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RULES OF PROCEDURE OF THE ASSEMBLY

Examination of rule 9 of the Rules of Procedure of the Assembly on credentials

Note by the Secretary-General

SUMMARY

Executive summary: This document examines rule 9 of the Rules of Procedure of the Assembly, pursuant to the Assembly's request to the Council to review the current wording of the rule to address matters relating to credentials raised at the thirtieth regular session of the Assembly by the Credentials Committee

Strategic direction, if applicable: Not applicable

Output: Not applicable

Action to be taken: Paragraph 19

Related documents: A 30/D and A 30/5(a)

Introduction

1 The Assembly, at its thirtieth regular session, held from 27 November to 6 December 2017, requested the Council to review the current wording of rule 9 of the Rules of Procedure of the Assembly to address the matters raised in paragraphs 7 and 8 of the report of the Credentials Committee (document A 30/5(a)), and report to the thirty-first session of the Assembly (A 30/D, paragraph 5(a).2).

2 The Council will note that the above-mentioned paragraphs 7 and 8 of the report of the Credentials Committee state as follows:

"7 When examining the documents submitted for the consideration of the Committee, its Members were of the view that rule 9 of the Rules of Procedure of the Assembly did not prevent Member States from transmitting copies of their credentials. Hence, it decided to recommend that copies of credentials whose wording is in compliance with the above-mentioned rule be accepted as in due and proper form, but questioned whether this practice should be accepted in the future.

8 In addition, the Committee expressed its concern that the requirement stated in rule 9 for delegations to transmit their credentials no later than the opening day of the Assembly was not observed by all Member States."

3 Rule 9 of the Rules of Procedure of the Assembly on credentials states as follows:

"Each Member shall transmit to the Secretary-General, the credentials of its representative and alternates, if any, together with the names of any other members of its delegation not later than the opening day of the Assembly. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by an appropriate authority properly designated by one of them to act for this purpose."

Submission of credentials in original form

4 Credentials are the instrument used by a State to designate persons entitled to represent it and act on its behalf at an international meeting. Therefore, credentials must be issued by, and should bear the signature of, an authority with power to bind the State. Pursuant to rule 9, in the case of the Assembly, that authority is either the Head of State or the Head of Government or the Minister for Foreign Affairs or an appropriate authority properly designated by one of them to act for this purpose.

5 As noted in paragraph 2 above, the Credentials Committee of A 30 was of the view that rule 9 did not prevent Member States from transmitting copies of their credentials. In this regard, the Committee recommended to the Assembly that copies of credentials whose wording was in compliance with rule 9 be accepted as in due and proper form but questioned whether this practice should be accepted in the future.

6 Rule 9 does not expressly state whether credentials must be in original form. Similarly, neither the first version of rule 9 (contained in the original text of the Rules of Procedure of the Assembly, adopted by the second session of the Assembly in 1961), nor subsequent amendments to the rule, made any reference to the credentials being required in "original" form. Nonetheless, the practice of the Organization, which is in line with the practice of the United Nations and some specialized agencies, such as the General Assembly and the International Civil Aviation Organization (ICAO),¹ has generally been to request Members to provide original credentials, not copies. At IMO, the request for originals is usually made in the respective invitations to Members to attend Assembly sessions.² Ordinarily, where copies of

¹ For example:

(a) The International Civil Aviation Organization (ICAO): Although rule 6 of the Standing Rules of Procedure of the Assembly of ICAO does not state whether or not credentials should be submitted in original form, the ICAO communication to delegates of the 39th Session of the ICAO Assembly in 2016 requested that credentials should be in original form and stated that "photocopies, scanned copies, electronic signatures or facsimiles will not be accepted."
<https://www.icao.int/Meetings/a39/Pages/information-for-delegates-credentials.aspx>

(b) United Nations General Assembly: Rule 27 of the Assembly's Rules of Procedure requires the submission of credentials to the Secretary-General, but is silent about whether the credentials can be accepted in original form or as copies. At its 72nd session, the General Assembly approved the report of the Credentials Committee, which recommended that credentials which had been communicated to the Secretary-General by means of facsimile communication be accepted on the understanding that formal credentials would be communicated to the Secretary-General as soon as possible (document A/72/601, paragraphs 6 and 7, dated 4 December 2017). This procedure was also followed at the 71st session of the Assembly (document A/71/670, paragraphs 6 and 7, dated 8 December 2016).

² See, for instance, NV.66 and NV.003, containing invitations to the twenty-ninth and thirtieth regular sessions of the Assembly.

credentials that meet all other requirements of rule 9 have been presented instead of originals, the practice of the Organization has been to accept them provisionally, subject to receipt of the originals in due course.³

7 Credentials should, preferably, be submitted in original form due to the following:

- .1 The practice of requiring credentials in original form is substantially linked to their legal nature and similarity to full powers. Article 2(1)(c) of the Vienna Convention on the Law of Treaties, 1969 (VCLT) defines full powers as "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty". In this regard, IMO meetings, including those of the Assembly, mostly discuss matters relating to treaties, and thus those speaking on behalf of a Member State or voting on an amendment or other matter should have the appropriate authority to do so. For IMO diplomatic conferences convened to consider and adopt specific treaties, the submission of duly signed credentials is considered sufficient for a delegation to participate and vote on matters relating to the adoption of the treaty. Therefore, in this context, credentials are considered as a form of full powers.⁴
- .2 The long-standing practice of IMO with regard to full powers, which is similar to the practice of the United Nations Secretary-General, is that the representative empowered to sign on behalf of his/her Government would normally hand over the original instrument of full powers at the time of signature. However, in accordance with the depositary practice, a signature by a representative could be accepted on the basis of a copy of the full powers on condition that they are in proper and due form, but this requires that the State provide the Treaty Section with the original full powers as soon as possible (by hand or mail).⁵

8 Pursuant to rule 10 of the Rules of Procedure of the Assembly, the Credentials Committee is tasked to "examine the credentials of delegations and report without delay". This entails an assessment of individual credentials on their conformity with rule 9, including confirmation that they have been signed by the appropriate authority. In order to ascertain that credentials meet the requirements of rule 9, the Credentials Committee would also need to satisfy itself of their authenticity, thus the necessity for credentials to be in original form.

9 It is acknowledged that requiring credentials in original hard form may not be reflective of technological advances such as electronic signatures. Technological advances may be explored in the future with a view of increasing flexibility and efficiency in the review and validation of credentials, while maintaining their integrity and formal requirements. In the

³ Thus, for example, at the twenty-second regular session of the Assembly, credentials of the representatives of Nicaragua, Pakistan and Paraguay which were submitted as copies or telefaxes were accepted on the basis that original documents would be submitted in due course (document A 22/5(a)/2, paragraph 5). Similarly, in earlier sessions of the Assembly, the tenth and eleventh sessions, the copies of credentials for representatives of Bahrain and Austria were accepted on the basis that the originals would be respectively submitted in due course (documents A X/SR.6, pages 2 and 3; and document A XI/SR.6, page 2).

⁴ See, for example, rule 3 of the Provisional Rules of Procedure for the International Conference on the revision of the HNS Convention (document LEG/CONF.17/2, annex).

⁵ See paragraph 3.2.4 of the United Nations Treaty Handbook.

meantime, it is recommended that the current IMO flexible approach of accepting copies of credentials subject to the originals being furnished, should be continued, without any amendment to rule 9 of the Rules of Procedure of the Assembly.

Late submission of credentials

10 In accordance with rule 9 of the Rules of Procedure of the Assembly, credentials shall be submitted not later than the opening day of the Assembly. The requirement for credentials to be submitted by the opening day of the Assembly stems from the fact that, inter alia, credentials are used to establish the quorum of meetings and also the voting list for the plenary.

11 The question of late submission of credentials relates essentially to the right of a delegation to participate in the proceedings of the Assembly (and to take part in votes) pending the receipt of valid credentials in respect of that delegation, and the decision of the Assembly on those credentials.

12 Three separate difficulties may arise in relation to this situation, namely:

- .1 the right of the delegation to participate in the proceedings of the Assembly;
- .2 the right of the delegation to vote; and
- .3 the validity of such a vote if the credentials of the delegation concerned are subsequently either not presented or are not accepted by the Assembly.

13 The Rules of Procedure of the Assembly do not state whether a delegation whose credentials have not been received, or are received late, has the right to participate or vote during the Assembly, and whether, if allowed to vote, the validity of the vote would come into question if that delegation's credentials were either not presented or not accepted by the Assembly.

14 The practice of IMO in this regard can be summed up as follows:

- .1 all delegations (including those whose credentials have either not been received or not been examined or examined but not been found to be in order, as well as delegations to whose admission objections have been raised) are seated provisionally with the same rights of participation, excluding voting; and
- .2 delegations which are seated provisionally shall only vote if they subsequently, before the voting takes place, submit credentials which are signed by an authorized person, in original form. Copies of credentials are also accepted if they meet all other requirements.

15 The requirement for delegations to submit credentials, in order to vote, is necessary for the maintenance of the integrity of the decision-making process of the Assembly or Contracting Parties, on treaty-related matters. As described in paragraph 9.1, credentials for Assembly meetings are generally similar to full powers as defined by article 2(1)(c) of the VCLT.

16 In this regard, article 7(1) of the VCLT provides that "a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if: (a) he produces appropriate full powers; or (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers."

17 In light of this analysis, it is recommended that the wording of rule 9 should remain as is, and the Assembly should continue the current practice of limiting the participation of delegations that have not submitted their credentials to discussions, without the right to vote, unless, before the voting takes place, they provide credentials in original form, or copies subject to the subsequent submission of originals.

18 However, should the Council and Assembly wish to provide clarity as to the processing and form of credentials and their late submission, one option may be to consider amending rule 10 of the Rules of Procedure of the Assembly, to enable the Credentials Committee to examine copies of credentials, and those credentials submitted late. The proposed new wording of rule 10 is shown below underlined:

Rule 10

A credentials committee shall be appointed at the beginning of each session of the Assembly. It shall consist of five members who shall be appointed by the Assembly on the proposal of the President. The Credentials Committee shall examine the credentials of delegations and report without delay. In examining the credentials, the Credentials Committee may recommend provisional acceptance of copies of credentials, or acceptance of those transmitted late, and shall report the same to the Assembly.

Action requested of the Council

19 The Council is invited to consider the information provided in relation to the submission of credentials under rules 9 and 10 of the Rules of Procedure of the Assembly, and decide as it may deem appropriate.
