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COUNCIL

Hundred and Sixty-fourth Session

6-10 July 2020¹

Report of the 110th Session of the Committee on Constitutional and Legal Matters (28-29 May 2020)

Executive Summary

At its 110th Session, the Committee on Constitutional and Legal Matters (CCLM):

1. Considered document CCLM 110/2 "*Voting procedures under Rule XII, paragraph 10 of the General Rules of the Organization: Comparative study - for information*". It took note of the comparative study providing a matrix setting out the rules and practices of 12 other UN Common System agencies. The CCLM requested the development of a draft code of conduct addressing the candidates, Members and the Secretariat, which is consistent with Rule XII at large and the General Rules of the Organization. The CCLM considered that the drafting of the code should be member-led and facilitate further the Independent Chairperson of Council (ICC) consultations with the Regional Groups and should be submitted for consideration by the CCLM, with a view to having a draft code finalized prior to the 42nd Session of the Conference.
2. Considered document CCLM 110/3 "*Use of unspent balance of biennial appropriations*" that was submitted following consideration by the Council at its 163rd Session of the Reports of the CCLM and the Joint Meeting of the Programme and Finance Committees. It was of the view that further analysis was required on how unspent balances are applied and took note of the various rules and practices of other UN system organizations. The CCLM noted the complexity of the issue, given a lack of clarity on how unspent balances could be used and, in particular, the absence of a definition of cash surplus in the Financial Regulations. It reaffirmed the importance of Financial Regulation 4.2 and underscored that FAO, as a rules-based organization, should operate in accordance with its policies and regulations. It recognized the authority of the Conference to make exceptions to Financial Regulation 4.2 but considered that these should be limited and made in accordance with a clear, well-defined and transparent process. The CCLM, given its mandate, would reconsider the issue and provide advice on legal arrangements, which could include, for example, a review of the Financial Regulations, once the Programme and Finance Committees had addressed technical and policy aspects of this matter, within their respective mandates.
3. The CCLM considered document CCLM 110/4 Rev.1 on "*the establishment of an International Digital Council for Food and Agriculture*". It was of the view that any FAO platform must be developed, proposed and established through the appropriate channels and observed that

¹ Rescheduled from 8-12 June 2020

this initiative should not be regarded as creating a precedent, nor as establishing a formal institutional relationship between FAO and the Global Forum for Food and Agriculture (GFFA). The Committee confirmed that this initiative would not result in a new governing body and agreed that it should not be called “Council”. It agreed with the Secretariat’s proposal that it could be called a “Platform”. CCLM Members emphasised that the platform must be fully grounded in the FAO mandate and recommended consideration of the name “*the International Platform for Digitalization in Food and Agriculture*”, as better reflecting the goal behind the initiative. The CCLM concluded that the other Council Committees would be better placed to review the name, and if possible the scope, in the context of their deliberations on the mandate.

4. The CCLM, by consensus, warmly welcomed the Organization’s voluntary adherence to the United Nations reporting system for allegations of sexual exploitation and abuse, observing that it will increase the transparency and accountability of the Organization.

5. Under the item, “Any other matters”, the CCLM welcomed the comprehensive updated report by the Independent Chairperson of the Council on the progress of his consultations regarding the appointment of Secretaries of Article XIV Bodies and expressed appreciation of the continued efforts made by the ICC to identify a solution suitable to both Management and the Bodies concerned. It took note of the explanation provided by the Legal Counsel regarding the membership of the forthcoming 164th Council. Taking into account the exceptional circumstances under which the re-scheduling of the Council session from June to July 2020 takes place and that the Conference, at its 41st Session, had established the dates for the change of membership as of 1 July 2020, and the absence of any rule addressing those circumstances, the CCLM took note of the Legal Counsel’s recommendation that a pragmatic approach be applied with a view to ensuring that the Members of the Council enjoy the rights that they would have enjoyed if the Council had been convened in June as originally scheduled.

Suggested action by the Council

The Council is invited to approve the Report of the 110th Session of the CCLM. The Council is more specifically invited to:

1. **Approve** the CCLM’s request for the development of a draft code of conduct to facilitate further consultations by the Independent Chairperson of the Council and for consideration by the CCLM, with a view to having a draft code finalized prior to the 42nd Session of the Conference. It is further invited **to endorse** the view of the CCLM that this code should address the candidates, Members and the Secretariat, be consistent with Rule XII at large and the General Rules of the Organization and be a member-led and participatory process.
2. **Reaffirm** the importance of Financial Regulation 4.2, **underscore** that FAO, as a rules-based organization, should operate in accordance with its policies and regulations and **endorse** the CCLM recommendation that it reconsider the matter and provide advice on legal arrangements, upon review by the Programme and Finance Committees of the technical and policy aspects of the use of unspent balances.
3. **Affirm**, considering the initiative to establish the “*International Digital Council for Food and Agriculture*”, that any FAO platform must be developed, proposed and established through the appropriate channels and fully grounded in the FAO mandate, and to **endorse** the CCLM recommendation to consider the name of “*the International Platform for Digitalization in Food and Agriculture*”, noting that the name could be subject to further review and adjustments by the other Council Committees.
4. **Welcome** the Organization’s voluntary adherence to the United Nations reporting system for allegations of sexual exploitation and abuse.

5. **Take note of** the continued efforts made by the ICC to identify a solution suitable to both Management and the Article XIV Bodies concerned with respect to the appointment of their Secretaries.

Queries on the substantive content of this document may be addressed to:

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I. Introduction

1. The Hundred and Tenth Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 28 to 29 May 2020.
2. The Session was convened virtually on an exceptional basis due to the COVID-19 pandemic in Italy and worldwide. This followed the endorsement by the Council Members of the Director-General's proposal, pursuant to Rule XXV, paragraph 13 of the General Rules of the Organization, that each Council Committee be convened at the earliest opportunity by conducting its upcoming Session virtually, to consider matters that require urgent consideration and decision by the Council within the first half of this calendar year.
3. The Session, open to silent observers, was chaired by H.E. (Ms) Daniela Rotondaro, who welcomed all the Members through remote participation. The CCLM was informed that Mr Esala Nayasi (Fiji) had been replaced by H.E. (Mr) Deo Saran for the Session and that H.E. (Ms) Mónica Robelo Raffone had been replaced by Mr Junior Andrés Escobar Fonseca. H.E. (Mr) Charles Essonghe (Gabon) was not able to attend due to technical problems.
4. The following Members joined the Session:
 - H.E. (Mr) Deo Saran (Fiji)
 - Mr Ali Albsoul (Jordan)
 - Mr Junior Andrés Escobar Fonseca (Nicaragua)
 - Mr Theodore Andrei Bauzon (Philippines)
 - Mr Rafael Osorio de Rebellón (Spain)
 - Ms Emily Katkar (United States of America)
5. Upon review of the Note from the Chair (**Annex 1** to this Report) and taking into account that certain Rules of Procedure of the CCLM² presuppose in-person CCLM sessions at the Organization's Headquarters, the CCLM agreed to suspend the rules that may be incompatible with the virtual meeting for the 110th Session, in accordance with Rule VII of the Rules of Procedure.

II. Item 1: Adoption of the agenda and arrangements for the Session (CCLM 110/1 Rev.1)

6. The CCLM Members took note of the exceptional arrangements for the Session and approved its Agenda.
7. Three items were raised under the Agenda item "Any other matters".

III. Item 2: Voting procedures under Rule XII, paragraph 10 of the General Rules of the Organization: Comparative study - for information (CCLM 110/2)

8. The CCLM considered document CCLM 110/2 "*Voting procedures under Rule XII, paragraph 10 of the General Rules of the Organization: Comparative study - for information*". This document was submitted to the CCLM further to the Council's consideration of the CCLM's recommendations with regard to the "*Voting procedures under Rule XII, paragraph 10 of the General Rules of the Organization*", as reflected in the Report of the 109th Session of the Committee³. In

²Basic Texts, Volume I, Part G

³ CL Report 163/REP, paragraph 12

particular, the Council looked forward in this regard to a comparative study on the rules and best practices of UN and other relevant entities.

9. The Secretariat presented a matrix setting out the rules and practices of other UN Common System agencies on voting procedures, including preventive measures and mechanisms to enforce the Organization's rules and procedures related to voting and non-compliance with them.

10. The Independent Chairperson of the Council (ICC) briefed the CCLM on the current status of his consultations with the Regional Groups on the subject-matter; in particular, he reported that the Regional Groups supported the development of a draft code of conduct by the Secretariat to form the basis for further consultations.

11. The CCLM took note of the comparative study. There was a consensus to develop a code of conduct addressing the candidates, Members and the Secretariat and that is consistent with Rule XII at large and the General Rules of the Organization. The development of the code of conduct should be member-led and a participatory process. The CCLM requested the Secretariat to prepare as soon as possible a draft code of conduct to facilitate consultations by the ICC and for consideration by the CCLM, with a view to having a draft code finalized prior to the 42nd Session of the Conference.

IV. Item 3: Use of unspent balances of biennial appropriations (CCLM 110/3)

12. The CCLM considered document CCLM 110/3 "*Use of unspent balance of biennial appropriations*" that was submitted following consideration by the Council at its 163rd Session of the Reports of the CCLM and the Joint Meeting of the Programme and Finance Committees. The CCLM recalled that the Council looked forward to "*a more fundamental discussion*" on this matter in the Council and the Committees and "*underlined the importance of the role of the CCLM in any further such discussions*".

13. The CCLM considered that further analysis was required on how unspent balances are applied. The CCLM took note of the various rules and practices of other UN system organizations that relate to their unspent balances or surpluses which included both their carry-over to the following fiscal year and their use to reduce the contribution of Members.

14. The Director of the Office of Strategy, Planning and Resources Management (OSP) explained that the authority to use a surplus to cover the accumulated deficit arises from the appropriations in respect of the previous biennia in which the accumulated deficit was incurred. She noted that the restriction built in Financial Regulation 4.1(a)⁴ would, however, apply to the use of surpluses exceeding the sum of the appropriations voted for the present biennium plus the accumulated deficit. Unless otherwise decided by the Conference, any such excess would constitute a surplus, to be disposed of in accordance with Financial Regulation 6.1(b)⁵. She observed, however, that the Financial Regulation did not include a definition of cash surplus.

15. The CCLM also noted the complexity of the issue, given the fact that there is a lack of clarity on how unspent balances could be used and, in particular, the absence of a definition of cash surplus in the Financial Regulations.

16. The CCLM reaffirmed the importance of Financial Regulation 4.2, which states the Organization's policy regarding unobligated appropriations at the end of the financial period and

⁴ Financial Regulation 4.1(a): "*The appropriations voted by the Conference for the ensuing financial period shall constitute an authorization to the Director-General to incur obligations and make payments for the purpose for which the appropriations were voted, and up to the amounts so voted*".

⁵ Financial Regulation 6.1(b): "*Any cash surplus in the General Fund at the close of any financial period shall be allocated among Member Nations in accordance with the Scale of Contributions applicable to that period and, as of 1 January following the year in which the audit of the final accounts of the financial period is completed, shall be released and applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; second, any arrears of contributions; and third, contributions for the calendar year following the year in which the audit is completed*".

underscored that FAO, as a rules-based organization, should operate in accordance with its policies and regulations. It recognized the authority of the Conference to make exceptions to Financial Regulation 4.2 but considered that these should be limited and made in accordance with a clear, well-defined and transparent process.

17. The CCLM, given its mandate, would reconsider the issue and provide advice on legal arrangements, which could include, for example, a review of the Financial Regulations, once the Programme and Finance Committees had addressed technical and policy aspects of this matter, within their respective mandates.

V. Item 4: The GFFA 2020's call upon FAO's Governing Bodies "to support a process" for "the establishment of an International Digital Council for Food and Agriculture" (CCLM 110/4 Rev.1)

18. The CCLM considered document CCLM 110/4 Rev.1. Presentations were made by the Legal Office and the Chief Economist who explained that the initiative would fill the gap in coordination mechanisms in the use of digital technologies in food and agriculture and would contribute to the implementation of the Organization's Strategic Objectives. The Legal Office explained that the proposed institutional arrangement reflected similar arrangements for other multi-stakeholder mechanisms hosted by FAO and would be subject to its Rules and Regulations and would not create an independent structure within FAO.

19. The CCLM took note that the item for "*the establishment of an International Digital Council for Food and Agriculture*" was proposed for inclusion on its Agenda by the Director-General pursuant to Rule XXXIV, paragraphs 7-8. It further took note of the January 2020 Communiqué of the Global Forum for Food and Agriculture (GFFA), calling upon FAO's Governing Bodies "*to support a process*" for "*the establishment of an International Digital Council for Food and Agriculture*". CCLM Members considered that any FAO platform must be developed, proposed and established through the appropriate channels. It was clarified that, like earlier similar initiatives of external *fora*, this proposal does not create a formal institutional relationship between FAO and GFFA. CCLM Members observed that this initiative should not be regarded as creating a precedent to this effect.

20. CCLM Members received further explanations on the proposed mandate of the Platform. Some CCLM Members referred to the Concept Note that had been circulated at the GFFA⁶, which appeared to be more comprehensive than the CCLM document. The Secretariat was requested to make the Concept Note available as soon as possible to the Members of the Council Committees. The CCLM made a general observation that greater clarity was needed with respect to this proposal. The CCLM also recommended that experiences of other hosting arrangements, referred to in document CCLM 110/4 Rev.1, be used as lessons learned to guide this process.

21. The Committee confirmed that this would not be a new governing body and agreed that it should not be called "Council". It agreed with the Secretariat's proposal that it could be called a "Platform". CCLM Members emphasised that the platform must be fully grounded in the FAO mandate and recommended consideration of the name "*the International Platform for Digitalization in Food and Agriculture*", as better reflecting the goal that is behind the initiative. The CCLM concluded that the other Council Committees would be better placed to review the name, and if possible the scope, in the context of their deliberations on the mandate.

⁶ <https://www.gffa-berlin.de/wp-content/uploads/2020/01/FAO-Concept-Note-Digital-Council.pdf>

VI. Item 5: Reporting under the UN Secretary General's reporting system for Sexual Exploitation and Abuse (CCLM 110/5)

22. The CCLM took note of document CCLM 110/5 "*Reporting under the UN Secretary General's reporting system for Sexual Exploitation and Abuse*" and the information presented during the Session.

23. The CCLM, by consensus, warmly welcomed the Organization's voluntary adherence to the United Nations reporting system for allegations of sexual exploitation and abuse, observing that it will increase the transparency and accountability of the Organization.

VII. Item 6: Any other matters

24. The ICC updated the CCLM on the progress of his consultations regarding the appointment of Secretaries of Article XIV Bodies, specifically with regard to his discussions with the Indian Ocean Tuna Commission (IOTC) and the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty). The CCLM welcomed the comprehensive report of the ICC. It noted and expressed appreciation of the continued efforts made by the ICC to identify a solution suitable to both Management and the Bodies concerned.

25. Regarding the Membership of the 164th Session of the Council, the Legal Counsel informed the CCLM that she had addressed this matter with the ICC and confirmed that there were no rules addressing the exceptional circumstances in which the Council Session had been rescheduled. She noted that the Conference, at its 41st Session, had established the dates for the change of membership as of 1 July 2020. The Legal Counsel had recommended that a pragmatic approach be applied with a view to ensuring that the Members of the Council enjoy the rights that they would have enjoyed if the Council had been convened in June as originally scheduled.

26. The Secretariat took note of the request of the Committee that documents be provided in all languages in a timely manner.

27. No other matter was raised under this agenda item.

Note from the Chair of the CCLM

Waiver of Rules of Procedure of the CCLM

I. Introduction

1. The CCLM may recall that, as a result of extraordinary circumstances caused by the COVID-19 pandemic, the dates of its 110th Session have been postponed, from 21-23 March 2020.
2. Considering the evolving situation of the COVID-19 pandemic in Italy and worldwide, and given the ongoing measures adopted by Italian authorities with respect to movement of people and public gatherings, it has become necessary to consider alternative arrangements for the holding of the Sessions of the FAO Council Committees, including the CCLM, including through remote participation, in order to ensure the continuity of essential business in the interest of the Organization.
3. Considering that the Council Members confirmed their endorsement of the proposal that each Council Committee, including the CCLM, be convened at the earliest opportunity by conducting its upcoming session virtually, in order to ensure that their deliberations are concluded on matters which require urgent consideration and decision by the Council within the first half of this calendar year;
4. It has accordingly been decided that the 110th Session of the CCLM would be held virtually on 28 and 29 May 2020.
5. Taking into account that certain Rules of Procedure of the CCLM presuppose in-person CCLM session, such rules would need to be waived to allow for the 110th Session of the CCLM to take place virtually. In this context, Rule VII of the Rules of Procedure of the CCLM provides as follows:

Rule VII "Suspension of Rules"

"Any Rule of Procedure of the Committee may be suspended by the Committee, provided that 24 hours' notice of the proposal for the suspension has been given, and that the suspension is not incompatible with the Constitution and the General Rules of the Organization. The notice period may be waived if no representative of a Member objects".

6. Therefore, under the circumstances, it is recommended that the CCLM invoke Rule VII of its Rules of Procedure to waive the following rules and such other rules that may be incompatible with a virtual meeting for the purposes of this 110th Session:
 - Rule II "Sessions and Meetings" - paragraph 4 to waive the requirement for the session to be held at the FAO Headquarters;
 - Rule II "Sessions and Meetings" - paragraph 5 to waive the requirement to communicate the date and place of each session as early as possible in advance of the session;
 - Rule III "Agenda" - paragraph 2 to waive the requirement for any representative of a Member of the Committee to request the Director-General to insert an item in the provisional agenda at least 14 days before the session;

II. Action requested of the CCLM

7. The CCLM is invited to consider waiving the Rules of Procedure referred to in paragraph 6 of this document, and decide as appropriate.