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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-seventh Session

Rome, 21 - 23 October 2013

REVIEW OF THE ORGANIZATION'S PRACTICE CONCERNING ACCEPTANCE OF CREDENTIALS OF DELEGATIONS TO THE CONFERENCE

BACKGROUND

1. The item has been placed in the Provisional Agenda of the Committee on Constitutional and Legal Matters (CCLM) under Rule XXXIV, paragraph 7 (k), of the General Rules of the Organization (GRO) whereby the Committee shall consider specific items referred to it by the Council or the Director-General which may arise out of “*standards for credentials and full powers*”.

2. The CCLM considered matters relating to the acceptance of credentials previously, i.e. on the occasion of the 69th Session in April 1999. During this Session, the CCLM examined questions related to the arrangements in place for acceptance of credentials and provisional seating of Members at sessions of the Conference. The Credentials Committee is, together with the General Committee, the Nominations Committee and the Resolutions Committee, one of the Committees of the Conference. The Credentials Committee is mandated to examine and ascertain the validity of the credentials of delegations of Members, and reports to the Conference thereon.

3. In recent years, the procedure and criteria governing the review of credentials have been increasingly considered too cumbersome relative to the requirements of properly functioning sessions of the FAO Conference, and not reflective of technological advances that would allow for further flexibility in the submission and review of credentials. Some Members have felt that the overall process of review of credentials could be streamlined also in consideration of the short duration of the sessions of the Conference.



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4. This document presents background information and suggested improvements to the process for the validation of credentials for consideration by the CCLM, with reference to recent practice within the United Nations system and related organizations. More specifically, it is suggested to consider adjustments to the processing of credentials and abolish the separation of credentials into two lists A and B, as currently applied. In addition, some modifications are suggested to the manner in which credentials can be communicated, and from which authorities valid credentials may be received. The changes are suggested with a view to increasing flexibility, clarity and efficiency in the review and validation of credentials, while maintaining the integrity of credentials and ensuring that the formal requirements for credentials in the United Nations system are not undermined.

CURRENT RULES AND PRACTICE OF THE CREDENTIALS COMMITTEE OF THE FAO CONFERENCE

5. The Credentials Committee of the Conference is appointed by the Conference at the beginning of its sessions with a mandate to examine the credentials deposited in accordance with Rule III.2 of the General Rules of the Organization (GRO) and to promptly report thereon to the Conference, which shall decide any questions arising (Rule III.3, GRO).

6. The criteria to ascertain the validity of credentials are set out in the GRO and in resolutions of the FAO Conference and Council, as clarified by long-standing practice. In addition, the Credentials Committee operates on the basis of consistent and established practice relying to a large extent on the practice of the General Assembly of the United Nations. In particular, in accordance with Resolution 396 (V) of 14 December 1950 of the General Assembly, whenever more than one authority claims to be the Government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the attitude adopted by the General Assembly is taken into account in other organs of the United Nations and in the Specialized Agencies. FAO has consistently adhered to this principle.

7. In the biennium 1998-1999, at its 115th Session (November 1998) and at its 116th Session (June 1999), the Council amended two aspects of the process of validation of credentials. First, authority to nominate the Credentials Committee – subject to subsequent confirmation by the Conference – was conferred to the Council, for the purpose of allowing the Credentials Committee to start working two weeks before the beginning of the Conference.¹ Second, upon recommendation of the 69th Session of the CCLM (April 1999), the Council introduced in FAO the United Nations practice of separately listing credentials in lists A and B.²

8. In accordance with Rule III.2 of the GRO, credentials are, insofar as possible, deposited with the Director-General not less than 15 days before the date fixed for the opening of each session of the Conference. Credentials are validated on the basis of the criteria set out in Article III.2 and XXI.4 of the GRO and on the basis of the practice of the Credentials Committee. Formal criteria applied may be summarized as follows:

- a) Credentials of delegates, alternates, associates and advisers have to be in the form of a document or a letter, bearing the signature, or signed on behalf of, either of the following: the Head of State, the Head of Government, the Minister of Foreign

¹ CL115/Rep, para. 61(a); CL115/4, para.10-14.

² CL116/Rep, para.120-122; CL116/5, para.2-12; CCLM69/2.

Affairs or the Minister of the Department concerned (Rules III.2 and XXI.4 of the General Rules of the Organization);

- b) A Permanent Representative to FAO does not require special credentials if his/her letter of accreditation to the Organization specifies that he/she is authorized to represent his/her government at sessions of the Conference, it being understood that this would not preclude that government from accrediting another delegate by means of special credentials (Rule III.2, GRO); and
- c) Letters signed by an Ambassador, Chief of Mission or Chargé d'Affaires which include the phrase "*upon instructions from my Government*", as well as "*Ordres de Mission*", *Notes Verbales*, and fax and email communications are not considered as valid formal credentials.

9. On the basis of the criteria, the Credentials Committee lists credentials received in two separate lists. List A includes those Members and Associate Members whose credentials are considered valid. List B includes those Members and Associate Members whose credentials are considered merely as information on their delegations. The specific criteria for classification of credentials in lists A and B are set out in a decision of the Council, contained in paragraph 121 of the Report of the Hundred and Sixteenth Session of the Council (CL116/Rep), as follows.

- a. *List A would include only Members and Associate Members whose credentials bear the signature, or are signed on behalf of, either of the following: the Head of State, the Head of Government, the Minister of Foreign Affairs or the Minister of the Department concerned in accordance with Rule III.2 of the General Rules of the Organization.³*
- b. *List B would include Members and Associate Members whose credentials are submitted in the form of:*
 - i. *letters signed by an ambassador, chief of mission, or chargé d'affaires, which contain a phrase confirming that they are acting upon instruction from their governments;*⁴
 - ii. *"Ordres de Mission" if specific mention is made of the current session of the Conference and if they are signed by the Minister concerned;*⁵
 - iii. *Notes Verbales; and*
 - iv. *faxes when they are copies of the original credentials.*⁶

³ In practice, and under the terms of GROIII.2, permanent representatives whose letter of accreditation specifies that they are authorized to represent their governments are currently included in List A.

⁴ Before the introduction of the two lists system, communications signed by the Ambassador of the country concerned and accredited to the Italian government were considered valid credentials, since the Ambassador represents the Head of State. In the Ambassador's absence this faculty devolved on the Chargé d'Affaires. However, in such cases neither the Ambassador nor the Chargé d'Affaires could themselves be included in the Delegation (Third Report of the Credentials Committee, C67/LIM/69, para.3).

⁵ Before the introduction of the two lists system, "*Ordres de Mission*" were accepted as credentials if specific mention was made to the current session of the Conference and if they were signed by the Minister concerned (decision of the Credentials Committee during the 13th session of the Conference, as set out in Document C65/LIM/68, and confirmed in the ensuing sessions of the Credentials Committee).

10. The Credentials Committee promptly reports the output of such process of validation to the Conference for approval. In particular, its report should include lists A and B. According to the above decision of the Council and consistent practice, the Credentials Committee typically recommends to the Conference the acceptance of the credentials of delegations on list A and those on list B, on the understanding that formal credentials of FAO Members referred in list B are communicated to the Director-General as soon as possible⁷. However, no action is taken to ascertain that formal credentials of Members on list B were indeed submitted to the Director-General. This mechanism has introduced considerable flexibility in the treatment of credentials.

11. Pending the report of the Credentials Committee and the decision on that report by the Conference, all delegations are seated provisionally and are authorized to participate fully in the work of the Conference session and to vote (cf. Rule III.5 GRO).

12. The decision of the Council⁸ to introduce the system of lists A and B was taken on the basis of the consideration that, as was the case at the United Nations and other agencies of the System, there was a strong concern not to preclude Members from exercising their right to participate, including the right to vote, on the basis of the incompleteness of their credentials, but that such flexibility would not apply in the case of fundamental political issues regarding the recognition of a State or Government. It was further considered that the Credentials Committee needed to act expeditiously, and that advances in technology needed to be recognized. At the same time, it was made explicit that the integrity of credentials had to be preserved, and that the formal requirements, as in force in all organizations of the United Nations, should not be undermined.

CONSIDERATIONS REGARDING THE CURRENT RULES AND PRACTICE WITH RESPECT TO CREDENTIALS IN FAO

13. Some interrelated improvements could be considered concerning the current practice of the Organization in respect of credentials, particularly in relation to: a) the continued justification of lists A and B; b) the manner in which credentials are communicated; and c) the issuing authority. Some adjustments to the procedures are suggested for consideration by the CCLM which would allow for significant streamlining of current practices.

14. It may be of interest to mention that a review of the practice in organizations of the United Nations System reveals that it evolves towards increased flexibility and clarity of procedures, facilitating a speedy review of credentials by the Credentials Committee and incorporating new technology. These objectives are very relevant for FAO.

15. Any adjustments to the procedures to review credentials should not affect the integrity of credentials or undermine the formal requirements for credentials. Importantly, any change to the procedures should not impinge on the very close scrutiny applied, in close consultation with the United Nations, to countries and governments that are affected by fundamental political issues that cast doubt on the legitimacy of their representation. The principles set forth in Resolution 396 (V) of the General Assembly would therefore continue to be followed.

⁶ CL116/Rep, para.121

⁷ CL116/REP, paragraph 121. This practice has been perpetuated since the introduction of the two-lists system (C 2013/LIM/23 Rev.1, C 2011/LIM/26 Rev.1, C 2009/LIM/13, C 2007/LIM/21-Rev.1, C 2005/LIM/15, C 2007/LIM/21-Rev.1., C2001/LIM/24/Rev.1)

⁸ The Hundred and Fifteenth and Hundred and Sixteenth Sessions of the Council in November 1998 and June 1999 respectively.

(i) **Listing of Credentials**

16. FAO's practice of listing credentials in lists A and B has given rise to a number of recurrent enquiries regarding the validity of credentials in List B, despite the fact that the very purpose of the distinction was to introduce increased flexibility in the system and allow for information on the composition of delegations to be accepted, "*in lieu of valid formal credentials*". Presumably, such enquiries are the result of a seemingly lower level of legitimacy of credentials in list B, even if the adopted procedure merely requires that list B credentials would be communicated as soon as possible, and, in fact, no substantive questions regarding list B credentials has ever arisen. To an extent, this perception may be created by the short duration of sessions of the FAO Conference, which leads to a situation that credentials in list B are often not formally clarified before the end of a session of the Conference or before the work of the Credentials Committee is completed and its final report to the Conference adopted.

17. It is also noted, in this context, that the mechanism of lists A and B reflect a practice of the General Assembly. However, sessions of the General Assembly last significantly longer than those of the FAO Conference, and the relevant Committee of the General Assembly disposes of a much larger period to receive and validate credentials⁹. Separate listings have contributed to increased flexibility, while preserving the integrity of the credentials as originally intended. However, the system of separate listings has not been adopted by most other organizations of the United Nations System. Consideration could therefore be given to abolishing separate listings. Instead, credentials and information on the composition of delegations could be accepted on the understanding that, in cases where credentials do not conform with formal requirements, formal credentials of Members and Associate Members would be communicated to the Director-General as soon as possible. The latter requirement would continue to be consistent with the United Nations practice.

(ii) **Communication of credentials**

18. A further aspect of the review of credentials that could be streamlined concerns the manner in which credentials are communicated. The formal requirement set out in the GRO and reflected in current practice is that credentials should be submitted in original form. List A includes "*Members and Associate Members whose credentials bear the signature, or are signed on behalf of, either of the following: the Head of State, the Head of Government, the Minister of Foreign Affairs or the Minister of the Department concerned.*" However, there has been significant pressure on the part of Members that credentials in electronic form be accepted, as valid formal credentials.

19. In this respect, there have been significant changes in many organizations of the United Nations System and the formal requirement of submission of credentials in original form does not correspond any longer to the prevailing practice of most organizations¹⁰. Considerable flexibility in the review and acceptance of credentials could be gained by

⁹ The sessions of the General Assembly of the United Nations start at the beginning of September and the report of the Credentials Committee is usually submitted to the plenary session of the General Assembly in December.

¹⁰ Similarly to FAO, UNIDO, OPCW, ILO, UNESCO and CTBT provisionally accept those documents, pending submission of the original credentials. WHO and WIPO accept credentials in electronic form. While not part of the United Nations System strictly speaking, international financial institutions, such as the World Bank or IFAD, also accept credentials in electronic form.

recognizing that technological advances have effectively altered the practice of communications and accepting documents in electronic form, on the understanding that formal credentials would be sent in due course and without any follow-up action being taken in that respect.

(iii) Authority to issue valid credentials

20. The practices in the United Nations system further reveal that United Nations organizations typically accept credentials submitted by permanent missions. Further consideration could therefore be given to accepting credentials submitted by a Permanent Representative, Ambassador, Chief of Mission or Chargé d’Affaires, as valid credentials. The acceptance of credentials by heads of Missions would be consistent with the general function of such missions to act as the formal channel of communication with the competent authorities of relevant governments. It is noted that, if adopted, this would be a particularly effective measure of streamlining, given the widespread practice in FAO of issuance of initial credentials by Permanent Representatives.

(iv) Principles set out in General Assembly Resolution 396 (V) of 14 December 1950

21. The observations made in this document regarding the formal aspects of the process of review and acceptance of credentials would leave intact the principles set out in General Assembly Resolution 396 (V) of 14 December 1950. In particular, whenever more than one authority claims to be the Government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy, the attitude adopted by the General Assembly is taken into account in other organs of the United Nations and in the Specialized Agencies. FAO would continue to adhere to these principles¹¹.

SUGGESTED ACTION BY THE COMMITTEE

22. In light of the above, the CCLM may wish to provide guidance to the Council, and through the Council to the Conference, on further streamlining the process of validation of credentials. In so doing, the Committee may wish to consider a few guiding principles:

- a) The general objective of additional flexibility in the treatment of credentials and the recognition of advances in technology;
- b) The need to preserve the integrity of credentials and to ensure that the formal requirements, as in force in all organizations of the United Nations System, are not undermined; and
- c) The need to continue to deal with issues of representation of Governments and Members by reference to the practice of the General Assembly of the United Nations.

23. More specifically, the CCLM may wish to recommend to the Council, and through the Council to the Conference, that:

¹¹ It is important to be aware that the determinations made by the Conference on issues of representation of Governments and States, on the basis of the recommendation of the Credentials Committee, and taking into account the practice of the United Nations General Assembly, have significant practical implications, insofar as they apply to all other Governing and statutory bodies of the Organization.

- a) There should be no change in the present flexible approach of allowing delegates to be seated provisionally, pending the final report of the Credentials Committee, even if their credentials are not fully in order;
- b) Lists A and B be abolished and that the Credentials Committee should follow the prevailing practice in the United Nations System that credentials in electronic form be accepted, on the understanding that formal credentials of Members and Associate Members in original form would be communicated to the Director-General in due course;
- c) Credentials be validly communicated through documents such as Notes Verbale, Ordres de Mission, and that, in general, consideration be given to increased reliance on credentials issued by Permanent Representatives accredited to the Organization; and
- d) The Credentials Committee and the Conference should continue to follow the practice that issues of representation of Governments and Members are to be dealt with by reference to the practice of the General Assembly of the United Nations.