the planning and budgetary process be implemented immediately after the adoption of the Immediate Plan of Action and that this be reflected in the Conference resolution adopting the Immediate Plan of Action.

19. On the basis of the information available at the time of its session, the CCLM did not consider that there would be impediments to the implementation of the actions of the draft Immediate Plan of Action foreseen to be implemented in 2009.

20. Aside from the above specific situations, the CCLM noted in general terms the actions set out in the Immediate Plan of Action and the proposals contained in document CCLM 83/2. While noting that eventually there would be a need to have a consolidated document setting out all amendments to the Basic Texts, it concurred with a proposal that proposed amendments be examined at its forthcoming sessions on the basis of thematic areas as identified in document CCLM 83/2 or in line with the recommendations of the Immediate Plan of Action. The

secretariat could submit for review by the CCLM sequential sets of documents containing proposed amendments to the Basic Texts. This would also allow the Conference Committee for Implementation of the Immediate Plan of Action to provide general policy guidance to the CCLM. As appropriate the secretariat could also draw the attention of the CCLM to issues requiring clarification, as well as options that could be considered to implement specific actions. In addition, there could be several legal options to address specific topics. The CCLM would decide whether guidance on specific issues from Conference Committee would be required.

21. The CCLM realized that while many proposed actions set out in the Immediate Plan of Action did require amendments to the Basic Texts, others could be addressed through the establishment of particular practices or working methods and the adoption of resolutions or other documents by the Conference. In addition, actions set out in the Immediate Plan of Action were either allowed or addressed under the existing Basic Texts. The CCLM stressed that this should be kept in mind throughout the process. The CCLM requested the secretariat to propose criteria for a distinction between matters to be addressed through formal amendments to the Basic Texts and matters to be dealt with through Conference resolutions or other documents.

22. The CCLM concurred with a proposal that after the forthcoming Special Session of the Conference it should have an informal meeting at the end of November 2008, which would allow the secretariat and the Members to have a better idea of the work to be accomplished.

23. The CCLM reviewed a number of thematic areas where amendments to the Basic Texts would be required. The CCLM made a preliminary identification of, and had an exchange of views on the provisions of the Basic Texts which would need to be amended to give effect to the actions set out in the Immediate Plan of Action. The review was made on the basis of preliminary tables that had been prepared in order to allow the Committee to have a tool to make a tentative identification of the work to be accomplished. The following thematic areas were identified in a preliminary manner and were the subject of a general preliminary discussion : (a) reporting lines of the technical committees (on programme and budget matters to the Council and on policy and regulatory matters to the Conference); (b) term of office and election procedures of the Director-General; (c) changes in the budget process and structure, including related matters such as change in the date of regular session of the Conference; (d) status of the Regional Conferences; (e) election and composition of the Council, Programme and Finance Committees and the CCLM; (f) respective functions of the Conference and Council, role of the Independent Chairperson of the Council, functions of the Programme and Finance Committees; (g) silent observers at sessions of the committees of restricted membership and (h) evaluation and audit functions.

24. In view of the fact that negotiations of the Immediate Plan of Action were still under way, the CCLM was of the view that, as a general rule, no specific identification of the provisions of the Constitution, the General Rules of the Organization and the Financial Regulations to be amended should be made at this stage, also in consideration of the fact that in order to address a number of matters several options would have to be considered.

25. The CCLM recommended that its Chairperson should bring to the attention of the Chairperson of the Conference Committee for the Follow-up to the Independent External Evaluation of FAO highlights of its report as an input to the deliberations under way.

IV. OTHER MATTERS

26. There were no other matters.

V. ADOPTION OF THE REPORT

27. The CCLM adopted this report on 30 September 2008.