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Продовольственная и
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Объединенных
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Organización
de las
Naciones
Unidas
para la
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y la
Alimentación

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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INDEPENDENT CHAIRPERSON OF THE COUNCIL

BACKGROUND

1. The Immediate Plan of Action for FAO Renewal (IPA), approved by the Conference at its Thirty-fifth (Special) Session, contains the following general statement regarding the Independent Chairperson of the Council (ICC):

“The Independent Chairperson of the Council will play an enhanced facilitation role in further empowerment of the Council to better play its role in governance and oversight. These functions of the Independent Chairperson will be specified in the Basic Texts and will include active consultation with regional groups in preparation for Council sessions” (paragraph 23).

2. The following specific actions regarding the ICC are included in the relevant IPA Action Matrix:

“Revise Basic Texts to clearly specify the proactive facilitation role of the Independent Chairperson of the Council for the Governance of FAO, eliminating any potential for conflict of roles with the managerial role of the Director-General and, including, in addition to chairing meetings of the Council (Action 2.26):

(a) serve as an honest broker in arriving at consensus between members on controversial issues (Action 2.27);

(b) liaise with the Chairs of the Programme and Finance Committees and CCLM on their work programmes and as appropriate with the Chairs of Technical Committees and Regional Conferences, normally attending the Programme and Finance Committees and Regional Conferences (Action 2.28);

(c) as and when he/she considers it useful, the Independent Chairperson of the Council may call for consultative meetings with representatives of the Regional Groups on issues of an administrative and organizational nature for the preparation and conduct of a session (Action 2.29);

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- (d) *liaise with FAO senior management on concerns of the membership, expressed through the Council and its Programme and Finance Committees and the Regional Conferences (Action 2.30);*
- (e) *ensure that the Council is kept abreast of developments in other fora of importance for FAO's mandate and that dialogue is maintained with other Governing Bodies as appropriate, in particular the Governing Bodies of the Rome based food and agriculture agencies (Action 2.31);*
- (f) *drive forward the continuous improvement of the efficiency, effectiveness and Member ownership of FAO Governance (Action 2.32);*
- (g) *The Basic Texts will also specify (Action 2.33);*
 - (i) *desirable qualifications (competencies) for the Independent Chairperson to be developed by the Conference Committee with advice of the CCLM and decided by the 2009 Conference;*
 - (ii) *that the Independent Chairperson is required to be present in Rome for all sessions of the Council and will normally be expected to spend at least six to eight months of the year in Rome (Action 2.34)".*

GENERAL CONSIDERATIONS

3. The status and functions of the ICC have been reviewed on three past occasions. The outcome of these reviews is highly relevant for the implementation of the IPA actions, even though they have been made a long time ago and from different perspectives. The reviews showed, *inter alia*, that the Governing Bodies expressed in the past, a clear preference for the appointment of the ICC by the Conference, as this was an important element to guarantee his independence, **and that flexibility should be retained in the definition of the functions of the ICC.**

(a) Establishment of the office of Independent Chairperson of the Council (1947)

4. At the early stages of the life of the Organization, the Constitution made provision for an Executive Committee appointed by the Conference and consisting of not less than nine, or more than fifteen Members of the Conference or their advisers, who were qualified "*by administrative experience or other special qualifications to contribute to the objectives of the Organization*". These appointments were *ad personam*. The Executive Committee used to appoint its Chairperson. In 1947, the Executive Committee was transformed into the Council of the Organization consisting of "*eighteen Member Nations*" elected by the Conference. Thus appointments ceased to be *ad personam* and became of a governmental nature.

5. On that occasion, some debate surrounded the issue of whether the Chairperson should continue to be elected by the Council (previously the Executive Committee), or whether the Chairperson should be elected by the Conference. A commission entrusted with the task of formulating amendments to the Constitution recommended that the Chairperson should be "*an impartial representative of all Member Nations*" and, to that effect, be elected by the Conference. Provision was therefore made in the Constitution for the election by the Conference of "*an Independent Chairman of the Council*"¹. At the same time, it was emphasized that the system "*was adopted as an indispensable compromise between the then existing system of an executive*

¹ CL 52/22, Appendix 1.

committee composed of members elected on a personal basis [...] by the Conference, and the establishment of a Council of representatives appointed by the governments of Member Nations elected by the Conference”.

(b) **Ad Hoc Committee on the Organizational Structure of FAO (1955-1957)**

6. In 1955, the Conference established an *Ad Hoc* Committee on the Organizational Structure of FAO². At first, the Committee considered abolishing the position of ICC but, subsequently, upon further review of the matter, recommended that the Council should continue to have an “*Independent Chairman*” appointed *ad personam*³. The Conference approved this recommendation.

7. The *Ad Hoc* Committee also made a number of proposals regarding the functions of the ICC which were, for the most part, subsequently incorporated by the Conference into the General Rules of the Organization (GRO) in 1957. These provisions have, since then, governed the status of the ICC, except for an amendment to the GRO regarding the term of office.

(c) **Review of the status, functions and term of office of the Independent Chairperson of the Council (1968-1971)**

8. The status, functions and term of office of the ICC were reviewed closely by the Governing Bodies between 1968 and 1971. In 1968, the Council examined a proposal that the functions of the ICC and the future of the position should be re-examined. In particular, the question was raised as to whether the Chairperson should continue to be “*independent*” and appointed by the Conference, or instead, should be appointed by the Council from among representatives of Members. The Council established an *ad hoc* Intergovernmental Committee to study the question⁴.

9. The *ad hoc* Committee examined the matter and submitted its views to the the Council⁵ which, in turn, reported to the Conference on the conclusions of the work of the Committee. At its session of 1971, the Conference expressed itself in favour of maintaining the procedure whereby it should continue to elect the ICC, as this was a means of guaranteeing independence. The Conference also stressed that being in active Government service should not be regarded as incompatible with the exercise of responsibilities as ICC. In this connection, the Conference emphasized that the principal qualities which should be taken into account when choosing an “*Independent*” Chairperson “*were his ability to be objective, his competence and his experience and knowledge of the Organization’s field of work*”. As regards the functions of the ICC, the Conference agreed that, in general, “*no substantial changes should be envisaged*”. However, following a debate, the Conference decided that “*the status, functions and term of office of the*

² The Committee was entrusted to carry out a study of the structure and functions of the Governing Bodies. The purpose of the “*study was to improve the efficiency of (these) organs, eliminating unnecessary documentation, avoiding successive reviews of the same subject matter and effecting such simplification as would lead to economy of time and money for the Organization and its Member Nations*”.

³ *Ad Hoc* Committee on Organizational Structure of FAO, C/57/5, page 21. The records of the proceedings reveal that while there was some uncertainty regarding the extent of the functions of the Chairperson, it was found that it was in the interest of the Organization that the office be maintained. The Committee recommended that a number of matters regarding the election of the Independent Chairperson be clarified.

⁴ CL 51/REP, paragraphs 141-145.

⁵ CL 51/REP, paragraphs 182-186.

Independent Chairperson of the Council should be set out in more detail in the Basic Texts of the Organization"⁶.

10. Following the decision of the Conference, the Council, at its session of June 1971, requested the Committee on Constitutional and Legal Matters (CCLM) to propose amendments to implement the decisions of the Conference, as clarified by the Council⁷.

11. The CCLM examined, *inter alia*, the following questions brought to its attention by the Council: (i) the method of election of the ICC; (ii) the duration of the term of office; (iii) the concept of "independence"; (iv) the qualifications that an ICC should possess; (v) his role during and between Council sessions. After a detailed review of each of these questions, the CCLM concluded that none of these questions involved amendments to the Basic Texts, except a proposal that the ICC would be appointed for a term of office of two years, renewable once⁸.

12. **The CCLM took the general view that it would be appropriate to continue to define the functions of the ICC in a broad, extensive manner, as emerging from the very nature of that office** because a more detailed definition of the functions of the ICC could result in the establishment of restrictions to those functions of the ICC, in light of possible unforeseen evolution of circumstances.

13. At its session of November 1971 the Council concurred with the conclusions of the CCLM that none of the questions involved amendments to the Basic Texts, except the recommendation that the ICC should be appointed for a non-renewable term of office of two years⁹. The Conference endorsed unreservedly the conclusion that none of the other questions involved amendments to the Basic Texts. However, after a debate, the Conference approved an amendment to Rule XXIII of the GRO, but the amendment eventually approved was different from the draft amendment which had been proposed, insofar as provision was made for a term of office for the ICC of two years, renewable only once.

14. Since 1971 no changes have been made to the provisions of the Basic Texts governing the status of the ICC.

FUNCTIONS OF THE INDEPENDENT CHAIRPERSON OF THE COUNCIL AND PROPOSED APPROACH FOR THE IMPLEMENTATION OF THE ACTION MATRIX

15. In examining the functions of the ICC it is useful to refer to the provisions of the Basic Texts, as clarified by practice.

16. Under Article V, paragraph 2 of the Constitution, the Conference is required to appoint the ICC. Rule XXIII of the GRO contains provisions regarding the term of office, nomination, emoluments and other conditions of appointment. The ICC does not vote. The election of the ICC is done in accordance with the relevant provisions of Rule XII and Rule XXIII of the GRO. Rule XXIII also contains a number of provisions regarding the status and entitlements of the ICC.

17. Aside from the functions generally performed by the ICC inherent in that office, the Basic Texts make reference to a few specific duties and functions. Thus, under Article XIV, paragraph 7 of the Constitution, the ICC may be required to certify conventions or agreements adopted by the Council. Under Rule XVI, paragraph 2, the ICC may appoint one or two rapporteurs from among representatives of Members. The ICC may convene a session of the Council, is consulted in connection with the preparation of the provisional agenda and is also consulted in connection with

⁶ C 69/REP, paragraphs 591-59.

⁷ CL 56/REP, paragraphs 99-101.

⁸ CL 57/4, paragraphs 2 to 14.

⁹ CL 57/REP, paragraphs 80 to 86.

any decision to be taken by correspondence under Rule XXV, paragraph 14 of the GRO, should matters of exceptional urgency arise between sessions. Under Rules XXVI and XXVII, paragraph 6, the ICC may attend meetings of the Programme and Finance Committees.

18. In practice, over the years, the ICC has fulfilled an increasing number of functions that were not explicitly foreseen in the Basic Texts but have arisen from the office of ICC. Thus, since the mid-sixties it has been considered that it was essential for the ICC, on account of the responsibilities connected with the office, to keep himself constantly informed of all matters related to the policy of the Organization. The ICC has therefore attended meetings other than sessions of the Programme and Finance Committees. In addition, there has been a recent practice whereby the ICC has been attending all sessions of Regional Conferences. In addition, the ICC has, over the years, been performing an increasingly important role in serving as an “*honest broker*” in arriving at a consensus between Members, especially on complex matters or controversial issues. Indeed, for the past eight years there has been a practice in FAO where the ICC has been chairing groups of Friends of the Chair to address specific topics. The ICC has been holding consultations with regional groups. The ICC has also liaised closely with senior officials of the secretariat and the Director-General whenever that was required.

19. In general, the Action Matrix closely reflects the current rules and practice regarding the role of the ICC. This being so, the same considerations which led the Conference in 1971 not to approve amendments to the Basic Texts, in particular the GRO, to clarify the role of the ICC remain valid today, and perhaps even more so. A too-detailed definition of the functions of the ICC could limit the ability of the legal framework governing those functions to properly address unforeseen situations.

20. **Therefore, it is proposed that instead of contemplating any amendments to the Basic Texts, consideration be given to adopting a Conference Resolution for the implementation the Action Matrix. The Resolution would, by and large, reproduce the content of the Action Matrix, subject to some adjustments,** as the Action Matrix itself reflects the practice regarding the functions of the ICC under the framework established by the GRO. The Action Matrix is a transcription of the status and functions of the ICC over the past few years.

DESIRABLE QUALIFICATIONS (COMPETENCIES) FOR THE INDEPENDENT CHAIRPERSON OF THE COUNCIL¹⁰

21. Between 1968 and 1971 the qualifications required of an ICC were also discussed. In 1969, the Conference emphasized that the principal qualities to be taken into account when choosing an ICC were “*his ability to be objective, his competence and his experience and knowledge of the Organization’s field of work*”¹¹. When examining the matter, the CCLM considered that it would be inappropriate to list in the Basic Texts the qualifications that an ICC should possess. The CCLM noted that even if the qualifications of the ICC were listed in the Basic Texts, the Conference, when appointing the ICC, would still have to use its judgment and consider the relative merits of the candidates¹². At that time, it was pointed out that detailed conditions on the qualifications of the ICC might impose unnecessary and inappropriate hindrances upon the Conference and Members when selecting the candidate, whereas the appointment of the ICC was primarily a matter for sovereign States.

22. Similar concerns were expressed with respect to the qualifications of the representatives of Member Nations to the Programme and Finance Committees and to the CCLM in document CCLM 84/6, examined by the Committee. This document stressed the desirability of a prudent

¹⁰ IPA Action 2.34.

¹¹ C 69/REP, paragraph 593.

¹² CL 57/4, Report of the Twenty-fifth Session of the CCLM, 1-4 November 1971, paragraph 8.

approach towards any strict requirements regarding the qualifications of members of the Committees. The document stressed, in particular, that “*on the issue of the qualifications of the individuals that elected Member Nations may appoint, it is proposed that the current text of Rules XXVI, paragraph 1 and XXVII paragraph 1, be maintained. The designation of representatives remains a prerogative of Members, made after appropriate regional consultation. In addition, as evidenced by practice, too strict conditions regarding the qualifications of representatives might not substantially change the nature of the current process of their designation by Members and, moreover, might limit the ability of Members to designate representatives*”.

23. Taking into account the above considerations, including the review of the matter already undertaken by the Governing Bodies, it is proposed that the definition of desirable qualifications for the ICC be done through the proposed Conference resolution and **based on the views put forward by the Conference in 1969**. At that time, the Conference considered that the principal qualities to be taken into account when choosing a person to fill the post of ICC should be “*his ability to be objective, his competence and his experience and knowledge of the Organization’s field of work*”¹³. This would provide the membership with a reasonable degree of assurance that the ICC would be able to fulfil his functions efficiently.

PRESENCE IN ROME OF THE INDEPENDENT CHAIRPERSON OF THE COUNCIL

24. IPA Action 2.34 provides that “*the Independent Chairperson is required to be present in Rome for all sessions of the Council and will normally be expected to spend at least six to eight months of the year in Rome.*”

25. It is proposed that the substance of this paragraph be incorporated into the Conference resolution on the ICC¹⁴. The relevant operative part of the Resolution would need to be read in conjunction with the general requirement, reflected also in the Resolution, that the ICC should exercise an active role on governance matters and that any potential for conflict of roles with the managerial functions of the Director-General should be eliminated.

DRAFT CONFERENCE RESOLUTION ON THE INDEPENDENT CHAIRPERSON OF THE COUNCIL

26. The Conference Resolution giving effect to the IPA Action Matrix on the ICC could be as follows:

“*THE CONFERENCE:*

Having noted that according to Article V, paragraph 2 of the Constitution the Independent Chairperson of the Council is appointed by the Conference and exercises such functions as are inherent in that office, or are otherwise defined in the Basic Texts of the Organization,

Having regard to Rule XXIII of the General Rules of the Organization;

Having noted that, through the Immediate Plan of Action (IPA) for FAO Renewal (2009-2011) adopted by Resolution 1/2008, the Conference decided that the Independent Chairperson of the Council should play an enhanced role in facilitating the exercise by the Council of its governance functions and oversight

¹³ C 69/ REP, paragraph 593.

¹⁴ This action has obvious financial implications.

of the administration of the Organization, and “drive forward the continuous improvement of the efficiency, effectiveness and ownership of governance by the membership of the Organization”;

Conscious of the need to ensure that an enhanced role of the Independent Chairperson of the Council should not create any potential for conflict of roles with the managerial functions of the Director-General in the administration of the Organization, as called for by the IPA;

Mindful that the IPA Actions regarding the Independent Chairperson of the Council should be clarified in a resolution and be implemented in the above spirit;

DECIDES:

1. *The Independent Chairperson of the Council shall, under the framework established by the Constitution and the General Rules of the Organization regarding his status and functions, and without restricting in any manner the general nature of those functions:*

- (a) whenever necessary, take such steps as may be required to facilitate and achieve consensus among Member Nations, especially on important or controversial issues;*
- (b) liaise with the Chairpersons of the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Matters regarding the work programmes of these Committees as well as, as appropriate, with the Chairpersons of the Technical Committees and Regional Conferences. Insofar as possible the Independent Chairperson of the Council shall attend the sessions of the Programme Committee, Finance Committee and Regional Conferences;*
- (c) as required or appropriate, convene informal consultative meetings with representatives of Member Nations or informal regional consultations on issues of an administrative and organizational nature for the preparation and conduct of Council sessions;*
- (d) liaise with the Director-General and other senior officials of the Organization in respect of any concerns of the membership, as expressed through the Council, Programme Committee, Finance Committee and Regional Conferences;*
- (e) ensure that the Council is kept informed of developments in other fora of relevance for FAO's mandate and that dialogue is maintained with other Governing Bodies as appropriate, in particular the Governing Bodies of the organizations based in Rome dealing with food and agriculture.*

2. *In nominating candidates for the office of Independent Chairperson of the Council, Member Nations should have regard to the qualities that the Chairperson should possess, including ability to be objective, sensitiveness to political, social and cultural differences, technical competence, as well as experience in and knowledge of the Organization's fields of work.*

3. *The Independent Chairperson of the Council shall be required to be present in Rome for all sessions of the Council and will normally be expected to spend at least six to eight months of the year in Rome.”*

27. It is also proposed that **the Conference Resolution should be included in the Basic Texts of the Organization.**

SUGGESTED ACTION BY THE COMMITTEE

28. The CCLM is invited to review this document and make such observations thereon as appropriate.

29. The CCLM is, in particular, invited to review the proposed Conference Resolution, propose such changes thereto as it deems appropriate, and endorse the draft Conference Resolution for the implementation of IPA Actions 2.26 to 2.34 regarding the ICC.