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Report of the Secretary-General

Part III: Administrative and statutory matters

(f) 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 next session of the General Assembly for its approval.

2. Following this request, the Secretariat, through its Legal and Contracts Programme started a thorough and rigorous analysis of the Statutes as well as of the legal situation in other agencies and international organizations before convening the Working Group and agreeing on the methodology and the concrete work plan to follow in order to guarantee the fulfillment of the entrusted task of amending Article 33.

3. The following Members expressed interest in taking part in the Working Group: Argentina, Costa Rica, Democratic Republic of the Congo, Egypt, India, Morocco, Peru, Philippines, Slovakia and Spain. The Head of the Legal and Contracts Programme has been acting as Rapporteur of the Working Group.

II. Mandate and priorities of the Working Group

4. In addition to the aforementioned commission, the Working Group has also considered looking into the situation of pending amendments in order to make some recommendations.

5. The Working Group priorities have been the following:

(a) To analyse and review the procedure of amendment of constitutions of other UN agencies and international organizations;



- (b) To examine all the options and proposals for the improvement of UNWTO's procedure of amendment to the Statutes;
- (c) To discuss and agree on the terms of a proposal for consideration of the Executive Council; and
- (d) To start analysing pending amendments in order to agree on which ones would enter into force immediately once the new Article 33 comes into force, and those that would still need ratification by 2/3 of the Members.

6. Since its creation, the Working Group has held two online meetings and several exchanges of contributions, ideas and opinions via e-mail:

- (a) The Working Group held its first meeting on 5 November 2015. During this meeting the terms of reference of the Working Group (its mandate, composition and functions, as well as about the foreseen timeframe to complete the assignment) were discussed together with the first deliberations on the analysis of the current situation of the amendment process and the options available to improve the situation according to the mandate of the General Assembly.
- (b) The second meeting of the Working Group took place on 18 December 2015. The discussions concentrated on taking a decision on the new procedure to be proposed, as well as on revising and fine-tuning the new wording for Article 33.

III. Proposed wording for Article 33

7. The current Article 33 (left) and its agreed re-wording that is being proposed (right) read as follows:

CURRENT TEXT

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 adopted by the Assembly by a two-thirds majority of Full Members present and voting.
3. An amendment shall come into force for all Members when two-thirds of the member States have notified the Depositary Government of their approval of such amendment.

PROPOSED NEW TEXT

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.

IV. Rationale for the new wording proposed by the Working Group

A. The lengthy process of amendment of the Statutes does not allow the adaptation of the Organization to the actual will of its organs in a timely manner.

8. The process of ratification of amendments to the Statutes and Financing Rules is extremely long: out of ten amendments adopted by the General Assembly only one has come into force, and it took 29 years for it to obtain the required ratification by 2/3 of the Member States.

9. The slow pace of ratification of amendments does not allow the Organization to adapt to the will of its Members in a timely manner. Further, it has forced the Organization to apply provisionally some of the amendments (i.e., the change of currency from peseta to euro), a practice that is contrary to the Statutes, as otherwise the Organization would have not been operational.

10. Similar problems have been experienced in other UN agencies and international organizations and on several occasions have been examined by the United Nations, but nothing more than simple palliatives have been found to resolve them. However, some UN agencies such as UNESCO, UNIDO and IFAD have adopted a more flexible approach in the procedure of amendment to their constituent treaty, particularly when the changes do not affect new obligations for the Members or other essential pillars of the Organization.

B. A twofold solution that provides flexibility while ensuring legal security and stability in the constitutional development of the Organization

11. After reviewing the analysis carried out by the Secretariat on the amendment procedure in other international organizations and agencies of the United Nations system, the Member States of the Working Group immediately opted for the system followed by UNESCO, where amendments which involve fundamental alterations in the aims of the Organization or new obligations for the Member States are the ones requiring 2/3 ratification while all other amendments, except as otherwise provided by the Governing Body, enter into force immediately once adopted.

12. In the case of UNWTO, the new article foresees two procedures: a more flexible one where amendments which do not involve fundamental alterations in the aims and/or structure of the Organization or new obligations for the Member States enter into force immediately after three months of their adoption by the Assembly (the three-month period is conceived to provide even greater legal certainty to the process, leaving time for the Depositary to notify the amendments, internal procedures such as translation of the texts, internal procedures to undertake, when necessary, by Member States, etc.) and a second one that still requires 2/3 ratification in the case of amendments which involve

fundamental alterations in the aims and structure of the Organization or new obligations for the Member States.

13. For the latter procedure, the proposed wording also opens the possibility for the General Assembly to establish a deadline for Member States to ratify, taking into consideration both the nature of the amendment and the characteristics of the ratification process (including political and social conditions). At the conclusion of the time limit, the corresponding amendment should be considered as having lapsed if it has not reached 2/3 ratification.

14. Finally, in both procedures, to be adopted, the Members of the Working Group decided that any amendment should be voted on by the Assembly and approved by a two-thirds majority of Full Members present and voting. The Members of the Working Group reasoned that voting requires a higher degree of involvement that could ensure a stronger commitment of Member States and therefore, it constitutes a more appropriate decision-making procedure for amendments.

V. Pending amendments

15. The Working Group is currently analysing and reviewing the pending amendments, in order to prepare a proposal with a list of all the pending amendments that would be effective upon the entry into force of the new amendment procedure (essentially those not involving fundamental alterations in the aims and structure of the Organization or new obligations for the member States), which will be submitted to the 104th Executive Council for its approval and endorsement before the twenty-second session of the UNWTO General Assembly.

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

17. The Working Group agreed that, in order to accelerate the process of ratification of this particular amendment once adopted by the General Assembly, no efforts should be spared. On the one hand, more guidance and support from the Secretariat to the Member States during the ratification process was requested (which the Secretariat has started to provide since the last General Assembly through the Regional Programmes) and on the other hand, the Working Group also expressed that advocacy efforts were to be made by the States themselves during statutory or other meetings.

VI. Actions to be taken by the Executive Council

18. The Executive Council is invited:

(a) To take note of the activities of the Working Group for the Review of the Procedure of Amendment to the Statutes and Financing Rules pursuing the objectives of amending Article 33 of the Statutes, as set out in resolution A/RES/662(XXI);

(b) To approve the proposal made by the Working Group to modify Article 33 and to endorse the text proposed before the twenty-second session of the UNWTO General Assembly;

(c) To transmit the present proposed amendment to the Secretary-General in order to initiate its circulation to the Full Members before submitting it to the consideration of the Assembly, as prescribed in Article 33(1) of the Statutes; and

(d) To thank the Working Group for its work and to encourage it to continue working on its recommendations concerning pending amendments that could be effective upon the entry into force of the new amendment procedure, to be submitted to the 104th Executive Council for its approval and to the twenty-second session of the UNWTO General Assembly for its adoption.

Annex I. List of amendments to the Statutes and the Financing Rules adopted by the General Assembly that have not yet come to force in accordance with Article 33 of the Statutes

1. The following amendments adopted by the General Assembly since the creation of the UNWTO have not, to date, been ratified by two-thirds of the member States and thus have not entered into force in accordance with Article 33(3) of UNWTO's Statutes.

2. The amendments are presented following the chronological order of their adoption by the General Assembly. Those that are applied, by decision of the General Assembly, on a provisional basis pending their entry into force are reproduced below in italics:

A. Amendment to Paragraph 12 of the Financing Rules adopted by the General Assembly at its third session, Torremolinos, September 1979 [resolution 61(III)] the application of which is provisional, pending its entry into force:

"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 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."

B. Amendment to Paragraph 13 of the Financing Rules adopted by the General Assembly at its fourth session, 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.

(c) A Member which is in arrears in the payment of its financial contributions to the Organization's expenditure shall be deprived of the privileges enjoyed by the Members in the form of services and the right to vote in the Assembly and the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two financial years. At the request of the Council, the Assembly may, however, permit such a Member to vote and to enjoy the services of the Organization if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

C. Amendment to Article 37 of the Statutes adopted by the General Assembly at its fourth session, Rome, September 1981 [resolution 93(IV)] the application of which is provisional, 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."

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

"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."

- E. 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."

- F. Amendment to Paragraph 4 of the Financing Rules adopted by the General Assembly at its fourteenth session, Seoul / Osaka, 24-29 September 2001 [resolution 422(XIV)] the application of which is provisional, pending its entry into force:**

"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."

- G. Amendment to Article 1 of the Statutes adopted by the General Assembly at its sixteenth session, 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."

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

"Membership of the Organization shall be open to:

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

- I. Amendment to Article 5 of the Statutes adopted by the General Assembly at its sixteenth session, 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.”

J. Amendment to Article 6 of the Statutes adopted by the General Assembly at its sixteenth session, 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.”

K. Amendment to Article 7 of the Statutes adopted by the General Assembly at its sixteenth session, 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 competences.”

L. Amendment to Article 9 of the Statutes adopted by the General Assembly at its sixteenth session, 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.”

M. Amendment to Article 14 of the Statutes adopted by the General Assembly at its sixteenth session, 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.”

N. Amendment to Paragraph 14 of the Financing Rules adopted by the General Assembly at its sixteenth session, Dakar, October-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.”

O. 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."

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

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

Annex II. List of adopted amendments to the Statutes and the Financing Rules that have not yet come to force and number of ratifications received to date

Resolution	Date of Adoption	Article	Ratified 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	99	5	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	43	61	Provisional Application
A/RES/511 (XVI)	2 December 2005	Article 1 Statutes	17	87	No
		Article 4 Statutes			
		Article 5 Statutes			
		Article 6 Statutes			
		Article 7 Statutes			
		Article 9 Statutes			
		Article 14 Statutes			
A/RES/512 (XVI)		Article 22 Statutes	18	86	No
A/RES/521 (XVII)	29 November 2007	Article 38 Statutes	56	48	No