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COUNCIL

Hundred and Fifty-fifth Session

Rome, 5-9 December 2016

Report of the 103rd Session of the Committee on Constitutional and Legal Matters (24-26 October 2016)

Executive Summary

The Committee on Constitutional and Legal Matters (CCLM):

- a) **examined** the issue of the Procedure for the selection and appointment of secretaries of bodies under Article XIV of the FAO Constitution and other entities hosted in FAO; **acknowledged** the need to balance the functional autonomy of Article XIV Bodies with legal and administrative responsibilities borne by the Organization for such Bodies; **stressed** that this matter involved policy, governance and legal issues; **agreed** that further consultations would be needed with wider participation - including with the Bodies themselves – and with the background reference material.
- b) **reviewed** issues related to *Decision-making procedures in bodies under Article XIV of the FAO Constitution*; **noted** that formal meetings of Statutory Bodies should be held public; **confirmed** the applicability of the general principle reflected in Article VII, paragraph 5 of the FAO Constitution to formal meetings of the Statutory Bodies and that the Director-General or his representative shall participate without the right to vote at the formal meetings of the Statutory Bodies and their subsidiary bodies; and **underlined** that this did not apply to informal meetings of Members of Statutory Bodies.

Suggested action by the Council

The Council is invited to:

- a) **provide** such guidance as it deems appropriate on the issue of the procedure for the selection and appointment of secretaries of Article XIV bodies and other entities hosted in FAO, taking into account the views of the CCLM and the Joint Meeting of the Programme and Finance Committees;

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b) **confirm** that formal meetings of Statutory Bodies should be held in public and that the Director-General or a representative of the Director-General shall participate without a right to vote at the formal meetings of the Statutory Bodies and their subsidiary bodies, pursuant to Article VII, paragraph 5 of the FAO Constitution.

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I. Introduction

1. The Hundred and Third Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 24 to 26 October 2016.

2. The Session, open to silent observers, was chaired by H.E. (Mr) Lubomir Ivanov, who welcomed all the members. The following members were present:

Ms Maria Laureano (Dominican Republic)

Mr Royhan Nevy Wahab (Indonesia)

H.E. (Mr) Mohammed S. Sheriff (Liberia)

Mr Lawrence Kuna Kalinoe (Papua New Guinea)

H.E. (Ms) Daniela Rotondaro (San Marino)

Mr Osama Mahmoud Humeida (Sudan)

Ms April Cohen (United States of America)

3. The CCLM was informed that Mr Rawell Salomón Taveras Arbaje (Dominican Republic) had been replaced by Ms Maria Laureano.

4. The CCLM approved its Provisional Agenda.

II. Procedure for the selection and appointment of secretaries of bodies under Article XIV of the FAO Constitution and other entities hosted in FAO

5. The CCLM examined document CCLM 103/2 *“Procedure for the selection and appointment of secretaries of bodies under Article XIV of the FAO Constitution and other entities hosted in FAO”*.

6. In introducing the document, the Legal Counsel observed that the establishing treaties of some Bodies under Article XIV of the FAO Constitution (*“Article XIV Bodies”*) made provision for the appointment of the secretaries by the Director-General with the approval of the Body concerned. Concerns were raised by the Secretariat regarding the selection of secretaries through elections, as had become a practice for these Bodies. Summarizing the issues of concern that had resulted from these processes, the Legal Counsel – noting that there was no basis for elections in the relevant establishing agreements, nor in the practice of the United Nations System – underlined that the selection and appointment of secretaries involved two parties: the Body concerned and the Director-General. He observed that, through the conduct of elections, the Director-General was effectively being excluded from discharging the statutory role attributed to him. The distinction between governance and management roles was highlighted. He proposed that the standard processes for the selection of senior staff be applied to the selection of secretaries, with some adjustments – such as the inclusion of one or two representatives of members in the selection panel – with subsequent submission of the proposed candidate to the Body concerned for approval. This alternative option for a possible future mechanism would allow both concerned parties to engage in their respective statutory roles.

7. The Legal Counsel informed the CCLM that the Secretariat was committed to ensuring full continuity in the operation of the Bodies concerned.

8. Following an extensive exchange of information, the CCLM acknowledged the need to balance the functional autonomy of Article XIV Bodies with legal and administrative responsibilities borne by the Organization for such Bodies.

9. The CCLM stressed that this matter involved policy, governance and legal issues. It noted that it would also be considered during the forthcoming Joint Meeting of the Programme and Finance Committees and would ultimately be referred to the Council. Some members were in favour of the option proposed by the Secretariat, while others would have preferred the Secretariat to present alternative options. The CCLM agreed that further consultations would be needed with wider participation - including with the Bodies themselves - and with the background reference material.

III. Decision-making procedures in bodies under Article XIV of the FAO Constitution

10. The CCLM considered document CCLM 103/3 entitled "*Decision-making procedures in bodies under Article XIV of the FAO Constitution*".

11. The CCLM noted that formal meetings of Statutory Bodies should be held in public, consistent with the longstanding practice of the Organization, as confirmed by the FAO Conference in 2005, and as also reflected in the General Rules of the Organization.

12. With regard to the presence of a representative of the Director-General at the formal meetings of Statutory Bodies, the CCLM recalled Article VII, paragraph 5 of the FAO Constitution. The CCLM confirmed the applicability of the general principle reflected in Article VII to the formal meetings of the Statutory Bodies, noting that the Rules of Procedure of the Statutory Bodies could not be inconsistent with their establishing agreements, nor the FAO Constitution. The CCLM confirmed that the Director-General, or a representative of the Director-General, shall participate without the right to vote at the formal meetings of the Statutory Bodies and their subsidiary bodies.

13. The CCLM underlined that the above did not apply to informal meetings of Members of Statutory Bodies.

IV. Any other matters

14. There were no other matters.