STANDING COMMITTEE OF THE COUNCIL OF DIPLOMATIC REPRESENTATIVES

April 2017

SUMMARY OF THE MEETING OF THE STANDING COMMITTEE

23 MARCH 2017

Churchillplein 6b, 2517 JW The Hague - La Haye | The Netherlands - Pays-Bas
+31 (70) 363 3303 +31 (70) 360 4867 | secretariat@hcch.net | www.hcch.net

Asia Pacific Regional Office - Bureau régional Asie-Pacifique | S.A.R. of Hong Kong - R.A.S. de Hong Kong | +852 2858 9912
Latin American Regional Office - Bureau régional Amérique latine | Buenos Aires | Argentina – Argentine | +54 (11) 4310 8372

Status of Staff Rules

1. The Secretary General (SG) gave an update on the discussion of the Staff Rules during the meeting of the Council on General Affairs and Policy (CGAP). He referred to paragraph 42 of the CGAP's Conclusions & Recommendations and noted that the outcome is that the question of the procedural process will be on the agenda of the Council of Diplomatic Representatives (CDR) at its next meeting on 23 May 2017. Members will be asked whether there is cause to reopen the approval process as carried out in December 2016 / January 2017. While the Chair of the CDR will try to reach consensus on this matter, if consensus is not possible, CDR will be invited to vote. If the response is "no" (*i.e.*, Members see no need to reopen the approval process), then the issue will be resolved. If the answer is "yes" (*i.e.*, Members do see a need to reopen the approval process), there will be a vote on the spot. The question will be whether or not Members approve the Staff Rules. The Secretary General stressed that the substance of the Staff Rules is not open for discussion at the CDR.

2. Serbia noted that while the CGAP agreed that the issue was in the remit of the CDR, the CGAP had not agreed to the approach as laid out by the SG. Serbia stated that this approach would have to be discussed with capital, but in the meantime, Serbia noted its strong reservation to this procedure. The SG responded that the approach he laid out was the result of *ex parte* discussions between the Chair, the SG, and Russia in particular. The SG stated that he was sharing the outcome of these discussions in the interest of transparency. The Chair asked the Permanent Bureau (PB) to check the recordings to see what was said in the plenary session of the CGAP following the *ex parte* discussions. Serbia stressed that their understanding was the discussions would be resumed at the CDR and they have concerns that the procedure proposed will not allow for the necessary discussion. Serbia stressed that there should not be a vote before discussion and noted that they have raised questions which have not been answered.

3. China noted that the SG had presented two options where the response of the Members was unanimous. He asked what would happen if the "no" is not unanimous. The Chair responded that decisions at the CDR will be made by consensus, which does not require unanimity. The SG noted that everyone would prefer consensus, but otherwise a vote will need to take place to confirm the approval of the Staff Rules.

4. The United Kingdom asked for confirmation that this approach is in keeping with Article 16 of the Rules of Procedure. The Chair confirmed that this was his understanding, as well as the understanding of the SG. The Chair read out Article 16 for clarity.

5. Chile and Mexico asked whether this approach would amount to revoking the original voting procedure. The Chair replied that the CDR will be asked whether they wish to reopen the vote on the Staff Rules. If there is a vote, this would replace the written vote that was carried out in December 2016 / January 2017.

6. Japan asked how this approach would affect the application process for the HCCH to be accepted as a party to the Administrative Tribunal of the Council of Europe (CoE). The SG responded that the CoE has the version of the Staff Rules that was approved via the written vote in December 2016/January 2017. The PB has received some comments from the CoE; the initial review carried out by the PB indicates that the comments received can be addressed at the Instruction-level. The comments received and the proposed adjustments will be shared with Members in the coming weeks. The SG specified that since there is now a question regarding the validity of the approval of the Staff Rules, the process with the CoE is on hold. When the Staff

Rules are approved / reapproved the PB will resubmit them to the CoE with the hope that they will enter into force before the end of this Financial Year.

7. The Chair asked for all questions on this issue to be submitted to the PB as soon as possible so that they can be addressed in good time.

Draft Budget for Financial Year 2017-2018 (LXIII)

8. The SG presented the main changes to the draft Budget, noting that the last version was prepared on 8 March before the meeting of the CGAP. There has not been time to prepare a new draft since the CGAP meeting, but the PB has run some figures to give an idea of further changes that could be made. The SG briefly explained a graph on an information sheet that was distributed to the Standing Committee and which showed that while the Budget has increased by 48.2% since 2006, the number of Member States has also increased, with the net result that the price per unit has "only" increased by 35.4%. He stressed that over the years Members are getting a better return on their investment and that proportionally speaking, they have to contribute less to finance the increase of the Budget, because new Members bring in "fresh oxygen" (funds) to the Budget. The SG recalled that this approach was last discussed during the drafting of the 2016 Financial Regulations and the Standing Committee confirmed a long-standing practice that new Members would indeed contribute additional funds to the Budget rather than decreasing the price per unit.

9. The SG noted that in the draft Budget of 8 March 2017, ***the price increase per unit was 2.95%*** (down from 4.61% in the first draft Budget of January 2017). At the CGAP, Members indicated that this increase was still too high. The SG outlined further changes to reduce the increase which could potentially be included in the next version of the draft Budget, to be sent on 14 April. First, he proposed to move the salary costs for the Regional Office in Hong Kong to the Budget in three steps over a three-year period (rather than in two steps proposed in the draft of 8 March 2017). The amount included in the next draft Budget would be € 40,000 rather than € 70,000. The cost for onsite meetings at the PB would also be reduced. In the 8 March version of the draft Budget, an increase of € 1,000 had been envisaged, but this has now been removed. The SG referred to a document that had been tabled which laid out costs for the various meetings planned for the next Financial Year. Finally, the SG noted that while the PB hopes to have an additional unit from Kazakhstan, this unit has been removed from the draft Budget. He also stated that the draft Budget has no funding for the celebration of the 125th anniversary of the HCCH. With these changes, the ***price increase per unit would decrease to 2.37%***; if one new unit materialises, this price would ***decrease further to 2.22%.***

10. The SG also noted that when considering the figures revised after 8 March, approx. 63% of the total increase in Member State contributions is covered by one single new Member State, Saudi Arabia. All other Member States share the remaining approx. 37% increase.

11. Finally, the SG announced that earlier in the morning he had been informed that the Department of Justice of Honk Kong SAR, China, will make a Voluntary Contribution of approx. € 180,000 to celebrate the 125th anniversary of the HCCH for events organised on conjunction with the Asia Pacific Regional Office.

12. Australia announced that it had submitted a written request on behalf of several delegations to the PB two days in advance of the meeting. The questions focus on Articles related to the Staff Rules, Travel, Consultants, and Travel costs for consultants / external experts. Australia requested a concise response as soon as possible.

13. Switzerland, Saudi Arabia, China, and Norway expressed their support for the draft Budget of 8 March, noting that an increase of under 3% is reasonable. China also noted that the increase was comparable with the budget of the Permanent Court of Arbitration.

14. Several delegations indicated that the proposed increase in the draft Budget of 8 March 2017 remains too high and that their governments' have a policy of zero nominal growth for international organisations.

15. Several delegations, including the United Kingdom, Canada, the United States of America, Japan, Mexico, Ecuador and Australia expressed reservations about including salary costs for the Asia Pacific Regional Office in the draft Budget. Several Member States indicated that they would like more time to consider and discuss this issue, including in the context of the CGAP meeting in March 2018. The SG responded that he finds is difficult to justify different treatment for the Regional Offices, and noted that the salary expenses for the Latin American Regional Office are covered by the Budget and in the case of the Representative, have been covered for some time. Canada noted that the CDR has not had much oversight of the Regional Offices in the past because they have been funded through Voluntary Contributions, but more oversight will be needed if the expenses are included in the Budget.

16. Several delegations, including the United Kingdom, Australia, Spain, Mexico, France, Chile, and Portugal asked for more information on the two inflation rates used in the draft Budget. The PB explained that the *inflation* rate for goods and services is the rate for the Netherlands as established by the Dutch Central Bank; while the rate applied to the salaries is a *cost of living adjustment* to the salary scales as established for Co-ordinated and associated organisations located in the Netherlands. The cost of living adjustment includes, but is not limited to, an inflation component; the adjustment is determined by the International Service for Remunerations and Pensions (ISRP) and approved by the Co-ordinated Committee for Remunerations as well as the governing bodies of the Co-ordinated and associated organisations. The salary scales enter into force on 1 January of each calendar year, and the cost of living adjustment can represent an increase or a decrease (as happened in the past). The PB will prepare a short memo clarifying this issue for Members in advance of the CDR. Norway noted that deviating from the salary scales for the Co-ordinated Organisations would impose an additional burden on the administration of the PB and for this reason Norway was not in favour of this approach. .

17. Several delegations, including Serbia, Mexico, Canada, Russia, and France asked for more information regarding the costs relating to the Staff Rules, including more detailed notes on the breakdown of these expenses. France asked whether there would be budgetary implications as a result of the amendments to the Staff Rules required by the Council of Europe. Russia proposed that an alternative draft Budget be prepared in case the Staff Rules are not approved at the CDR.

18. Serbia asked for a written summary of the SG's opening remarks on the changes made to the draft Budget subsequent to the 8 March version, as well as more information on reorganisation at the Diplomat Lawyer level in keeping with Article 5 of the Statute. The SG responded that it is his intention to bring staffing back in line with the Statute, but due to ongoing developments he cannot be more specific about plans in that area. Serbia also asked for more information on travel costs and a breakdown of activities requiring travel envisaged for the next Financial Year.

19. Spain stated that new Members should not be a reason to increase the Budget. Spain also indicated that they were more interested in the total increase of the Budget rather than the per unit increase. Finally, Spain asked about why two overhead rates are used with regard to Voluntary Contributions. The PB responded that the overhead rate depends on the nature of the contribution

and how the resulting project is staffed. The general rule is that an overhead of 20% is applied to contributions that necessitate a staff member to work at the PB, and 10% if there is no staff at the PB. Specific projects, like iSupport, use an overhead rate as determined by those funding the project. In the case of iSupport, the European Union set the overhead rate.

20. Japan asked for the implementation rate for the current Financial Year and more information on how a potential surplus would be treated.

21. Germany noted that the part of the draft Budget dedicated to the Staff Rules is predicated on the entry into force of these Rules and that the ring-fenced amount for Staff Rules in the Budget for the current Financial Year should be frozen and transferred to the Budget for the next Financial Year if the new rules do not enter into force before the end of the current Financial Year. Concerning the fund for the indemnity for loss of employment, Germany would welcome confirmation that this fund will be independent of the Budget. Germany suggested that a maximum ceiling should be fixed for this fund and the fund should be furnished through a one-time payment from Members. Germany proposed that the fund should only be replenished once it is spent to pay this specific indemnity.

22. Canada asked for more information regarding submission of the next version of the draft Budget, noting that it is not approved before the meeting of the CDR. There are outstanding issues that still need to be discussed, and if the issues cannot be resolved in advance, Canada may need to discuss them during the CDR meeting. Spain noted that it is far from being in a position to endorse the draft Budget of March 2017.

23. The Chair stressed that the Members need to be in a position to approve the draft Budget at the CDR meeting in May. He encouraged Members to make their views known as soon as possible so that questions can be addressed by the PB well in advance of the meeting.

Pension Reserve Fund (PRF)

24. The SG referred to the document prepared in advance of the meeting and noted that he may request that the CDR mandate the Standing Committee or a Working Group to look into questions regarding the financing of the pensions more closely. He noted that the new Strategic Asset Allocation (SAA) is currently being prepared and that it will be shared with the Members as soon as possible. The SG explained that the pensions of the currently 8 pensioners should be covered by the Budget of the Organisation, and that the Pension Reserve Fund (PRF) is the vehicle to ensure that pension liabilities are covered in the long-term. Currently, the Budget does not allow for full payment of the pensions and the PRF is used to cover the gap, which however puts even more pressure on the PRF. The SG explained that this dilemma needed to be solved.

25. Several delegations queried the amount of the pension liability and wondered whether it would grow. Several delegations asked for more information regarding how the pensions are administered, including the contribution rate of the staff at the PB. The SG responded that these concerns would be addressed either before or during the meeting of the CDR.

Other business

26. The Chair laid out the timeline of next steps. The final version of the draft Budget will be distributed to Members on 14 April. According to the Financial Regulations, Member States can

submit comments on this version until 10 May (although the draft Budget will not be altered after 14 April). The CDR will meet on 23 May and the final Budget as well as the contribution letters will be sent out as soon as possible thereafter. In the coming weeks, the PB will respond to the questions raised during the Standing Committee meeting, as well as those submitted in written form. These questions and responses will be shared on the Secure Portal of the HCCH website if the PB has been authorised to do so by the Member States concerned.