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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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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 (Supplementary observations)

1. In the course of the discussions held so far in the Conference Committee for the Follow-up to the Independent External Evaluation of FAO, hereinafter referred to as CoC-IEE or the Conference Committee, and within its Working Groups occasional references have been made to the possibility that the Basic Texts, as they stand, might constitute impediments to the implementation of some actions of the Immediate Plan of Action.
2. Being aware of these discussions, the Director-General, acting under Rule XXXIV, paragraph 3 of the General Rules of the Organization, has decided to refer this particular matter to the Committee on Constitutional and Legal Matters (CCLM). This document is an addendum to document CCLM 83/2 already prepared and is also to be seen in conjunction with the Immediate Plan of Action as will be available at the time of the session of the CCLM.
3. Document CCLM 83/2 lists thematic areas covered by proposed actions of the Immediate Plan of Action, which, if agreed upon, would involve amendments to the Basic Texts. The areas listed, as well as the provisions of the Basic Texts identified in the document, are presented in a generic manner. The question arises as to whether there would be specific actions listed in the Immediate Plan of Action which could not be implemented because the required changes to the Basic Texts had not yet been made¹. In other words, would there be any impediments to the

¹ It is important to keep in mind the observations set out in document CCLM 83/2 regarding the structure of the Basic Texts and the procedural conditions for their amendment.

implementation in 2009 of the actions described in the Immediate Plan of Action, pending the adoption of amendments to the Basic Texts, in November 2009?

4. Two specific areas have been brought to the attention of the Secretariat. The first concerns the issue of the reporting lines of the technical committees of the Council (on programme and budget matters to the Council and on policy and regulatory matters to the Conference). The second issue is that of the change in the budget process and structure, including related matters such as change in the date of the regular session of the Conference. Other issues might be raised which the CCLM would be invited to review.

Reporting lines of the technical committees (on programme and budget matters to the Council and on policy and regulatory matters to the Conference)

5. Under Article V, paragraph 6 of the Constitution, as it stands at present, *“in the performance of its functions, the Council shall be assisted by (...) a Committee on Commodity Problems, a Committee on Fisheries, a Committee on Forestry, a Committee on Agriculture and a Committee on World Food Security. These Committees shall report to the Council and their composition and terms of reference shall be governed by rules adopted by the Conference”*.

6. From a legal point of view, the reports of the so-called technical committees of the Conference are referred to the Council. This reporting line flows directly from the Constitution and there are no procedures for derogating from or suspending the provisions of the Constitution. Under a strict legalistic approach to the matter, reporting by the technical committees to the Conference could only be made after the amendment of the Constitution.

7. Two options could be considered to address this issue.

7.1. First option: it could be considered that in practice no difficulties would arise given the schedule of the sessions of the Governing Bodies and the possibility for the Council to forward the reports of the technical committees to the Conference. Indeed, the Committee on World Food Security is due to hold its session this year. The Committee on Fisheries, the Committee on Forestry, the Committee on Commodity Problems and the Committee on Agriculture are due to hold their sessions during the first part of 2009. Given the timing of the sessions of these Committees, on the one hand, and the timing of sessions of the Council and of the Conference, on the other hand, it would be possible to refer the reports of the technical committees to the Conference through the Council. The Council could, therefore, after having reviewed the programme and budget matters involved in the reports, submit them to the Conference for review of policy and regulatory issues. There were situations in the past where particular issues addressed by the technical committees were referred to the Conference through the Council. Should this approach be followed no difficulty would arise in practice for the implementation of the proposed action whereby the technical committees should report to the Council on programme and budget matters and to the Conference on policy matters, pending the amendment of the Constitution.

7.2. Second option: under another option, the Conference could agree that, pending the adoption of an amendment to Article V, paragraph 6 of the Constitution, the technical committees could exceptionally report directly to the forthcoming regular session of the Conference on policy issues. Subject to such views as the CCLM may wish to offer, the membership could agree exceptionally to this course of action. This could be reflected in

the Conference resolution adopting the Immediate Plan of Action which could specifically foresee the possibility that the technical committees would exceptionally report on policy matters to the Conference, pending the amendment of the Constitution². This approach, which could be reflected in the draft Conference resolution under negotiation, would have the advantage of providing a clear and straightforward solution to the issue at hand.

Changes to the programme of work and budget process and structure, including related matters such as change in the date of the regular session of the Conference

8. In order to implement these changes, a number of amendments to the General Rules of the Organization and, to a lesser extent, to the Financial Regulations would be required. A provisional list of provisions of these Basic Texts that would need to be amended is given in paragraph 15 (e) of document CCLM 83/2. The set of amendments required to implement these changes are not inherently difficult to formulate as they are not conceptually complex *per se*. However, there will be a need to introduce a number of direct and consequential amendments to the Basic Texts to give effect to the proposed changes. This exercise will require in due course close scrutiny by the CCLM with a view to ensuring that the proposed amendments are correctly drafted and that no important issues are overlooked.

9. It is envisaged that in the course of 2009 the Organization will develop a Strategic Framework, a Medium-Term Plan 2010-13 and a Programme of Work and Budget 2010-11 under a new integrated results-based framework. It is envisaged that these documents will be examined by a Conference Committee that would be established by the forthcoming Special Session of the Conference, in accordance with a draft Conference resolution under negotiation. The functions of the Conference Committee would be without prejudice to the statutory functions of the Council and its standing committees, with the direct support of the Working Groups of the Conference Committee and expert inputs to the Working Groups from the Programme and Finance Committees and with advice of the Council as appropriate. This is a matter still under negotiation.

10. A question of a legal nature arises related to the fact that, at present, the General Rules of the Organization make provision for a two-step procedure for the preparation of the Programme of Work and Budget through the submission of a summary Programme and 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 Council³. More specifically the issue is whether the Director-General is under the obligation to continue to follow this two step procedure, which would be cumbersome and inconsistent with the spirit of the process under way aimed at introducing the new budgetary documents in 2009.

11. On the basis of past practice of FAO it would seem possible to implement the new programme and budget process pending the adoption of required amendments to the General Rules of the Organization. In 1987, the Conference adopted resolution 6/87 entitled "*Consideration of review of certain aspects of FAO's goals and operations*"⁴. In the context of the conduct of that review, the Council requested the Director-General in 1988 to prepare a brief

² As reflected in the Immediate Plan of Action, the agenda and arrangement of the reports of the Technical Committees might have to be organized in such a manner as to reflect these lines of reporting to the Conference and to the Council respectively.

³ The Basic Texts do not contain explicit provisions on the Strategic Framework and the Medium-Term Plan, although they contain generic provisions on programme and planning of the activities of the Organization under which these documents were prepared in the past.

⁴ C87/REP, paragraph 143.

document of about five pages indicating the budget level that he intended to use in the preparation of the Programme of Work and Budget together with the main activities to be undertaken which would be made available to the members of the Committees prior to a joint session of the Programme and Finance Committees to be held in January 1989. The Joint Meeting would make a recommendation for the Director-General on the level of the budget⁵. This was the procedure of the outline Programme of Work and Budget followed on an experimental basis not only in 1989 but also in 1991. It was only in November 1991, after this procedure had been implemented for two budgetary cycles on an experimental basis, in accordance with the above request of the Council and a decision by the Conference in 1989⁶, that the Conference approved amendments to the General Rules of the Organization to introduce the new procedure of the “*outline Programme of Work and Budget*”⁷. The procedure of the outline Programme of Work and Budget was abolished in 1997 through another amendment to the General Rules of the Organization⁸. Similarly, the summary Programme of Work and Budget was also introduced and implemented in 1973 on the basis of a decision of the Conference⁹, before being reflected formally in the General Rules of the Organization in 1975¹⁰.

12. Therefore the practice of the Organization clearly indicates that it would be possible, on the basis of a decision of the Conference, as reflected in the draft Conference resolution under negotiation, to introduce immediately the changes to the budgetary process foreseen in the Immediate Plan of Action pending the adoption of the relevant amendments to the General Rules of the Organization in November 2009.

Suggested action by the Committee

13. The CCLM is invited to review the present document, with particular reference to the above proposals, and offer such views as appropriate.

14. In addition, the CCLM is invited to indicate whether any provisions of the Basic Texts might constitute impediments to the implementation in 2009 of the actions set out in the Immediate Plan of Action and if so, how these actions could be brought into line with such Basic Texts.

⁵ CL94/REP, paragraph 128. On that occasion, the Council was informed by the Legal Counsel that the General Rules of the Organization did not require the Director-General to prepare an outline Programme of Work and Budget. However, the Rules would not preclude him from complying with such a request on a voluntary and experimental basis. For the procedure to be established on a long-term basis, on the other hand, it would be highly desirable for the Conference to amend the General Rules, which the Conference did after two biennia of implementation of the system. On that occasion, the Legal Counsel also referred to a similar situation in connection with the introduction of the process of the Summary Programme of Work and Budget in 1973, after which the Conference had amended the General Rules in 1975.

⁶ C89/REP, paragraph 239, resolution 10/89, paragraph 7.

⁷ C91/REP, paragraph 200.

⁸ C97/REP, paragraph 119.

⁹ C73/REP, paragraph 241.

¹⁰ Cf. C75/REP, paragraph 376.