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Item 34 of the provisional agenda

RULES OF PROCEDURE CONCERNING RECOMMENDATIONS TO MEMBER STATES AND INTERNATIONAL CONVENTIONS COVERED BY THE TERMS OF ARTICLE IV, PARAGRAPH 4, OF THE CONSTITUTION: PROPOSED AMENDMENT TO ARTICLE 10 OF THE SAID RULES

SUMMARY

In compliance with 33 C/Resolution 92 and 34 C/Resolution 88, the Director-General submits a proposal 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 of UNESCO.

This item has no financial or administrative implications.

Action expected of the Executive Board: proposed decision in paragraph 6.

1. As set out in 33 C/Resolution 92, the General Conference endorsed recommendation R.25 of the ad hoc working group on the three organs of UNESCO, by which the ad hoc working group decided that “*the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution should be amended with regard to the preparation of such instruments in order to ensure full participation by Member States in their elaboration*”. The General Conference also invited the Director-General to implement the recommendation and to report thereon to the General Conference at its 34th session (33 C/Resolution 92, paras. 2 and 4).

2. As a part of the follow-up to 33 C/Resolution 92 concerning relations between the three organs of UNESCO, the Secretariat informed the Executive Board, at its 174th and 177th sessions, that the participation of Member States in the elaboration of draft standard-setting instruments was already governed by the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution* and in particular by Part IV of the Rules, which provides for the establishment by the General Conference of a special committee consisting of technical and legal experts appointed by Member States and responsible for examining the Director-General’s final report containing the draft instrument (Article 10, paras. 4 and 5). The Secretariat also pointed out that since 2000, the General Conference had decided on several occasions not to have recourse to the aforementioned special committee, the intergovernmental character (category II) of which is confirmed by Articles 18 and 19 of the *Regulations for the general classification of the various categories of meetings convened*

by UNESCO. In order to give Member States a greater role, the Secretariat then stated that it would be desirable to ensure that the relevant provisions currently in force were applied. Consideration might also be given to amending 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 so as to make recourse to a special committee of technical and legal experts compulsory. With regard to this last point, the Secretariat proposed the following changes to paragraphs 4 and 5 of Article 10:

Original Text

IV. Preparation of drafts to be submitted to the General Conference for consideration and adoption

Article 10

[Taken from Basic Text 2008]

1. When the General Conference has taken decisions under the terms of Article 6, it shall instruct the Director-General to prepare a preliminary report setting forth the position with regard to the problem to be regulated and to the possible scope of the regulating action proposed. The preliminary report may be accompanied by the first draft of a convention or recommendation, as the case may be. Member States shall be asked to make comments and observations on that report.

2. The Director-General's preliminary report shall reach Member States at least fourteen months before the opening of the session of the General Conference. Member States shall forward their comments and observations on the preliminary report, to reach the Director-General at least ten months before the opening of the session mentioned in the preceding sentence.

3. On the basis of the comments and observations transmitted, the Director-General shall prepare a final report containing one or more draft texts, which shall be communicated to Member States at least seven months before the opening of the session of the General Conference.

4. The Director-General's final report shall be submitted either direct to the General Conference itself or, if the Conference has so decided, to a special committee to be convened at least four months before the opening of the General Conference and consisting of technical and legal experts appointed by Member States.

Proposed Text

(the proposed amendments are in bold)

IV. Preparation of drafts to be submitted to the General Conference for consideration and adoption

Article 10

1. When the General Conference has taken decisions under the terms of Article 6, it shall instruct the Director-General to prepare a preliminary report setting forth the position with regard to the problem to be regulated and to the possible scope of the regulating action proposed. The preliminary report may be accompanied by the first draft of a convention or recommendation, as the case may be. Member States shall be asked to make comments and observations on that report.

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3. On the basis of the comments and observations transmitted, the Director-General shall prepare a final report containing one or more draft texts, which shall be communicated to Member States at least seven months before the opening of the session of the General Conference.

4. The Director-General's final report shall be submitted **either** direct to **the General Conference** ~~or, if the Conference has so decided to~~ a special committee to be convened at least six months before the opening of the General Conference and consisting of technical and legal experts appointed by Member States.

5. In the latter case, the special committee shall submit a draft which has its approval to Member States, with a view to its discussion at the General Conference, at least seventy days before the opening of the session of the General Conference.

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3. This proposed amendment to the said Rules was included in the full report on the follow-up to 33 C/Resolution 92 concerning relations between the three organs of UNESCO, submitted to the General Conference at its 34th session (34 C/19 Rev.) in pursuance of 177 EX/31.

4. Following a request by the General Committee of the General Conference at its 34th session, the agenda item on implementation of 33 C/Resolution 92 (relations between the three organs of UNESCO) was submitted to the Legal Committee which, in its conclusions, 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 seemed 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 was also of the opinion that Recommendation 25 might not be examined, and much less be the subject of a decision, during the 34th session of the General Conference as the item had not first – and specifically – been placed on its agenda as stipulated by Article 20 of the above-mentioned Rules (34 C/75).

5. Pursuant to 34 C/Resolution 88, by which the General Conference requested the President of the General Conference, the Executive Board and the Director-General to pursue the implementation of the recommendations in 33 C/Resolution 92 not applied to date, taking into account the conclusions of the Legal Committee on Recommendation 25, the Secretariat informed the Executive Board at its 180th and 181st sessions (180 EX/INF.14 and 181 EX/INF.7) that the proposed amendment would be specifically placed in advance on the agenda of the 182nd session of the Executive Board and then on that of the 35th session of the General Conference.

Action expected of the Executive Board

6. In the light of the foregoing, the Executive Board may wish to adopt a decision along the following lines:

The Executive Board,

1. Recalling 33 C/Resolution 92, in particular Recommendation 25, and 34 C/Resolution 88 concerning relations between the three organs of UNESCO,
2. Having examined document 182 EX/34,
3. Recommends that the General Conference amend Article 10, paragraphs 4 and 5, 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 of UNESCO, as follows:
 - “4. *The Director-General’s final report shall be submitted direct to a special committee to be convened at least four months before the opening of the General Conference and consisting of technical and legal experts appointed by Member States.*
 5. *The special committee shall submit a draft which has its approval to Member States, with a view to its discussion at the General Conference, at least seventy days before the opening of the session of the General Conference.*”