

Annex n.



CONSTITUTIONAL COMMISSION

REPORT TO FIDE COUNCIL - DECEMBER 2020

The Constitutional Commission (hereafter CC), during the 2020 FIDE Congress, held an on-line meeting on 1st of December 2020.

The following members of the CC were present: Roberto Rivello (chairman), Marouane Tabti, Ian Wilkinson.

A first part of the meeting was public, open to the participation of all delegates, FIDE officials and Commissions' members. It was attended by: FIDE President Arkady Dvorkovich, Deputy President Bachar Kouatly, Treasurer Zhu Chen, vice President Michael Khodarkovsky, vice President Nigel Short, Marco Biagioli, Dominic Cross, Ion Dobroteanu, Willy Iclicki, Alex Holowczak, Arfa Khaled, Baira Marilova, Aleksandr Martynov, Sofie Ratama, Sava Stoislavljevic, Francois Strydom, Patrick Van Hollandt, Gary Wastell.

A second part was reserved exclusively to the members of the Commission.

The following points were inserted in the agenda, discussed and decided, when a decision had to be taken by the CC.

D) Issues concerning the organisation of an Online General Assembly – Applicable Rules – Internal Rules of the General Assembly

The organisation of an on-line General Assembly is, of course, something completely new for FIDE, that was made necessary by the current extraordinary situation determined by the Covid-19 pandemic.

However, FIDE Charter contains no rules in contrast with this possibility, therefore an on-line General Assembly is fully valid.

Art. 17.15 of the FIDE Charter establishes that “electronic roll calls and voting are possible, if available”.

Given the approval of the new Charter, this year, it will be necessary to update and completely redraft the Electoral Rules and the Internal Rules of the General Assembly. Hopefully, this will be fully possible in 2021. However, this means that, at the moment, there are not existing secondary rules that can help to better specify how to give application to the Charter in this specific situation.

A very first version of new Internal Rules of the General Assembly is proposed in this Congress for the approval of the General Assembly. It is still a not comprehensive regulation; in a large part it just reminds and repeats the content of art. 17 of the new Charter. However, it makes sense to approve the document. A better version could follow next year, but some provisions (from point 4.11 to point 4.16 of the draft document) are useful, and in any case the approval of new Internal Rules is necessary to overrule the previous ones that were approved decades ago and are not applicable at all, not being in accordance with the new Charter.

The proposed version also contains some rules about on-line meetings, in art. 4.16¹. No problems about them, but there are some other issues, concerning on-line meetings, that must be discussed.

- Identification of the participants in the meeting: the system that the Secretariat has been implementing (asking each Member Federation to officially communicate in advance e-mail and phone number of the delegates; identification of the participants, the day of the meeting, asking them to be visible by webcam and to show identity documents if requested) is reasonable and give sufficient guarantees, even more than the usual practices employed in occasion of ordinary meetings “in presence”.
- Roll-call: the new Charter make possible “electronic roll-call”, this helps to avoid tiring and time expensive roll-calls, as carried out in past meetings. After the previous preliminary identification of the participants, at the beginning of the meeting it will be enough to ask everybody to confirm their presence on-line, all at the same time, the Secretary will be able to count the presences and to communicate the *quorum* to the President and the Assembly.
- Electronic Voting system: the system of secured e.vote, WeVote, developed by an independent company, certified as an “European trustee third party”, in accordance with European Union rules, and the obligations this company assumed, seem to give

¹ “4.16. The General Assembly sessions may be held online if necessary. The rules for offline sessions shall apply to the online GA sessions mutatis mutandis unless otherwise decided by the GA for certain sessions with the following reservations:

- a) a reliable, well-known system / platform shall be used (Skype, Zoom, etc.);
- b) the system / platform and voting specifics shall be pre-approved by the FIDE Council;
- c) each session participant shall be solely responsible for his technical equipment and web connection;
- d) technical requirements and details of the system / platform use shall be specified by the President and notified to the participants in advance by the secretariat;
- e) participants are strongly recommended to inform the Chairman of their intention to deliver a speech in advance in order to form a comfortable schedule to cover all items of the agenda, otherwise such speech may be limited”.

sufficient guarantees about a fully secret voting and counting. Of course, today there are not worldwide valid rules about systems of electronic voting, however the same can be said, in general, in the field of security of information systems, but all of us we use more and more trust services, in particular for electronic transactions; electronic signatures, seals and time stamps and so on.

The same system can be used also for open votes. In this meeting of the GA secret vote is requested as mandatory only for decisions concerning Chess Olympiads.

- The question if multiple points in the agenda can be voted at the same time was raised. It depends. Usually not, but if there is a *consensus* on a proposal to do this, without any substantial objection, this is possible.
- Appointment of Scrutineers: the Charter does not establish as mandatory the appointment of scrutineers, when there are no elections. However, Electoral Regulations provide this, specifying, in the part B), that “the procedures set out in section (A) above”, for “Presidential Election years”, shall apply” in “other years”. As already mentioned, Electoral Regulations must be rewritten. At the moment being, the point could be controversial, but in the opinion of the CC the notion of “other years” makes reference to meetings in which at least one election is scheduled, and this is not the case of this on-line meeting. Also if not mandatory, the election of scrutineers can be useful, to double check results of open votes or to follow the procedure of electronic secret vote, remaining in contact with WeVote IT experts. To do this, not being an election, scrutineers can be also less than three, for example 1 or 2, especially bearing in mind the peculiarities of an on-line meeting.

II List of delegates and voting rights

- In accordance with art. 28.9 of the Charter “The Electoral Commission shall verify who is entitled to vote in FIDE’s elections, while art. 3(B) of the Electoral Rules previews that, in the above mentioned “other years”, “any disagreement as to who is entitled to vote at the General Assembly is referred to the Constitutional Commission for final decision”. Updated Electoral Rules are needed, but in the meantime, art. 27.3.e) of the FIDE Charter is also relevant, given that it attributes to the CC the competence “e) to deliver mandatory advisory opinions on any dispute concerning Part II of FIDE Charter, when it does not concern FIDE elections”. Therefore, the CC agrees with the Council (see Council decisions in the meeting of 30 September 2020, about some specific cases) and with the Secretariat that it is to the CC to verify and decide who is entitled to vote when there are no elections.
- Given that, the CC examined the situations submitted to its attention by the Council and/or by the Secretariat.

- Art. 17.6 of the Charter rules that: “Presidents and delegates may only represent one Member Federation at a time and must, on the date of the meeting of the General Assembly, have either: - a citizenship or at least two years’ residency of the country or territory they represent, or - at least one year experience as an office holder of this Member Federation. They must also be elected or appointed by the appropriate body of that Member Federation”. At the current date these conditions are not fulfilled for the delegates appointed by the Federations of Comoros, Seychelles, Solomon Island and Nauru. The delegates of Comoros and Seychelles, informed about the pending case, voluntarily resigned from their position before the meeting of the CC. Federations of Solomon Island and Nauru insisted in the legitimacy of the appointment of their delegates, noting that Mr. Kalessis and Mr. Kenmure acted as their delegates from already more than one year and Mr. Kenmure acted also as rating officer for a longer period. However, these functions cannot be considered as an equivalent of being “office holder” of a national federation. The *rationale* of the rule is to guarantee that the delegate of a federation has an effective link with that federation and exercised relevant functions on its territory. On these bases, the CC decided that:
 - the delegate indicated by the Federation of **Solomon Island** does not meet the requirements of article 17.6 of the Charter, and, accordingly, cannot represent this Federation,
 - the delegate indicated by the Federation of **Nauru** does not meet the requirements of article 17.6 of the Charter, and, accordingly, cannot represent this Federation.

These two Federations were immediately informed that, in accordance with general rules, they still have the possibility, for this meeting of the GA, to indicate their President as their delegate.

- The CC then examined two cases, concerning the chess Federations of Cote d’Ivoire and South Africa, that were controversial already in occasion of the Abu Dhabi Extraordinary GA. After February GA, the Council requested additional information to all parties involved in the cases, involving also the African Chess Confederation, but it has not yet taken a decision, considering that not clear decisive evidence was acquired. Therefore, the CC must reach the same conclusions taken in February 2020, to not assign to anybody the right to vote. These cases are highly controversial, some judiciary proceedings are still pending in front of national authorities, other FIDE organs have already been charged of the task to investigate them and/or to mediate between parties, but still no clear evidence has been collected about the legitimacy of a delegate. Therefore, the CC decided that:

- nor Mr. Justin Brou, nor Mr. Essis Essoh can represent as delegate the Federation of **Cote d’Ivoire** in this meeting of the GA;
 - nor Mr. Joe Mahomole nor Mr. Hendrik du Toit can represent as delegate the Federation of **South Africa** in this meeting of the GA.
- The CC then examined the case of the chess Federation of Morocco. The parties involved in the case were contacted to mediate a possible solution, that was found among them. Given that new elections have been scheduled for the beginning of 2021, there are no opposition about the possibility for Mr. Mustapha Amzal to represent the federation of Morocco in this meeting of the GA. Therefore, the CC confirms the legitimacy of the participation in the meeting of Mr. Mustapha Amzal as representative of the chess federation of **Morocco**.
- The CC, at the moment being, has not yet been involved in the case concerning the chess Federation of India, therefore, the CC cannot take any decision about this issue; however, following a request by the Secretariat, it can just confirm that there are no indications of a delegate of this chess Federation legitimated to participate in this meeting of the GA.

III Proposals included in the Agenda of the General Assembly

In accordance with its competences (“to review ... changes of the FIDE Charter, By-laws, Electoral Rules, Ethics and Disciplinary Code, Financial Rules and Rules on Non-elected Commissions” and “to ensure that proposed changes of FIDE Charter, Electoral Rules, Ethics and Disciplinary Code, Financial Rules and Rules on Non-elected Commissions occur in conformity with the established procedural rules”), the CC examined the proposals of changes of rules included in the agenda, especially points: 2.6, 3.1, 3.2.1, 4.1, expressing the following concerns:

- 3.2.1. Resolution Submitted by Nigel Short & Malcolm Pein.
In the opinion of the CC, an “automatic” suspension is never possible. Art. 13 of the Charter clearly establishes how and by which organs a suspension of a Member Federation can be decided. Vice-President Nigel Short, present at the CC meeting, noted that the intention of the proposed resolution is different and fully in accordance with the Charter. In this case, a rewording of the proposal, still possible during the meeting of the GA, would be advisable before any decision on the proposal.
- 4.1.4 Resolutions for the 2020 FIDE General Assembly Submitted by Nigel Short & Malcolm Pein – Second Resolution
In the opinion of the CC, if the possibility to be delegate of a Federation for a person having “at least one year experience as an office holder of this Member

Federation” will be deleted, at least the situation of a person having the “domicile” in the country or the territory of that Federation and may be also of a person that has played regularly for a given period of time for that Federation would have to be considered.

The CC has no other objections to submit to the attention of the Council and the GA.

III Constitutional Commission Internal Rules, organisation and next tasks

The CC considers as necessary to draft and approve some Constitutional Commission Internal Rules, to regulate, among others, the following issues:

- the proceedings concerning legitimacy of delegates of Member Federations and voting powers in non-electoral years;
- the interaction with other FIDE organs, about updating of FIDE Handbook (see 7.14 of the Charter: “All FIDE rules and regulations are collected in the FIDE Handbook, whose index, structure and updating must be approved by the Constitutional Commission that, in accordance with its Internal Rules, will instruct FIDE offices about the publication”);
- the modality of election of a Deputy Chairman, among its members (see 27.1 of the Charter: “The Constitutional Commission is composed of the Chairman and four members, one of them will act as Deputy Chairman, chosen in accordance with the Constitutional Commission’s Internal Rules”);
- the possibility to preview a position of assistant or secretary to help the Commission in its functions.

It is well known that Internal Rules of the Constitutional Commission do not require to be approved by the Council, and that in any case “Internal Rules cannot supersede nor derogate other FIDE rules, in accordance with the hierarchy listed in 7.1”. However, the CC believes that at least some issues, especially relevant, need a previous approval by the Council or, at least, a strict coordination with the Council.

Decisions regarding list of delegates are linked to the competences of the Council about obligations of Member Federations and, in the worst cases, suspensions of Member Federations.

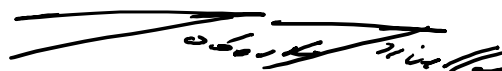
If strict neutrality in the internal affairs of its members is one of the main principles of FIDE, it also true that FIDE but has the right and duty to evaluate their compliance with FIDE principles and their obligations towards FIDE, among them the obligation “to comply with their own statutes, rules and regulations” and” to regularly organise general assemblies and elections”. It’s becoming frequent that, pending national controversies, for prolonged periods of time a federation cannot be represented by a delegate in FIDE, a situation that creates difficulties and problems, especially to players, arbiters and organisers. It could be considered the possibility, in those cases, when no decision can be taken by the CC about the legitimacy of a given

delegate, to designate, for a temporary period, a “reverse delegate”, appointed by the Council, without voting powers in case of FIDE elections, but charged from one side to make the interests of that federation in front of FIDE (for example, for what concerns FIDE titles and ratings, participation of teams in FIDE events, participation in FIDE Congresses and so on), from another side to inform FIDE about the situation and evolution of national disputes, facilitating, if requested, a solution of these disputes. This, or similar solutions, could be included also in the CC Internal Rules.

Also the possibility to preview a position of assistant or secretary to help the Commission in its functions, of course without voting powers, needs to be submitted to the previous attention of the Council.

Turin, 1 December 2020

Roberto Rivello

A handwritten signature in black ink, appearing to read 'Roberto Rivello', written over a horizontal line.