

## CONSTITUTIONAL COMMISSION

## MINUTES OF MEETING HELD AT TALLINN, ESTONIA

4 OCTOBER 2013, 9:00 – 13:00

## 1. PRESENT:

1.1 Commission members: Chairman Casto Abundo (PHI), Secretary Francois Strydom (RSA), Willy Iclicky (MNC) and Roberto Rivello (ITA).

1.2 Other participants: Nigel Freeman, David Jarrett, Ignatius Leong, Lewis Ncube, Emelia Ellappen, Ruth Haring, Michael Khodarkovsky, Arthur Schuering, Mwinde Muchimba, Adam Drwonkowski, Hans Pees, Gary Wastell, Hesham Elgendy and Mehrdad Pahlevanzadeh.

## 2. OBJECTIVE:

The Chairman reminds everyone that in accordance with the FIDE Statutes, the Constitutional Commission has the responsibility of seeing that any changes to be introduced conform to the rest of the Statutes.

## 3. RESTRUCTURING AND AMENDING FIDE HANDBOOK

3.1 Last year the General Assembly in Istanbul amended the Statutes and Electoral Regulations. Now it is time to restructure and update the rest of the contents of the FIDE Handbook. Mr David Jarrett is dealing with this as a special project at the request of the Presidential Board. Mr Jarrett's report to the Presidential Board in May 2013 of progress so far was made available in the Agenda Annexes to members of the meeting.

3.2 It is proposed that the upkeep of Part A (Administrative subjects) be entrusted to the Secretariat or, in some instances, to newly-created coordinating commission known as the Central Board of Commissions.

3.3 It is further proposed that the review and upkeep of the chapters in Part B (Commissions) be made the responsibility of the relevant commission. These include the drafting of internal procedural rules for each commission and inclusion in the Handbook of the regulations on their awards and activities. Mr Jarrett declared himself willing to assist the chairperson of each commission with this task.

3.4 There are a number of chapters or topics that require removal either because they are included elsewhere or they are obsolete. On the other hand, there are a number of important documents (for example the doping code) which is published on the FIDE website, but have not been incorporated into the Handbook as yet.

#### 4. POTENTIAL AMBIGUITIES IN ELECTORAL REGULATIONS

- 4.1 According to article 4.3 of the FIDE Statutes a member federation shall be represented at the General Assembly by its delegate or the holder of the irrevocable proxy of the federation that has been validly and timely granted in accordance with the Electoral Regulations. A delegate can assign the proxy only to the delegate of another federation.
- 4.2 The Electoral Commission (ELE) noted that some uncertainty arises from the Electoral Regulations on whether excess proxies can be re-assigned only to a Delegate or also to a non-delegate. This issue will be discussed further and reported upon by the ELE after which the Constitutional Commission will be asked to comment.
- 4.3 Following the announcement by the Secretariat of the rules relating to proxies for purposes of the Extra-ordinary meeting of the General Assembly in Tallinn to elect the chairman of the ELE, the question arose whether the rules for “election years” or “non-election years” apply. In order to assist the ELE and the FIDE Secretariat, the members of the Constitutional Commission was asked by the meeting to prepare an advisory opinion on this matter.
- 4.4 After adjournment of the main session of the meeting, the members of the Constitutional Commission deliberated and prepare the annexed advisory opinion in which it is concluded that 2013 is a “non-election year” and that the rules of paragraph 5B of the Electoral Regulations apply for the election of the ELE chair, i.e. there is no deadline for the assignment and reassignment of proxies.
- 4.5 According to paragraph 1.2 of the Electoral Regulations nominations for the Presidential ticket and Continental Presidents must be sent to the Secretariat 3 months before the opening of the elective General Assembly. No express provision is made for the manner in which Continental Presidents are to be nominated. It was pointed out that Continental Associations are autonomous and that the procedure for nomination of candidates for the position of Continental President (sitting *ex officio* as a member of the Executive Board and Presidential Board) must be dealt with by each continent in its own Statutes.
- 4.6 Zonal presidents are *ex officio* members of the Executive Board. According to art 5.2 of the FIDE Statutes any substitute for the Zonal president must be a member of the same zone. Similarly one would expect that Continental statutes would require that proxies for meetings of the Continental Assembly should be restricted to a member of the same continent.
- 4.7 It was pointed out that the assignment of a proxy must be distinguished from the appointment of a delegate by a federation as its representative in the General Assembly. A delegate belongs to the federation he or she represents, whereas a proxy holder will be the delegate of another federation. The appointment of delegates is governed by paragraph 5A(1) of the Electoral Regulations and the assignment of proxies by paragraph 5A(2) and (3) thereof.

## 5. PRECEDENT PROXY FORM

Mr Abundo proposes that an example proxy form be made available for use by federations to ensure compliance with the necessary requirements for a valid assignment of a proxy. Use of the proxy form is not compulsory. The proposed wording of the proxy form appears below. Mr Khodarkovsky proposes that it be published on the FIDE website in down-loadable form.

On Letterhead of national federation

Date:

To: FIDE Secretariat

The \_\_\_\_\_ Chess Federation hereby assigns its proxy to Mr. \_\_\_\_\_, FIDE Delegate of the \_\_\_\_\_ Chess Federation, or his nominee, for the \_\_\_\_\_ Continental Assembly and FIDE General Assembly at the \_\_\_\_ Congress date/year in \_\_\_\_\_.

Signed:

President or Delegate

## 6. VERIFICATION PROCEDURE FOR RECEIPT OF PROXIES

It was proposed that as an administrative procedure, proxies sent by email should come from an email address (or fax number) of the federation or officials as published on the FIDE website. Receipt of the proxies should be acknowledged by the Secretariat by return copy to the federation email.

Casto Abundo

Chairman

Annex: Advisory Opinion of FIDE Constitutional Commission

**Advisory opinion of FIDE Constitutional Commission**

1. In the open session of the Constitutional Commission held in Tallinn on Friday 4 October 2013, the issue arose as to the proper meaning of the terms “election year” and “non-election year” as referred to in the FIDE Statutes and Electoral Regulations. The members of the Constitutional Commission were asked to consider this issue and to issue an advisory opinion.
2. The terms “election year” and “non-election year” are not defined in either the Statutes or Electoral Regulations and the proper interpretation must be reached by reference to those clauses in which the terms appear.
3. These terms appear 3 times in the Statutes and twice in the headings of paragraph 5 of Electoral Regulations.
4. The first reference to “election year” appears in Chapter 3 art 2 of the Statutes:  
  
*“The President and all other FIDE officials and organs are either elected by the General Assembly or appointed (i.e. nominated by the President and confirmed by the General Assembly) for a of four years. If the FIDE Congress in the election year is held before or after the 4-year period expires the term of office is equally shortened or prolonged”.*
5. It is already apparent from this provision that the “election year” is linked to the election of the President and other FIDE officials and occurs once every four years and that the intervening three years are “non-election years”. See also the reference to “quadrennial elections” in Chapter 08 - Electoral Commission (ELE) - art. 3.2.
6. The FIDE Statutes Chapter 08 - Electoral Commission (ELE) - art. 2.4 mentions that “*an election must be held in a non-election year to fill a position that has become vacant*”: therefore it is clear that an election can be held in a non-election year.
7. It follows that the present year (2013) is a non-election year despite the fact that an extra-ordinary meeting will take place at which the chairman of the Electoral Commission will be elected.
8. The provisions of the Statutes Chapter 3 art 10 also contemplate an election in a “non-election year”, adding an additional pertinent rule for what concerns the application of the Electoral Regulations :

*“10. When an elected FIDE office becomes vacant for any reason during the course of a term, the Presidential Board may make an appointment to fill the office until the next ordinary elections, except for the President, elected Vice Presidents, Continental Presidents and elected Commission members. A vacancy for the position of President shall not be filled. A vacancy for the position of elected Vice President or for a member of an elected Commission shall be filled at the next General Assembly. In a non-election year the relevant provisions of the electoral regulations shall apply by analogy.”*

9. Therefore, after having clarified that 2013 is not an election year, it has to be clarified how electoral rules can be applied “by analogy”.
10. Analogy can be applied, as a general principle, in the absence of expressed provisions to the contrary.
11. Paragraph 5 of the Electoral Regulations differentiates between “5A Election years” and “5B Non-election years”. Paragraphs 1-4 do not make any distinction between election and non- election years.
12. Therefore paragraphs 1-4 of the Electoral Regulations can be applied by analogy in elections held in non-election years. Rules of paragraph 5B of the Electoral Regulations have to be applied for elections held in non-elections years. The more onerous provisions of paragraph 5A do not apply to elections held in non-elections years. The Electoral Commission still have the remaining competencies listed in Chapter 8 of the FIDE Statutes which also could be interpreted by analogy.

Casto Abundo

Chairman

Tallinn, 4 Oct. 2013