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| 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 |
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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Eighty-fourth Session

Rome, 2-4 February 2009

MINISTERIAL MEETINGS

BACKGROUND

1. The Immediate Plan of Action for FAO Renewal (IPA) provides that “*Ministerial meetings may be convened by the Conference and Council when matters developed at technical levels, normally in the technical committees, need political endorsement or more visibility. Their reports will normally be considered directly by the FAO Conference, with reference of any FAO programme issues for the advice of the Council*” (paragraph 27). More specifically, the relevant Action Matrix provides for the following:

“Basic Text Change to specify that the Conference or Council may call a Ministerial meeting when matters developed at technical level need political endorsement of more visibility (2.66).

The Ministerial meeting reports will normally be considered directly by the Conference (2.67).”

2. It would be useful to review past practice of FAO in convening Ministerial Meetings, before addressing legal considerations to be taken into account in formulating options for the implementation of the relevant IPA action.

PRACTICE OF THE ORGANIZATION

3. In May 1994¹ the Director-General proposed to convene sessions of the Committees on Fisheries and Forestry at ministerial level. In a statement to the Council, he emphasized that despite important developments in international fisheries, Ministers of Fisheries had had no

¹ Document CL 106/2-Sup. 1 - “*Director-General’s Review of the Programmes, Structures and Policies of the Organization (Additional Information)*”, May 1994.

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occasion to meet in a global forum since the World Conference on Fisheries Management and Development ten years earlier, and that he intended to invite them to the forthcoming session of the Committee on Fisheries². The proposal was approved by the Council in June 1994, and Ministerial Meetings on Forestry and Fisheries were convened in 1995 as ministerial segments of the sessions of the Committees on Forestry and Fisheries.

4. The issue of the status of Ministerial Meetings arose at that time and prompted a number of queries. It had been proposed that Ministerial Meetings should adopt declarations and take final decisions on policy matters, in particular regarding the position to be presented to the Commission on Sustainable Development, which was due to meet after the Ministerial Meetings but before the Council session. At that time, the status of the meetings as part of the Committee on Forestry (COFO) and the Committee on Fisheries (COFI) was mentioned as an issue. As technical committees of the Council established under Article V of the FAO Constitution, COFO and COFI can only advise and make recommendations to the Council and cannot take final decisions on their own authority. On political grounds, it was also considered inappropriate for decisions taken at ministerial level to be reviewed by the Council, which normally consists mainly of permanent representatives to the Organization.

5. In view of the above, at the time of the Ministerial Meetings on Forestry and Fisheries in 1995, the Legal Counsel and the secretaries to the committees made the following statement:

“I would like to clarify the status of the COFO/COFI meeting and the Ministerial Meeting that is being held in conjunction with it.

As you know, COFO/COFI is a subsidiary body of the Council established under Article V.6 of the FAO Constitution. COFO/COFI has its own rules of procedure and reports to the Council, to which it gives advice and makes recommendations.

The Ministerial Meeting is being convened by the Director-General as a separate meeting, distinct from COFO/COFI, albeit convened in conjunction with COFO/COFI. The reason for this is that the meeting will be expected to take decisions; in this case decisions regarding the position to be presented to the Commission on Sustainable Development to be held in New York in 1995, rather than merely to give advice and make recommendations to the Council. The Ministerial Meeting will be operating under the General Rules of the Organization as its Rules of Procedure”.

6. Later on, the convening of Ministerial Meetings “in conjunction with meetings of COFO and COFI” was discussed extensively at the Regional Conferences held in 1996. In general, the Regional Conferences supported the convening of Ministerial Meetings in conjunction with COFI and COFO in the future, but advised the Director-General that a flexible approach was needed in determining the frequency of such meetings; that they should be called, after consultation with Members, only when issues of enough significance and urgency had emerged, and that such meetings would not be necessary in 1997.

7. Subsequently, Ministerial Meetings on Forestry and Fisheries were convened in 1999 and in 2005 as separate Ministerial Meetings and no longer as ministerial segments of the sessions of the COFO and COFI. The legal status of these Ministerial Meetings *vis-à-vis* the sessions of COFO and COFI was restated on a number of occasions. The Ministerial Meetings on Forestry

² CL 106/REP, Appendix E7, paragraph 47.

and Fisheries of 1999 and 2005 were referred for approval by the Council³. The Organization was also urged to organize the Ministerial Meeting on Agriculture in Small Island Developing States in 1999 and take the necessary steps to ensure its financing.

8. In all cases, the Ministerial Meetings were convened under Article VI, paragraph 5 of the Constitution, which reads as follows:

“The Conference, the Council, or the Director-General on the authority of the Conference or Council, may convene general, regional, technical or other conferences, or working parties or consultations of Member Nations and Associate Members, laying down their terms of reference and reporting procedures, and may provide for participation in such conferences, working parties and consultations, in such manner as they may determine, of national and international bodies concerned with nutrition, food and agriculture”.

9. Past practice of the Organization also shows that all Ministerial Meetings were called to deal with broad issues, such as declarations or initiatives involving important policy dimensions. The topics addressed were of interest to a large number of countries and not only to a specific region or group of countries. The fact that documents considered by the meetings were approved at ministerial level conferred upon them both visibility and a measure of political weight.

10. In identifying matters referred to Ministerial Meetings and preparing relevant documents, account was taken of the mandates of the various Governing Bodies of the Organization, in particular the relevant Technical Committees of the Council. Ministerial Meetings did not deal directly with programme or budget matters, for which competence lies with other Governing Bodies, or for which specific procedures exist⁴. In addition, Ministerial Meetings did not examine matters of a technical nature, which are usually within the purview of other statutory bodies of the Organization.

PERTINENT LEGAL CONSIDERATIONS

11. First, the constituent instruments of the organizations of the United Nations system, as well as the rules applicable to the operation of their Governing Bodies, do not refer to the composition of delegations. Nor do they establish any substantive requirement regarding the composition of delegations to sessions convened at *ministerial level*, or provide for particular meetings to be held at *ministerial level*. However, policy decisions of the Governing Bodies of such organizations have often called for meetings at high political level. In such cases, calls for higher level participation were made through suitable policy decisions, such as resolutions of the relevant Governing Bodies.

12. This was confirmed by inter-agency consultation and information received from the legal advisers of the organizations of the United Nations system. The constituent instruments of the organizations do not make provision for the convening of meetings at a given level. Neither the United Nations Charter, nor the Rules of Procedure of the main United Nations organs contain any such provisions. The same approach is taken in other organizations such as the World Health

³ For the Ministerial Meetings of 1999, see CL 115/REP, Appendix D, and for the Ministerial Meetings of 2005, see CL 127/REP, Appendix F.

⁴ For instance, the Ministerial Meetings could not be required to approve budgetary estimates for fisheries and forestry programmes, for which specific procedures exist. In general, matters referred to Ministerial Meetings were not defined in such a manner as to be in direct conflict with other specific rules of the Basic Texts, especially when matters referred to them were statutorily entrusted to other Governing Bodies of the Organization and the intervention of the Ministerial Meetings would pre-empt or interfere with the established operating mechanisms of the Governing Bodies.

Organization, UNESCO, the World Intellectual Property Organization, the International Atomic Energy Agency, and the Universal Postal Union. The same applies at the World Trade Organization, which is not part of the United Nations system. Article 3 of the Constitution of the International Labour Organization provides that each national delegation to the Conference is composed of four delegates: two Government delegates, one employer delegate and one worker delegate. However, no rules prescribe that the Government delegates should have a particular rank in the administration and it is entirely for the Governments to decide upon the appropriate level of their representation to sessions of the Conference⁵.

13. Second, from a legal point of view, making provision in the main constituent instruments of the Organization for representation at ministerial level might reflect a misconception about the essential nature of an inter-governmental meeting. In an inter-governmental meeting, a delegation is inherently supposed to represent the views of a Government. Particular situations could arise in connection with meetings of experts – either Government-designated experts or experts appointed in an individual capacity by the Director-General – where the official position of a Government on a given topic is not the objective of the meeting.

14. However, aside from the particular situations of meetings of experts, a Government delegation is supposed to present the official view of its Government and, therefore, it may not be appropriate, from a legal standpoint, to establish distinctions as to the composition of delegations. It is because a delegation is expected to represent the views of a Government – irrespective of the status and rank of the officials concerned – that for important meetings credentials are required. Credentials are usually issued by the Head of State, Head of Government, Minister of Foreign Affairs or, in the case of FAO, the Minister concerned⁶, i.e. authorities that are assumed to be inherently empowered to commit a State in the absence of any document to that effect⁷. Credentials are required in order to ensure that the delegation does represent the concerned Government. A delegation duly mandated to represent a Government commits that Government irrespective of the status and rank of its individual members. Because of these legal considerations, the question was raised as to whether direct provision for participation of individuals of ministerial rank was consistent with established principles of, or practice in, international law.

15. Third, the practice of FAO reveals a great diversity in the composition of delegations to meetings, irrespective of whether they attend sessions of Technical Committees or Ministerial Meetings. Historically, delegations to sessions of Technical Committees, such as the Committee on Fisheries and the Committee on Forestry, have been attended by a large number of Cabinet Ministers⁸. Conversely, many delegations to the Ministerial Meetings in 1995, 1999 and 2005 did not include Ministers and Cabinet Ministers, as participation of Government representatives at ministerial level was determined primarily by the interest in the topics under discussion for the concerned Governments, rather than by the qualification of the meeting as being ministerial.

⁵ Although it is common that delegations to the Conference of ILO are headed by Ministers.

⁶ Rule III, paragraph 2 of the General Rules of the Organization.

⁷ In a slightly different context, the Vienna Convention on the Law of the Treaties provides in Article 7 that Heads of State, Heads of Government and Ministers of Foreign Affairs, by virtue of their functions, do not have to produce full powers for the purpose of performing all acts relating to the conclusion of a treaty.

⁸ The Committee on Fisheries is particularly illustrative to this situation: a very substantial number of Ministers used to attend its sessions in its early years (from the Sixties until the mid-Eighties), and recent sessions have also been attended by a significant number of Ministers and heads of departments of fisheries.

POSSIBLE OPTIONS FOR THE IMPLEMENTATION OF THE IPA ACTION

16. Taking into account the above, the CCLM is invited to examine the following options.

17. First option: Article VI, paragraph 5 of the Constitution provides that the Conference, the Council, or the Director-General on the authority of the Conference or Council, may convene Ministerial Meetings. The Ministerial Meetings of 1999 and 2005 were convened by the Director-General under the authority of this constitutional provision and with the approval of the Council. From this perspective, the issue is essentially one of a policy nature, which would not require amendments to the Basic Texts. The Conference and the Council have full authority to define conditions under which Ministerial Meetings should be convened and the Ministerial Meetings of 1999 and 2005 were convened on the authority of the Council⁹.

18. Second option: as confirmed by inter-agency consultation and research, and subject to such views as the CCLM may hold, an appropriate solution reconciling a correct legal approach to the matter and the wishes of the membership to exercise greater control over the convening of Ministerial Meetings, especially in connection with earlier sessions of Technical Committees, might consist in addressing the matter through a Conference resolution, which could then be set out in the Basic Texts. The resolution could clarify:

- (i) the authority of the Conference or Council to convene Ministerial Meetings following sessions of Technical Committees;
- (ii) the nature of issues referred to Ministerial Meetings as well as the possible relationship with regular activities of the Governing Bodies, especially programme and budget matters; and
- (iii) the reporting lines.

19. The draft Conference resolution could read as follows:

“THE CONFERENCE:

Having noted that “Ministerial Meetings” have been held occasionally after sessions of standing committees, established under Article V, paragraph 6 of the Constitution,

Having noted further the need to clarify the conditions regarding the convening of such “Ministerial Meetings” in the future, as called for by the Immediate Plan of Action for FAO Renewal (2009-2011),

Recalling Article V, paragraph 5 of the Constitution,

DECIDES:

1. *Ministerial Meetings, held in conjunction with sessions of technical committees established under Article V, paragraph 6 of the Constitution, may be convened from time to time as decided by the Conference or Council, when matters developed at technical level are deemed to require political endorsement or visibility.*

⁹ Despite some initial doubts as to their legal status, the meetings of 1994 were also convened following endorsement by the Council of the proposals of the Director-General.

2. *Subject to the decision of Conference or Council, Ministerial Meetings should not deal with programme and budget matters which are addressed in the context of the programme of work and budget process, nor with matters primarily of a regional, technical or scientific nature which are normally considered by statutory bodies of the Organization.*

3. *Ministerial Meetings shall normally report to the Conference, except that any relevant issues having programme or budget implications shall be referred to the Council”.*

20. **Third option:** the above developments, including inter-agency consultation and research, suggest that, from a legal point of view, one of the above options would be desirable, rather than an amendment to the Constitution or the General Rules of the Organization (GRO). However, should the CCLM consider addressing the issue through an amendment to the Basis Texts, it is recommended that such amendment should be limited to the GRO. Should this be the case, a Rule incorporating the content of the **operative paragraphs** of the above draft Conference resolution could be added to the GRO. This could be an addition to Rule XXXV of the GRO.

21. If it endorses this option, the CCLM is invited to indicate whether it is desirable to define in more detail what a “*Ministerial Meeting*” is and whether there would be a need to clarify the implications of the status of the meeting for delegations not headed by Ministers. Subject to such views as the CCLM may hold, it might be necessary to clarify that delegations not headed by a Cabinet Minister would have the same rights of participation as other delegations.

SUGGESTED ACTION BY THE COMMITTEE

22. The CCLM is invited to review this document and provide such comments as it deems appropriate.