
PLENARY MEETING

Document 77-E
3 October 2014
Original: English

Japan

PROPOSALS FOR THE WORK OF THE CONFERENCE

STABILIZATION OF THE BASIC INSTRUMENTS OF THE UNION

Japan is pleased to submit its proposals for consideration by the 2014 ITU Plenipotentiary Conference (PP-14).

1 Introduction

The discussion in the 2010 Plenipotentiary Conference revealed that ratification, acceptance, approval of or accession to the amendments to the ITU Constitution and the ITU Convention is a complex and lengthy process for ITU Member States, in particular for those Member States whose national language is not one of the six ITU official languages. The numerous amendments which require a burdensome ratification process have resulted in legally unstable situation, which undermines one of the cardinal/fundamental principles of the law of international organizations.

In this context, the Council working group on a stable Constitution (CWG-STB-CS), open to all Member States of the Union, established under the Resolution 163 (Guadalajara, 2010) pursuant to its terms of reference, delivered the “Report By The Chairman Of The Council Working Group On A Stable ITU Constitution” (Report) for consideration by the 2014 Plenipotentiary Conference. The Report highlighted several important issues that the CWG-STB-CS did not have a mandate to resolve and proposed that these issues to be discussed at the 2014 Plenipotentiary Conference. Nevertheless, there still remains divergence of opinions among Member States on these issues.

2 Proposals

Japan still firmly believes the significance of maintaining the legal stability, while appreciating the efforts by the CWG-STB-CS. In order to further promote the process achieving the stabilization of the basic instruments of the union, Japan proposes that Resolution 163 (Guadalajara, 2010) and its Annex to be revised as the Attachment of this document so as to:

- (i) adopt an alternative approach to solve the difficulties mentioned in the Introduction above (not creating the “another document”),
- (ii) extend the mandate of the Council working group to enable to prepare drafts of a stable Constitution and a Convention which include the introduction of simplified procedures of amendments particularly on provisions on technical, procedural or administrative matters,
- (iii) submit the drafts to the 2018 plenipotentiary conference for its consideration and necessary actions, as appropriate.

MOD J/77/1

RESOLUTION 163 (~~GUADALAJARA, 2010~~ REV. BUSAN, 2014)

**Establishment of a Council working group on a
stable ITU Constitution and a Convention**

The Plenipotentiary Conference of the International Telecommunication Union
(~~Guadalajara, 2010~~ Busan, 2014),

considering

- a) that the instruments of the Union are enumerated in Article 4 of the ITU Constitution;
- b) that Article 52 of the Constitution requires that the Constitution and the ITU Convention be simultaneously ratified by any signatory Member State in accordance with its constitutional rules;
- c) that, pursuant to No. 224 of the Constitution and No. 519 of the Convention, any Member State may propose amendments to the Constitution and the Convention, respectively;
- d) that No. 231 of the Constitution and No. 527 of the Convention stipulate that, after entry into force of any amending instrument, ratification, acceptance, approval or accession in accordance with Articles 52 and 53 of the Constitution shall apply to the Constitution and Convention as amended,

recalling

- a) that numerous amendments were made to the Constitution and Convention at each plenipotentiary conference in the past;
- b) that the amendments mentioned in *recalling a)* above require ratification, acceptance, approval of or accession to both the Constitution and Convention as amended,

recognizing

- a) that the Constitution, the provisions of which are complemented by those of the Convention, is the basic instrument of the Union (No. 30 of the Constitution refers);
- b) that ratification, acceptance, approval of or accession to the amendments to the Constitution and Convention is a complex and lengthy process for ITU Member States, in particular for those Member States whose national language is not one of the six ITU official languages;
- c) that the numerous amendments and the need to go through a burdensome ratification process have resulted, from a legal standpoint, in an undermining of one of the

cardinal/fundamental principles of the law of international organizations, namely the integrity and homogeneity of the supreme normative instrument applicable to all the Member States of an intergovernmental organization such as ITU,

recognizing further

~~a) that the "Report by the Chairman of the Council Working Group on a Stable ITU Constitution" was delivered by the Council Working Group on a Stable Constitution (CWG-STB-CS) established under the Resolution 163 (Guadalajara, 2010) pursuant to its terms of reference for consideration by the 2014 Plenipotentiary Conference;~~

~~a**b**) that discussions in the 2009 and 2010 sessions of the ITU Council revealed that there is a need to have a stable Constitution in order the significance and necessity to resolve the current difficulties of ratification, acceptance, approval or accession mentioned in recognizing b) and c) above;~~

~~b**c**) that consensus has emerged among the ITU Member States to revise the terms of reference of the CWG-STB-CS to examine an alternative approach and to make the Council Working Group to prepare the drafts of such a stable Constitution and Convention which will in order to be submitted to the 2014-2018 plenipotentiary conference for its consideration and necessary actions, as appropriate;~~

~~c) that consensus also emerged among the ITU Member States that, apart from the stable Constitution, the remaining provisions could be transferred to another "document/convention"⁴ which would not be subject to ratification, acceptance, approval or accession, taking into account the difficulties mentioned in recognizing b) and c) above;~~

resolves

1 that a Council working group on a stable Constitution and a Convention, open to all Member States of the Union, be established, with the revised terms of reference as contained in the annex to this resolution;

2 that annual reports of the above-mentioned Council working group with the revised terms of reference, should be submitted to the Council sessions in 2011-2015 (including a work programme) and 2012-2016, and the final report should be submitted to the Council session in 2013-2017,

instructs the extraordinary session of the Council in 2010-2014

1 to establish the Council Working Group on a stable Constitution and a Convention (CWG-STB-CS/CV), open to all Member States of the Union, with the revised terms of reference as referred to in *resolves* 1 above;

2 to designate the chairman and vice-chairmen of CWG-STB-CS/CV,

instructs the Council

1 to allocate necessary funds within the available resources in order to implement this resolution;

⁴ ~~The Council Working Group (CWG-STB-CS) needs to examine these terms and to propose options in this regard in its report to the Council for consideration by the 2014 plenipotentiary conference for the required action, as appropriate.~~

2 to examine and take appropriate action on the annual reports of CWG-STB-CS/CV submitted to the 2011-2015 and 2012-2016 sessions of the Council, as mentioned in *resolves* 2 above;

3 to ensure that all Member States and Sector Members of the Union are regularly informed in a comprehensive manner by means of the annual reports, so that Member States can submit their comments and/or contributions, and Sector Members can submit their comments, as appropriate, as per § 6 of the annex to this resolution;

4 to consider the final report prepared by the above-mentioned group and submitted to Council session in 2013-2017, and make any comments it considers appropriate before it is transmitted to the Member States, Sector Members and 2014-2018 plenipotentiary conference;

5 to ensure that the final report is circulated to Member States and Sector Members at least 12 months before the 2014-2018 plenipotentiary conference,

instructs the Secretary-General

1 to support the activities of the CWG-STB-CS/CV, including the preparation of the annual and final reports, by providing all necessary resources and assistance required for the successful completion of its tasks, which shall be carried out in the six ITU official languages;

2 to dispatch the invitation letter, including the agenda, of this group's meetings at least four months in advance so as to allow Member States to prepare their contributions;

3 to submit the annual and final reports of CWG-STB-CS/CV to the 2011-2015, 2012-2016 and 2013-2017 sessions of the Council;

4 to disseminate the annual and final reports of CWG-STB-CS/CV to all Member States and Sector Members, as mentioned in *instructs the Council* 3 and 5 above;

5 to conduct a study on the existing mechanisms within other United Nations organizations with respect to the entry into force of the amendments to their "basic instruments" and report to the 2011-2015 or 2012-2016 session of the Council, and to circulate the results of the study to all Member States for them to prepare their contributions, as appropriate, to the 2014-2018 plenipotentiary conference;

6 to ensure that all expenditures are financed from the regular budget of the Union, under the supervision of the Council,

instructs the Directors of the three Bureaux

to participate in and support the activities of CWG-STB-CS/CV,

invites Member States

1 to nominate representative(s) having broad knowledge and experience on the subject to participate in the activities and attend the meetings of CWG-STB-CS/CV;

2 to consider, where applicable, any comments from their respective Sector Members on the work of the group, with a view to taking them into account, as appropriate, when submitting their contributions to the work of the group.

ANNEX TO RESOLUTION 163 (~~GUADALAJARA, 2010~~ REV. BUSAN, 2014)

Terms of reference of the Council Working Group (CWG-STB-CS/CV)

The terms of reference of the Council Working Group on a stable Constitution and a Convention (CWG-STB-CS/CV), as referred to in *resolves* 1 of this resolution, are:

1 To examine the provisions of the current ITU Constitution and those of the current ITU Convention, ~~without proposing including proposals on~~ modifications to their texts particularly provisions on amendments of the instruments, and carry out studies of these provisions in order to prepare the draft of the stable Constitution and the draft of ~~another "document/convention"; the latter would not be subject to the ratification, acceptance, approval or accession stipulated in Articles 52 and 53 of the Constitution~~ Convention.

~~2~~ — To this effect, ~~CWG-STB-CS, without proposing modifications to the text of the Constitution and Convention, shall:~~

~~2.1~~ — Examine the provisions of the Constitution and Convention, including those amendments approved by the 2010 plenipotentiary conference, in order to identify those provisions which are of a stable and fundamental nature and should continue to be of a stable and fundamental nature in the future.

~~2.2~~ — Consolidate and include all provisions identified under § 2.1 above, without proposing modifications to their text, in a document labelled "Draft stable Constitution", which will be subject to ratification, acceptance, approval or accession as stipulated in Articles 52 and 53 of the Constitution.

~~2.3~~ — Consolidate and include the remaining provisions contained in the current Constitution and the current Convention, including those amendments approved by the 2010 plenipotentiary conference, not identified as being of a stable and fundamental nature, nor identified as being of a continued/permanent stable and fundamental nature as a result of the activities carried out under § 2.1 above in another "document/convention". This "document/convention", would not be subject to the ratification, acceptance, approval or accession as stipulated in Articles 52 and 53 of the Constitution.

~~3~~2 To suggest consequential changes to the draft stable Constitution and the draft ~~"document/convention"~~ Convention as a result of actions taken when performing the tasks contained in § ~~1~~ § 2.2 and 2.3 above, together with corresponding cross-references, in a separate section of the report, for consideration and required action by the ~~2014-2018~~ plenipotentiary conference, as appropriate.

~~4~~3 To seek contributions and comments from Member States.

~~5~~4 To prepare, pursuant to *resolves* 2 of this resolution, the annual and final reports for submission to the ~~2014-2015, 2012-2016 and 2013-2017~~ sessions of the ITU Council.

~~6~~5 To post on the group's website comments from Sector Members on the annual reports prepared by the group in ~~2014-2015 and 2012-2016~~.

~~7~~6 CWG-STB-CS/CV shall hold two meetings in ~~2014-2015~~, each for a maximum period of five days. The number of meetings in ~~2012-2016 and 2013-2017~~ should not exceed two per year, each for a maximum period of five days. However, a final decision on the number and duration of the meetings in ~~2012-2016 and 2013-2017~~ will be taken by the Council. These meetings should take place preferably collocated with other major relevant ITU events/meetings.