



CAP/CSA/29/10_Report_WG_Review of Amendments

**UNWTO COMMISSION FOR EAST ASIA AND THE PACIFIC
UNWTO COMMISSION FOR SOUTH ASIA
Twenty-ninth Joint Meeting
Chittagong, Bangladesh
17 May 2017**

Item 10 of the Provisional Agenda

**REPORT OF THE WORKING GROUP ON THE REVIEW OF THE AMENDMENT
PROCEDURE OF THE STATUTES**

Note by the Secretary-General

The Secretary-General submits to the Joint Meeting of the two Commissions for Asia and the Pacific a report of the Working group on the Review of the Amendment Procedure of the Statutes

Report of the Working Group on the Review of the Amendment Procedure of the Statutes

I. Background

1. The General Assembly, through its resolution 662(XXI), requested the Secretary-General to constitute a Working Group composed of Member States, under the responsibility of the Executive Council, in charge of reviewing the current procedure for amending the Statutes and eventually preparing the text of an amendment to Article 33 of the Statutes in order to submit it to the General Assembly at its next session for approval.

2. Following this request, the Working Group composed by Argentina, Costa Rica, Democratic Republic of the Congo, Egypt, India, Morocco, Peru, Philippines, Slovakia and Spain proposed an amendment to Article 33 of the Statutes and submitted a draft text to the Executive Council at its 103rd session, held in Málaga, Spain. The Executive Council, through decision 13(CIII) approved to amend Article 33 of the Statutes and endorsed the proposed text, requesting the Secretary-General to submit it to the General Assembly at its 22nd session for approval.

3. The wording of the new Article 33 proposed by the Working Group and approved by the Executive Council at its 103rd session, pending its approval by the 22nd General Assembly, reads as follows:

Article 33:

1. *Any suggested amendment to the present Statutes and its Annex shall be transmitted to the Secretary-General who shall circulate it to the Full Members at least six months before being submitted to the consideration of the Assembly.*

2. *An amendment shall be voted by the Assembly and adopted by a two-thirds majority of Full Members present and voting.*

3. *An amendment shall come into force for all Members within 3 months after it has been adopted by the Assembly, unless the resolution by which it is adopted provides that the procedure established in paragraph 4 shall be applicable.*

4. *Notwithstanding the provisions of paragraph 3, any amendment to Articles 4, 5, 6, 7, 9, 14, 23, 25, 28, 33 or 35 of the Statutes, or to the Financing Rules, or any amendment involving fundamental alterations in the aims or the structure of the Organization or to the rights and obligations for the member States -so determined by the General Assembly- shall come into force for all Members forthwith when two-thirds of the member States have notified the Depositary Government of their approval of such amendment. The General Assembly may also establish a deadline for member States to notify the approval of such amendment.*

4. The Council also requested the Working Group to analyse the pending amendments to the Statutes (i.e., amendments that have not received approval by two-thirds of the member States) and list those that would be effective upon the entry into force of the new amendment procedure, in order to submit a proposal to the Executive Council at its 105th session for its approval and recommendations to the General Assembly at its 22nd session that will take place in Chengdu, China.

5. Consequently, the Working Group held an online meeting on 1 December 2016 followed by several exchanges of contributions, ideas and opinions via e-mail and its recommendations are hereby transmitted by the Secretary-General for consideration of the Executive Council.

II. Recommendations of the Working Group on the amendment procedure to the Statutes

6. The list of amendments that are being proposed by the Working Group to be effective once the amendment to Article 33 of the Statutes has entered into force is included in paragraph I. A of Annex I of this document. If the Executive Council endorses the proposal of the Working Group, the General Assembly will consider to include in the resolution by which it adopts the amendment to Article 33 of the Statutes (if so decided) the list of pending amendments that will also enter into force once the amendment to Article 33 of the Statutes is effective. The same could be proposed by the Working Group to the 22nd session of the General Assembly for amendments listed in paragraph I. B of Annex I, subject to confirmation of the Depositary.

7. It is important to reaffirm that even if the General Assembly accepts the proposal of the Working Group and adopts the new amendment procedure, this will itself be an amendment to the Statutes and hence it will still have to be approved by two-thirds of the Member States to enter into force, in accordance with the current text of Article 33 of the Statutes.

8. The Working Group also agreed that, in order to accelerate the process of approval of this particular amendment once adopted by the General Assembly, no efforts should be spared. In addition to the guidance provided by the Secretariat to member States on an ongoing basis, this issue has been introduced in the agendas of all the Regional Commissions to call upon member States to initiate any domestic procedure as necessary so that, if the amendment to Article 33 of the Statutes is adopted at the 22nd session of the General Assembly that will take place in Chengdu, China, member States are in a position to communicate immediately to the Depositary of the Statutes their agreement with the amendment so that the necessary two-thirds approvals are achieved in a timely manner.

9. The Secretariat wishes to recall that, in accordance with Article 33 of the Statutes, in order for an amendment to enter into force no formal instrument of ratification, acceptance or approval is required but rather member States are simply required to notify the Depositary Government of their approval of such amendment.

A. List of pending amendments proposed by the Working Group to be automatically effective once the amendment to Article 33 of the Statutes has entered into force

10. The new procedure requires that any amendment affecting any of the following matters is approved by two-thirds of the member States in order to enter into force:

- (a) Articles 4, 5, 6, 7, 9, 14, 23, 25, 28, 33 or 35 of the Statutes;
- (b) The Financing Rules;
- (c) Involving fundamental alterations in the aims and/or structure of the Organization; or
- (d) Creating new obligations for the Member States.

11. In view of the above, the Working Group agreed that the following amendments would be automatically effective upon entry into force of the new procedure:¹

- (a) Article 37 of the Statutes [A/RES/93(IV)]
- (b) Article 15 of the Statutes [A/RES/208(VII)]
- (c) Article 22 of the Statutes [A/RES/512(XVI)]

¹ For the text of the amendments please see Annex I.

B. Amendment to Article 38 of the Statutes adopted through resolution 521(XVII) including Chinese as an official language of the Organization

12. By the time of the 17th session of the General Assembly in 2007, in which the amendment to Article 38 (see complete text in Annex I) was approved through resolution 521(XVII), the Secretariat enclosed a report² informing the General Assembly that the costs entailed by adopting Chinese as an official language would amount to €187,000 for the payment of salary of a translator and an assistant as well as the budget for publications, among other annual expenditures.

13. Almost 10 years after the adoption of this amendment, the current costs of the inclusion of Chinese as an official language of the Organization might have altered from the estimated calculations contained in document A/17/5(c). Nevertheless, the Secretary-General believed in 2007 that the addition of Chinese would only be feasible insofar extra resources are provided, either through a budget increase (without altering the programme of work) or voluntary contributions.

14. Since the entry into force of Chinese as an official language has financial implications to the budget of the Organization, the Working Group agreed that the amendment to Article 38 could not be effective within the new amendment procedure to the Statutes.

C. Amendments to Article 1, 4 to 7, 9, 14 of the Statutes and to Paragraph 14 of the Financing Rules through resolution 511(XVI)

15. By virtue of resolution 511(XVI), adopted at the 16th session of the General Assembly in 2005, the following amendments were approved (see complete text in Annex I): Articles 1 (Status of the Organization); 4 to 7 (Membership); 9 (General Assembly) and 14 (Executive Council) of the Statutes; and Paragraph 14 of the Financing Rules.

16. Following legal analysis on the matter and appropriate consultation with the Depositary of the UNWTO Statutes (i.e., the Minister of Foreign Affairs and Cooperation of Spain), the above-mentioned amendments can only be approved as a whole for they are considered to be one single amendment to different provisions of the Statutes. Furthermore, any decision by the General Assembly on the approval of the amendments contained in the said resolution would entail the “restart” in the whole approval process, setting back the number of instruments deposited to zero.

17. In any case, out of the eight amendments contained in resolution 511(XVI), only that to Article 1 could be effective upon the entry into force of the new amendment procedure, as all the others are included in the list of “fundamental matters” and, thus, requiring being approved by two-thirds of the member States for their entry into force.

18. Therefore, the Working Group agreed that the above-mentioned amendments would not be effective upon entry into force of the amendment to Article 33 of the Statutes.

D. Status of amendments that are being applied provisionally

19. The amendments to Article 14 (Permanent seat for the Host Country in the Executive Council) and Article 37 (Depositary) of the Statutes, and to paragraph 4 (Currency) and paragraph 12 (Deadline for the payment of contributions) of the Financing Rules (see complete text in Annex I) are being applied provisionally pending their entry into force by virtue of the following decisions of the General Assembly: resolution 208(VII), resolution 365(XII) and resolution 422(XIV).

20. In line with previous resolutions by the General Assembly (628(XX) and others), the Working Group recognized the necessity to strictly follow the process of amendment and approval established in the Statutes and to refrain from applying provisionally any adopted amendment in the future.

² Document A/17/5(c).

Nevertheless, the Working Group also considered that these amendments could be included in the list of pending amendments that could be effective once the amendment to Article 33 of the Statutes has entered into force.

21. These amendments, which are essential to the operation of the Organization, were duly adopted by the General Assembly and have been applied by express or tacit consent without any declaration against for over twenty or thirty years. Therefore, even if the provisional application of amendments is contrary to the Statutes, it would be difficult from a legal perspective to deny, challenge or reverse now the legitimate expectations of member States that have consented to apply these amendments in good faith for decades.

22. Consequently, the Working Group considered the possibility for the resolution adopting the proposed amendment to Article 33 of the Statutes to state that its entry into force (through approval by two-thirds of Member States) would also entail the effective entry into force to those amendments that are being applied provisionally. This solution would definitely confer legal certainty to the situation of these amendments.

23. The Secretariat is currently consulting the Depositary to ascertain that this solution would be feasible so that the Working Group may propose it to the 22nd session of the General Assembly.

III. Relevance of other pending amendments

24. During the analysis of pending amendments to the Statutes, the question was raised as to whether certain pending amendments that were adopted many years ago may still be appropriate or relevant today. This is the case, for example, of the amendment to paragraph 13 of the Financing Rules (see complete text of the amendment in Annex I), by which compensatory amounts are added to arrears, a practice which is not standard among the specialized agencies of the UN system and might not be advisable in the context of UNWTO.

25. Although these questions were not part of its initial mandate, the task of the Working Group regarding pending amendments to the Statutes would somehow be incomplete without looking into the matter. Therefore, the mandate of the Working Group could be expanded so as to analyse the relevance of other pending amendments that will not enter into force once the amendment to Article 33 of the Statutes is effective, and then submit its recommendations to the 22nd session of the General Assembly.

Annex I: Status of the pending amendments to the Statutes and its Financing Rules with the new Amendment Procedure to the Statutes

I. Proposal by the Working Group on the pending amendments that would be effective upon the entry into force of the new Amendment Procedure to the Statutes.

A) Amendments that would be automatically effective upon the entry into force of the new Amendment Procedure of the Statutes

Amendment to Article 37 of the Statutes adopted by the General Assembly at its fourth session, Rome, September 1981 [resolution 93(IV)] which has been applied provisionally, pending its entry into force:

"1. These Statutes and any declarations accepting the obligations of membership shall be deposited with the Government of Spain.

"2. The Government of Spain shall inform all States so entitled of the receipt of the declarations referred to in paragraph 1 and of the notification in accordance with the provisions of Articles 33 and 35, and of the date of entry into force of amendments to these Statutes."

Amendment to Article 15 of the Statutes adopted by the General Assembly at its seventh session, Madrid, September-October 1987 [resolution 208(VII)]:

"1. The term of elected Members shall be four years. Election for one-half of the membership of the Council shall be held every two years.

2. The terms of office of the Members of the Council shall not be immediately renewable upon expiration unless an immediate renewed membership is essential to safeguard a fair and equitable geographical distribution. In such a case, the admissibility of the request for renewal shall be obtained from a majority of Full Members present and voting."

Amendment to Article 22 of the Statutes adopted by the General Assembly at its sixteenth session, Dakar, November-December 2005 [resolution 512(XVI)]:

"The Secretary-General shall be appointed by a two-thirds majority of Full Members present and voting in the Assembly, on the recommendation of the Council, for a term of four years. His appointment shall be renewable only once."

B) Amendments that could enter into force once the new Amendment Procedure to the Statutes is effective, subject to confirmation by the Depositary

Amendment to Article 14 of the Statutes adopted by the General Assembly at its fifth session, New Delhi, October 1983 [resolution 134(V)], clarified at the twelfth session, Istanbul, October 1997, the application of which is provisional, pending its entry into force [resolution 365(XII)]:

"1bis. The host State of the Headquarters of the Organization shall have a permanent additional seat on the Executive Council, which shall be unaffected by the procedure laid down in Paragraph 1 above concerning the geographical distribution of Council seats."

Amendment to Paragraph 4 of the Financing Rules adopted by the General Assembly at its fourteenth session, Seoul and Osaka, 24-29 September 2001 [resolution 422(XIV)]:

"The budget shall be formulated in euros. The currency used for payment of contributions shall be the euro or any other currency or combination of currencies stipulated by the Assembly. This shall not preclude acceptance by the Secretary-General, the extent authorized by the Assembly, of other currencies in payment of Members' contributions."

Amendment to Paragraph 12 of the Financing Rules adopted by the General Assembly at its third session, Torremolinos, September 1979[resolution 61(III)]:

“The Members of the Organization shall pay their contribution in the first month of the financial year for which it is due. Members shall be notified of the amount of their contribution, as determined by the Assembly, six months before the beginning of the financial years in which the General Assembly is held and two months before the beginning of the other financial years. However, the Council may approve justified cases of arrears due to different financial years existing in different countries.”

II. Pending amendments that would still require being approved by two-thirds of the member States in order to enter into force under the new Amendment Procedure to the Statutes.

Amendment to Article 1 of the Statues adopted by the General Assembly at its sixteenth session in Dakar, November/December 2005 [resolution 511(XVI)]:

“The World Tourism Organization, hereinafter referred to as “the Organization”, is hereby established as an international organization of intergovernmental character. It is a specialized agency of the United Nations.”

Amendment to Article 4 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar, November/December 2005 [resolution 511(XVI)]:

Membership of the Organization shall be open to:

- (a) Full Members
- (b) Associate Members

Amendment to Article 5 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar, November/December 2005 [resolution 511(XVI)]:

“1. Full membership of the Organization shall be open to all sovereign States that are members of the United Nations.

2. Such States may become Full Members of the Organization if their candidatures are approved by the General Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organization.

3. States that have withdrawn from the Organization in accordance with the provisions of Article 35 shall have the right to become Full Members of the Organization again, without requirement of vote, on formally declaring that they adopt the Statutes of the Organization and accept the obligations of membership.”

Amendment to Article 6 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar November/December 2005 [resolution 511(XVI)]:

“1. Territories already holding associate membership on 24 October 2003 shall maintain the status, rights and obligations belonging to them as at such date. The list of such territories is annexed to these Statutes.

2. Members enjoying the status of Affiliates, up to at the date of entry into force of the Amendments to the present Statutes adopted on 29 November 2005 shall become as of right Associate Members at that date.

3. Associate membership of the Organization shall be open to intergovernmental and non-governmental organizations, tourism bodies without political competence subordinate to territorial entities, professional and labour organizations, academic, educational, vocation training and research institutions and to commercial enterprises and associations whose activities are related to the aims of the Organization or fall within its competence. The participation of Associate Members in the work of the Organization shall be of a technical nature, with decisions and votes being the exclusive prerogative of the Full Member.

4. Such entities may become Associate Members of the Organization provided that their requests for membership are presented in writing to the Secretary-General and that the candidature is approved by the General Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organization. Except in the cases of international organizations, the candidatures of the entities mentioned in paragraph 3 above shall be introduced by the United Nations member State on whose territory their headquarters is located.

5. The General Assembly shall abstain from considering the candidature of such entities if their headquarters is located in a territory that is the subject of a dispute, of sovereignty or other, before the United Nations, or if their activity is related to such a territory, unless no Full Member objects to the introduction of the candidature of said entity or to its admission to the Organization.”

Amendment to Article 7 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar November/December 2005 [resolution 511(XVI)]:

“1. A Committee of Associate Members shall be constituted which shall establish its own rules and submit them to the Assembly for approval by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organization. The Committee may be represented at meetings of the Organization’s organs.

2. The Committee of Associate Members shall be composed of three boards:

- (a) a board of destinations, composed of the tourism bodies, without political competence subordinate to territorial entities;
- (b) an education board composed of academic, educational, vocational training and research institutions; and
- (c) a professional board composed of all the other Associate Members.

Intergovernmental and non-governmental organizations may participate in whichever board or boards correspond to their competencies.”

Amendment to Article 9 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar November/December 2005 [resolution 511(XVI)]:

“1. The Assembly is the supreme organ of the Organization and shall be composed of delegates representing Full Members.

2. At each session of the Assembly each Full Member shall be represented by not more than five delegates, one of whom shall be designated by the Member as Chief Delegate.

3. Associate Members as of 24 October 2003, the list of which is annexed to the present Statutes, shall be represented by not more than five delegates, one of whom shall be designated as Chief Delegate. These delegates may participate, without the right to vote, in the work of the Assembly. They shall have the right to speak but may not participate in decision-making.

4. The Committee of Associate Members may designate three spokespersons, one representing the board of destinations, one representing the professional board and the other representing the education board, who shall participate in the work of the Assembly, without the right to vote. Each Associate Member may designate one observer, who may attend the deliberations of the Assembly.”

Amendment to Article 14 of the Statutes adopted by the General Assembly at its sixteenth session in Dakar November/December 2005 [resolution 511(XVI)]:

“1. The Council shall consist of Full Members elected by the Assembly in the ratio of one Member for every five Full Members, in accordance with the Rules of Procedure laid down by the Assembly, with a view to achieving a fair and equitable geographical distribution.

2. Associate Members as of 24 October 2003 may have a spokesperson who may participate, without the right to vote, in the work of the Council. Such spokesperson may not participate in decision-making.

3. The three spokespersons of the Committee of Associate Members may participate, without the right to vote, in the work of the Council. Such spokespersons may not participate in decision-making.”

Amendment to Article 38 of the Statutes adopted by the General Assembly at its seventeenth session in Cartagena de Indias, November 2007 [resolution 521(XVII)]:

“The official languages of the Organization shall be Arabic, Chinese, English, French, Russian and Spanish.”

Amendment to Paragraph 13 of the Statutes adopted by the General Assembly at its fourth session in Rome September 1981 [resolution 92(IV)]:

(a) A Member which is one or more years in arrears in the payment of its contributions to the Organization’s expenditure may not be elected to the Executive Council or hold offices within the organs of the General Assembly.

(b) A Member which is one or more years in arrears in the payment of its contributions to the Organization’s expenditure and which has failed to explain the nature of the circumstances surrounding its failure to pay and to indicate the measures to be taken to settle its arrears shall pay a compensatory amount equal to two per cent of its arrears, in addition to said arrears.

Amendment to the last sentence of Paragraph 14 of the Financing Rules adopted by the General Assembly at its sixteenth session in Dakar November/December 2005 [resolution 511(XVI)]:

“In calculating the assessments of Associate Members, account shall be taken of the different bases of their membership and the limited rights they enjoy within the Organization.”

Annex II: List of pending amendments to the Statutes and the Financing Rules and number of approvals received to date

Resolution	Date of Adoption	Article/Paragraph	Approved by	Pending	In force
A/RES/61 (III)	September 1979	Paragraph 12 Financing Rules**	95	9	Provisional Application
A/RES/92 (IV)	25 September 1981	Paragraph 13 Financing Rules	83	21	No
A/RES/93 (IV)	25 September 1981	Article 37 Statutes*	87	17	Provisional Application
A/RES/134 (V)	14 October 1983	Article 14 Statutes**	100	4	Provisional Application
A/RES/208 (VII)	1 October 1987	Article 15 Statutes*	68	36	No
A/RES/422 (XIV)	29 September 2001	Paragraph 4 Financing Rules**	44	60	Provisional Application
A/RES/511 (XVI)	2 December 2005	Article 1 Statutes	20	84	No
		Article 4 Statutes			
		Article 5 Statutes			
		Article 6 Statutes			
		Article 7 Statutes			
		Article 9 Statutes			
		Article 14 Statutes			
		Paragraph 14 Financing Rules			
A/RES/512 (XVI)		Article 22 Statutes*	21	83	No
A/RES/521 (XVII)	29 November 2007	Article 38 Statutes	59	45	No

* Amendments that would be automatically effective upon the entry into force of the new Amendment Procedure to the Statutes.

** Amendments that could enter into force once the new Amendment Procedure to the Statutes is effective, subject to confirmation by the Depositary.