

September 2009

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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

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Eighty-eighth Session

Rome, 23 - 25 September 2009

FIFTY-ONE YEARS OF ACTIVITY OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

1. The Committee on Constitutional and Legal Matters (CCLM) held its first session on 27 October 1958. It has therefore operated for almost 51 years day by day. This short note provides some general information on the establishment of the CCLM, its *modus operandi*, especially taking into account a number of recent developments and some highlights on the substantive activities carried out since its first session.

Establishment of the CCLM

2. The CCLM was established in 1957 when the Conference approved a long series of amendments to the Basic Texts of the Organization, mainly the Constitution and the General Rules of the Organization (GRO). The main features of FAO's institutional architecture go back to that period.

3. In fact, the Conference at its session of 1955 had established an ad hoc Committee to study “*the structure, functions and procedures of the Council and certain committees with a view to making recommendations to improve their efficiency, eliminate unnecessary documentation and avoid successive reviews of the same subject matter*”¹. The ad hoc Committee made a number of recommendations which eventually resulted in the adoption of a number of amendments to the Constitution and the General Rules of the Organization.

¹ REP 1955, paragraphs 377 – 387.

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4. In 1957 the Conference amended Article V of the Constitution which then made provision for the Committee on Commodity Problems, the Programme Committee (previously the Co-ordinating Committee), the Finance Committee (previously the Committee on Financial Control) and, when convened, the Committee on Constitutional and Legal Matters. These would be committees appointed by and reporting to the Council.

Modus operandi of the CCLM

5. The operating procedures of the CCLM are set out in Rule XXXIV of the General Rules of the Organization. The CCLM is composed of not more than 7 members elected by the Council for a period of two years at the session of the Council immediately following the regular session of the Conference. In fact, the Council has always appointed seven Members since 1957. The nomination and voting procedures are set forth in Rule XXIV, paragraph 2 of the GRO.

6. The Committee holds sessions to consider specific items referred to it by the Council or by the Director-General which may arise out of a number of issues. As can be seen, Rule XXXIV, paragraph 3 establishes a very broad mandate as it contains a long list of topics that can be addressed by the Committee. Then Rule XXXIV, paragraph 4, after having listed many topics also provides that the Committee may consider the legal and constitutional aspects of any other matters submitted to it by the Council or the Director-General.

7. The Committee, at its first session following its election by the Council, elects a Chair and a Vice-Chair. The practice which is generally followed is that they remain in office for the whole biennium, either by analogy with the Programme and Finance Committee, or simply because it is the most effective or convenient solution. Appendices I and II contain a list of all chairpersons, vice-chairpersons and members of the CCLM since its beginning in November 1957.

8. Rule XXXIV, paragraph 7 provides that the meetings of the Committee be held in private, unless otherwise determined by the Committee. Two observations may be made in this regard:

(a) The first is that there has been a practice whereby documents used to be distributed to Members only. The CCLM in the past dealt with issues of a restricted nature but in 2006 it endorsed a proposal so that from then on all future CCLM documents would be placed on the FAO website with the exclusion of those which the Legal Office would consider of a confidential character. In such cases, the Legal Office would inform the CCLM at its relevant session of the reasons for such confidentiality.

(b) The second is that the IEE made a few recommendations regarding the possibility for silent observers to attend meetings of the Programme and Finance Committee. These recommendations were endorsed by the Immediate Plan of Action of FAO Renewal approved by the Conference. All meetings of the CCLM which took place in 2009 were open to silent observers.

9. Rule XXXIV, paragraph 8 provides that the Committee may adopt and amend its own Rules of Procedure which must be consistent with the Constitution and the GRO. However, the Committee has not adopted any Rules of Procedure. It has been considered that the framework established by the General Rules of the Organization would be sufficient for the CCLM to operate and it does not seem that, in the course of the past fifty years there was ever a procedural issue that the GRO were unable to address.

10. It has been the practice of the Organization that the Committee holds a Spring Session and an Autumn Session. However, there were occasional periods when more sessions were held². It has also been a practice that when there were no particularly urgent matters one of the sessions may not have been held. In the sixties, seventies and eighties CCLM meetings used to last for 4 days. However, because of the nature of issues, improvements in working methods and broader efforts aimed at streamlining procedures and making savings and efficiency gains, the CCLM now meets for shorter periods of time.

Highlights on some substantive activities of the CCLM

11. The activities of the CCLM would call for a specific detailed study which, unfortunately, has never been made. Given the broad range of matters which the CCLM has been called upon to address, consistent with Rule XXXIV paragraphs 3 and 4 of the GRO, such a study would not be an easy task. However, over the years, there were studies on particular topics which were examined by the CCLM³.

12. In general, and as a matter of principle as provided for in Rule XXXIV paragraph 3 of the GRO, amendments to the Constitution, the General Rules of the Organization and the Financial Regulations have been referred to the CCLM.

13. The CCLM has also, in general, reviewed relationship agreements concluded between FAO and other organizations under Article XIII, paragraph 1 of the Constitution as well as amendments to such agreements. The Organization has now some eighteen agreements concluded under this basis.

14. In the same vein, the CCLM has made extensive reviews of conventions or agreements concluded under Article XIV of the Constitution including amendments to those conventions or agreements. In addition, the CCLM examined a number of matters arising out of the operation of conventions and agreements concluded under Article XIV of the Constitution such as the overall status of such bodies or specific matters related to the Indian Ocean Tuna Commission or the General Fisheries Commission for the Mediterranean or amendments to Part R of the Basic Texts on "*Principles and procedures which should govern conventions and agreements concluded under Article XIV and XV of the Constitution, and commissions and committees established under Article VI of the Constitution*". In relation to agreements under Article XIV of the Constitution, the CCLM has also examined broader issues related to the Vienna Convention on the Law of Treaties, such as FAO's practice regarding acceptance of reservations.

15. Aside from simpler questions or matters of routine that may be referred directly to the Council or the Conference for decision, the CCLM has examined institutional issues regarding commissions and committees established under Article VI of the Constitution. The Codex Alimentarius Commission, a joint FAO/WHO commission, is one of those commissions which was established under Article VI of the Constitution in 1961. A range of matters pertaining to this Commission was referred to the CCLM on past occasions, such as amendments to its Statutes, membership of regional economic integration organizations within Codex, seating arrangements for the European Community within Codex and functions of the Executive Committee and matters related to participation of international non-governmental organizations in the work of the Commission. Over the years, the CCLM examined matters related to specific bodies under

² In 1991 and 2009 for instance.

³ There were specific studies on matters such as the Codex Alimentarius Commission, the membership of the European Community in FAO, the Indian Ocean Tuna Commission, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the Agreement for the Establishment of the Regional Fisheries Commission (RECOFI) including, at times, extensive references to the review by the CCLM.

Article VI of the Constitution such as the European Commission on Agriculture, the Advisory Committee on Pulp and Paper, the Committee on Wood-Based Panel Products, the North American Forestry Commission and several fisheries bodies, such as the Fishery Committee for Eastern Central Atlantic.

16. Over the years the CCLM was called upon to examine matters involving an obvious political dimension which must be seen in the light of conditions which prevailed at the time and are now only of historical interest. Thus, the CCLM examined matters related to assistance to peoples in liberated areas of colonial territories, the question of the participation of liberation movements in FAO meetings, for example, the membership status of Vietnam in relation to FAO. In a different context, the CCLM also examined matters related to succession of States in Eastern Europe. In 1995, the Committee extensively examined the issue of the participation of the European Community and of Member States of the European Community, representing their overseas territories outside the geographical scope of the Treaty of Rome in FAO meetings and intergovernmental agreements under FAO auspices.

17. The CCLM has also examined, on many occasions, issues related to the distribution of Member Nations by regions. In fact, until 1977 the membership of some Governing Bodies of FAO, with particular reference to the Council, was frequently increased and the CCLM was asked to examine matters related to the distribution of Member Nations by region. In one way or another, this was almost a standing item on the agenda of the main Governing Bodies of FAO for a long period of time. More recently, between 1985 and 1989, the matter was also reviewed from the perspective of the elections to the Programme and Finance Committee and again in 2005.

18. The Staff Regulations which govern the administration of the staff of the Organization are amended by the Council. In that connection, the CCLM has reviewed a wide range of personnel-related issues such as the establishment of a category of personnel, or the introduction of a financial disclosure system for designated staff members or even the issue of personal status for purposes of staff entitlements (registered partnerships and same-sex marriages). In 1973, the proposal was made that FAO should accept the statutes and the jurisdiction of the International Civil Service Commission and that a number of functions exercised until then by the Organization and its Governing Bodies should be transferred to the ICSC. This resulted in a process of review and amendment of a number of provisions of the General Rules of the Organization which amounted to a transfer of authority on a number of matters to the ICSC. Matters pertaining to the acceptance of the jurisdiction of the Joint Inspection Unit were also referred to the CCLM.

19. Topics having to do with the relationship between the main institutional players in the life of the Organization were examined many times. This was the case, for instance, as regards the functions of the Independent Chairperson of the Council which were reviewed by the CCLM between 1969 and 1971. The term of office of the Director-General, as well as related election procedures, was also examined on a few occasions. The procedures of appointment and the functions of vice-chairpersons of the Council were examined in 1965. On that occasion, a procedure was developed and eventually incorporated into the GRO to deal with urgent issues arising between Council sessions. Other matters included the status of observers in meetings of the Organization, the practice followed by the Organization regarding acceptance of credentials, matters related to voting procedures, criteria for Conference resolutions, the languages of the Organization, the process of preparation and adoption of the programme of work and budget or the possibility of restricting attendance by the general public to meetings of the Organization. This latter issue had to be seen in light of a long-standing tradition of the organizations of the United Nations system whereby the meetings of their main organs are public meetings. As mentioned above, the CCLM has also often examined issues related to the amendment of Financial Regulations and legal aspects involved in some financial matters, at times of a sensitive nature, such as the authority of the Director-General to borrow or the conditions of use of the Special Reserve Account.

20. As apparent from the above, the CCLM has, over the years, dealt with a very broad range of legal issues. Two topics attracted considerable attention in the history of the CCLM. They required the preparation and review of legal analysis involving original or unprecedented features and there would be justification to single them out in this review.

21. The first concerned the recognition of the immunity of the Organization by Italian courts which acquired a critical dimension in view of the fact that the headquarters of FAO are based in Italy. By 1982 and 1983 Italian tribunals did not recognize the immunity of FAO in respect of a number of acts performed by it and judgments were delivered by national courts against the Organization. This led to a much debated, complex process of review of the matter by the Conference, the Council and the CCLM which was eventually settled through exchanges of letters with the Italian Government. In that context it was even envisaged by the Conference that FAO should request an advisory opinion from the International Court of Justice. Thus, basically, between 1982 and 1986 this was a complex matter that was permanently before the Committee and which was eventually settled to the satisfaction of all parties.

22. The second of these topics was the formulation of a status for regional economic integration organizations within FAO, in other words, the conditions of membership of the European Community within FAO. The process of negotiation of this status lasted for three years from 1988 to 1991. The process attracted considerable attention at the time, as one of the stated objectives pursued was the definition of a form of membership that would set a model, a precedent for other organizations of the United Nations system. Eventually, however, while the model adopted in FAO exists in a number of organizations with limited, special competence, FAO has remained virtually the only organization with broad competence of which the European Community is a Member⁴.

Concluding remarks

23. Throughout 2009 the CCLM has been playing an active role in the review of a comprehensive set of amendments to the Basic Texts of the Organization for the implementation of the Immediate Plan of Action for FAO Renewal (IPA). The actions of the IPA foresee a number of changes in the future *modus operandi* of the CCLM including the appointment of a Chairperson who will not represent a country or a region and who will not vote and, in general, an alignment of the operating model of the CCLM on that of the Programme and Finance Committees of FAO. One would wish that the new operating model of the CCLM would be as efficient as the one which has functioned for the past 51 years.

⁴ As a result of the interest that this process attracted and the visibility acquired by the Committee, there were many nominations for Members at the elections of November 1991 and there was a need to hold secret ballots.

APPENDIX I

CCLM Chairpersons and Vice-Chairpersons: 1958 - 2009

1st Session - 1958)	Chairperson: Mr. S.G. Macdonald (Canada) Vice-Chairperson: Mr. K. C. Christofas (UK)
2nd Session - 1959)	Chairperson: Mr. S.G. Macdonald (Canada) Vice-Chairperson: Mr. M. Nazir Ahmed (Pakistan)
3rd Session - 1959)	Chairperson: Mr. W. W. Sohl (USA) Vice-Chairperson: Mr. M. Nazir Ahmed (Pakistan)
4th Session - 1961) 5th Session - 1961)	Chairperson: Mr. R. Regala (Philippines) Vice-Chairperson: Mr. M. Nazir Ahmed (Pakistan)
6th Session - 1962) 7th Session - 1962)	Chairperson: Mr. M. Nazir Ahmed (Pakistan) Vice-Chairperson: Mr. M. Abdelhaziz Shihi (Morocco)
8th Session - 1962) 9th Session - 1963)	Chairperson: Mr. Abdelhaziz Shihi (Morocco) Vice-Chairperson: Mr. German Arciniegas (Colombia)
10th Session - 1963)	Chairperson: Mr. Abdelhaziz Shihi (Morocco) Vice-Chairperson: Mr. C. Booth (UK)
11th Session - 1964) 12th Session - 1965) 13th Session - 1965) 14th Session - 1965) 15th Session - 1965)	Chairperson: Mr. Abdelhaziz Shihi (Morocco) Vice-Chairperson: Mr. C. F. Permison (UK)
16th Session - 1966) 17th Session - 1967) 18th Session - 1967) 19th Session - 1968) 20th Session - 1969) 21st Session - 1969)	Chairperson: Mr. R. Rossow (USA) Vice-Chairperson: Mr. Nor El Ghorfi (Morocco)
22nd Session - 1970) 23rd Session - 1971) 24th Session - 1971) 25th Session - 1971)	Chairperson: Mr. Nor El Ghorfi (Morocco) Vice-Chairperson: Mr. J. A. Stafford (Australia)
26th Session - 1972)	Chairperson: Mr. O. R. Borin (Italy) Vice-Chairperson: Mr. I. K. Khalil (Pakistan)
27th Session - 1973) 28th Session - 1973)	Chairperson: Mr. O. R. Borin (Italy) Vice-Chairperson: Mr. J. Ayala-Lasso (Ecuador)
29th Session - 1974)	Chairperson: Mr. O. R. Borin (Italy) Vice-Chairperson: Mr. J. Alejandrino (Philippines)

30th Session - 1975)	Chairperson: Mr. O. R. Borin (Italy)
31st Session - 1975)	Vice-Chairperson: Mr. Y. Stambouli (Algeria)
32nd Session - 1976)	
33rd Session - 1976)	
34th Session - 1977)	Chairperson: Mr. O. R. Borin (Italy)
35th Session - 1977)	Vice-Chairperson: Mr. C. J. Valdes (Philippines)
36th Session - 1978)	Chairperson: Mr. O. R. Borin (Italy)
37th Session - 1979)	Vice-Chairperson: Mr. T. Glaser (Switzerland)
38th Session - 1979)	
39th Session - 1980)	Chairperson: Mr. T. Glaser (Switzerland)
40th Session - 1981)	Vice-Chairperson: Mr. H. P. Senghor (Senegal)
41st Session - 1981)	
42nd Session - 1982)	Chairperson: Mr. T. Glaser (Switzerland)
43rd Session - 1983)	Vice-Chairperson: Mr. H. Carandang (Philippines)
44th Session - 1984)	Chairperson: Mr. I. P. Alvarenga (El Salvador)
45th Session - 1984)	Vice-Chairperson: Mr. H. Benattallah (Algeria)
46th Session - 1985)	
47th Session - 1985)	
48th Session - 1986)	Chairperson: Mr. I. P. Alvarenga (El Salvador)
49th Session - 1987)	Vice-Chairperson: Mr. M. Panebianco (Italy)
50th Session - 1987)	
51st Session - 1988)	Chairperson: Mr. Fotis G. Poulides (Cyprus)
52nd Session - 1989)	Vice-Chairperson: Mr. M. Panebianco (Italy)
53rd Session - 1989)	
54th Session - 1990)	Chairperson: Mr. Fotis G. Poulides (Cyprus)
	Vice-Chairperson: election deferred
55th Session - 1990)	Chairperson: Mr. Fotis G. Poulides (Cyprus)
56th Session - 1991)	Vice-Chairperson: Mr. G. L. Valenza (Italy)
57th Session - 1991)	
58th Session - 1992)	Chairperson: Mr. Samuel Fernández Illanes (Chile)
59th Session - 1992)	Vice-Chairperson: Mr. Gian Luigi Valenza (Italy)
60th Session - 1993)	
61st Session - 1993)	
62nd Session - 1994)	Chairperson: Mr. Fotis G. Poulides (Cyprus)
	Vice-Chairperson: Mr. Ben Rhoma Mehrez (Tunisia)
63rd Session - 1994)	Chairperson: Mr. Fotis G. Poulides (Cyprus)
64th Session - 1995)	Vice-Chairperson: Mr. Salah Hamdi (Tunisia)
65th Session - 1996)	Chairperson: Mr. Salah Hamdi (Tunisia)
	Vice-Chairperson: Dr. Milan Beránek (Czech Republic)

66th Session - 1997)	Chairperson: Mr. Salah Hamdi (Tunisia)
67th Session - 1997)	Vice-Chairperson: Dr. Milan Beránek (Czech Republic)
68th Session - 1998)	Chairperson: Dr. Milan Beránek (Czech Republic)
	Vice-Chairperson: Mr. Moussa Bocar Ly (Senegal)
69th Session - 1999)	Chairperson: Dr. Milan Beránek (Czech Republic)
70 th Session - 1999)	Vice-Chairperson: Mr. Moussa Bocar Ly (Senegal)
71 st Session - 2000)	Chairperson: Mr. Moussa Bocar Ly (Senegal)
72 nd Session - 2001)	Vice-Chairperson: Mr. Julio César Lupinacci (Uruguay)
73 rd Session - 2002)	Chairperson: H.E. Francis Montanaro Mifsud (Malta)
74 th Session - 2003)	Vice-Chairperson: Mr. Adam Maiga Zakariaou (Niger)
75 th Session - 2003)	Chairperson: Mr. Adam Maiga Zakariaou (Niger)
76 th Session - 2004)	Vice-Chairperson: Ms. Claire Gaudot (France)
77 th Session - 2004)	Chairperson: Mr. Adam Maiga Zakariaou (Niger)
78 th Session - 2005)	Vice-Chairperson: Ms. Claire Gaudot (France)
79 th Session - 2005)	Chairperson: Mr. Adam Maiga Zakariaou (Niger)
	Vice-Chairperson: Mr. Jean-Jacques Soula (France)
80 th Session - 2006)	Chairperson: Mr. John Cornet d'Elzcius (Belgium)
81 st Session - 2007)	Vice-Chairperson: Mr. Noel D. De Luna (Philippines)
82 nd Session - 2007)	Vice-Chairperson: Mr. Emmanuel Fernandez (Philippines)
83 rd Session - 2008)	Chairperson: Mr. Julio Fiol (Chile)
	Vice-Chairperson: Mr. Theo Van Banning (Netherlands)
84 th Session - 2009)	Chairperson: Mr. Julio Fiol (Chile)
85 th Session - 2009)	Vice-Chairperson: Mr. Gerard Limburg (Netherlands)
86 th Session - 2009)	
87 th Session - 2009)	
88 th Session - 2009)	

APPENDIX II**COMPOSITION OF THE CCLM****November 1957 - November 1958****Countries**

Canada
Cuba
France
Norway
Pakistan
United Kingdom
United States of America

November 1958 - June 1959**Countries**

Canada
Cuba
France
Norway
Pakistan
United Kingdom
United States of America

June 1959 - November 1959**Countries**

Canada
Cuba
France
Norway
Pakistan
United Kingdom
United States of America

November 1959 - November 1961**Countries**

Canada
Cuba
Denmark
Morocco
Pakistan
Philippines
United Kingdom

November 1961 - November 1963**Countries**

Ceylon
Colombia
Iran
Morocco
Pakistan
Philippines
United Kingdom

December 1963 - November 1965**Countries**

Canada
Colombia
France
India
Morocco
United Kingdom
United States of America

December 1965 - November 1967**Countries**

Australia
France
Morocco
Netherlands
United Kingdom
United States of America
Uruguay

November 1967 - November 1969**Countries**

Australia
France
Morocco
Pakistan
United Kingdom
United States of America
Uruguay

November 1969 - November 1971**Countries**

Australia
Belgium
Costa Rica
France
Morocco
Pakistan
United States of America

November 1971 - November 1973**Countries**

Australia
Ecuador
Italy
Japan
Morocco
Pakistan
United Kingdom

November 1973 - November 1975**Countries**

Algeria
Finland
France
Italy
Philippines
Switzerland
Venezuela

November 1975 - November 1977**Countries**

Algeria
Costa Rica
Czechoslovakia
France
Italy
Philippines
Switzerland

November 1977 - November 1979**Countries**

Czechoslovakia
France
Gambia
Italy
Panama
Switzerland
United States of America

November 1979 - November 1981**Countries**

France
Hungary
Italy
Senegal
Switzerland
Syria
United States of America

November 1981 - November 1983**Countries**

Hungary
Italy
Nigeria
Philippines
Switzerland
United Kingdom
United States of America

November 1983 - November 1985**Countries**

Algeria
El Salvador
Italy
Philippines
Poland
United States of America
Yemen Arab Rep. of

November 1985 - November 1987**Countries**

El Salvador
Italy
Philippines
Poland
Senegal
Sudan
United States of America

November 1987 - November 1989**Countries**

Chile
Cyprus
France
Italy
Morocco
Philippines
United States of America

November 1989 - November 1991**Countries**

Cyprus
Czechoslovakia
France
Italy
Pakistan
Senegal
United States of America

November 1991 - November 1993**Countries**

Chile
France
Italy
Kenya
Libya
Sri Lanka
United States of America

November 1993 - November 1995**Countries**

Cuba
Cyprus
France
Italy
Lithuania
Tunisia
Unites States of America

November 1995 - November 1997**Countries**

Costa Rica
Czech Republic
France
Iraq
Italy
Tunisia
United States of America

November 1997 - November 1999**Countries**

Czech Republic
Democratic People's Republic of Korea
Dominican Republic
France
Malta
Senegal
United States of America

November 1999 - November 2001**Countries**

Democratic People's Republic of Korea
France
Iraq
Malta
Senegal
United States of America
Uruguay

November 2001 - November 2003**Countries**

Canada
France
Iraq
Malta
Niger
Philippines
Uruguay

November 2003 - November 2005**Countries**

Canada
Czech Republic
France
Guatemala
Iraq
Niger
Philippines

November 2005 - November 2007**Countries**

Belgium
Czech Republic
Gabon
Netherlands
Philippines
Syria
United States of America

November 2007 - November 2009**Countries**

Chile
Gabon
Indonesia
Lesotho
Netherlands
Syria
United States of America