
PLENARY MEETING

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Note by the Secretary-General

REPORT OF THE COUNCIL WORKING GROUP ON A STABLE CONSTITUTION

Please find enclosed the summary records of the discussion that took place at Council 2013 on the Final Report of the Council Working Group on a Stable Constitution (CWG STB-CS). The Final Report itself is contained in [Document PP-14/52](#).

Dr Hamadoun I. TOURE
Secretary-General

Annexes: [Annex A: Extract of Summary Record of the seventh Plenary Meeting \(C13/118\)](#)
[Annex B: Extract of Summary Record of the eighth Plenary Meeting \(C13/119\)](#)

ANNEX A

EXTRACT of Document C13/118

Summary Record of the seventh Plenary Meeting of the 2013 Session of ITU Council

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2 Report of the Council Working Group on a stable ITU Constitution (Documents C13/49, C13/50, C13/52, C13/54, C13/56, C13/83)

2.1 The Chairman of the Council Working Group on a stable ITU Constitution introduced Document [C13/49](#) containing the final report of the CWG under Resolution 163 (Guadalajara, 2010). She said that in Annex I to the document, the CWG suggested a draft stable Constitution and draft “other document/convention” (which it called General Provisions and Rules). Annex II to the document contained those draft texts with consequential amendments. The CWG also brought to the attention of the Council and plenipotentiary conference a series of key questions that had arisen during its discussions but were outside its terms of reference to resolve. In particular, the CWG asked whether the stable Constitution should be a new treaty or an amendment to the current Constitution, and whether the General Provisions and Rules should be regrouped, in a single document, with the General Rules of conferences, assemblies and meetings of the Union.

2.2 The councillor from Saudi Arabia introduced Document [C13/54](#), proposing in particular that the stable Constitution should be a new treaty replacing the current Constitution and Convention, and that there should be a single document entitled General Provisions and Rules consisting of two parts (Part 1 General Provisions; Part 2 General Rules of conferences, assemblies and meetings of the Union) which should be binding on Member States. He further proposed that the stable Constitution should establish a hierarchy between the stable Constitution, the General Provisions and Rules, the Radio Regulations and the ITRs.

2.3 The councillor from the Russian Federation introduced Document [C13/56](#), proposing that the stable Constitution should be a new treaty which, upon entry into force, would supersede and replace the current Constitution and Convention. Other proposals concerned the hierarchy of the Union’s binding instruments and the procedure for reviewing the Constitution. Supporting the title of the “other document/convention” proposed by the CWG, he said that following the adoption of the stable Constitution, the General Provisions and Rules should acquire the same status as the General Rules of conferences, assemblies and meetings of the Union and no longer require ratification by Member States. With regard to the way forward, he suggested that the Council recommend that the text in Annex II to Document C13/49 should form the basis for consideration by PP-14 and that Member States should base their contributions to PP-14 on that text.

2.4 The councillor from the United Arab Emirates introduced Document [C13/83](#), noting that it would be up to PP-14 to decide on the key questions identified by the CWG, which ranged from the hierarchy among the instruments of the Union to amendment procedures. He proposed that the relevant provisions of Article 55 of the Constitution be reviewed in order to alleviate, as far as possible, the onerous process for Member States associated with consenting to be bound by amendments and, as agreed in principle by the CWG, to achieve relative stability for a period of eight years.

2.5 The councillor from the Philippines, speaking on behalf of the observer for the Islamic Republic of Iran, introduced Document [C13/50](#), commenting on weaknesses in the CWG's application of its terms of reference. Other comments related to the status and name of the second document, and the question of whether the stable Constitution would be a new or amended text. The Islamic Republic of Iran considered that only the draft stable Constitution should be subject to ratification, acceptance, approval or accession.

2.6 The Legal Adviser introduced Document [C13/52](#), presenting the results of a study of the mechanisms of United Nations and other intergovernmental organizations concerning the entry into force of amendments to their basic instruments. The Council was invited to note the document and circulate it to the Member States to help them, as appropriate, in their preparations for PP-14.

2.7 The Chairman opened the general discussion on the documents that had been introduced.

2.8 The councillor from Turkey, speaking as a vice-chairman of the CWG, said that a comparison of the basic texts of a range of intergovernmental organizations revealed that ITU was unique in also having the ITRs and the Radio Regulations. Also, ITU was in the minority in having basic texts that dealt with such matters as definitions, use of languages, and the duties of the Secretary-General.

2.9 The councillor from Rwanda supported the proposals made by Saudi Arabia.

2.10 The Chairman said that the discussion would continue at the next plenary meeting.

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ANNEX B

EXTRACT of Document C13/119

Summary Record of the eighth Plenary Meeting of the 2013 Session of ITU Council

1 Report of the Council Working Group on a stable ITU Constitution (continued) (Documents C13/49, C13/50, C13/52, C13/54, C13/56, C13/83)

1.1 The Chairman invited the Council to continue its consideration of the CWG's report and proposals related thereto.

1.2 One councillor said that the draft stable Constitution, if it entered into force, should be considered a new treaty, rather than an amended version of the existing text, because under the law on treaties, amendments were limited to parts of a text, whereas a revision was a re-examination of the entire text. Furthermore, Resolution 163 (Guadalajara, 2010) would not have referred to a stable Constitution if the intention had been for Member States to draft amendments. Lastly, amendments to the Constitution could not stand on their own, whereas the draft stable Constitution could.

1.3 Referring to No. 216 of the Constitution, two councillors asked whether, if the draft stable Constitution came into force, ratification by a Member State would automatically imply that it was also ratifying the 2012 ITRs. One considered that it would not, given that provisions like No. 216 had to be interpreted contextually and that No. 216 had to be viewed in the context of the 1992 Constitution, not the draft stable Constitution. If No. 216 was transposed to the draft stable Constitution, however, unless its scope was qualified, ratification of the draft stable Constitution would imply ratification of the 2012 ITRs.

1.4 One councillor said that there should be two documents – a Constitution and General Provisions and Rules – so as to avoid confusion. There would be a period of transition to manage before and after they entered into force, during which existing texts would have to be aligned to take account of new numbering. Given the importance of the subject, all relevant documents should be made available to all Member States with a view to PP-14.

1.5 One councillor said that making the General Provisions and Rules binding but not subject to State ratification appeared to violate State sovereignty and would require further consideration.

1.6 Another councillor said that if the draft stable Constitution was considered a new treaty, more work and time would be needed before it could be adopted at a plenipotentiary conference. She did not see the benefit in adopting a new constitution as opposed to amending the current text. If the second document was binding on Member States, it would have to be subject to ratification and would therefore not meet the intent of Resolution 163 (Guadalajara, 2010), i.e. to reduce the burden on Member States. She noted that, according to the ITU Legal Adviser, the second document could be made legally binding within ITU through the provisions of the Constitution, but that would require a provision setting out its status along the lines of Article 32 of the current Constitution. The Council should not just transmit the CWG's report to PP-14, it should also draw Member States' attention to the range of issues that remained unresolved.

1.7 One councillor noted that while the CWG had quite properly not proposed any substantive changes, the Council should be able to make proposals on the basis of the group's work. It was important to ensure that the General Provisions and Rules were binding on Member States and amendable only by a plenipotentiary conference. Moreover, certain stable financial provisions should be included in the new Constitution.

1.8 One councillor, referring to Document [C13/52](#), asked for further information on how other United Nations organizations revised their basic instruments. He and other councillors considered that a stable constitution could be achieved by amending Article 55 of the current Constitution at PP-14.

1.9 Two councillors endorsed the proposal to convene an extraordinary plenipotentiary conference on the Constitution, with one agreeing that Member States would need at least eight months to consider the document, which should be a new treaty.

1.10 Another councillor noted that the CWG's work had been expected to result in a constitution with fewer articles and a convention containing rules of procedure that, while binding, would not require ratification. The proposals set forth in Document [C13/49](#) would require ratification by his country's parliament. He doubted that Annex 2 could be used as the basis for future work as it did not reflect the desire for a simpler document with a higher degree of stability. He and another councillor suggested that Document C13/49 be noted by the Council and submitted to PP-14 for consideration. Along with several others, they suggested that the mandate of the CWG be renewed and its terms of reference revised.

1.11 One councillor noted that there were no criteria for determining which provisions were fundamental and stable in nature and suggested that provisions on the financial burden for and obligations of Member States should be included and require ratification. If the new General Provisions and Rules were binding, Member States would have to be given the possibility to make reservations to them, as currently provided in Article 32B of the Convention. He suggested that, rather than being binding, the General Provisions and Rules should simply "apply to" the Member States.

1.12 Two councillors said that Council-13 was not in a position to debate and resolve the many important outstanding issues; rather, it should decide whether or not to comment on Document C13/49 and, if so, determine the nature of those comments. Several councillors expressed doubt that the Member States would be able to reach a global consensus at PP-14, given the number of participants and the constraints in terms of time and resources. Other approaches could be considered, such as revising the provisions related to entry into force of amendments to the Constitution and the Convention.

1.13 One councillor said that the final result should be amendments to the existing Constitution, not a new treaty. A number of provisions that might be moved to a second document (for example, provisions on financial issues, in particular the contributory unit) were in fact of great importance to Member States and should therefore remain in the basic instrument. Only existing documents should be submitted to PP-14, but all Member States had to be engaged in the discussion and therefore needed to receive documents in the working languages in timely fashion.

1.14 One councillor said that the draft stable Constitution would have to be ratified by her country, whether it was considered a new treaty or an amended version of the existing text. Another councillor pointed out that it was easier in some countries to obtain ratification of amendments than of a new treaty.

1.15 One councillor noted that the CWG had not changed any provisions but merely rearranged the existing ones, which were well known to Member States. The outstanding issues did not fall within the CWG's remit, nor should they be difficult to resolve. It would not be worthy of the Council merely to note Document C13/49; it should submit its observations to PP-14 for consideration. Since the Council was open to all Member States, it could not be said that its contribution was limited.

1.16 One councillor said that, while a cautious approach was understandable given the issues at stake, the CWG had exhausted its terms of reference under Resolution 163 (Guadalajara, 2010), under which the Council was limited to considering the group's final report and to making any comments it considered appropriate before transmitting the report to PP-14. If the Council wished to make recommendations, it should place them before PP-14 in the report transmitted; PP-14 could then amend Resolution 163 accordingly.

1.17 The Chairman of the CWG on a stable ITU Constitution said that the report of her group together with a summary of councillors' comments would provide a useful basis for discussion by PP-14.

1.18 The Council **agreed** that, in preparation for PP-14, Document C13/49 together with the summary record of the present discussion should be sent to all Member States and Sector Members, and that Document C13/52 should be sent to all Member States.
