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# COUNCIL

## Hundred and Sixty-fifth Session

30 November – 4 December 2020

### Report of the 111<sup>th</sup> Session of the Committee on Constitutional and Legal Matters (26-28 October 2020)

#### Executive Summary

At its 111<sup>th</sup> Session, the Committee on Constitutional and Legal Matters (CCLM):

1. **Considered** the legal and constitutional framework under which the New Strategy for Private Sector Engagement (“the Strategy”) is being developed, **endorsed** the overarching legal principles that should govern FAO’s engagement with the private sector as reflected in document CCLM 111/2 with a view to preserving the legal and constitutional status of the Organization in accordance with its Basic Texts and **underscored** that, when engaging with the private sector, FAO’s goals should be prioritized and UN values promoted. The Committee **welcomed** the work done in developing the Strategy and the extensive and inclusive consultations that had been conducted with Members, private sector and other stakeholders and **emphasized** that the Strategy should closely follow and be consistent with relevant UN system policies and reports relating to cooperation and partnerships arrangements between the United Nations and the Business Sector.
2. **Confirmed** that the proposal for the selection and appointment of Secretaries set out in Annex 3 to CCLM 111/3 was consistent with the Basic Texts and the Constitution of FAO and relevant treaties establishing Article XIV Bodies. While welcoming the work undertaken by the Independent Chair of the Counsel (ICC) including his extensive consultations with the Article XIV Bodies concerned and FAO Management with a view to reaching a consensus on a lasting solution on this matter, it **took note** of changes to the above-mentioned proposal introduced by the ICC further to his recent consultations, as reflected in the Annex 1 to the CCLM Report (CL 165/12) and encouraged the ICC to advance his consultations with a view to enabling the Council to reach a conclusion on this matter soon.
3. **Welcomed** the comprehensive presentation on the activities of the Development Law Service (LEGN) of the Legal Office, in particular its contribution to the Organization’s COVID-19 Response and Recovery Programme, highlighted the importance of sound legal frameworks and their effective implementation for the achievement of the Sustainable Development Goals, also in times of emergency, observing the importance of entrenching the “One Health” approach through strong legal frameworks in the context of the pandemic. The Committee **expressed support** for initiatives on “*the Programme to strengthen implementation, compliance and enforcement*” as well as the implementation of the “*Strategy on Law and Climate Change*”, and **encouraged** the collaboration with other

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organizations, sister UN system agencies and stakeholders with a view to supporting Members to address their priorities. It acknowledged the 25<sup>th</sup> anniversary of FAOLEX as an important milestone in the service provided to Members by the Legal Office.

4. **Took note** of the complexity of the issues involved in the Review of the jurisdictional set up of the United Nations common system (as per UN General Assembly Resolution 74/255B, paragraph 8) and that the Review is in its first phase, through a consultation launched by the UN Office of Legal Affairs. It **welcomed** the consultations with FAO Management and the Staff Representatives Bodies and **looked forward** to being informed on further developments.
5. **Reviewed** the General Rules of the Organization and **observed** that the General Committee is constituted only upon election of its Members by the Conference, following a nomination by the Council and, accordingly, **considered** that, pursuant to the Basic Texts, the General Committee could not meet prior to the Conference. Acknowledging the need for efficiency gains, the Committee **suggested** that nominees for the General Committee could meet informally prior to the Conference without the authority to take decisions or make recommendations.
6. **Welcomed** the update on the status of the item on unspent balances provided by the CCLM Secretariat and **took note** that the item will be considered by the next Joint Meeting of the Finance and Programme Committees after which the CCLM will be in the position to reconsider this item.

#### **Suggested action by the Council**

The Council is invited to approve the Report of the CCLM. The Council is, more specifically, invited to:

1. **Approve** the overarching legal principles that should govern FAO's engagement with the private sector as reflected in document CCLM 111/2 with a view to preserving the legal and constitutional status of the Organization in accordance with its Basic Texts;
2. **Agree** with the CCLM that the proposal for the selection and appointment of Secretaries set out in Annex 3 to CCLM 111/3 is consistent with the Basic Texts and the Constitution of FAO and relevant treaties establishing Article XIV Bodies and **endorse** changes to this proposal introduced by the ICC further to his recent consultations with the Article XIV Bodies concerned and FAO Management, as reflected in the Annex 1 to the CCLM Report (CL 165/12);
3. **Note** the information on the activities of the Development Law Service (LEGN) of the Legal Office, in particular its contribution to the Organization's COVID-19 Response and Recovery Programme, **highlight** the importance of sound legal frameworks and their effective implementation for the achievement of the Sustainable Development Goals, also in times of emergency, observing the importance of entrenching the "One Health" approach through strong legal frameworks in the context of the pandemic, and **encourage** collaboration with other organizations, sister UN system agencies and stakeholders with a view to supporting Members to address their priorities.
4. **Note** of the information provided on the on-going Review of the jurisdictional set up of the United Nations common system requested by the UN General Assembly, noting that FAO would participate with due consideration being given to its distinct governance structure and legal framework and **note**, with appreciation, the involvement of the FAO Staff Representative Bodies in this process and **request** to be informed of developments on this subject.
5. **Agreed** with the CCLM that, pursuant to the Basic Texts, the General Committee cannot meet prior to the Conference and **note** its suggestion that nominees for the General Committee could meet informally prior to the Conference without the authority to take decisions or make recommendations.

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

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## Introduction

1. The Hundred and Eleventh Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 26 to 27 October 2020.
2. The Session was convened virtually on an exceptional basis due to the COVID-19 pandemic in Italy and worldwide.
3. The Session, open to silent observers, was chaired by H.E. (Ms) Daniela Rotondaro, who welcomed all the Members through remote participation. The Chair welcomed the new CCLM Members: H.E. (Mr) Domingo Nolasco (Philippines) designated to replace Mr Theodore Andrei Bauzon, and Ms Alison Storsve (United States of America) designated to replace Ms Emily Katkar, in accordance with Rule 34 paragraph 4 of the General Rules of the Organization.
4. The CCLM was informed that, for this Session, Mr Esala Nayasi (Fiji) had been replaced by H.E. (Mr) Deo Saran and that H.E. (Ms) Mónica Robelo Raffone (Nicaragua) had been replaced by Mr Junior Andrés Escobar Fonseca.
5. The following members joined the Session:
  - H.E. (Mr) Deo Saran (Fiji)
  - H.E. (Mr) Charles Essonghé (Gabon)
  - Mr Ali Albsoul (Jordan)
  - Mr Junior Andrés Escobar Fonseca (Nicaragua)
  - H.E. (Mr) Domingo Nolasco (Philippines)
  - Mr Rafael Osorio de Rebellón (Spain)
  - Ms Alison Storsve (United States of America)
6. The CCLM followed the modalities applied to the CCLM 110<sup>th</sup> Session, as reflected in the Note from the Chair (Annex 1 to CL 164/2), and agreed to suspend the rules that may be incompatible with the virtual meeting for the 111<sup>th</sup> Session, in accordance with Rule VII of the Rules of Procedure.

### **Item 1: Adoption of the agenda and arrangements for the Session (CCLM 111/1 Rev.1)**

7. The CCLM Members approved the Agenda as well as the Chair's suggestion to consider the substantive items on the Agenda – requiring a specific CCLM action – prior to the two items submitted for information. It also agreed to the request for an update on the issue of unspent balances that had been addressed at its last CCLM Session, under Any Other Business.

### **Item 2: New Strategy for Engagement with the Private Sector (CCLM 111/2)**

8. The CCLM considered document CCLM 111/2 “*New Strategy for Engagement with the Private Sector*” submitted to the CCLM under Rule XXXIV, paragraph 7 (m) of the General Rules of the Organization (GRO). The Committee was called to consider exclusively the legal and constitutional framework under which the New Strategy for Private Sector Engagement has been drafted and is currently still under development.
9. Deputy Director-General Beth Bechdol made a comprehensive presentation on a number of features of the Strategy relevant to the CCLM deliberations and provided an update on the informal on-going consultations with the FAO Members.
10. This was followed by a presentation by the Legal Office which focussed on the overarching legal principles for FAO's engagement with the private sector, and on those matters that the CCLM was asked to consider within the framework of its specific mandate.

11. The CCLM welcomed the work done in developing the Strategy and the extensive and inclusive consultations that had been conducted with Members, private sector and other stakeholders.
12. The Committee endorsed the overarching legal principles that should govern FAO's engagement with the private sector as reflected in document CCLM 111/2, with a view to preserving the legal and constitutional status of the Organization in accordance with its Basic Texts. In light of the legal and constitutional status of the Organization, the Committee underscored that, when engaging with the private sector, FAO's goals should be prioritized and UN values promoted.
13. The Committee acknowledged the important role of the private sector in the achievement of the 2030 Agenda/SDGs and highlighted the need to strengthen safeguards and mechanisms to maintain FAO's impartiality, integrity and reputation, emphasizing the importance of due diligence mechanisms and risk management to uphold these legal principles and FAO's institutional framework. It encouraged consultations with Regions, Sub-regions and Members to ensure accountability and transparency.
14. The Committee underlined that the Strategy should closely follow and be consistent with UN system policies and reports, including the "*Guidelines on a Principle-Based Approach to the Cooperation between the United Nations and the Business Sector*"<sup>1</sup>, "*The United Nations System – Private Sector Partnerships Arrangements in the context of the 2030 Agenda for Sustainable Development*"<sup>2</sup> and the "*UNSDG Common Approach to Prospect Research and Due Diligence for Business Sector Partnerships*".
15. The Committee recommended that its observations and views be taken into account in the further development of the Strategy.

### **Item 3: Selection and Appointment of Secretaries of Article XIV Bodies (CCLM 111/3)**

16. The CCLM considered document CCLM 111/3 "*Selection and Appointment of Secretaries of Article XIV Bodies*". It noted that this item had been considered at the 103<sup>rd</sup>, 106<sup>th</sup>, 107<sup>th</sup>, and 110<sup>th</sup> Sessions of the CCLM and had also been the subject of extensive consultations by the present Independent Chairperson of the Council (ICC), Mr Khalid Mehboob, and his predecessor.
17. The ICC presented the outcome of his consultations with the Chairs of the three Statutory Bodies concerned<sup>3</sup> and informal consultations with the Chairs and Vice-Chairs of the Regional Groups.
18. The CCLM, while noting that the process had been on-going for quite some time, welcomed the work undertaken by the ICC and took note of his extensive consultations with a view to reaching a consensus on a lasting solution for the selection and appointment of Secretaries of Article XIV Bodies.
19. The Committee confirmed that the proposal in Annex 3 to CCLM 111/3 for the selection and appointment of Secretaries was consistent with the Basic Texts and the Constitution of FAO and relevant treaties establishing Article XIV Bodies.
20. The Committee noted changes to the above-mentioned proposal introduced by the ICC further to his recent consultations, as reflected in the Annex 1 to this report.

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<sup>1</sup>[https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fun\\_business\\_partnerships%2Fguidelines\\_principle\\_based\\_approach\\_between\\_un\\_business\\_sector.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fun_business_partnerships%2Fguidelines_principle_based_approach_between_un_business_sector.pdf)

<sup>2</sup> JIU/REP/2017/8 - "*The United Nations System – Private Sector Partnerships Arrangements in the context of the 2030 Agenda for Sustainable Development*"

<sup>3</sup> Indian Ocean Tuna Commission (IOTC); General Fisheries Commission for the Mediterranean (GFCM); International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty)

21. The CCLM encouraged the ICC to advance his consultations with the Article XIV Bodies concerned and FAO Management with a view to enabling the Council to reach a conclusion on this matter soon.

#### **Item 4: Activities of the Development Law Service – Information report (CCLM 111/4)**

22. The CCLM took note of document CCLM 111/4 “*Activities of the Development Law Branch – Information report*” providing information on the activities undertaken by the Development Law Service (LEGN) in support to the FAO mandate that were presented during the Session. The Committee welcomed the report and the comprehensive presentation made during the Session.

23. The Committee acknowledged the 25<sup>th</sup> anniversary of FAOLEX as an important milestone in the service provided to Members by the Legal Office. It highlighted the importance of sound legal frameworks and their effective implementation for the achievement of the Sustainable Development Goals, also in times of emergency.

24. The CCLM expressed appreciation for the contribution of LEGN to the Organization’s COVID-19 Response and Recovery Programme, observing the importance of entrenching the “One Health” approach through strong legal frameworks in the context of the pandemic. The Committee expressed its support to LEGN’s new initiative on “*the Programme to strengthen implementation, compliance and enforcement*” as well as the implementation of the “*Strategy on Law and Climate Change*”.

25. The CCLM took note of and encouraged the collaboration between LEGN and other organizations, sister UN system agencies and stakeholders with a view to supporting Members to address their priorities.

#### **Item 5: Review of the jurisdictional set up of the United Nations common system (as per UN General Assembly Resolution 74/255B, paragraph 8) – Information report (CCLM 111/5)**

26. The CCLM took note of document CCLM 111/5 “*Review of the jurisdictional set up of the United Nations common system (as per UN General Assembly Resolution 74/255B, paragraph 8) – Information report*” presented by the Legal Office for information.

27. During the Session, the Legal Counsel provided further clarifications on the ongoing consultations internally as well as amongst the organizations of the UN system. She observed that this matter was brought to CCLM for information in light of the exclusive authority of the FAO Conference to determine the jurisdiction applicable to FAO personnel.

28. The CCLM took note of the complexity of this matter and that the Review is in its first phase, through a consultation launched by the UN Office of Legal Affairs.

29. It welcomed the consultations with FAO Management and the Staff Representatives Bodies and looked forward to being informed on further developments.

#### **Item 6: Working Methods of the Conference: The General Committee (CCLM 111/6)**

30. The CCLM considered document CCLM 111/6 “*Working Methods of the Conference: The General Committee*”.

31. The Legal Counsel made a brief presentation. The ICC recalled his mandate from the 162<sup>nd</sup> Session of the Council to consider working methods of the Conference, including methods to enhance efficiency. He reported on his informal consultations with the Chairs and Vice-Chairs of the Regional Groups, including on items that do not require CCLM action.

32. The Committee, having reviewed the General Rules of the Organization, observed that the General Committee is constituted only upon election of its Members by the Conference, following a nomination by the Council. Accordingly, it considered that, pursuant to the Basic Texts, the General Committee could not meet prior to the Conference. Acknowledging the need for efficiency gains, the Committee suggested that nominees for the General Committee could meet informally prior to the Conference without the authority to take decisions or make recommendations.

### **Item 7: Any other matters**

33. An update on the status of the item on unspent balances was provided upon request for information. The CCLM took note that the item will be considered by the next Joint Meeting of the Finance and Programme Committees after which the CCLM will be in the position to reconsider this item.

34. No other matter was raised under this item.

**Annex 1****Revised proposed procedure for the selection and appointment of Secretaries of****Article XIV Bodies**

1. A Vacancy Announcement is drafted by technical departments with support of the Human Resources Division (“CSH”) as is done for all senior (D1 and above) staff positions. The draft Vacancy Announcement is shared with the Chairperson of the Body concerned who is invited to provide views thereon.
2. The Vacancy Announcement is issued and posted for 30 days.
3. A first review and screening of candidates is undertaken by CSH based on the minimum criteria and qualifications set out in the Vacancy Announcement.
4. A second review is undertaken by the offices of the relevant Deputy Director-General and the relevant Director (D2) and the two representatives of the Members of the Article XIV Body to establish a shortlist of candidates for interview. The interview shortlist must contain at least ten candidates.
5. An Interview Panel is established, which is composed of:
  - a) the relevant Deputy Director-General or Director (D2);
  - b) one Senior FAO officer;
  - c) two representatives of the Members of the Article XIV Body;
  - d) one external member, to be selected by the Interview Panel from among three candidates proposed by CSH; and
  - e) one representative of CSH (for process support).
6. Interviews of shortlisted candidates are conducted by the Interview Panel which will prepare a report. The Panel Report will identify a minimum of three and a maximum of five qualified candidates.
7. Both the shortlist of candidates for interview as well as the three to five candidates submitted to the Director-General is compiled with due regard to gender and geographic balance in line with the policy of the Organization. If this balance is not achieved, the Panel Report must contain a justification for this.
8. The Panel Report is submitted for consideration by the Director-General.
9. Reference checks are undertaken by CSH.
10. The Director-General identifies one proposed candidate for appointment, whose name and *curriculum vitae* are referred to the relevant Article XIV Body for approval in accordance with the provisions of the treaty concerned.
11. Upon approval of the Body, an offer is issued to the candidate. Should there be non-approval, the Director-General will propose to the Body another candidate recommended for appointment.
12. Upon acceptance, the Director-General appoints the candidate.