



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

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COUNCIL

Hundred and Twenty-ninth Session

Rome, 16 – 18 November 2005

REPORT OF THE SEVENTY-NINTH SESSION OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS (CCLM)

Rome, 11-12 October 2005

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I. INTRODUCTION

1. The Seventy-ninth Session of the Committee on Constitutional and Legal Matters (CCLM) was held on 11-12 October 2005. All the Members of the Committee, as listed below, were represented:

Canada, Czech Republic, France, Guatemala, Iraq, Niger and Philippines.

II. AMENDMENTS TO THE STATUTES OF THE CODEX ALIMENTARIUS COMMISSION

2. The CCLM considered document CCLM 79/2 entitled “*Amendments to the Statutes of the Codex Alimentarius Commission*”. The CCLM noted that the Commission had been established as a joint FAO/WHO standard-setting body, by parallel resolutions of the FAO Conference and the World Health Assembly in 1961 and 1962, which, at the time, approved the Statutes of the Commission and took a number of related decisions. Food standards adopted by the Commission, in accordance with the Statutes, were voluntary subject to acceptance by Governments. As a result of the entry into force of the World Trade Organization Agreements, doubts were expressed as to this position. In particular, it was pointed out that, insofar as Codex standards were recognized as reference points for international trade by WTO, in the WTO context acceptance was irrelevant, because obligations existed irrespective of whether or not standard were accepted by individual governments.

3. The CCLM noted that the matter was extensively discussed within the Codex Commission in the late Nineties but that, at the time, the Commission did not recommend any amendments to its Statutes. However, the question was revisited in 2004 by the Codex Committee on General Principles. At its Twenty-second Session in April 2005, this Committee agreed to recommend to the Commission the abolition of the acceptance procedure and endorsed a number of consequential amendments to the Procedural Manual. At its Twenty-eighth Session, held in Rome from 4 to 9 July 2005, the Commission agreed, by consensus and without any discussion on the substance, to recommend to the FAO Conference and to the World Health Assembly that Article 1 of the Statutes of the Codex Alimentarius Commission be revised in order to abolish the acceptance procedure.

4. The CCLM reviewed the proposed amendments to the Statutes of the Codex Alimentarius Commission, attached hereto as **Appendix I**, and found them to be in order from a legal point of view. The Committee agreed to transmit them to the Council for on-forwarding to the Conference, for approval, at its forthcoming Thirty-third Session in November 2005. The CCLM noted that the World Health Assembly would be considering the proposed amendments at its Session of Spring 2006.

III. PERSONAL STATUS FOR PURPOSES OF STAFF ENTITLEMENTS

5. Following the request of the FAO Council at its Hundred and Twenty-eighth Session held in June 2005¹, the CCLM examined the issue, dealt with in document CCLM 79/3 entitled

¹ Report of the Hundred and Twenty-eighth Session of the FAO Council, Rome, 20-24 June 2005, paragraph 113.

“*Personal status for purposes of staff entitlements*”, and recommended to the Council the adoption of the following decision:

“In connection with the consideration of the report of the Seventy-ninth Session of the CCLM, the Council recalled the fundamental and long-established principle that the personal status of staff members for purposes of FAO’s entitlements should continue to be made by reference to the law of nationality of the staff member concerned. The Council emphasized that such a reference to national law, as done by the Secretary-General of the United Nations, would continue to ensure respect for the social, religious and cultural diversity of the Member Nations and their nationals and, indeed, was the only method whereby the sovereignty of all States could be respected.

Accordingly, the Council requested the Director-General to adopt an administrative directive consistent with that issued by the Secretary-General of the United Nations (ST/SGB/2004/13 “Personal status for purposes of United Nations entitlements” of 24 September 2004), as soon as practicable after its present Session. The administrative directive should underline the cardinal principle that the personal status for purposes of entitlements under the Staff Regulations and Rules has been determined, and should continue to be determined, by reference to the law of nationality of the staff member concerned. When a staff member has more than one nationality, the Organization would continue to recognize, under applicable rules, the nationality of the State with which the staff member is most closely associated for purposes of the Staff Regulations and Rules.

The Council expressed the view that the proposed administrative directive would not involve changes to the Staff Regulations but would merely constitute an interpretation of existing provisions, which will take effect as from the date of publication of the administrative directive. The Council also asked the Director-General to take such internal measures as required for the implementation of its decision.”

IV. SECURITY EXPENDITURE FACILITY – AMENDMENTS TO FINANCIAL REGULATIONS

6. The CCLM considered document CCLM 79/4 entitled “*Security Expenditure Facility – Amendments to Financial Regulations*”, which contained a draft Resolution for adoption by the Conference. The CCLM noted that the draft Resolution included a proposal to amend the Financial Regulations of the Organization by adding a new paragraph 6.12 at the end of Financial Regulation VI.

7. The CCLM recalled that such draft Resolution was discussed and supported by the Finance Committee, at its Hundred and Tenth Session held in September 2005.²

8. The CCLM, in reviewing the draft Resolution and the proposed amendments to Financial Regulation VI, rectified a reference to a Session of the Council and noted that the wording of paragraph (d) of the proposed new Financial Regulation 6.12 reflected the present wording of paragraph (d) of Financial Regulation 6.11.

9. The CCLM found the wording of the proposed draft Resolution and the proposed new Financial Regulation 6.12, as set out in **Appendix II** to this report, to be in conformity with the

² Report of the 110th Session of the Finance Committee, Rome, 19-23 September 2005, paragraph 71.

Basic Texts of the Organization and in proper legal form and recommended that it be transmitted to the Council, for its subsequent submission to the Conference for consideration and adoption.

V. RESTRICTION OF ATTENDANCE BY THE “GENERAL PUBLIC” TO MEETINGS

10. The CCLM reviewed document CCLM 79/5 entitled “*Restriction of attendance by the ‘general public’ to meetings of the Organization*”, including a draft Conference resolution on limited amendments to Rule V, paragraph 3 and Rule XXV, paragraph 9 (c) of the General Rules of the Organization, authorizing the Director-General to restrict access by the so-called “*general public*” to the sessions of the Conference and the Council.

11. In this context, the CCLM noted that, in line with a tradition of the United Nations system, the meetings of the main Governing Bodies of FAO are held in public. Meetings of the technical committees of open membership, under Article V of the Constitution, and commissions and committees under Article VI and of bodies set up under Article XIV of the Constitution are also held in public. Exceptions concern, *inter alia*, committees of restricted membership of the Council, including the CCLM, and, in general, any committees dealing with the internal working of the Conference, Council or technical committees of the Council, such as drafting committees. However, a number of developments have taken place since the time when the above provisions were adopted and security concerns have acquired an important dimension, as evidenced by the proposed Security Expenditure Facility.

12. The CCLM noted that these concerns have placed upon the Director-General increased responsibilities for security within the Organization, which he discharges in cooperation with the authorities of the host country, as may be required, and which may go as far as denying access to FAO’s premises to particular individuals on the grounds of security. Notwithstanding this authority, it is considered that new developments call for an approach which would better reconcile the principles of transparency, openness and access by the public to the meetings of the main bodies of the Organization with the responsibilities of the Director-General, as the official primarily responsible for security, in consultation with the authorities of the host country, as appropriate, both at Headquarters and in countries where FAO meetings may be held.

13. The CCLM concurred with a proposal to amend the text of the proposed draft Conference resolution, as concerns Rule V, paragraph 3 of the General Rules of the Organization, in order to bring it more into line with the tradition and practice of the United Nations while, at the same time, allowing the Director-General to take into account all relevant security concerns when making appropriate arrangements for the admission of the public to plenary meetings of the Conference. The CCLM agreed to send the draft Conference resolution, as amended, set out in **Appendix III** hereto, to the Council for on-forwarding to the Conference for approval.

14. Finally, the CCLM emphasized that the proposed amendments were without prejudice to the principle that the plenary meetings of the Conference and Council are public, which continues to be clearly stated in the General Rules of the Organization, and that the regime of access by representatives of the press and other information agencies would remain unchanged. The CCLM noted that a process of adjustment of the Rules of Procedure of bodies under Article V, VI and XIV of the Constitution would be progressively carried out, taking into due account the situation of each body.

VI. AGREEMENT BETWEEN THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

15. Following the request of the FAO Council at its Hundred and Twenty-eighth Session held in June 2005³, the CCLM examined the text of the draft agreement and found it to be consistent with the Basic Texts of the Organization, in particular with Sections M “*Cooperation with International Governmental Organizations*” and N “*Guiding Lines Regarding Relationship Agreements between FAO and Intergovernmental Organizations*”.

16. The CCLM recommended that the draft agreement between WIPO and FAO, attached to this report as **Appendix IV**, be submitted to the Council at its Hundred and Twenty-ninth Session in November 2005 for approval and, subsequently, to the Conference at its Thirty-third Session in November 2005 for confirmation.

³

Report of the Hundred and Twenty-eighth Session of the FAO Council, Rome, 20-24 June 2005, paragraph 113.

APPENDIX I**AMENDMENTS TO THE STATUTES OF THE CODEX ALIMENTARIUS
COMMISSION****ARTICLE 1⁴**

The Codex Alimentarius Commission shall, subject to Article 5 below, be responsible for making proposals to, and shall be consulted by, the Directors-General of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:

- (a) protecting the health of the consumers and ensuring fair practices in the food trade;
- (b) promoting coordination of all food standards work undertaken by international governmental and non governmental organizations;
- (c) determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;
- (d) finalizing standards elaborated under (c) above and, ~~after acceptance by governments,~~ publishing them in a Codex Alimentarius either as regional or world wide standards, together with international standards already finalized by other bodies under (b) above, wherever this is practicable;
- (e) amending published standards, as ~~after~~ appropriate, survey in the light of developments.

⁴

Words struck out to be deleted, words underlined to be added

APPENDIX II**DRAFT RESOLUTION .../..****Amendment to Financial Regulation VI (Security Expenditure Facility)****THE CONFERENCE,**

Recalling, the Director-General's proposal to establish a Security Expenditure Facility grouping in a new Chapter of the Programme of Work and Budget expenditures directly related to headquarters and field security in FAO, as a means of strengthening the existing financial framework for planning, monitoring and accountability for improved security of staff and assets of the Organization;

Noting in particular, that the Finance Committee, at its Hundred-and-ninth Session (Rome, 9-13 May 2005), recognised the need for consolidated and comprehensive coverage for security costs within a single budgetary provision and for financial flexibility through a funding mechanism which could be supplemented by voluntary contributions, and supported the Director-General's proposal to establish a Security Expenditure Facility as a means of grouping all staff and non-staff costs directly related to headquarters and field security in a new Chapter 9 of the Programme of Work and Budget;

Noting further the deliberations of the Joint Meeting of the Programme and Finance Committees of 11 May 2005 concerning the proposal for the creation of an additional Chapter 9 to the Programme of Work and Budget and the establishment of a Security Expenditure Facility;

Recalling that the Council, at its Hundred and Twenty-eighth Session (Rome, 20-25 June 2005), concurred with the creation of an additional Chapter 9 to the Programme of Work and Budget and the establishment of a Security Expenditure Facility;

Considering that the Finance Committee, at its Hundred and Tenth Session (Rome, 19-23 September 2005) and Committee on Constitutional and Legal Matters, at its Seventy-ninth Session (Rome, 11-12 October 2005), reviewed the proposed amendments to Financial Regulation VI;

Noting that the Council, at its Hundred and Twenty-ninth Session (Rome, 16-18 November 2005), agreed to transmit to the Conference, for approval, the proposed amendments to Financial Regulation VI;

Decides:

- a. to establish a Security Expenditure Facility consisting of a separate budgetary Chapter and a Security Account;
- b. to designate Chapter 9 of the Programme of Work and Budget for the purposes of defining and authorising security expenditures, including staff and non-staff security provisions and expenditures at headquarters and in the field to ensure the Organization's compliance with United Nations security policies;
- c. to establish a Security Account through the following addition of Financial Regulation 6.12 to the Financial Regulations of the Organization:

6.12. There shall be established:

- (a) a Security Account, which shall be used for the purpose of managing activities which involve security expenditure defined as being:
 - (i) expenditures on headquarters security provisions;
 - (ii) expenditures on field security provisions to ensure in particular the Organization's participation in the UN security management system and compliance with its provisions for field security;
- (b) the sources of funds shall be:
 - (i) Regular Programme Appropriations approved by the Conference;
 - (ii) voluntary contributions;
- (c) expenditures of a capital nature, defined as expenditures with a useful life in excess of FAO's financial period of two years that also meet the definition of security expenditures as per sub-paragraph (a) above, shall be funded from the Security Account;
- (d) the balance of funds in Chapter 9 of the budget at the end of each financial period shall be transferred to the Security Account for use in a subsequent financial period.

APPENDIX III

DRAFT RESOLUTION .../..

Amendment to Rule V, paragraph 3 and Rule XXV, paragraph 9(a) of the General Rules of the Organization

THE CONFERENCE,

Having taken note of the views of the Committee on Constitutional and Legal Matters, at its Seventy-ninth Session (Rome, 11-12 October 2005) on the proposed amendments to Rule V, paragraph 3 and Rule XXV, paragraph 9(a) of the General Rules of the Organization;

Considering that the Council, at its Hundred and Twenty-ninth Session (Rome, 16-18 November), agreed to transmit to the Conference, for approval, the proposed amendments to the General Rules of the Organization;

Having noted further that the overarching principle that plenary meetings of the Conference and the Council shall continue to be held in public and that the proposed amendments are intended to clarify the extent of the responsibilities of the Director-General on security matters in connection with exceptional situations which might arise;

Noting its deliberations in connection with the establishment of a Security Expenditure Facility and the related amendment to the Financial Regulations.

Noting also that the implementation of the revised provisions of Rule V and Rule XXV of the General Rules of the Organization with respect to bodies established under Article VI and Article XIV of the Constitution shall be carried out in a progressive and differentiated manner having regard to all pertinent considerations, including the mandate of the concerned bodies;

Decides:⁵

- (a) to amend Rule V, paragraph 3 of the General Rules of the Organization as follows:
“Subject to any decision of the Conference, the Director-General shall, taking into account all relevant security concerns, make appropriate arrangements for the admission of the public and to plenary meetings of the Conference. Subject to any decision of the Conference, the Director-General shall also make arrangements for the admission of representatives of the press and other information agencies to plenary meetings of the Conference.
- (b) to amend Rule XXV, paragraph 9(a) as follows:
“Subject to the provisions of subparagraphs (b) and (c) below, meetings of the Council and of such of its committees as are open to all of its members shall be public. Rule V, paragraph 3 applies mutatis mutandis to the meetings of the Council and of such of its committees as are open to all its members”.

⁵ Words struck out to be deleted, words underlined to be added

APPENDIX IV

**AGREEMENT BETWEEN THE FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS (FAO)
AND
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

The Food And Agriculture Organization of the United Nations (“FAO”) and the World Intellectual Property Organization (“WIPO”), referred to in this Agreement jointly as “the organizations,”

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

ARTICLE I
Representation

1. Each organization shall invite the other organization to participate, without the right to vote, in the deliberations of its governing bodies and of other bodies where matters of particular concern to the other organization are considered, and in which it has indicated that it has an interest. Representatives of the organization so invited shall be afforded full opportunity to present its views on matters within the scope of its activities and mandate.
2. In this context, and subject to such arrangements as may be necessary to safeguard confidential matters, the organizations shall cooperate in the preparation of official documents, by making available drafts of the relevant documents, and providing technical advice and input, where appropriate and feasible.

ARTICLE II
Exchange of Information

1. The organizations shall regularly exchange information regarding their relevant activities and positions.
2. Each organization shall inform its Members of relevant activities of the other organization or, as appropriate, provide an opportunity for the other organization to do so.
3. The organizations shall keep each other informed of their relevant activities and positions in other organizations and forums and, as far as possible, coordinate their positions.

ARTICLE III
Fields of Cooperation

Cooperation under this Agreement may include:

- (a) The development of joint activities to address issues of mutual relevance, including coordinating and conducting joint studies and joint seminars and workshops, including on public policy options relating to the interaction between intellectual property and the food and agriculture sector;

- (b) Where appropriate, the coordination of databases, and the provision of access through their websites to the relevant information systems of the other organization and, where appropriate, the coordinated development of such information systems;
- (c) The provision of relevant technical information and input to support the work of the other organization, including in response to requests from that organization's Members;
- (d) Where appropriate, collaboration in providing technical assistance, including capacity building, to developing countries and countries with economies in transition;
- (e) Cooperation of work on such matters where intellectual property rights may intersect aspects of:
 - Farmers' Rights and traditional knowledge;
 - Agricultural biotechnology;
 - Genetic resources for food and agriculture;
 - Promotion of innovation and the effective capture of benefits from public investment in research;
 - Access to, and transfer of, technology in the food and agriculture sector;
 - Plant protection and production;
 - Use of distinctive signs in the food and agriculture sector;
 - Ethical issues in food and agriculture;
 - Information and analysis on patterns and trends of intellectual property use in the food and agriculture sector;
 - Creation, development and dissemination of agricultural information and data, particularly on the Internet and on CD-ROM.
- (f) Technical cooperation, as appropriate, on issues relevant to international instruments under the aegis of the two organizations, including:
 - the International Treaty on Plant Genetic Resources for Food and Agriculture;
 - the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
 - the International Plant Protection Convention;
 - the *Codex Alimentarius*;
 - the Paris Convention for the Protection of Industrial Property;
 - the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure;
 - the Patent Cooperation Treaty;
 - the Patent Law Treaty;
 - other relevant policy documents developed or administered by the organizations which address matters of mutual interest.

ARTICLE IV

Joint programmes of work

1. In order to promote cooperation within the context of this Agreement, and in order to develop joint activities to address issues of mutual relevance, either the FAO or WIPO may propose joint projects aimed at specific objects of cooperation. Such joint programmes of work shall specify the respective responsibilities and financial obligations of the FAO and WIPO, and specify any other sources of funds, as well as staffing responsibilities. In implementing such joint programmes of work, the FAO and WIPO may jointly agree on cooperation with other organizations and agencies, including funding agencies.

2. If agreed between the Parties, such joint programmes of work may be dated and numbered serially, signed by both organizations and regarded as annexes to this Agreement.
3. Such joint programmes of work may be modified by the written mutual consent of the FAO and WIPO.
4. Where necessary within the context of agreed joint activities or programmes of work, either organization may second staff to the other organization, and make other administrative arrangements.

ARTICLE V

Financial implications

1. Any minor and ordinary expenditure relating to the implementation of this Agreement shall be borne by the respective organization.
2. If the cooperation proposed by one of the organizations to the other in accordance with this Agreement entails expenditure beyond minor and ordinary expenditures, the two organizations shall consult to determine the availability of the resources required, the most equitable way of meeting such expenditure and, if resources are not available, the most appropriate ways to obtain the necessary resources. If necessary and if agreed by the two organizations, they may jointly seek financial resources from donor institutions for their cooperation activities and joint programmes of work.

ARTICLE VI

Implementation of this Agreement

The Director-General of the FAO and the Director-General of WIPO may make the arrangements necessary for ensuring satisfactory implementation of this Agreement.

ARTICLE VII

Modification of the Agreement

Subject to the provisions of Article X below, this Agreement may be modified by the written mutual consent of the organizations.

ARTICLE VIII

Termination

Either organization may terminate this Agreement, subject to six months' written notice. Termination shall not affect obligations previously entered into specifically for the conduct of joint programmes of work implemented under Article IV of this Agreement.

ARTICLE IX

Agreements with other Organizations

This Agreement is without prejudice to agreements concluded by either FAO or WIPO with other organizations or programmes within the United Nations System.

ARTICLE X
Entry into Force

This Agreement and any modification thereto shall enter into force once the pertinent constitutional processes of both organizations have been completed.

**On behalf of the Food and Agriculture
Organization of the United Nations**

**On behalf of the World Intellectual
Property Organization**

**Jacques Diouf
Director-General**

**Kamil Idris
Director-General**