



**GOVERNING COUNCIL**  
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**Item No. 21 on the Agenda : Revision of the Regulations concerning the election of the Governing Council**

(memorandum prepared by the UNIDROIT Secretariat)

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| <i>Summary</i>            | <i>Consideration of the proposals made by the ad hoc Committee of the General Assembly for the amendment of Article 7 of the Regulations</i> |
| <i>Action to be taken</i> | <i>Expression of the Governing Council's opinion for transmission to the General Assembly</i>  |
| <i>Related documents</i>  | <i>A.G. / A.H.C. Doc. 5, Regulations of the Institute</i>  |

1. Pursuant to the decision taken by the General Assembly at its 58<sup>th</sup> session, held in Rome on 28 November 2004, an *ad hoc* Committee of the General Assembly met in Rome on 28 February 2005, under the chairmanship of H.E. Mr J.F. Cogan, Ambassador of Ireland in Italy, to develop proposals for the amendment of Article 7 of the Regulations of the Institute designed to ensure minimum representation of all the important geographic regions of the world on the Governing Council.
2. It will be recalled that the need for this meeting arose out of the failure of any of the three candidates from African member States to secure election to the Governing Council at the last elections to that body, which took place at the 57<sup>th</sup> session of the General Assembly, held in Rome on 28 November 2003.
3. The meeting may be considered to have been a success from all points of view. Under the guidance of an extremely able Chairman, the *ad hoc* Committee was able to agree on proposing absolutely the minimum number of amendments to Article 7 of the Regulations necessary to achieve the objective which it had been set by the General Assembly. First, there was agreement that, depending on the number of regions into which the Institute's membership was to be divided, the candidate receiving the highest number of votes from each such region on the occasion of an election to the Governing Council (it was agreed that the proposed new rule should not apply to other elections potentially also covered by the present Article 7(5), such as elections to the Administrative Tribunal, under Article 7bis(2) of the Statute) should be automatically elected, regardless of whether or not the number of votes received by that candidate would otherwise have sufficed to elect him. Thus each region would be assured of at least one seat on the Council. The

remaining seats on the Council would continue to be filled according to the existing rule, that is on the basis of an absolute majority of the votes cast. Secondly, notwithstanding minority support for dividing the Institute's membership into five regions - essentially so as to assure recognition of the Latin American and Caribbean countries' distinct legal culture - there was a considerable majority in favour of it being rather divided into four regions, namely Africa, the Americas, the Asia/Pacific region and Europe. The Committee recommended that the proposed formula should, however, be reviewed periodically so as to reflect possible changes in the make-up of the Institute's membership.

4. The Secretariat was invited by the Committee to prepare drafts reflecting its conclusions regarding the amending of Article 7(5) of the Regulations.

5. These drafts are presented in a slightly different form in the Report of the Chairman of the Committee (A.G. / A.H.C. Doc. 5). This difference reflects the slightly different status of the two drafts in question. The one, providing for the automatic election of the candidate receiving the highest number of votes from each of the regions into which the Institute's membership is divided, attracted general consensus among members of the Committee and was therefore made the subject of an Appendix to the Report of the Chairman. The other, providing for the division of the Institute's membership into four regions, reflected the considered opinion of a considerable majority of those serving on the Committee but not of everyone - as mentioned above, in § 3 - and is therefore rather set out in a footnote to the relevant part of the Report of the Chairman. It was the view of the Chairman that it would be unwise to imperil the chances of approval of the one commanding universal support by presenting it on the same footing as the other, given the slight shadow hanging over the latter by virtue of the minority opinion favouring five regions.

6. That part of the Secretariat's redraft of Article 7(5) which reflects that part of the Committee's conclusions which commanded universal support is as follows (with the amended part of the text being highlighted in italics):

"5. When the Assembly is called upon to proceed simultaneously to several appointments, *other than appointments to the Governing Council*, under identical conditions, candidates with an absolute majority of votes shall be elected. Should the number of candidates be lower than that of the appointments to be made, a second ballot shall be held among the remaining candidates and those obtaining the highest number of votes shall be elected.

*5 bis. When the Assembly is called upon to proceed simultaneously to several appointments to the Governing Council under identical conditions, the first [four] appointments shall be reserved for the candidates having secured the highest number of votes from each region and the remaining appointments shall be filled by those of the other candidates having secured an absolute majority of votes. Should the number of candidates elected be lower than that of the appointments to be made, a second ballot shall be held among the remaining candidates and those obtaining the highest number of votes shall be elected."*

7. That part of the redraft of Article 7(5) which rather reflects that part of the Committee's conclusions which commanded less than universal (albeit considerable majority) support is as follows:

"5 *ter*. For the purposes of the preceding paragraph, the term 'region' shall refer to each of the geographic regions into which the membership of the Institute is divided by the General Assembly. The General Assembly, at its 59<sup>th</sup> session held in Rome on 1 December 2005, fixed these regions as Africa, the Americas, the Asia-Pacific region and Europe".

8. *It is for the Governing Council at its 84<sup>th</sup> session to express its opinion on the conclusions reached by the Committee, as reflected in the aforementioned redrafts, for transmission to the General Assembly at its 59<sup>th</sup> session, when that body will be called upon to decide upon the amending of Article 7(5).*

9. One further issue that was raised during the Committee's deliberations was also referred by the Chairman of the Committee to the Governing Council for its opinion. This concerned whether or not Article 7(4) of the Regulations should be deleted or amended. At present, that paragraph provides that, in the event of a tie for the last seat on the Council, "the older candidate shall be deemed to be elected". The representative of Canada suggested that not only should this rule be deleted but that it should be replaced by one providing, in the case of a tie, for a further ballot involving the parties thereto.

10. *The Governing Council is therefore further called upon to express its opinion, likewise for transmission to the General Assembly, regarding whether or not Article 7(4) should be deleted or amended.*

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