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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-seventh Session

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BUREAUS AND STEERING COMMITTEES OF TECHNICAL COMMITTEES UNDER ARTICLE V OF THE CONSTITUTION (COMPOSITION AND FUNCTIONS)

1. PURPOSE AND BACKGROUND

1. The purpose of this document is to allow the Committee on Constitutional and Legal Matters (CCLM) to make a review and advise on-going the process of amendment to the Rules of Procedure of the Technical Committees (the Committee on Commodity Problems, the Committee on Fisheries, the Committee on Forestry and the Committee on Agriculture) which have been or are being debated.

2. The 2008 Immediate Plan of Action for FAO Renewal (IPA) contained a number of actions regarding the Technical Committees.¹ These actions were to be implemented through changes in

¹ Report of the Thirty-fifth (Special) Session of the Conference (Rome, 18-21 November 2008), Appendix E, Immediate Plan of Action for FAO Renewal, paragraph 26 and actions 2.56-2.65, which provides that

“The Technical Committees will report to Council on FAO’s budget and priorities and strategies for the programmes and directly to the FAO Conference on global policy and regulation becoming Committees of the Conference (action 2.56), and:

(a) Chairs will remain in office between sessions and provide their reports to the Council and Conference (action 2.57);

(b) Ways of working – Technical Committees will:

- Meet more flexibly as to duration and frequency, according to needs, normally once in each biennium. They will address priority emerging issues and may be convened especially for this purpose (action 2.58);

- The Chair will facilitate full consultation with Members, on agendas, formats and duration (action 2.59);

- More use will be made of parallel sessions and side events, taking care that countries with small delegations can participate (informal sessions will include NGOs and the private sector including representation from developing countries) (action 2.60); (...)”

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practice and amendments to the Basic Texts. Accordingly, proposed amendments to the latter were reviewed by the CCLM² and the Council³ in 2009 and approved by the Conference at its 36th Session (18-23 November 2009).⁴ As a result of these amendments, the Technical Committees have been given an enhanced status.

3. At its 139th Session (17 - 21 May 2010), the Council invited the Technical Committees to examine their rules of procedure, taking into account the considerations outlined in document CCLM 90/2 and the recommendations of the Report of the 90th Session of the Committee on Constitutional and Legal Matters (CCLM).⁵ While acknowledging that the authority to amend their rules of procedure was vested in the Technical Committees, the Council stressed the desirability of consistency among the rules of all these committees.

4. A process of review of their rules of procedure ensued. In October 2010, the Committee on Forestry (COFO) amended Rules I (Officers), II (Sessions) and VI (Records and papers) of its Rules of Procedure.⁶ On the issue of the composition of its Steering Committee, COFO amended Rule I providing that it is composed of a Chairperson and six Vice-Chairpersons corresponding to the six Chairpersons of the FAO Regional Forestry Commissions. Regarding the functions of COFO's Steering Committee, a new paragraph was added to that same Rule (paragraph 4) providing that: *"Between sessions, the Steering Committee shall facilitate consultation with Members in relation to agendas, formats and other matters, and perform other actions relevant for ensuring preparations for the sessions."*

5. In May 2012, the Committee on Commodity Problems (CCP) amended Rule I (Officers) of its Rules of Procedure.⁷ Concerning the composition of its Bureau, the CCP enlarged it from three to seven Members (a Chairperson and six Vice-Chairpersons). Regarding its functions, it established that: *"The Bureau shall, between sessions, represent the membership of the Committee, perform functions related to the preparation of sessions of the Committee, and perform such other functions as may be delegated to it by the Committee."*

6. In July 2012, the Committee on Fisheries (COFI) amended Rules I (Officers), II (Sessions), IV (Agenda and documents) and VI (Records and papers) of its Rules of Procedure.⁸ On the issue of the composition of its Bureau (formerly called Steering Committee), COFI amended Rule I in order to

² Report of the Eighty-fourth Session of the CCLM (Rome, 2-4 February 2009), paras. 21-35 and document CCLM 84/3 entitled *"Technical Committees"*.

³ Report of the Hundred and Thirty-sixth Session of the Council (Rome, 15-19 June 2009), paras. 92-95 and Report of the Hundred and Thirty-seventh Session of the Council (Rome, 28 September - 2 October 2009), paras. 46-52.

⁴ Report of the Thirty-sixth Session of the Conference (Rome, 18-23 November 2009), paras. 136-143.

⁵ Report of the Hundred and Thirty-ninth Session of the Council (Rome, 17 - 21 May 2010), paras. 55-56. See also Report of the Ninetieth Session of the CCLM (Rome, 28-29 April 2010), paras. 8-17 and document CCLM 90/2 entitled *"Rules of Procedure of the Technical Committees (Committee on Commodity Problems, Committee on Fisheries, Committee on Forestry and Committee on Agriculture)"*.

⁶ Report of the Twentieth Session of the Committee on Forestry (Rome, 4-8 October 2010), para. 37 and Annex 1. See also Part J of Volume I of the Basic Texts, Rules of Procedure of COFO.

⁷ Report of the Sixty-ninth Session of the Committee on Commodity Problems (Rome, 28-30 May 2012), para. 24 and Annex I to document CCP 12/9. See also Part H of Volume I of the Basic Texts, Rules of Procedure of the CCP.

⁸ Report of the Thirtieth Session of the Committee on Fisheries (Rome, 9-13 July 2012), paras. 9-12 and Appendix E. See also Part I of Volume I of the Basic Texts, Rules of Procedure of COFI.

enlarge it from six to seven Members (a Chairperson, a first Vice-Chairperson and five other Vice-Chairpersons). Regarding the functions of COFI's Bureau, a new paragraph was added to Rule I (paragraph 2) proving that: "*Between sessions, in relation to agendas, formats and other matters, and to perform other actions relevant for ensuring preparations for the sessions, the representatives of the regional groups in the Bureau shall consult with Members in a timely way.*"

7. The Committee on Fisheries also agreed that its Bureau should examine a proposal made by Thailand, on behalf of some Members of the Asia Regional Group, intended to "*change the current practice of granting the first Vice-Chairperson the right of claiming the office of Chairperson in the succeeding session*".⁹ The Committee is thus expected to review the matter at its next session.

8. In May 2012, the Committee on Agriculture (COAG) reviewed proposed amendments to its Rules of Procedure. However, COAG did not reach agreement on all proposals and thus it did not formally adopt any amendments. The Committee did agree to establish a Bureau of seven Members "*with one representative from each Regional Group*"¹⁰ and entrusted it with the task of negotiating a consensus proposal for COAG's next session. It should be noted that a formal provision regarding the functions of COAG's Bureau is still lacking.

9. In light of the somewhat different approach in respect of the issues of composition and functions of the bureaus and steering committees that each Technical Committee has taken or is taking¹¹, it is suggested that the CCLM may wish to review the matter further. During this review, the CCLM may wish to recall that the Council has stressed the desirability of consistency among the rules of all these committees, considering that they remain under the general authority of the Conference and Council. This is especially so as there is reason to believe that the format of the bureaus and steering committees of the Technical Committees could and is having an impact on the format of the bureaus of other statutory bodies of the Organization. Therefore, the CCLM may wish to offer its views on the matter, so that a harmonized format is followed as far as practicable. At the same time, the CCLM may wish to note that the Technical Committees may have specific functional requirements.

II. ISSUES FOR CONSIDERATION

a) Composition of the bureaus and steering committees

10. At its 90th Session (28-29 April 2010), the CCLM examined the issue of the number of officers elected by each technical committee. The CCLM considered that broader membership in order to ensure representation of all regions could be achieved in some Technical Committees through an increase in the overall number of officers up to seven (one per geographic region). The CCLM underlined that this was a matter to be reviewed by each Technical Committee, taking into account all

⁹ See Report of the Thirtieth Session of the Committee on Fisheries (Rome, 9-13 July 2012), para. 12.

¹⁰ Report of the Twenty-third Session of the Committee on Agriculture (Rome, 21-25 May 2012), para. 27.

¹¹ It should be noted that the Committee on World Food Security (CFS) may not necessarily provide a model to be followed in this regard. At the time the CFS was reformed there was an understanding among FAO Members that the *modus operandi* of the CFS was to a large extent due to the committee's *sui generis* nature and should not set a precedent for other FAO bodies.

relevant considerations including the fact that some regions could have difficulties in fulfilling all the positions.¹²

11. Subsequently, COFO, CCP and COFI amended their respective rules of procedure in order to broaden membership in their bureaus to seven Members. These amendments are in line with the guidance provided by the CCLM. The Bureau of COAG is also considering broadening its membership to eight Members in order to have an independent Chairperson who does not represent a country or region and seven Members.

12. Regarding the position of Chairperson, there have been discussions regarding the desirability of ensuring rotation of the office among FAO's seven regions. COFO inserted a paragraph in Rule I of its Rules of Procedure providing that "*When electing the Chairperson, the Committee shall give due consideration to the desirability of ensuring equitable rotation of the office among the regions*". The CCLM may wish to recommend that a similar provision be adopted by the other Technical Committees.

13. Greater consistency may also be needed in respect of the position of First Vice-Chairperson, which is currently under discussions. There are some practical advantages in electing a First Vice-Chairperson who can temporarily replace the Chairperson in an automatic manner when needed. This may facilitate the work of the secretariat and obviate the need for *ad hoc* appointments made by the rest of the Members, which may occasionally raise discussions. This is a matter for the membership to consider and decide upon.

14. The CCLM may wish to review the matter and consider whether a recommendation regarding the composition of bureaus and/or steering committees would be desirable in order to ensure consistency among the rules of the different Technical Committees.

b) Functions of the bureaus and/or steering committees

15. Following the IPA call for an enhanced role of the Chairpersons of the technical committees, the CCLM examined the issue of the functions of the bureaus and steering committees of the technical committees. At its 84th and 90th Sessions, the CCLM noted that the rules of procedure of only two technical committees (COFI and COFO) established a steering committee. These steering committees varied in their composition and performed their functions only "*during sessions*". However, the IPA had suggested that the Chairperson should perform a number of functions also during the inter-session period. Building upon the Rules of Procedure of COFI and COFO, the CCLM recommended that consideration be given to establishing steering committees that would act not only during sessions but also between sessions.¹³

16. The CCLM also considered that a generic reference to the functions of the steering committee or bureau such as "*ensuring preparations for the sessions*" could be added to the Rules of Procedure.¹⁴ Indeed, bureaus normally confine themselves to organizational matters in order not to interfere with the mandate of the main body. Although, in practice, it may not be always easy to distinguish between

¹² Report of the Ninetieth Session of the CCLM (Rome, 28-29 April 2010), para. 12. In fact, recent practice shows that some regions are having difficulties to participate effectively in bureau meetings.

¹³ Report of the Eighty-fourth Session of the CCLM (Rome, 2-4 February 2009), para. 31.

¹⁴ Report of the Ninetieth Session of the CCLM (Rome, 28-29 April 2010), para. 11.

organizational matters and policy ones entrusted to the main body. This principle is generally recognized in the provisions of other entities that have bureaus. That is also the prevailing position in similar bodies of other organizations of the United Nations system. For example, Rule V of Rules of Procedure of the World Food Programme provides that “*The primary functions of the Bureau shall be to facilitate the effective and efficient functioning of the Board and, in particular: (a) the strategic planning of the work of the Board; (b) the preparation and organization of Board meetings; and (c) the promotion of dialogue*”.¹⁵

17. In the case of FAO, it should be noted that COFO, CCP and COFI have added a provision to their respective Rules of Procedure on the functions of their bureaus and steering committees that is consistent with the guidance provided by the CCLM. In the case of COAG, a formal reform of its Rules of Procedure is pending so the existing Bureau is working on the basis of a mandate provided by COAG itself.

18. On the issue of the delimitation of functions of the bureaus vis-à-vis the plenary of the committees and statutory bodies, questions have been raised on occasions as to whether some of the issues examined by the bureaus went beyond organizational matters, encroaching on the functions of the plenary. This is a matter of a delicate nature which could justify, as far as possible taking into account the specific situation of each committee, the establishment of a “common statutory denominator” for the bureaus and steering committees of the Technical Committees.

19. The CCLM is invited to review the matter and recommend that consideration be given to the following revised paragraph to be inserted in the Rules of Procedure of the Technical Committees:

“The primary functions of the Bureau/Steering Committee shall be to facilitate the effective and efficient functioning of the Committee and, in particular: (a) the planning of the work of the Committee; (b) the preparation and organization of Committee sessions, including by facilitating consultation with Members in relation to agendas, formats and other matters; and (c) the promotion of dialogue.”

20. On a related issue, the CCLM may wish to consider the question of the delegation of functions by the Technical Committees to their bureaus and/or steering committees. The CCP adopted an amendment to Rule I (1) of its Rules of Procedure that provides that “*The Bureau shall, between sessions, represent the membership of the Committee, perform functions related to the preparation of sessions of the Committee, and perform such other functions as may be delegated to it by the Committee*”. In recent practice, some bureaus have been delegated tasks which could be seen as going beyond organizational matters. Accordingly, questions have been raised as to whether such delegations are possible and to which extent. In this regard, it should be noted that unlike Article V (3) of the Constitution whereby it is established that the Council “*shall have such powers as the Conference may delegate to it*”, none of the existing GRO provisions grant the Technical Committees the power to delegate functions to their bureaus or steering committees.¹⁶ In the absence of such a

¹⁵ Rules of Procedure of the World Food Programme, Rule V: “*Functions of the Bureau. The primary functions of the Bureau shall be to facilitate the effective and efficient functioning of the Board and, in particular: (a) the strategic planning of the work of the Board; (b) the preparation and organization of Board meetings; and (c) the promotion of dialogue.*”

¹⁶ The situation of the Committee on World Food Security (CFS) is different because Rule XXXIII (11) of the General Rules of the Organization explicitly provides that “*The Bureau shall exercise such functions as may be defined in these Rules or in the Rules of Procedure.*”

provision, and more importantly, of clear limits regarding matters that may not be delegated, general principles providing that bureaus should limit their functions to organizational matters would apply. The CCLM may wish to offer its views on this matter.

III. SUGGESTED ACTION BY THE COMMITTEE

21. The CCLM is invited to review this document make such recommendations to the Council and the Technical Committees thereon as appropriate. The CCLM may wish to advise in general on the desirability of a consistent approach towards the issue of the composition and functions of bureaus, with due account being taken of the specific functional requirements of the Committees. The CCLM may also wish to invite the Technical Committees, through the Council, to:

- a) Consider a composition for their bureaus and/or steering committees containing up to seven Members, one per FAO geographic region, as already recommended by the CCLM at its 90th Session;
- b) Consider whether a provision regarding rotation of the position of the Chairperson drafted in generic terms, as adopted by COFO and reproduced at paragraph 12 of this document, should be adopted;
- c) Consider whether a provision regarding the election of a First Vice-Chairperson by the Committee is needed; and
- d) Clarify the functions of their bureaus or steering committees, as may be appropriate, in light of the considerations set out in paragraph 19 of this document.