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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Sixty-ninth Session

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ACCEPTANCE OF CREDENTIALS: PRACTICE OF SELECTED ORGANIZATIONS OF THE UN SYSTEM

I. INTRODUCTION

1. At its Hundred and Fourteenth Session, in November 1997, the Council mandated the Joint Meeting of the Programme and Finance Committees to review the procedures and methods of work for Conference sessions and requested the Joint Meeting to report to it, at its Hundred and Fifteenth Session, in November 1999, through the CCLM. The Joint Meeting of the Programme and Finance Committees, in May 1998, suggested that the process of validation of credentials be reviewed and the preparatory work on the validation of credentials be carried out, as far as possible before the opening of the Conference by a Credentials Committee nominated by the Council but subsequently confirmed by the Conference.

2. With respect to the validity of credentials, the September 1998 Joint Meeting further noted that the credentials submitted by facsimile could possibly be accepted on the understanding that they would be confirmed by signed credentials. This matter was discussed further by the CCLM at its Sixty-eighth Session. Regarding the form of credentials, the CCLM considered that the Credentials Committee should be allowed a certain degree of flexibility in the light of the practice followed by the United Nations and

other agencies of the UN System. The CCLM requested the Secretariat to prepare a paper describing the practice of selected organizations of the UN System with respect to acceptance of credentials for consideration at its next session. The Secretariat contacted the UN, Unesco, ILO, WHO and IAEA and obtained information from them on the matter.

3. The present document reviews the practice of FAO and the above organizations of the UN system on the acceptance of credentials, makes certain observations on the timing of the consideration of credentials and suggests a possible approach regarding the acceptance of credentials.

II. RULES AND PRESENT PRACTICE IN FAO

4. In accordance with Rule III.2 of the General Rules of the Organization, the 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 .

Criteria for the validity of credentials

- (a) Credentials 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 Affairs or the Minister of the Department concerned (Rules III.2 and XXI.4 of the General Rules of the Organization).
- (b) Letters signed by an Ambassador, Chief of Mission or Chargé d'Affaires which include the phrase "*upon instructions from my Government*" may be accepted in the absence of the above (decision taken by the Credentials Committee at the Twelfth, Thirteenth and Fourteenth Sessions of the Conference).
- (c) "*Ordres de Mission*" may be accepted as credentials if specific mention is made of the current session of the Conference and they are signed by the Minister concerned.
- (d) Cables and Notes Verbales (because they are not signed) are not considered as valid (Decision taken by the Credentials Committee at the Twelfth Session of the Conference).
- (e) As regards faxes, the position of the Credentials Committee is not well defined.

Participation in the work of the Conference Sessions

5. In accordance with Rule III.5 of the General Rules of the Organization and FAO practice, 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.

III. POSITION OF SELECTED ORGANIZATIONS OF THE UN SYSTEM ON ACCEPTANCE OF CREDENTIALS

6. The Rules and practices of the four selected organizations are, as a whole, similar to those of FAO.

Criteria for the validity of credentials

7. The way the credentials committees of the organizations concerned work and the criteria they adopt are comparable. As regards faxes, in all organizations they are accepted provisionally pending receipt of original documents. No procedure has been established for verifying the authenticity of faxes.

Participation in the work of Governing Bodies

8. A distinction should be made between the provisional seating of delegates pending the report of the Credentials Committee and the definitive seating of delegates.

Practice on provisional seating

9. Organizations, as a whole, are flexible on the question of the participation in the work of the Governing Bodies by all registered delegates pending the report of the Credentials Committee. The delegates are seated provisionally and may participate with all rights in the proceedings until the Credentials Committee has reported and the Governing Body concerned has taken its decision. However, on the question of whether or not these rights include the right to hold positions in the body itself or its committees, and to vote, the replies are divergent. While ILO does not authorize to vote the delegations whose credentials are still not in due form, UN, Unesco and WHO are more flexible. It is to be noted, however, that the position of ILO is quite different from that of the other organizations; as Employers and Workers representatives participate on an equal footing with Government representatives, in that organization, the essential role of the Credentials Committee is to ensure that the non-governmental delegates have been appointed by the Government in agreement with the most representative Employers or Workers organization.

Practice on definitive seating

10. As noted above, the position of the ILO is quite strict: if the report of the Credentials Committee indicates that the credentials are not fully in order, then the delegations concerned are not entitled to vote. The UN practice, which is also broadly

followed by Unesco and IAEA, is again more flexible. In the UN, the Credentials Committee, in its first report, lists only delegations whose credentials are fully and formally in order and thus acceptable. As noted above, other delegations continue to be seated provisionally. In its final report, the Credentials Committee establishes two different lists of countries. The first lists those countries whose delegations have submitted credentials considered to be in order. The second lists those countries whose delegations have submitted "*information concerning the appointment of their representatives*" which in some way are not yet formally complete, e.g. facsimile communications, letter or note verbale from the Permanent Mission etc. In submitting its report, the Chairman of the Credentials Committee proposes to the Governing Body concerned that the credentials of delegations in both lists be accepted, "*on the understanding that formal credentials of representatives of the Member States referred to in the second list would be communicated to the Executive Head as soon as possible*". There is no further report on whether or not such corrective action has been taken.

IV. THE TIMING OF THE CONSIDERATION OF CREDENTIALS

11. The recommendations of the Programme and Finance Committees as endorsed by the Council to amend the General Rules of the Organization to allow for the nomination of members of the Credentials Committee by the Council, imply a concern that the work of the Credentials Committee be accomplished, and its report made available to the Conference, earlier in the course of the Conference Session (see draft amendments to Rule VII and to Rule XXIV in draft Conference Resolution attached to document CCLM 69/3). Such amendments, if adopted, would of course change the procedures only for future biennia and would not affect the procedures for the present biennium. They would however raise a concern regarding the timing of the consideration of credentials for future biennia. In this context, it is to be noted from the practice of the other organizations that periodic reports of the Credentials Committee are normally spread out over a substantial part of the session of the Governing Body concerned and that delegates are normally seated on the basis of partial reports and provisional seating pending the final report of the Credentials Committee. Indeed, at least in the case of the United Nations and other organizations following its practice, it appears that there is a strong concern not to preclude Members from exercising their right to participate in the proceedings, including the exercise of their right to vote, on the basis of the formal incompleteness of their credentials. This, of course, is only applicable to situations where there is not some fundamental political issue regarding recognition of a State or Government. It is also to be noted that, in the present practice of the FAO Conference, many important votes are scheduled for the first days of the Conference, including the admission of new Members and the election of the Director-General. For these votes, it has been customary for all delegations registered to be allowed to vote.

V. CONCLUSIONS

12. The Committee may wish to consider the above information and provide its guidance to the Council, and through it to the Conference and its Credentials Committee,

regarding the process of validation of credentials. In so doing, the Committee may wish to bear in mind the following considerations:

- (a) The apparent desire of FAO Members as expressed in the recommendations of both the Programme and Finance Committees and the Council for more flexibility in the treatment of credentials, for speeding up the work of the Credentials Committee and for recognizing 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 UN system are not undermined.
13. In view of the above, the following suggestions could be made:
- (a) there should be no change to the present flexible approach of allowing delegates to be seated provisionally, even if their credentials are not fully in order pending the final report of the Credentials Committee;
 - (b) the Credentials Committee should follow the UN practice of listing separately those credentials considered as valid (list A) and those which are considered merely information on the representatives (list B). The report submitted to the Conference, for approval, should include lists A and B, on the understanding that formal credentials of representatives of the Members referred to in list B would be communicated to the Director-General as soon as possible;
 - (c) delegates of FAO Members listed in lists A and B should be authorized to fully participate in all debates of the Conference Session, hold positions in the Conference and its subsidiary bodies and vote.