



WORKING PAPER

LEGAL COMMITTEE – 34TH SESSION

(Montréal, 9 to 17 September 2009)

Agenda Item 3: Consideration of Rule 31 of the Rules of Procedure of the Legal Committee

LEGAL COMMITTEE: PARTICIPATION OF OBSERVERS

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Paragraph 6 of the *Revised Constitution of the Legal Committee* (Resolution A7-5) reads: “The Committee shall adopt rules of procedure. Such rules, and any amendment thereto which affects the relationship of the Committee with other bodies of the Organization or with States or other organizations, shall be subject to approval by the Council”.

1.2 During the sixth meeting of its 184th Session, the Council “agreed to refer the issue of the participation of observers in the Legal Committee, in particular Rule 31 (*Motions and amendments*) of the *Rules of Procedure* of the Legal Committee (Doc 7669-LC/139/5), to the Working Group on Governance [WGOG] for consideration and report back to the Council” (C-DEC 184/6).

1.3 The Council, during the fourth and fifth meetings of its 187th Session, considered a report of WGOG addressing *inter alia* this issue (C-WP/13399). It was agreed that the Legal Committee should be invited to consider whether to amend Rule 31, taking into account C-WP/13399 and the discussion in the Council (C-DEC 187/5).

2. PRESENT SITUATION

2.1 Observers are addressed in Rule 5: “Such non-contracting States and international organizations as are duly authorized by the Council may be represented at sessions of the Committee by one or more observers.” Pursuant to Rule 22: “Observers may participate without vote in the deliberations of the Committee when its meetings are not held in private. With respect to private meetings, individual observers may be invited by the Committee to attend and to be heard.” Rule 36 further indicates about voting rights that “Observers shall not be entitled to vote”.

2.2 Rule 31 enables observers “to make a motion or an amendment provided that such motion or amendment is seconded by the Representatives of two States on the Committee”. Rule 31 is rather unique in the ICAO framework: save the diplomatic conferences held under ICAO auspices, the Legal Committee is the only ICAO body where observers benefit from such a right.

3. DISCUSSIONS

3.1 WGOG felt that Rule 31 is not very restrictive and further observed that, during the most recent meetings of the Legal Committee, it was not systematically verified whether a motion by an observer was actually seconded by two States before it was accepted in the discussion. WGOG opined that it would be preferable to align the rules and practice of the Legal Committee with those applicable in other ICAO bodies and UN organizations, i.e. not to entitle the observers to make motions or amendments, considering that they have no voting right (Rules 22 and 36). WGOG recommended that the Legal Committee should therefore be asked to review Rule 31 of its Rules of Procedure to this end, given that any initiative to change these Rules is vested in the Legal Committee.

3.2 During the discussion in Council, several representatives expressed concerns about the above recommendation of WGOG. They considered that radical action by way of amendment of the Rules of Procedure might not be warranted. As for them, Rule 31, if properly applied, should allow efficient conduct of meetings in this respect, while any amendment thereto as suggested could send the wrong message that the most valuable contribution of observers are to be downplayed. The Council agreed that it valued the expertise and participation of industry associations and other organizations in the deliberations of the Legal Committee and that it was for the Legal Committee to decide how to proceed further.

4. CONCLUSION

4.1 In view of the above, the Legal Committee is invited to consider whether to amend Rule 31 of its *Rules of Procedure* so as to prevent observers from making motions or proposing amendments, subject to the approval of the Council.

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