



Sixteenth session
Dakar, Senegal, 28 November-2 December 2005
Provisional agenda item 25

AMENDMENTS TO THE STATUTES

(b) Amendment to Article 22 of the Statutes proposed by Spain

Note by the Secretary-General

The Secretary-General submits to the Assembly, in accordance with Executive Council decision 25(LXXV), the draft amendment to Article 22 of the Statutes presented by Spain, as well as the note prepared by the Legal Adviser on this subject.

AMENDMENTS TO THE STATUTES

(b) Amendment to Article 22 of the Statutes proposed by Spain

1. On 11 May 2005, the Secretary-General received a communication from the Secretary-General of Tourism of Spain requesting the inclusion in the agenda of the seventy-fifth session of the Council held in Nessebar, Bulgaria, in June 2005, a proposal of amendment to Article 22 of the Statutes and Rule 53(2) of the Rules of Procedure of the General Assembly.

2. The amended wording of Article 22 of the Statutes would be as follows:

"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 may be renewed only once.*"

In the current text of the Statutes, this last sentence is worded as follows:
"His appointment shall be renewable."

3. In a second communication, received at the Secretariat on 17 May 2005, the Secretary-General of Tourism of Spain entrusted the Secretary-General with circulating this proposal to all the Members in order to comply with the notice period established by Article 33 of the Statutes for the communication of draft amendments to the Statutes.

4. The corresponding note verbale was immediately sent by the Secretariat to all the Members of the WTO.

5. Furthermore, with the Chairman of the Executive Council having agreed to the inclusion of this new item in the agenda, in accordance with Rule 4(8) of the Rules of Procedure of the Council, this draft amendment was transmitted to the last session of the Executive Council.

6. By decision 25(LXXV), the Executive Council, having noted that a large majority of the Members of the Council had expressed themselves in favour of this proposal, decided to transmit it to the General Assembly.

7. The Members will find attached the Note of the Legal Adviser regarding the substance of the draft amendment.

A N N E X

Summary Note by the Legal Adviser on the

DRAFT AMENDMENT OF ARTICLE 22 OF THE STATUTES PROPOSED BY SPAIN

1. The Secretary-General transmitted to me for comment the letters he sent on 12 May to the Chairman of the Executive Council and to Spain's Secretary-General of Tourism, respectively. These letters lead me to make the following brief observations with regard to the substance of the proposal itself. These observations concern exclusively the proposed amendment of Article 22 of the Statutes; as for the amendment of the Rules of Procedure, which the Spanish proposal links to the former, I agree with the Secretary-General in considering that it will suffice, once the amendment to the Statutes comes into force, to modify the Rules of Procedure of the Assembly in the same way.
2. The Secretary-General asked me to undertake a study of the practices observed in other organizations of the United Nations system regarding the renewal of the mandate of their Secretary-General or Director-General. Considering the extremely short notice given me, I was not able to carry out an exhaustive study in this regard.
3. For example:
 - the United Nations Charter (Article 97) does not fix the duration of the term of office of the Secretary-General, let alone the conditions of renewal (or limitations thereof). It was by virtue of Resolution 11(I) of 24 January 1946, which has not been modified since, that the General Assembly specified the conditions of appointment of the first Secretary-General, limiting his term of office to a period of five years, renewable for one additional term.
 - the Geneva Convention relative to the International Telecommunication Union does not specify the length of the term of office of the Secretary-General and of the Deputy Secretary-General, which is left up to the decision of the Plenipotentiary Conference (Article 2 – Elections and Related Matters, paragraph 1 (no. 13)); the same clause stipulates that they eligible for re-election only once;
 - the Constitution of the Universal Postal Union is likewise silent on this question, while Article 109 of the General Regulations stipulates a minimum duration of the term of office (5 years) and specifies the terms and conditions of renewal (renewable only once);

- the Constitution of the World Health Organization is silent on the question (Article 31); but Article 108 of its Rules of Procedure stipulates that the Director-General shall be appointed to a term of office of five years, renewable once;
- the Constitution of UNESCO (Article VI, paragraph 2) specifies that the Director-General of the Organization shall be appointed to a four-year term, renewable;
- the term of office of the Managing Director of the International Monetary Fund is not specified either by the Articles of Agreement of the Organization (Article XII, Section 4 (a)); nevertheless, paragraph (c) of Section 14 of the By-Laws of the Fund stipulates that the contract of the Managing Director shall be for a term of five years and may be renewed for the same term or for a shorter term;
- the Constitution of the ILO does not specify the duration of the term of office of the Director-General (Art. 8) but the ILO Staff Regulations establish the term of office of the Director-General at 5 years and provides for the possibility of renewal;
- the Statute of the World Meteorological Organization likewise leaves open the question of the conditions of appointment of the Secretary-General (Article 21(a)); nevertheless, Regulation 197 of the General Regulations of the Organization stipulates that the term of office of the Secretary-General shall be four years, limited to two renewals;
- the FAO Constitution (Article VII, paragraph 1) stipulates that the Director-General shall be appointed to a term of 6 years and shall be eligible for reappointment;
- the Convention on the establishment of the International Maritime Organization (Article 23) does not specify the duration of the term of office or the conditions of renewal, but stipulates that the Council should conform as far as possible to the practice observed in this matter by the United Nations;
- the Convention establishing the World Intellectual Property Organization establishes the term of the Director-General at six years (6 years) and establishes his eligibility for reappointment (Article 9.3) while leaving it up to the General Assembly of the Organization to fix the specific conditions of appointment;
- the Vienna Convention stipulates that the Director-General of the United Nations Industrial Development Organization shall be appointed to a term of 4 years, renewable only once (Article 11, paragraph 2).

4. Outside of the United Nations specialized agencies:

- the Statute of the International Atomic Energy Agency limits the term of its Director-General to four years (Article VII.A), but leaves the conditions of re-appointment open;
- the Marrakech Agreements are also silent on the question of the term of office of the Director-General of the World Trade Organization (Article VI.2); the length of the term was fixed at four years by the procedures for the appointment of Directors-General adopted by the General Council on 10 December 2002; this appointment may be renewed once for a term not exceeding four years.
- the Washington Convention on the ICSID likewise fixes a maximum term for the Secretary-General (6 years, Article 9), and establishes that the candidates are eligible for re-appointment;
- the Paris Convention on the OECD stipulates in Article 10 that the Secretary-General shall be appointed to a term of 5 years, but does not specify the conditions of re-appointment;
- the Treaty of London establishing the Council of Europe does not contain any provisions concerning the term of office or the renewal of the Secretary-General; the conditions of his appointment are contained in the Regulations relating to the appointment of the Secretary-General, the Deputy Secretary-General and the Clerk of the Assembly adopted by the Committee of Ministers with the approval of the Assembly at the 43rd meeting of the Ministers' Deputies on 3-6 December 1956 and modified on 23 September 1961; point 8 of these Regulations fixes the term of the Secretary-General at five years and provides for the possible renewal of his appointment;
- the Charter of the Organization of American States, on the other hand, not only establishes the duration of Secretary-General's term of office at five years, but also stipulates that the Secretary-General may not be re-elected more than once or succeeded by a person of the same nationality (Art. 108).

5. From the information I have been able to gather, I draw the following observations:

6. Firstly, the length of the term of office is very rarely fixed by the constitutional acts of international organizations. When they do fix the term, it is generally six years (FAO, WIPO and ICSID) and the appointment is renewable with no limit on the number of renewals. The only exceptions are UNESCO and UNIDO (4 years, renewable once), the OECD (5 years, but with no limits as to renewal), and the OAS (5 years, renewable once). This prudence could likely be explained by the desire of the member states of international organizations not to tie their hands too restrictively and to keep open their options to adapt to circumstances: it is often relatively easy to modify rules of procedure, but it is always extremely difficult to amend the constitutional act.

7. Secondly, and on the other hand, it happens very frequently that the rules of procedure of organizations not only fix the duration of the appointment, but also limit it to just one renewal. However, when such is the case, the term of the Secretary- or Director-General is more often than not five years (UN, UPU, IMF and IMO); at the FAO and ICSID, the term of office is six years, but no limits are imposed on the number of renewals permitted; the same is true at the ILO, the OECD and the Council of Europe, where the length of the term is fixed at five years and at the IAEA, where it is four years. At the WMO, the Secretary-General is appointed for four years and his appointment may be renewed twice. Aside from the cases of UNIDO and UNESCO mentioned above, only the appointment procedure in force at the WTO/OMC limits the renewal of a four-year term to just one time.

8. In conclusion, it is my opinion that:

1. there are no obstacles of a legal nature to the adoption of the proposed amendment;

2. this, however, entails a very onerous procedure whose outcome is uncertain, as if it is adopted by the General Assembly, the amendment will not come into force until it has been ratified by two-thirds of the Full Members (Article 33, paragraph 3 of the Statutes);

3. the same result could be achieved through the adoption of a General Assembly resolution, which (as would also be the case in the event of an amendment of the Statutes) would only take effect going forward;

4. as for the substance of the proposal, the adoption of a rule limiting the renewal of the Secretary-General's appointment to just one additional term would make the rules applicable at the WTO among the most restrictive out of those currently in force at the international organizations whose practices I have been able to study.

Done in Garches, 20 May 2005,

A handwritten signature in black ink, appearing to read 'Alain Pellet', with a stylized flourish at the end.

Alain Pellet
Legal Adviser of WTO; Professor at the University of
Paris X-Nanterre; Member and former Chairman of the
United Nations International Law Commission

