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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Ninety-seventh Session

Rome, 21 - 23 October 2013

### Voting procedures by the Conference (appointment of the Independent Chairperson of the Council and election of Council Members) - Amendment to the General Rules of the Organization

#### I. INTRODUCTION

1. The purpose of this paper is to review the voting procedures followed by the Conference with respect to the election of the Independent Chairperson of the Council (ICC), in situations where there is only one candidate for the office, and with respect to the election of Council Members. This review is following the 38<sup>th</sup> Session of the Conference, held from 15 to 22 June 2013, and the 147<sup>th</sup> Session of the Council, held immediately thereafter, on 24 June 2013.

2. On the occasion of the 38<sup>th</sup> Session of the Conference, there were some informal discussions regarding the procedures for the election of the ICC and Council Members. At its 147<sup>th</sup> Session, the Council heard proposals from Members concerning, *inter alia*, the procedures for elections and votes.

#### II. ELECTION OF THE INDEPENDENT CHAIRPERSON OF THE COUNCIL

3. The issue that arises is whether in situations where there is only one candidate for the office of the ICC, the Conference should still hold a secret ballot, as is currently the case, or whether the Conference could elect the ICC by clear general consent.

4. Rule XII, subparagraph 10(a) of the General Rules of the Organization (GRO) provides for three situations where a secret ballot must be held, even where there is only one candidate: i) the appointment of the ICC and ii) of the Director-General, and iii) the admission of additional Members and Associate Members, as follows:

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*“The appointment of the Chairperson of the Council and of the Director-General, the admission of additional Member Nations and Associate Members shall be decided by secret ballot. Other elections shall likewise be decided by secret ballot, except that in the case of an election in which there are not more candidates than vacancies the Chairperson may submit to the Conference or Council that the appointment be decided by clear general consent.”*

5. The GRO do not contain an explicit provision on the suspension or waiver of the requirement of a secret ballot in those three situations.

6. The practice of holding a secret ballot for an uncontested vacancy may be traced back to the 1950s. A Special Committee on Methods of Election, established by the Council in 1956, considered whether or not to require a secret ballot in such circumstance<sup>1</sup>. The Special Committee was of the opinion that while, generally, there was no merit in doing so, *“there might be occasions when a Member Nation wished to register a negative vote or to abstain”*<sup>2</sup>; and, to protect this right, secret ballots should be mandatory. Accordingly, the Special Committee proposed a rule requiring secret ballots to elect the ICC, the Director-General, and Council Members, and for the admission of additional Members and Associate Members.

7. On the basis of the above-quoted provision of the GRO, it has been a long-standing practice of the Organization to hold a secret ballot for the election of the ICC, even if there is only one candidate. This was the case, for example in 1991, 1995, 1999, 2003, 2007, and 2011. The amount of time spent on holding secret ballots, where the result was foreseeable, was occasionally the subject of some discussion among Members Nations, and from time to time the efficiency of this particular rule and practice was re-examined.

8. At the 22<sup>nd</sup> Session of the Conference, in 1983, some delegates expressed concern that a secret ballot would be held where there were the same number of candidates as elective places to be filled. At that time, the delegates had the basic procedures in mind for the election of Council Members and, to a lesser extent, for the election of the ICC. It was agreed that the Council should review the rules *“with a view to speeding [voting] procedures and thus saving valuable time”*<sup>3</sup>. The Council, in turn, agreed that the CCLM ought to review the question, in particular with respect to the election of the ICC and Council Members. After weighing the advantage of the secret ballot, i.e. the possibility of Member Nations expressing their choice without any constraint or embarrassment, against the disadvantage of the expenditure of valuable time, the CCLM concluded that the Members’ interests were adequately protected, and no change to the rules was necessary. The CCLM noted, however, that the relevant rule could be amended easily to delete the reference to the ICC (or the Council Members<sup>4</sup>) if a policy decision to change the rule was taken. The Council, at its 86<sup>th</sup> Session, in November 1984, agreed with the CCLM that no change was necessary at that time and endorsed the CCLM’s view that should the Conference determine that such an amendment was appropriate, the amendment could be

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<sup>1</sup> Report of the Special Council Committee on Methods of Election, Appendix I to C 57/36 (9th Session of Conference, 2 - 23 November 1957).

<sup>2</sup> Report of the Special Council Committee on Methods of Election, Appendix I to C 57/36, paragraph 49.

<sup>3</sup> C 83/REP, paragraph 371. There were situations where a substantial number of abstentions or negative votes were registered during secret ballots where there was only one candidate.

<sup>4</sup> Until 1999, the election by the Conference of Council Members required a secret ballot even in situations where there were not more candidates than elective places to be filled.

done and approved easily<sup>5</sup>. Eventually, the membership considered that the procedures should not be changed, in view of the political nature of the elections in question.

9. Between 1997 and 1999, the matter was again under review. The Council requested the Joint Meeting of the Programme and Finance Committees to review a number of proposals of the Secretariat regarding procedures and methods of work for Conference sessions, including voting. In September 1998, the Joint Meeting had an extensive exchange of views on the matter. A recommendation was made that no voting should be required when the number of candidates equalled the number of vacancies to be filled or when there was only one candidate for one post. The CCLM considered again, after informal consultations with regional groups, that the matter should be decided first at the political level, especially insofar as the election of the ICC and of the Director-General were concerned. The CCLM was of the opinion that the admission of additional Member Nations should continue to be decided by secret ballot<sup>6</sup>. The CCLM recommended, at the time, that there was no need to hold a secret ballot for the election of Council Members when the number of candidates equalled the number of vacancies. In June 1999, at its 116<sup>th</sup> Session, the Council endorsed the views and amendments proposed by the CCLM. In November 1999, the Conference, at its 30<sup>th</sup> Session through Resolution 4/99, approved the proposal that the election of Council Members be made by clear general consent whenever the number of candidates was equal to the number of vacancies. The Conference underlined that voting procedures should ensure protection of the rights of individual Members<sup>7</sup>. The Conference did not approve changes to the procedures for the election of the Director-General, the ICC or for the admission of additional Members and Associate Members.

10. At the 2013 Session of the Conference, some Members held the view that notwithstanding the political considerations put forward between 1955 and 1957, in 1983 and 1984 and again in 1998 and 1999, and the nature of the office of ICC, the ICC could be elected by general consent, instead of by secret ballot, in situations where there was only one candidate for the position. The matter is therefore one for political decision by the membership. Should the CCLM, and subsequently the Council, and ultimately the Conference be of the view that there is no need to hold a secret ballot for the election of the ICC in the presence of only one candidate for the office, the draft Conference Resolution set out in Appendix 1 to this document could be considered.

### III. ELECTION OF COUNCIL MEMBERS

11. There seems to be an emerging informal consensus that the voting procedures for the election of Council Members by the Conference set out in Rule XII, subparagraph 3(b) and Rule XII, paragraph 12 of the GRO could be amended, in order to avoid or reduce the need for repeated ballots. These procedures apply when the Conference elects candidates to fill simultaneously more than one position. Voting procedures for the election of Council Members by the Conference could be aligned with the procedures that the Council follows when it carries out elections to fill simultaneously more than one elective place. Such procedures are set forth in Rule XII, paragraph 13 of the GRO.

12. By way of background, it may be of interest to mention that the Conference established procedures for elections by the Conference to fill simultaneously more than one elective place between 1955 and 1957. At that time, a Special Committee on Methods of Election<sup>8</sup> underlined that in the case

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<sup>5</sup> CL 86/REP, paragraphs 173 to 180.

<sup>6</sup> CL 116/5, paragraphs 13 and 16.

<sup>7</sup> C 99/REP, paragraphs 120 to 123.

<sup>8</sup> Document C57/36; CCLM Working Document No. 16, Multiple Elections in FAO (Note by the Director-General); Document CL 29/11, Report of the First Session of the Committee on Constitutional and Legal Matters, Rome 27 October 1958.

of multiple elections (i.e. when the Conference elected simultaneously several candidates), the required majority could not be a figure that was “more than one half of the number of Member Nations casting votes”. This was so because given the large number of Members participating in the vote in relation to the candidates, there could be situations when there would be more candidates obtaining the required majority than seats to be filled<sup>9</sup>. Consequently, the Special Committee proposed and the Conference adopted a special formula set out in Rule XII, subparagraph 3(b) of the GRO, which reads as follows:

*“Except as otherwise provided in these Rules, in the case of an election by the Conference to fill simultaneously more than one elective place, the required majority shall be the smallest number of whole votes necessary to elect no more candidates than there are seats to be filled. This majority shall be obtained by the following formula:*

$$\text{Required majority} = \frac{\text{number of votes cast}}{\text{number of seats} + 1} + 1$$

*(disregarding any resultant fraction).”*

13. Subsequently, some discussions took place on the desirability of maintaining or reconsidering a system that appeared to be cumbersome and not easily understood. The conclusions reached were that the formula set out in Rule XII, subparagraph 3(b) established a high threshold that was appropriate for Conference elections and ensured the fairness of the system. In view of the need to reach the required majority given by the formula, the elections by the Conference of Council Members at times involved successive ballots. For many years, the Conference used to dedicate a full day to elections. However, due to improved regional consultation, there has been a reduction in the number of occasions where there have been more candidates than elective places to be filled and there was a need to hold secret ballots. In the recent past, a secret ballot was held in 2009 and again at the Conference session of June 2013<sup>10</sup>. In the session of June 2013, the election of Council Members for Europe required two ballots due to the special majority requirement set out in Rule XII, subparagraph 3(b), a procedure which was considered to be time-consuming.

14. A simplified and straightforward procedure could be accomplished by streamlining Rule XII, paragraph 12 and aligning it on the procedure set out in Rule XII, paragraph 13 of the GRO for multiple elections by the Council. Insofar as there would be no distinction between elections at the

<sup>9</sup> An example of this is found at the session of the Conference in June 2013. There were four candidates (Cyprus, Hungary, the Russian Federation, and Turkey) for three seats to be filled. The application of the formula set out in Rule XII, subparagraph 3(b) led to a required majority (a threshold) of 121 votes. The Russian Federation obtained 142 votes and was declared elected. Turkey (120 votes); Hungary (113 votes); and Cyprus (105 votes) were not elected. However, given that 160 countries cast valid votes, the simple majority without the formula would have been 81. There was a need to proceed to a second ballot among these three countries, for two available seats. In this second ballot, 155 Members cast valid votes, and more than one-half of that number was 78. However, the application of the formula led to a required majority of 104 votes. Turkey (116 votes) and Hungary (109 votes) were elected. Cyprus obtained 85 and was not elected. Again, all candidates had reached the requirement of more than one-half of the Members casting valid votes.

<sup>10</sup> In 2003 there was one ballot for the election of Members of Asia and another ballot for the election of Members of the Near East. In 1995 there were three ballots for Europe; four for Latin America and the Caribbean and one for Asia. In 1993 there were four ballots for Asia, two for Europe and two for Latin America and the Caribbean. In 1991 there were two ballots for Asia and two for Latin America and the Caribbean. Similar ballots used to be held at the elections held throughout the 1980s.

Conference and at the Council, there would be no justification for two separate paragraphs, and these could be merged into a single paragraph. The candidates who receive the largest number of votes shall be declared elected in a number equal to the number of elective places to be filled, provided that they have received the required majority of more than one-half of the number of valid ballot papers deposited. Appendix 2 contains a draft Conference Resolution proposing amendments to Rule XII, paragraphs 3, 4, 12 and 13 of the GRO. Alignment of the voting procedures for multiple elections by the Conference on those followed for multiple elections by the Council, including reduction in the level of the required majority, would have the advantage of convenience, uniformity and would allow for a better understanding by the membership of voting procedures. At the same time, this would allow the Conference to adopt a clear, easy to understand set of alternative and simplified rules governing a sensitive matter. Furthermore, these rules have operated effectively over many years<sup>11</sup>.

15. It is important to underline that revised procedures for multiple elections by the Conference based on those applied by the Council would reduce the need for successive ballots, but would not obviate the need for successive ballots in some exceptional, limited cases<sup>12</sup>. Depending on the number of candidates in relation to the number of available seats and the votes expressed by Members (especially in presence of “dispersion” of votes) there could be a situation where not all candidates reach a majority of more than one-half of the number of valid ballot papers deposited. There might, therefore, be a need to hold additional ballots, as is occasionally the case when the Council elects members of the Programme and Finance Committees. Indeed, under current procedures for multiple elections by the Council the candidates who received the largest number of votes are declared elected in a number equal to the number of elective places to be filled, provided that they have attained the required majority of more than one-half of the Members casting valid votes. If not all of the elective places have been filled after the first ballot, a second ballot is held to fill the remaining places, under the same conditions as the first ballot. The procedure is pursued until all the elective places have been filled.

16. A situation could also arise where, because of a comparatively large number of candidates in relation to the number of elective places to be filled and dispersion of votes among several candidates, no elective place has been filled after a ballot, because none of the candidates has attained the required majority of more than one-half of the number of valid ballot papers deposited. To address this situation, it is proposed to insert in the rules a provision whereby if at any ballot no candidate obtains the required majority, the candidate having received the lowest number of votes at that ballot shall be eliminated. Under a scenario of dispersion of votes and where no candidate obtains the required majority, this clause would allow for the gradual elimination of the candidate or candidates having the lowest number of votes and, in parallel, facilitate the “transfer” of votes to other candidates who would then be able to obtain the required majority.

#### **IV. SUGGESTED ACTION BY THE COMMITTEE**

17. The CCLM is invited to review this document and make such comments thereon as appropriate<sup>13</sup>.

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<sup>11</sup> These procedures for the Council were adopted by the Conference at its session of 1959 by Resolution 59/59. The Council had recommended on the basis of experience gained that "a simplified and less cumbersome" procedure be instituted, and the Conference endorsed this view.

<sup>12</sup> Consideration of the actual results of ballots for election of Council Members by the Conference in the elections held in 2013, 2003, 1995, 1993 and 1991 shows that the application of a required majority of more than one half of Members casting valid votes would have obviated the need for more than one ballot.

<sup>13</sup> It is important to stress that the proposals made in this document could be affected by possible changes and improvements in the electronic voting system. That would, in particular, be the case if secret votes were to be made through the electronic voting system. Should changes in the electronic voting system affecting these

18. In particular, the CCLM is invited to review the proposed draft Conference Resolutions, set out in Appendix 1 and Appendix 2 of this document and, as appropriate, refer them to the Council for endorsement and subsequent on-forwarding to the Conference for approval.

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proposals be envisaged, the proposals would be revised in due course. In any case, a decision by the Conference on these proposals would be taken in June 2015 and, therefore, there would be time to revise these proposals.

**Appendix 1**  
**RESOLUTION \_\_/2015**

**Amendment of Rule XII, subparagraph 10(a) of the General Rules of the Organization**

**THE CONFERENCE,**

**Recalling** that during its 147<sup>th</sup> Session in June 2013, the Council heard proposals from Member Nations concerning, *inter alia*, elections and votes;

**Noting** that the amount of time spent on holding secret ballots, even where the result is foreseeable, has been the subject of some concern and discussion among Member Nations and that at the 147<sup>th</sup> Session of the Council in June 2013, proposals were made to reconsider the system;

**Noting** that the Committee on Constitutional and Legal Matters at its 97<sup>th</sup> Session in October 2013 recommended an amendment to Rule XII of the General Rules of the Organization and that the Council at its 148<sup>th</sup> Session in December 2013 endorsed the proposed amendment;

**Decides** to amend Rule XII of the General Rules of the Organization as follows<sup>14</sup>:

**“Rule XII**

**Quorum and Voting Arrangements at Meetings of Conference and Council**

(...)

10.

- (a) The appointment of the ~~Chairperson of the Council and of the Director-General~~, *and* the admission of additional Member Nations and Associate Members shall be decided by secret ballot. Other elections shall likewise be decided by secret ballot, except that in the case of an election in which there are not more candidates than vacancies the Chairperson may submit to the Conference or Council that the appointment be decided by clear general consent.”

(Adopted on ....)

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<sup>14</sup> Deletions are indicated using ~~strikethrough text~~ and insertions are indicated using *underlined italics*.

## Appendix 2

### RESOLUTION \_\_/2015

#### *Amendment of Rule XII, paragraphs 3, 4, 12 and 13 of the General Rules of the Organization*

#### THE CONFERENCE,

**Recalling** that during its 147<sup>th</sup> Session in June 2013, the Council heard proposals from Member Nations concerning, *inter alia*, elections and votes;

**Noting** that while the procedures set out in Rule XII, subparagraph 3(b) and Rule XII, paragraph 12 of the General Rules of the Organization for multiple elections by the Conference were used many times in the past, these procedures could be streamlined, taking into account the procedures followed for Council elections;

**Noting** that the Committee on Constitutional and Legal Matters at its 97<sup>th</sup> Session in October 2013 recommended amendments to Rule XII of the General Rules of the Organization insofar as it concerns multiple elections by the Conference and that the Council at its 148<sup>th</sup> Session in December 2013 endorsed the proposed amendments;

**Decides** to amend Rule XII of the General Rules of the Organization as follows<sup>15</sup>:

#### “Rule XII

#### Quorum and Voting Arrangements at Meetings of Conference and Council

(...)

3.

(a) Except as otherwise provided in the Constitution or these Rules, the required majority for any decision or for any election ~~to fill one elective place~~ shall be more than one half of the votes cast.

~~(b) Except as otherwise provided in these Rules, in the case of an election by the Conference to fill simultaneously more than one elective place, the required majority shall be the smallest number of whole votes necessary to elect no more candidates than there are seats to be filled. This majority shall be obtained by the following formula:~~

$$\text{Required majority} = \frac{\text{number of votes cast}}{\text{number of seats} + 1} + 1$$

~~(disregarding any resultant fraction).~~

<sup>15</sup> Deletions are indicated using ~~strikethrough text~~ and insertions are indicated using *underlined italics*.

(...)

4.

~~(b) In the case of an election to fill simultaneously more than one elective place the phrase “votes cast” shall mean the total number of votes cast by the electors for all elective places.~~

(...)

12. In any election ~~by the Conference~~ to fill simultaneously more than one elective place the following shall apply:

(a) In the Conference a majority of the Member Nations of the Organization and in the Council two-thirds of the Members of the Council shall constitute a quorum. More than one-half of the valid ballot papers deposited shall constitute the required majority.

~~(a)~~(b) Each elector, unless he wholly abstains, shall cast one vote for each elective place to be filled. Each vote shall be cast for a different candidate. Any ballot paper which is not in conformity with these requirements shall be declared defective.

~~(b)~~(c) Any The candidate who receives the required majority largest number of the votes cast as defined in paragraph 3(b) of this Rule shall be declared elected in a number equal to the number of elective places to be filled, provided they have received the required majority defined in subparagraph (a) above.

~~(e)~~(d) If only some of the elective places have been filled after the first ballot, a second ballot shall be cast to fill the remaining elective places, under the same conditions as the first ballot. This procedure shall continue until all the elective places have been filled.

~~(d) This procedure shall continue until all the elective places have been filled.~~

(e) If, at any stage during the election, one or more vacant places cannot be filled because of an equal number of votes having been obtained by two or more candidates, a separate ballot shall be held among such candidates to determine which of them shall be elected, in accordance with the provisions of subparagraph (c) above. Such procedure will be repeated as necessary.

(f) If in any ballot no candidate receives the required majority, the candidate that receives the smallest number of votes in that ballot shall be eliminated.

~~(f) If in any ballot no candidate receives the required majority and more than one candidate receives the smallest number of votes, a separate ballot between these candidates shall be held and the candidate receiving the smallest number of votes shall be eliminated.~~

~~(g) If in the separate ballot provided for in subparagraph (f) of this paragraph more than one candidate again receives the smallest number of votes, the above operation shall~~

~~be repeated with respect to those candidates until one candidate is eliminated, provided that if all the same candidates receive the smallest number of votes in two successive separate ballots, such candidates as will have been designated by lot shall be eliminated.~~

- ~~(h) — If at any stage in an election other than a separate ballot all remaining candidates receive the same number of votes, the Chairperson of the Conference shall formally announce that if in the two following ballots the votes are again equally divided he will suspend balloting for a period which he shall determine and then hold two further ballots. If after applying this procedure the final ballot again results in an equally divided vote, such candidate as will have been designated by lot shall be declared elected~~

~~13. In any election by the Council to fill simultaneously more than one elective place, the following shall apply:~~

- ~~(a) — Two thirds of the membership of the Council shall constitute a quorum and more than one half of the number of Council Members casting valid votes shall constitute the required majority.~~
- ~~(b) — Each elector, unless he wholly abstains, shall cast one vote for each elective place to be filled. Each vote shall be cast for a different candidate. Any ballot paper which is not in conformity with these requirements shall be declared defective.~~
- ~~(c) — The candidates who receive the largest number of votes shall be declared elected in a number equal to the number of elective places to be filled, provided they have received the required majority defined in subparagraph (a) above.~~
- ~~(d) — If only some of the elective places have been filled after the first ballot, a second ballot shall be cast to fill the remaining elective places, under the same conditions as the first ballot. This procedure shall be continued until all the elective places have been filled.~~

~~If, at any stage during the election, one or more of the vacant elective places cannot be filled because of an equal number of votes having been obtained by two or more candidates, a separate ballot shall be held among such candidates to determine which of them will be elected, in accordance with the provisions of subparagraph (c) above. Such procedure will be repeated if necessary.”~~

(Other paragraphs, subparagraphs and internal references to amended or deleted provisions of Rule XII to be re-numbered accordingly)

(Adopted on ....)