

COUNCIL

Third Special Session

**DRAFT REPORT ON THE THIRD SPECIAL SESSION
OF THE COUNCIL**

Geneva
21 and 26 June 2019
Rapporteur: Ms S. Flores Liera (Mexico)

CONTENTS

	Page
Introduction.....	1
I. Credentials of representatives.....	2
II. Adoption of the agenda.....	2
III. Status report on outstanding contributions to the Administrative Part of the Budget and Member State voting rights.....	2
IV. Election of the Deputy Director General.....	2
V. Closure of the session.....	7

DRAFT REPORT ON THE THIRD SPECIAL SESSION OF THE COUNCIL

Introduction

1. Pursuant to Resolution No. 1376 of 30 November 2018, the Council convened for its Third Special Session at the Centre International de Conférences Genève on 21 June 2019. Three meetings were held, chaired by Mr Z.K. Korcho (Ethiopia).

2. The following Member States were represented.¹

Afghanistan	Denmark	Latvia	Senegal
Albania	Djibouti	Lesotho	Serbia
Algeria	Dominica	Liberia	Seychelles
Angola	Dominican Republic	Libya	Sierra Leone
Argentina	Ecuador	Lithuania	Slovakia
Armenia	Egypt	Luxembourg	Slovenia
Australia	El Salvador	Madagascar	Somalia
Austria	Eritrea	Malawi	South Africa
Azerbaijan	Estonia	Maldives	South Sudan
Bahamas	Eswatini	Mali	Spain
Bangladesh	Ethiopia	Malta	Sri Lanka
Belarus	Fiji	Mauritania	Sudan
Belgium	Finland	Mauritius	Sweden
Benin	France	Mexico	Switzerland
Bolivia (Plurinational State of)	Gabon	Mongolia	Tajikistan
Bosnia and Herzegovina	Georgia	Montenegro	Thailand
Botswana	Germany	Morocco	Timor-Leste
Brazil	Ghana	Mozambique	Togo
Bulgaria	Greece	Myanmar	Trinidad and Tobago
Burkina Faso	Guatemala	Namibia	Tunisia
Burundi	Guinea	Nauru	Turkey
Cabo Verde	Guyana	Nepal	Turkmenistan
Cambodia	Haiti	Netherlands	Uganda
Cameroon	Holy See	New Zealand	Ukraine
Canada	Honduras	Nicaragua	United Kingdom
Central African Republic	Hungary	Niger	United Republic of Tanzania
Chad	Iceland	Nigeria	
Chile	India	North Macedonia	United States of America
China	Iran (Islamic Republic of)	Norway	
Colombia	Ireland	Pakistan	Uruguay
Comoros	Israel	Panama	Uzbekistan
Congo	Italy	Paraguay	Vanuatu
Costa Rica	Jamaica	Peru	Venezuela (Bolivarian Republic of)
Côte d'Ivoire	Japan	Philippines	
Croatia	Jordan	Poland	Viet Nam
Cuba	Kazakhstan	Portugal	Yemen
Cyprus	Kenya	Republic of Korea	Zambia
Czechia	Kyrgyzstan	Republic of Moldova	Zimbabwe
Democratic Republic of the Congo	Lao People's Democratic Republic	Romania	
		Rwanda	
		Samoa	

¹ The list of participants is contained in document C/Sp/3/3. Unless otherwise indicated, all documents and slide presentations are available on the Council section of the IOM website.

I. Credentials of representatives

3. The Council noted that the Director General had examined the credentials of the representatives of the Member States listed in paragraph 2 and found them to be in order.

II. Adoption of the agenda

4. The Council adopted the agenda as contained in document C/Sp/3/1.

III. Status report on outstanding contributions to the Administrative Part of the Budget and Member State voting rights

5. The Administration, introducing document C/110/5/Rev.1 (Status report on outstanding contributions to the Administrative Part of the Budget and Member State voting rights (as at 12 June 2019)), said that, since the closure of the Twenty-fourth Session of the Standing Committee on Programmes and Finance the previous day, no additional payments had been received. The amount of outstanding contributions therefore remained at USD 39,763,279. The number of Member States subject to Article 4 of the Constitution also remained at 22, of which 8 had lost their right to vote.

6. The Council took note of document C/110/5/Rev.1 and of the update provided by the Administration.

IV. Election of the Deputy Director General

7. The Chairperson drew attention to the provisions of the IOM Constitution and the Rules of Procedure of the Council related to the election process, as described in document C/108/INF/1, entitled Note on rules and procedures for the election of the Director General and Deputy Director General.

8. The official list of five candidates had been communicated to Member States by the Council Bureau on 26 April 2019. At the joint meeting of the Working Group on Budget Reform and the Working Group on IOM–UN Relations and Related Issues held on 22 May 2019, lots had been drawn to determine the order in which the candidates would appear on the ballot paper, with the following result: Mr Evan P. Garcia, Mr Jamal Hamed Shamayleh, Mr Ashraf El Nour, Mr Md. Shahidul Haque and Ms Suraya Dalil.

9. The Legal Counsel gave a slide presentation explaining the procedure for filling in the ballot papers.

10. Member States were called to vote in English alphabetical order, starting with Costa Rica, which had been drawn by lot. The countries that held the positions of First Vice-Chairperson and Rapporteur of the Council designated the following tellers: Ms Monica Eimert (Denmark) and Mr Jorge González Mayagoitia (Mexico). The counting took place in the conference room and the tellers read the name appearing on each ballot out loud. The tellers were assisted by the Legal Counsel and two other members of the Administration.

11. At the first round of voting, ballots were distributed to all eligible Member States present. The results of the first round were as follows:

(a)	Number of ballot papers taken from the ballot box:	147
(b)	Number of invalid ballot papers:	0
(c)	Number of abstentions:	1
(d)	Number of votes cast:	146
(e)	Two-thirds majority:	98
(f)	The candidates obtained the following number of votes:	
	Mr Garcia	23
	Mr Shamayleh	7
	Mr El Nour	56
	Mr Haque	36
	Ms Dalil	24

12. The delegation of Jordan withdrew its candidate, Mr Jamal Hamed Shamayleh, after the first round.

13. Since the two-thirds majority required by Article 13 of the Constitution had not been obtained, the Council proceeded to a second ballot, the results of which were as follows:

(a)	Number of ballot papers taken from the ballot box:	148
(b)	Number of invalid ballot papers:	0
(c)	Number of abstentions:	1
(d)	Number of votes cast:	147
(e)	Two-thirds majority:	98
(f)	The candidates obtained the following number of votes:	
	Mr Garcia	21
	Mr El Nour	56
	Mr Haque	42
	Ms Dalil	28

14. Since the two-thirds majority required by Article 13 of the Constitution had not been obtained, the Council proceeded to a third ballot, the results of which were as follows:

(a)	Number of ballot papers taken from the ballot box:	149
(b)	Number of invalid ballot papers:	1
(c)	Number of abstentions:	1
(d)	Number of votes cast:	147
(e)	Two-thirds majority:	98
(f)	The candidates obtained the following number of votes:	
	Mr Garcia	18
	Mr El Nour	58
	Mr Haque	44
	Ms Dalil	27

15. After the third round, the Philippine candidate, Mr Evan P. Garcia, withdrew his candidacy.

16. Since the two-thirds majority required by Article 13 of the Constitution had not been obtained, the Council proceeded to a fourth ballot, the results of which were as follows:

(a)	Number of ballot papers taken from the ballot box:	149
(b)	Number of invalid ballot papers:	0
(c)	Number of abstentions:	1
(d)	Number of votes cast:	148
(e)	Two-thirds majority:	99
(f)	The candidates obtained the following number of votes:	
	Mr El Nour	66
	Mr Haque	50
	Ms Dalil	32

17. In accordance with document C/108/INF/1, and as no candidate had achieved the required two-thirds majority, the candidate having obtained the smallest number of votes — Ms Dalil — was removed from the next ballot, in which only the names of the two remaining candidates — Mr El Nour and Mr Haque — appeared. The results of the fifth ballot were as follows:

(a)	Number of ballot papers taken from the ballot box:	150
(b)	Number of invalid ballot papers:	0
(c)	Number of abstentions:	2
(d)	Number of votes cast:	148
(e)	Two-thirds majority:	99
(f)	The candidates obtained the following number of votes:	
	Mr El Nour	73
	Mr Haque	75

18. The Chairperson said that, according to paragraph 14(a) of document C/108/INF/1, “When only two candidates remain on the ballot and the candidate having obtained the greater number of votes has obtained the absolute majority but not the required two-thirds majority, that candidate alone will be put on the last ballot, unless the Council agrees to an election by consensus/acclamation in favour of that candidate.” Having ascertained that the Council did not agree to elect Mr Haque by acclamation, he proposed that a sixth round of voting take place, in which only Mr Haque’s name would appear on the ballot.

19. One delegation, noting the narrow margin between the two remaining candidates and that nothing in the Constitution precluded a further ballot between them, proposed that Member States be given another opportunity to vote for one or the other candidate.

20. The Legal Counsel said that the rule stipulated in paragraph 14(a) of document C/108/INF/1 and read out by the Chairperson was clear. In addition, Rule 38, paragraph 4, of the Rules of Procedure of the Council stated that: “For the purpose of these Rules, the phrase ‘members present and voting’ means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.”

21. Several Member States endorsed that view.

22. A number of Member States expressed disagreement with what they considered a misinterpretation of the result of the fifth ballot. With regard to Rule 38, paragraph 4, of the Rules of Procedure of the Council the number of votes needed for an absolute majority should be determined by the total number of valid ballots taken from the ballot box. In addition, a distinction had to be made between “abstentions” (which implied non-participation in the vote) and “blank ballots” (which implied a lack of confidence in the candidates on the ballot). In the case at hand, the abstentions were in fact blank ballots and should therefore be counted in the total used to determine the number of votes required for an absolute majority.

23. Following a protracted discussion of the options before the Council, including a proposal to defer the entire election until the rules had been clarified and to hold a new election at that time, the Council suspended its proceedings to allow for consultations.

24. When the meeting resumed, one group of Member States said that it did not agree with the interpretation of the rules of procedure provided by the Legal Counsel. IOM needed a Deputy Director General who enjoyed the support of all Member States. Efforts to find such a consensus among all Member States had not borne fruit. It therefore requested that the Council adjourn its deliberations and reconvene at the earliest possible date.

25. The Legal Counsel reminded the Council that adjournments were governed by Rule 33 of the Rules of Procedure of the Council, which stipulated: “During the discussion of any matter, a representative may move, or the Chairman may propose, the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall be immediately put to the vote.”

26. The Council voted by show of hands, 63 for and 55 against, to adjourn its deliberations.

27. When the Council reconvened on Wednesday, 26 June 2019, and in the absence of an election by consensus/acclamation, it proceeded, in accordance with the Rules of Procedure of the Council, to a sixth round of voting with only the name of Mr Haque on the ballot paper. The results of the sixth ballot were as follows:

(a)	Number of ballot papers taken from the ballot box:	144
(b)	Number of invalid ballot papers:	0
(c)	Number of abstentions:	1
(d)	Number of votes cast:	143
(e)	Two-thirds majority:	96
(f)	Votes in favour:	86
(g)	Votes against:	57

28. The two-thirds majority of votes required under Article 13 of the Constitution having not been obtained, and the Council having therefore not elected a Deputy Director General, the Council agreed that the process would have to start anew.

29. One group of Member States said that, in its view, elections for the positions of Director General and Deputy Director General should be conducted in a more transparent and non-controversial manner, in strict adherence to the rules of procedure. Elected officials should enjoy the full support of all Member States. The group had tried to find a dignified solution for both final contenders without compromising the integrity of the rules. It had conveyed that solution to the Bureau, on the understanding that the candidate from Bangladesh had agreed, but, as it turned out,

that was not the case. Pending the election of the new Deputy Director General, no other top management position should be filled at IOM.

30. One representative said that his delegation attached great importance to transparent application of the rules of procedure. The outcome of the vote had clearly shown that a majority of the Member States present and voting supported the candidate from Bangladesh, for which he expressed heartfelt gratitude.

31. With regard to the way forward, the Chairperson pointed out that there would be a gap between the end of the current Deputy Director General's term, on 31 August 2019, and the election of the new Deputy Director General at the next special session of the Council, in the spring of 2020. The rules were silent on that situation, and he therefore suggested that the Council might wish to adopt a pragmatic solution, in order to ensure the continued smooth functioning of the Organization at a time of change and renewal.

32. One representative observed that IOM was unusual in having an elected Deputy Director General. Member States needed a clear indication of who had authority to make a decision in the present situation and of the implications in terms of human resources rules.

33. Another representative alerted the Council to the dangers of setting a precedent, especially in the light of the proposal being made for the Director General to appoint two Deputy Directors General.

34. One group of Member States proposed that the Council authorize the Director General to temporarily appoint a qualified person of his choosing to discharge the tasks of the Deputy Director General at what was a critical juncture for IOM. Some said that they would not object to the Director General choosing the incumbent.

35. Another group of Member States proposed that, in the interests of pragmatism and to ensure the proper functioning of IOM, the term of the incumbent be extended until a new Deputy Director General had been elected.

36. In the view of a third group, the two proposals were not mutually exclusive and could be reconciled. The Council should empower the Director General to ask the incumbent Deputy Director General if she was willing and available to extend her term, or, should that prove not to be the case, to appoint a qualified person of his choosing to occupy that position.

37. One representative, noting the importance of legitimacy and legality, said that it was an attribute of the Council to elect the Director General and Deputy Director General. The incumbent Deputy Director General had been elected and could therefore continue in office, at the request of the Council. Should she be unable to do so, then the candidate that had obtained an absolute majority in the sixth ballot should assume the post ad interim.

38. Several speakers raised concerns about the date of the election, as "spring" was a vague term and their governments would need time to find and submit candidates.

39. Other speakers raised concerns about the legal vacuum the situation had revealed. The time was perhaps right to amend the Constitution and/or the Rules of Procedure of the Council with a view to filling it.

40. The Legal Counsel, addressing the points raised, said that neither the Rules of Procedure of the Council nor the Constitution dealt specifically with the situation of a gap between two terms of

office. On the other hand, they contained no provisions that would stand in the way of the Council taking a pragmatic decision on how to proceed. Such a pragmatic, interim arrangement would be unrelated to any proposals for constitutional amendments. In addition, no specific human resources rules would be applicable if the decision was to extend the term of the incumbent; such a decision would merely involve a two-line addition to the existing contract.

41. On the question of when to schedule the election, the Legal Counsel specified that two rules were relevant: the election had to take place during a special session of the Council; and the list of candidates was closed two months before that special session. He proposed that the date of that special session be determined at the next regular session of the Council, in November 2019.

42. The Director General saluted all the candidates: the mobilization of all the constituencies and candidates in the election not only showed how central IOM was to Member State concerns, but also encouraged him to pursue his endeavours to strengthen the Organization.

43. Regarding the time frame for the election, and given the likelihood that some Member States would raise concerns about certain provisions of the Rules of Procedure of the Council, he believed that the proposal to set a date for the election at the next regular session of the Council was a reasonable one. He reassured the Council that no decision made at the current session would be deemed to set a precedent or have an impact on possible future structural changes to the Organization's leadership.

44. He considered that, in the nine months he had been with the Organization, he and the Deputy Director General had shown that they were engaged and committed to working together and had achieved results. He also attached great importance to certainty and predictability. If, as he would prefer, the decision was to extend the mandate of the incumbent, it would have to be on the understanding that she would have full authority to discharge her tasks and that she would remain in her position until the election of a new Deputy Director General in 2020 – a short-term prolongation would not provide the necessary guarantees of stability and predictability.

45. The Deputy Director General agreed with the Director General that they had a good working relationship and had embarked on an important transformation of the Organization. She would therefore be happy and honoured to continue to serve as Deputy until her replacement was elected at the next special session of the Council.

46. The Council therefore agreed that the incumbent Deputy Director General should continue in her position until a replacement was elected and took up his or her duties. The Council also agreed to authorize the Chairperson to sign the extension of the incumbent Deputy Director General's contract.

V. Closure of the session

47. The Chairperson declared the Third Special Session of the Council closed on Wednesday, 26 June 2019, at 12.20 p.m.