



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
and
Agriculture
Organization
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the
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Organisation
des
Nations
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l'agriculture

Продовольственная и
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организация
Объединенных
Наций

Organización
de las
Naciones
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para la
Agricultura
y la
Alimentación

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Eighty-fifth Session

Rome, 23-24 February 2009

CRITERIA FOR DISTRIBUTION OF PROPOSED AMENDMENTS IN THE BASIC TEXTS

BACKGROUND

(a) Request by the Committee on Constitutional and Legal Matters

1. At its Eighty-third Session, the Committee on Constitutional and Legal Matters (CCLM) observed 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 existing Basic Texts. The CCLM stressed that this should be kept in mind throughout the process [of review of the proposed amendments]. 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*”¹.

2. This document has been prepared in response to this request and is intended to provide criteria on the matter. It should be underlined that this is an issue of considerable importance for the preparation and review of draft amendments.

¹ CL 135/9, paragraph 21.

(b) **Earlier discussions on the matter**

3. The Immediate Plan of Action (IPA) and its action matrices contain undifferentiated calls for the amendment of the Basic Texts, without specifying which legal instruments should be amended, or proposing any criteria to be followed to address the matter. However, this is subject to the following observations:

- First, during the deliberations of Working Group II of the Conference Committee for the Follow-up to the Independent External Evaluation of FAO, occasional references were made to where the amendments to the Basic Texts would be set out precisely, but the matter was not pursued and was not reflected in the IPA.
- Second, at its Eighty-third session the CCLM examined the matter in some detail and made a preliminary review of the amendments to the Basic Texts for the implementation of the IPA. The CCLM noted that what was commonly referred to as “*Basic Texts*” was a comprehensive set of legal instruments of different nature contained in two volumes. Volume I included the Constitution, the General Rules of the Organization (GRO), the Financial Regulations, as well as the Rules of Procedure of the Council and of the Committees of the Council, whereas Volume II included a number of resolutions and decisions of the Conference on important matters. The CCLM further noted that the implementation of actions of the IPA might 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.

4. At that session, the CCLM noted more specifically the hierarchy between the instruments which form part of the Basic Texts, the Constitution being the most important one. The GRO 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 its Committees must also be consistent with this framework. Under this framework, the Governing Bodies, in particular the Conference and the Council, may be called upon to approve specific resolutions or other documents. Finally, the CCLM recommended that, consistent with good legal practice, any amendments to the Constitution should be drafted in a short and concise manner. In general, amendments to other instruments should be drafted also adhering to principles of coherence, consistency and transparency.

POSSIBLE PROPOSED CRITERIA

5. The CCLM could consider the following criteria to distinguish at which level amendments to the Basic Texts should be approved.

6. In general, actions involving changes to provisions currently set out in the Constitution, the GRO and the Financial Regulations would have to be implemented through amendments to the same legal instruments. While these criteria are not mentioned in the IPA, reference to them was briefly made in deliberations of Working Group II. These criteria have been followed when preparing the amendments to the Constitution and the GRO which were referred to the CCLM. As a specific example, insofar as the Constitution makes provision for a particular term of office for the Director-General, any change thereto would involve an amendment to the Constitution. In the same vein, insofar as the reporting lines of the Technical Committees of the Council are set out in the Constitution, changes to those reporting lines would have to be addressed also through an amendment to the Constitution. Similar considerations apply to the amendment of provisions

contained in the Basic Texts. An important guiding principle to distinguish between matters to be addressed through amendments to the Constitution and the GRO and other instruments such as

Conference resolutions or other documents would be based, to a large extent, on the pre-existing structure and content of the Basic Texts.

7. From a general legal perspective, legal instruments having higher ranking in legal hierarchy are of a more general and concise nature whereas legal instruments at lower levels are more specific and detailed. This is also related to the process of amendment of these instruments insofar as, in any legal system, the process of amendment of the main constituent instrument of an organization is subject to tight procedural conditions, such as requirements of advance notice of proposed amendments and a qualified majority for the approval of amendments. Matters addressed in the main constituent instrument should therefore be both of an important and lasting nature, since any changes thereto necessarily involve a complex, if not cumbersome, process.

8. In this logic, detailed rules on processes and organizational matters should not be set out in basic legal instruments with a high rank in legal hierarchy. Rules on these matters may have to be adjusted from time to time and it would not be desirable or possible to implement a heavy amendment procedure. The hierarchy of legal instruments responds to a need for flexibility and the scope for adjusting legal instruments is wider as regards texts at “*lower levels*”, such as Conference or Council resolutions. Detailed rules on matters such as the programme of work and budget process, working practices or the charter of the independent evaluation office should be set out in instruments other than the main Basic Texts (such as the Constitution or the GRO), as confirmed by inter-agency consultation and evidenced by the practice of other organizations². This is consistent with a distinction, inherent in any organized legal system, between primary legislation and subsidiary legislation. While the definition and content of these concepts vary from country to country, primary legislation consists usually of the main rules issued by the Parliament, and subsidiary legislation includes legal acts at a lower level in legal hierarchy intended to implement primary legislation.

9. It is also proposed that the current overall structure of the Basic Texts be maintained. At its Eighty-fourth session the CCLM did not feel that this structure should be reconsidered. As mentioned above, Volume II of the Basic Texts should continue to include a number of important resolutions or decisions of the Governing Bodies. This is also the approach followed by some of the specialized agencies of the United Nations. At present, Volume II of the Basic Texts contains only resolutions and decisions of the Conference, but in future it might be appropriate that some Council resolutions should also be incorporated in this Volume of the Basic Texts.

10. In this connection, it is proposed that the Conference, at its forthcoming regular session, when adopting the amendments to the Constitution, the General Rules of the Organization and the Financial Regulations, should decide which resolutions or extracts of its resolutions or decisions or resolutions or decisions of the Council should be inserted in Volume II.

11. Finally, it should be noted that the above criteria have been followed by the Conference Committee and Working Group II, and by the CCLM. Both the Conference Committee and the CCLM have examined proposals by substantive, thematic areas which may involve amendments to a complete spectrum of instruments, involving not only the Constitution, the GRO, the Financial Regulations and the Rules of Procedure of various Committees, but also other components of the Basic Texts set out in Volume II thereof.

² The same approach is taken in other organizations of the United Nations system. For instance, the “General Programme of Work” of WHO, which broadly corresponds to the Strategic Framework of FAO, is only mentioned in general terms in the Constitution of WHO through a generic reference to the fact that the Executive Board submits to the Health Assembly a general programme of work for a specific period. The Medium-Term Strategic Plan is not referred to in the Constitution, in the Rules of Procedure of the Health Assembly or the Financial Regulations of WHO; its preparation is foreseen in a resolution of the World Health Assembly. It is only the programme budget which is referred to in some detail in the Financial Regulations of WHO.

SUGGESTED ACTION BY THE COMMITTEE

12. The CCLM is invited to review this document and make such observations thereon as appropriate, taking into account the urgent need for the secretariat and the CCLM to continue to prepare and review draft amendments on the basis of precise criteria for their distribution in the relevant Basic Texts, including possible Conference and Council resolutions.

13. The CCLM is, more specifically, invited to offer its views on the following proposed criteria:

- (a) actions which would involve changes to provisions which are currently set out in the Constitution, the General Rules of the Organization and the Financial Regulations would have to be implemented in amendments to these same instruments;
- (b) the provisions of the Constitution and the General Rules of the Organization should continue to contain the main rules of the Organization and these rules should continue to retain a general nature;
- (c) actions involving the preparation of detailed rules on processes, working methods and administrative structures, which are likely to need to be adjusted from time to time, should be implemented through legal instruments of lower rank in the hierarchy of legal texts, including through Conference or Council resolutions and decisions;
- (d) the Conference at its thirty-sixth session should decide which provisions, other than those set out in the Constitution, the General Rules of the Organization and the Financial Regulations, should be incorporated in revised Volume II of the Basic Texts.