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# GENERAL CONFERENCE

## FORTIETH REGULAR SESSION

### COMMITTEE OF THE WHOLE

#### RECORD OF THE SEVENTH MEETING

Held at the Austria Center Vienna  
on Friday, 20 September 1996, at 10.40 a.m.

Chairman: Mr. AYATOLLAHI (Islamic Republic of Iran)

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[\*] GC(40)/22.

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The composition of delegations attending the session is given in document GC(40)/INF/13/Rev.2.

96-03431 (XXI)

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ARTICLE VI OF THE STATUTE (continued)

(a) AMENDMENT OF ARTICLE VI (GC(40)/20 and Add.1, GC(40)/COM.5/12/Rev.1, GC(40)/COM.5/16/Rev.1, GC(40)/COM.5/17) (continued)

1. The CHAIRMAN said that the "CHAIRMAN'S DRAFT" before the Committee<sup>1</sup> - the result of lengthy informal consultations - represented an attempt to reconcile the contending views reflected in documents GC(40)/COM.5/12/Rev.1, GC(40)/COM.5/16/Rev.1 and GC(40)/COM.5/17. Representatives of about 40 Member States had co-operated with him in producing a compromise text which - he hoped - would facilitate a consensus. He was grateful to them all.

2. Having pointed out that operative paragraph 2 should read "... as contained in document GC(40)/20 ..." (not "... as attached to this resolution ..."), he urged the Committee to concentrate on operative paragraph 4, which contained alternative wordings in square brackets.

3. Mr. KONACHKOV (Russian Federation), having thanked the Chairman and the other participants in the informal consultations leading to the "CHAIRMAN'S DRAFT", suggested that in preambular paragraph (a) the phrase "increasing the representation of the areas of Africa and the Middle East and South Asia" be replaced by something like the phrase "giving equitable representation to the under-represented areas" from the operative paragraph of resolution GC(XXV)/RES/389, that in preambular paragraph (h) the words "be in a position to" be inserted after "will" and that in operative paragraph 1 the phrase "to expand the size and composition of the Board" be replaced by a phrase on the lines of "to ensure the equitable representation of all areas and possibly to expand the size of the Board".

4. With regard to operative paragraph 4 of the "CHAIRMAN'S DRAFT", his delegation could accept either of the alternative wordings.

5. Mr. PETROV (Bulgaria) expressed support for the suggestion made by the representative of the Russian Federation regarding operative paragraph 1.

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<sup>1</sup> See the Attachment to this document.

6. Mr. RUIZ (Spain) said his delegation had difficulties with the phrase "the elements identified by the Chairman of the Open-ended Consultative Group" in operative paragraph 4 of the "CHAIRMAN'S DRAFT" and suggested that the paragraph be modified to read: "... and of the report of the Chairman of the Open-ended Consultative Group ...".

7. His delegation could accept either of the alternative wordings for the last part of operative paragraph 4.

8. Mr. BENMOUSSA (Morocco) said he could not go along with the suggestion made by the representative of the Russian Federation regarding operative paragraph 1; the point - the equitable representation of all areas - was covered in preambular paragraph (b), by the phrase "in all regions resulting in the under-representation of other areas". The objective sought by the representative of the Russian Federation could perhaps be achieved through the addition, at the end of operative paragraph 1, of a phrase like "while ensuring the equitable representation of all areas".

9. As regards the remarks made by the representative of Spain, the Moroccan delegation had difficulties with some of the elements identified by the Chairman of the Open-ended Consultative Group in his report but had chosen not to raise objections to that part of operative paragraph 4 of the "CHAIRMAN'S DRAFT".

10. As regards the last part of operative paragraph 4, his delegation considered only the first alternative wording to be acceptable.

11. Ms. LETTS (Australia), commenting on the suggestion made by the representative of the Russian Federation regarding operative paragraph 1 of the "CHAIRMAN'S DRAFT", said that, while her delegation appreciated the reasons for the suggestion, it believed that the time had come to recognize the widely held view that something must be done about expanding the Board.

12. Mr. COLE (United Kingdom) said that, while his delegation had no fundamental difficulty with the suggestion made by the representative of the Russian

Federation regarding operative paragraph 1, it believed that the present formulation should be left unchanged.

13. Mr. Chan-Ho HA (Republic of Korea) said that operative paragraph 1 was the product of extensive discussions and should, in his view, be left as it stood.

14. Ms. BATACLAN (Philippines), urging that operative paragraph 1 be left as it stood, said she was sure that the need for "the equitable representation of all areas" would be taken into account when the Board was being expanded.

15. As regards operative paragraph 4, her delegation preferred the first alternative wording for the last phrase, but it could join in a consensus on the second one if the words "in accordance with Article XVIII of the Statute" were inserted after "approval".

16. Mr. RUIZ (Spain) said that his delegation could only just live with operative paragraph 1 as it stood and that, if the representatives of the Russian Federation and Morocco were going to press for that paragraph to be modified, the Spanish delegation would also have some modifications to propose in order to take into account the legitimate aspirations of Member States located in certain areas.

17. Mr. LABROSSE (France), recalling that the Chairman had urged the Committee to concentrate on operative paragraph 4 of the "CHAIRMAN'S DRAFT", said that the Committee should comply with the Chairman's wish out of respect for those who had worked so long on producing that draft.

18. As regards the two alternative wordings in operative paragraph 4, the second one had the advantage of being essentially identical with what had appeared in resolution GC(39)/RES/21 adopted by the General Conference in 1995.

19. Mr. TWAL (Jordan) agreed that the Committee should concentrate on operative paragraph 4.

20. Ms. HASAN (Pakistan) said that her delegation was in favour of operative paragraph 1 as it stood, but could accept the addition suggested by the representative of Morocco in order to meet the concerns of the representative of the Russian Federation.

21. As regards operative paragraph 4, it preferred the first alternative wording.

22. Ms. LETTS (Australia) said that in the light of the discussion she felt it would be best to leave operative paragraph 1 as it stood and concentrate on operative paragraph 4, where the second alternative wording seemed most likely to command a consensus.

23. Mr. PECSTEEN (Belgium), having urged that operative paragraph 1 be left as it stood, expressed support for the first alternative wording in operative paragraph 4 without the word "final" in the English version.

24. Mr. MAFFEI (Argentina) said that, as the Committee was not concentrating on operative paragraph 4, he would like to say that the addition to operative paragraph 1 suggested by the representative of Morocco in order to meet the concerns of the representative of the Russian Federation was acceptable to his delegation.

25. As regards operative paragraph 4, his delegation strongly preferred the second alternative wording for the last part.

26. Mr. STRATFORD (United States of America) said that the addition to operative paragraph 1 suggested by the representative of Morocco was acceptable to his delegation also.

27. The United States delegation also had difficulties with some of the elements identified by the Chairman of the Open-ended Consultative Group in his report, but was prepared to go along with the first part of operative paragraph 4 as it stood.

28. As regards the last part of operative paragraph 4, his delegation preferred the second alternative wording but could live with the first one if the words "concrete" and "final" were deleted.

29. Mr. COLE (United Kingdom) said that his delegation preferred the second alternative wording for the last part of operative paragraph 4.

30. Mr. HREHOR (Czech Republic) said that his delegation appreciated the suggestions made by the representatives of the Russian Federation and Morocco, but on balance it would prefer the "CHAIRMAN'S DRAFT" to be left largely as it stood.

31. For practical reasons his delegation preferred the second alternative wording for the last part of operative paragraph 4. If there was more support for the first alternative wording, however, he would like the word "final" to be deleted.

32. Mr. COOK (New Zealand) said that his delegation did not share the "widely held view" referred to in operative paragraph 1, but it was willing to go along with that paragraph as it stood.

33. With regard to operative paragraph 4, his delegation could accept the reference to "the elements identified by the Chairman of the Open-ended Consultative Group in his report" and preferred the second alternative wording.

34. Mr. INDELICATO (Italy) said that operative paragraph 1 was acceptable to his delegation with or without the addition suggested by the representative of Morocco.

35. As regards operative paragraph 4, his delegation preferred the second alternative wording.

36. In his opinion, the word "final" was superfluous in the first alternative wording.

37. Mr. PAPADIMITROPOULOS (Greece) said that his delegation preferred the second alternative wording for the last part of operative paragraph 4.

38. Mr. Chan-Ho HA (Republic of Korea) said that his delegation preferred the first alternative wording with retention of the phrase "a concrete formula for final approval".

39. Mr. KOÇ (Turkey) said that, in his view, the reference in operative paragraph 4 to "the elements identified by the Chairman of the Open-ended Consultative Group in his report" should remain.

40. Mr. OKONKWO (Nigeria) said that his delegation could accept operative paragraph 1 as it stood or with the change suggested by the representative of the Russian Federation.

41. His delegation, which preferred the first alternative version for the last part of operative paragraph 4, wondered whether it might help if the word "final" was replaced by "necessary".

42. Mr. BENMOUSSA (Morocco), having stated that he would not press the suggestion which he had made for an addition to operative paragraph 1, said that his delegation had difficulties with the second alternative wording for the last part of operative paragraph 4: it made no reference to Article XVIII of the Statute and it referred to "recommendations" rather than to "observations". In any case, his delegation believed that the adoption of a draft resolution with that wording would merely result in further inertia.

43. With regard to the first alternative wording, his delegation could go along with deletion of the word "final" if the phrase in question was modified to read "... on a finalized concrete formula for approval by the General Conference ...".

44. Mr. WAMBAYI (Kenya) and Mr. AL-RACHACH (Saudi Arabia) expressed support for the modification suggested by the representative of Morocco.

45. The CHAIRMAN asked whether those members of the Committee who had spoken out in favour of the second alternative wording could accept the first one with the modification just suggested by the representative of Morocco.

46. Ms. DORAN (Ireland) said her delegation still preferred the second alternative wording.

47. Mr. Chan-Ho HA (Republic of Korea) said that his delegation could go along with the modification of the first alternative wording just suggested by the representative of Morocco.

48. Mr. NASSER (Egypt) said that his delegation could not accept the second alternative wording and would prefer the first one as it stood.

49. Mr. KEMPEL (Austria) suggested modifying the second alternative wording by substituting "observations" for "recommendations" and adding "in accordance with Article XVIII of the Statute" at the end.

50. Mr. BENMOUSSA (Morocco) said that he could not go along with the suggestion made by the representative of Austria.

51. Ms. OK (Turkey) suggested that the beginning of the first alternative wording be modified to read "its report on an acceptable formula for finalization by the General Conference ...".

52. Ms. MÄKELÄINEN (Finland) expressed support for that suggestion.

53. Mr. NASSER (Egypt) said that he could not understand why some delegations had difficulties with the word "formula" in the first alternative wording, which his delegation considered perfectly acceptable as it stood.

54. Mr. OURO-PRETO (Brazil), Mr. VIEIRA (Portugal) and Mr. MAFFEI (Argentina) said they preferred the second alternative wording with the modifications suggested by the representative of Austria.

55. Mr. BENATTALLAH (Algeria) said that his delegation would like the Open-ended Consultative Group to become a negotiating body, although with Ambassador Bøjer still as Chairman.

56. As regards "the elements identified by the Chairman of the Open-ended Consultative Group in his report", they would clearly provide for only a very small increase in the size of the Board and would do nothing to alleviate the under-representation of areas like Africa.

57. Ms. BATACLAN (Philippines) suggested combining the two alternative wordings to read "to submit its report and recommendations on proposed amendments containing a concrete formula for approval by the General Conference at its forty-first regular session in accordance with Article XVIII of the Statute."

58. Mr. PECSTEEN (Belgium) said that he could go along with the wording just suggested by the representative of the Philippines but would prefer the modified version of the second alternative wording suggested earlier by the representative of Austria.

59. Ms. HASAN (Pakistan) said her delegation had no difficulties with the word "concrete" and would prefer the first alternative wording.

60. Mr. HAMADA (Tunisia) said his delegation could accept operative paragraph 1 as it stood. With regard to operative paragraph 4, it could accept the first alternative wording with the modification suggested by the representative of Morocco.

61. Mr. STRATFORD (United States of America), having expressed strong support for the second alternative wording with the modifications suggested by the representative of Austria, said that, in his view, the words "a concrete formula" implied that the Board would not be doing its job properly unless very specific recommendations were made to the Conference regarding the Board's future size and composition. That was not what the Statute required of the Board.

62. Ms. LETTS (Australia) said that, if the Board was requested "to develop within a timetable a process of negotiations among Member States", that should ensure that the momentum was maintained. Her delegation therefore preferred the second alternative wording with the modifications suggested by the representative of Austria.

63. Ms. MALLIOTIS (Cyprus) said that she also preferred the second alternative wording with the modifications suggested by the representative of Austria. With regard to operative paragraph 1, she expressed support for the suggestion made by the representative of the Russian Federation.

64. The CHAIRMAN said it seemed to him that, if the words "concrete" and "final" were deleted, the Committee should be able to go along with the first alternative wording.

65. Mr. QUAYES (Bangladesh) said that he could go along with the first alternative wording without those two words.

66. Mr. BENMOUSSA (Morocco) recalled that he had suggested the phrase "... on a finalized concrete formula for approval by the General Conference ...". That suggestion had received support in the Committee, and he could not go along with the simple deletion of the words "concrete" and "final". In a spirit of compromise, he

would accept the phrase "... on a finalized acceptable formula for approval by the General Conference ...".

67. Mr. NASSER (Egypt) said that he could accept that phrase, although he would be sorry to see the word "concrete" deleted.

68. The CHAIRMAN suggested that the Committee opt for the first alternative wording with "concrete formula for final approval" replaced by "finalized formula for approval".

69. It was so agreed.

70. Mr. RUIZ (Spain) said that his delegation, which had not stood in the way of the agreement, still had reservations about the phrase "elements identified by the Chairman of the Open-ended Consultative Group in his report".

71. Mr. KULEBA (Ukraine), welcoming the agreement, said that he would have liked operative paragraph 1 to be modified in the manner suggested by the representative of the Russian Federation.

72. The CHAIRMAN said he assumed that the Committee wished to recommend for adoption by the General Conference the "CHAIRMAN'S DRAFT" with "attached to this resolution" replaced by "contained in document GC(40)/20" in operative paragraph 2 and with the last part of operative paragraph 4 reading "... to submit its report on a finalized formula for approval by the General Conference at its forty-first regular session in accordance with Article XVIII of the Statute".

73. It was so agreed.

74. The CHAIRMAN thanked Ambassador Bøjer, on behalf of the Committee, for the manner in which he had presided over the deliberations of the Open-ended Consultative Group. He hoped that Ambassador Bøjer would be able to continue chairing the Group.

(b) COMPOSITION OF REGIONAL GROUPS (GC(40)/11 and Add.1, GC(40)/INF/7, GC(40)/COM.5/13, GC(40)/COM.5/18/Rev.1)

75. Mr. LEDERMAN (Israel), introducing the draft resolution contained in document GC(40)/COM.5/13, said that the Agency was based on the principle of the sovereign equality of all Agency Member States. That principle was enshrined in Article IV.C of the Statute. Through the draft resolution submitted by it, Israel wanted to ensure that all Member States could enjoy all the rights of Agency membership flowing from the Statute.

76. Because it had been excluded from participation in the activities of the Middle East and South Asia (MESA) regional group, Israel had been discriminated against within the Agency for almost 40 years. That exclusion had undermined Israel's ability to participate effectively and equally in the Agency's activities, to consult and be consulted, and to be elected to serve on the Board of Governors.

77. In the report contained in the Attachment to document GC(40)/11, however, the Director General made three important, unequivocal statements:

"It is evident that Article VI is premised upon the assumption that every Member State of the Agency is within one of those areas [one of the eight areas listed in Article VI]. If this were not the case, a Member State that was not within an area would be ineligible to serve as a member of the Board. Such ineligibility would be contrary to the principle of the sovereign equality of all of its Member States, upon which the Agency is based and which is enshrined in Article IV.C of the Statute.";

"Where a doubt exists as to whether a Member State is within a particular area, it is clear that the decision on that issue cannot be taken solely by the Member States who are acknowledged as being within that area. The taking of a decision by such States could result in the State in question being excluded from all areas."; and

"In these circumstances, the determination of whether a State falls within a particular area referred to in Article VI, or the development of a list of States that fall within each of the areas referred to in Article VI, is a matter that falls within the co-responsibility of the Board and the General Conference."

In June, the Board had decided to submit that report, together with the summary record of its discussion, to the General Conference as its own report.

78. The area to which Israel belonged - geographically, politically and otherwise - was obvious, and Israel believed that its situation within the Agency should be

redressed speedily. The Director General's report had paved the way for the General Conference to resolve the matter favourably, by accepting that report and confirming that Israel belonged to the MESA area.

79. He urged Member States to support the draft resolution contained in document GC(40)/COM.5/13, which aimed to end almost 40 years of discrimination.

80. Mr. AMIRKHIZI (Islamic Republic of Iran), introducing the draft resolution contained in document GC(40)/COM.5/18/Rev.1 on behalf of its sponsors and of Bangladesh, Iraq and Lebanon, said there was a very important principle underlying the draft resolution - that it was for regional groups to decide upon their composition.

81. In 1995, the General Conference had, while acknowledging that long-standing principle, decided to provide for a general exchange of views on the question of the composition of the regional groups. In the report contained in the Attachment to document GC(40)/11, it was noted that Article VI.A.1 of the Statute referred not to "geographical groups" but rather to "areas", not all of which were necessarily geographical. That point had been reflected in preambular paragraph (c) of the draft resolution. Another feature of the draft resolution was that it represented an attempt to address the fact that some Member States did not belong to any regional group.

82. The sponsors of the draft resolution believed that all Member States should have an equal chance of serving on the Board of Governors, and they hoped that the draft resolution would attract wide support and be adopted by consensus.

The meeting rose at 1.35 p.m.