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34th session, Paris 2007

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LEGAL COMMITTEE

Fifth report

IMPLEMENTATION OF 33 C/RESOLUTION 92

(RELATIONS BETWEEN THE THREE ORGANS OF UNESCO)

1. Pursuant to the decision of the General Committee, this item was submitted to the Legal Committee for consideration.
2. One member asked about the differences between the annex to document 34 C/19 and the revised version of the annex. He noted too, with regret, that once more matters relating to the implementation of 33 C/Resolution 92, which had legal implications, had not spontaneously been included in the agenda of the Legal Committee even though they undeniably fell within its terms of reference. He also asked about the status of document 34 C/19 which did not require the General Conference to take a decision, even though it referred to the need to amend the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution, expressing concern that the regulatory procedures for amending the Rules of Procedure might be circumvented.
3. The representative of the Director-General said that the section on the implementation of recommendation 25 referred to the need to amend paragraphs 4 and 5 of Article 10 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution in order to ensure full participation by Member States in the preparation of such standard-setting instruments. The latter concern had been addressed by the General Conference in 33 C/Resolution 92. The purpose of the amendment would be to require mandatory recourse to the Special Committee consisting of technical and legal experts appointed by Member States (category II meeting), as mentioned in Article 10, and thus to reverse the practice of recent years which had consisted in bypassing that stage in the process of drafting standard-setting instruments. He said that document 34 C/19 (Annex) Rev. differed from the original document only through the insertion of the text of 177 EX/Decision 31 and contained no substantive modifications.
4. Several members asked whether such a procedure was consistent with the provisions of Article 20 of the Rules of Procedure, which required that proposed amendments be placed first on the agenda of the General Conference. Other members doubted that it was desirable to amend the Rules of Procedure at the current session. Several Committee members noted that, with regard to

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its substantive aspects, the implementation of recommendation 25 will require additional analysis by the Legal Committee.

5. The representative of the Director-General stated that the matter had been placed before the Legal Committee under agenda item 6.1.

6. Following a general discussion during which, among other things, the question was raised as to the time when the amendment referred to could be examined, the Legal Committee adopted the following conclusions:

“The Committee emphasized the need to strictly comply with constitutional and regulatory procedures in the implementation of 33 C/Resolution 92.

Noting that the information indicated in relation to the ‘Status of Implementation’ of recommendation 25 seems to imply a modification of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution, the Legal Committee is of the opinion that recommendation 25 may not be examined, and much less to take a decision, during the present session of the General Conference as this item had not first – and specifically – been placed on its agenda as stipulated by Article 20 of the above-mentioned Rules.”