

*13<sup>th</sup> Ordinary Session of the Intergovernmental Council  
Kuala Lumpur, 16-17 March 2017  
Agenda Item 7*

## **OPTIONS AND RATIONALE FOR REVISION OF THE STATUTES AND RULES OF PROCEDURE OF THE INTERGOVERNMENTAL COUNCIL**

This document, prepared in response to the decisions of the MOST Intergovernmental Council (IGC) at its Twelfth Ordinary Session (1-2 June 2015) and Extraordinary Session (14 November 2015), and of the IGC Bureau (meetings held on 27-28 January and 15-16 September 2016), constitutes a revised, updated and consolidated version of the documents circulated to the IGC Bureau in September 2016 (MOST/IGC/Bureau/2016/23.1 and MOST/IGC/Bureau/2016/23.2).

The document reviews the current status of the MOST Statutes and Rules of Procedure, highlighting the main areas with respect to which, on the basis of recent practice, the Statutes and/or Rules of Procedure have been judged obsolete, incomplete or technically flawed. It further reviews in connection with this rationale the detailed proposals for revision developed by the working group established for this purpose by the IGC Bureau.

In addition to substantive issues relating to the content of the Statutes and Rules of Procedure, the present document also considers for the information of the IGC the procedure and timeframe that might be considered appropriate for their revision.

1. At its 12<sup>th</sup> Ordinary Session, convened in Paris on 1-2 July 2015, the MOST Intergovernmental Council (IGC), “taking note of the Interim Report on the Audit of the Governance of UNESCO and Dependent Funds, Programmes and Entities (document 196 EX/23 INF.5), and in particular of the remarks concerning the MOST programme in annex 6 thereof”, requested the Secretariat “to submit to the aforementioned Extraordinary Session, after consultation with the Bureau, proposals for revision of the Statutes and Rules of Procedure”.
2. The procedure for revision of the Statutes requires a resolution in due course by the General Conference, on the basis of a recommendation to be made by the IGC, and of consideration by the Executive Board. The revision of the Rules of Procedure requires a decision by the IGC.
3. In light of these procedural requirements, and noting, as registered in the Summary Report on the Proceedings of the 12<sup>th</sup> Ordinary Session, that opinion was divided within the IGC as to the desirability of considering the revision of the Statutes and Rules of Procedure before agreement had been reached on a comprehensive strategy for MOST, the Extraordinary Session of the IGC, convened in Paris on 14 November 2015, requested the Bureau to consider issues relevant to revision of the Statutes and Rules of Procedure, alongside its finalization of a draft comprehensive strategy, at its meeting on 27-28 January 2016.
4. The IGC further requested the Bureau to take account in this regard of the recommendations made by the External Auditor, in its Report on the Audit of the Governance of UNESCO and Dependent Funds, Programmes and Entities (documents 197 EX/28 and 197 EX/28.INF), and of the decision thereon by the Executive Board (197 EX/Dec. 28) as reported to the General Conference in document 38 C/63.
5. In its resolution on “Governance, procedures and working methods of the governing bodies of UNESCO” (38 C/Res. 101), the General Conference, noting the aforementioned External Auditor’s report and decision of the Executive Board, decided “to establish an open-ended working group of all Member States of UNESCO, and invite Member States to submit their views and proposals on governance, procedures and working methods of the governing bodies of UNESCO” and invited “all intergovernmental programmes ... to inscribe, in 2016 if feasible, an item on their agenda concerning the follow-up to the recommendations of the External Auditor’s report contained in document 38 C/23, to improve their governance by concrete measures, and to report on their proposals to the Chairperson of the open-ended working group”. Item 7 of the provisional agenda of the Ordinary Session responds to this requirement.
6. In its discussion on revision of the Statutes and Rules of Procedure during its meeting on 27-28 January 2016, the IGC Bureau endorsed the review of relevant issues as presented to it in document

MOST/IGC/Bureau/2016/3.1 and, with a view to developing detailed proposals based on broad consultation, established a working group composed of Turkey as Chair, Argentina, Thailand and Egypt, and further including as an expert Mr Jan Monteverde Haakonsen, in his capacity as representative of Norway to the Intergovernmental Council and past member of the Bureau, which was mandated to submit draft proposals on the basis of consultation with the respective regional groups. The working group's report was submitted to the aforementioned meeting of the IGC Bureau (document MOST/IGC/Bureau/2016/23.1).

7. The IGC Bureau has judged that revision of the MOST Statutes and Rules of Procedure should respond to three complementary objectives, the first two of which are not conditional on decisions to be taken in due course by the General Conference:
  - a. correction of technical flaws and well identified gaps in the drafting of the current texts, as adopted by the General Conference in Resolution 5.2 of its 27<sup>th</sup> session (1993);
  - b. updating of elements that have become obsolete, including in particular replacement of the Scientific Steering Committee by the Scientific Advisory Committee, or are no longer aligned with the Strategy as endorsed by the Executive Board (199 EX/Dec. 7);
  - c. clarifying processes and procedures, or establishing complementary processes and procedures, to improve governance, particularly in areas specifically indicated by the External Auditor (e.g. frequency of sessions, term limits, technical qualifications of delegates, decision procedures, delegated authority of the Bureau), and taking account of established experience on the relevant issues.
8. With reference to the analysis of technical flaws and gaps in the Statutes endorsed by the IGC Bureau during its meeting in January 2016, the working group has made the following proposals:
  - The number of IGC members should to be corrected to 35, consistently with relevant resolutions of the General Conference (Article II.1).
  - With respect to Article II.7, the issue of communicating technical information to the secretariat should be dealt with by the Rules of Procedure not by the Statutes. The existing Article is therefore proposed to be deleted.
  - Article III is proposed to be revised to separate Ordinary Sessions from the General Conference, confirming established practice. Article X might further be revised in light of this.
  - Article IX is unclear and appears inconsistent with Rule 18. Clarification of the status of invited experts is proposed by the working group in a new Article X. Further details in this regard could be considered for inclusion in the Rules of Procedure.

- Article XIX appears misplaced in the section concerning the Committee, in so far as it concerns both the Council and Committee. It is proposed to move it to constitute the final article of the revised Statutes.
9. With respect to the areas in which the Statutes have been judged to be obsolete, the working group has made the following proposals:
- Revision of Article VII to refer explicitly to the Strategy as endorsed by the Executive Board and to the Action Plan designed to support its implementation.
  - Articles XI-XVIII are proposed to be consolidated into a single Article, reflecting the replacement of the Scientific Steering Committee by the Scientific Advisory Committee and aligning the functions and activities of SAC with the requirements of the Strategy as endorsed by the Executive Board and with the need to ensure ongoing contributions from SAC to the Action Plan. The working group has further proposed that the IGC President's *ex officio* membership of SAC be abolished, as no longer consistent with its advisory functions, and replaced by the right for a designated representative of the Bureau to attend meetings of SAC.
10. Clarification of processes and procedures in order to improve governance are proposed by the working group in the following areas:
- Article II.2, which is inconsistent with the longstanding practice of holding elections to the IGC and a subsequent Extraordinary Session during the General Conference, is proposed to be revised to align terms with actual conduct of elections.
  - Article II.4 (renumbered as II.3) is proposed to be revised to limit IGC membership to two consecutive terms. Objections to this proposal have been made during the consultation phase, on the grounds that rigid term limits may hamper political commitment to MOST.
  - Noting the recommendations of the External Auditor, the working group considered whether Article II.6 might be revised to introduce criteria for the eligibility of member state appointees to the IGC. It was decided to propose no change in this regard.
11. With respect to the Rules of Procedure, the rationale for the specific proposals elaborated by the working group may be summarized as follows.
12. Many rules within the Rules of Procedure duplicate verbatim the provisions of the Statutes. While it naturally remains the case that all provisions of the Rules of Procedure should be strictly consistent with the Statutes, the duplication may be a potential source of confusion. At this stage, however, the working group has decided not to propose extensive changes in this regard.

13. The Statutes give little detail about the conduct of sessions, which is therefore for the Rules of Procedure to fill in. Current Rule 3 has several shortcomings:
  - In spite of its title, it deals only with the date and place of sessions, not with all aspects thereof.
  - It introduces a verbal confusion by referring to “plenary” sessions, a notion that has no statutory basis and that the working group has proposed to remove.
  - Rules 3.2 and 3.3 appear incoherent in giving the Director-General the authority to convene a session while empowering a majority of members of IGC to decide where it should take place.
  - The working group has proposed to add a new Rule 3.3 to clarify the basis on which Extraordinary Sessions may be convened, both during the General Conference as customary and on other occasions as required.
14. Rule 4 introduces a further verbal confusion in referring to “meetings”, which are by definition sessions. In addition, it largely duplicates the Statutes and is therefore perhaps unnecessary, unless reference is to be made to categories of observers not foreseen by the Statutes but consistent with them. Finally, its relation with Rule 18 is unclear in the absence of adequate specification of how the status of observers differs from that of the public. In the interests of clarity, the working group has proposed to restrict Rule 4 to a reference to the Statutes, added a new Rule 5 to cover the case of invited experts, who are not observers.
15. Clearer procedures are proposed by the working group for proposals relating to the agenda under Rule 5.4. In the current text, in so far as the Director-General prepares the agenda in consultation with the Bureau (Rule 5.1), it does not obviously make sense for the Director-General and Bureau to have a separate right to propose items.
16. Rule 8, as noted previously by the IGC Bureau, fails to address many practical issues, including the status of observers, the presence on an ad hoc basis of external experts, the process by which meetings are convened and the agenda set, the basis for establishment of working groups, the possibility of using technologies for virtual meetings, and deadlines for circulation of documents. The working group has made specific proposals in this regard.
17. The working group has proposed to clarify Rules 9 and 10, dealing with the status and functions of the President and Vice-Presidents, and furthermore to add a specific Rule addressing the attributions of the Rapporteur.
18. Rule 12 mentions the Executive Secretary, but fails to define the position or the role. Proposals to clarify this remain to be developed.

19. The working group has proposed to amend Rule 17.3 to refer to all sessions and meetings of subsidiary bodies in order to clarify the basis on which the requirement for a quorum can be suspended.
20. The working group has proposed that the publicity of meetings (Rule 18) be abolished in the absence of any clear definition of what constitutes the “public” in this context or of the practical implications of such publicity. The opinion on this point of the UNESCO Legal Affairs Department has specifically been requested, taking account of general rules and established practices within UNESCO as a whole.
21. Rule 28 is unsatisfactory in so far as it provides no practical guidance for the actual conduct of elections. The possibility of establishing specific procedures in this regard remains to be considered.
22. Rule 30 could helpfully specify the basis on which the Bureau or the IGC may use video technologies to conduct business. The working group has proposed language in this regard.
23. In addition to the substantive issues addressed above in paragraphs 8-10 (Statutes) and 11-22 (Rules of Procedure), the IGC is called upon to determine the timeline appropriate for revision.
24. The most expeditious procedure would entail adoption by the 13<sup>th</sup> Ordinary Session of the redrafted Rules of Procedure, as proposed by the working group and with such amendments as may be judged desirable, and of a recommendation to the General Conference that the redrafted Statutes, on the basis of the preliminary proposals made by the working group and with such amendments as may be judged desirable, be adopted at its 39<sup>th</sup> session in November 2017.
25. The General Conference will, at the aforementioned session, be considering under follow-up to 38 C/Res. 101 general issues bearing on the governance of UNESCO, and thus on substantive options to be reflected in the revision of the MOST Statutes. In view of the ongoing work of the open-ended working group of all Member States established by the General Conference, it is uncertain which position will be taken at the 39<sup>th</sup> session, and even whether a final resolution will be adopted at that point. The IGC may therefore wish to delay any decision on proposals for revision of its Statutes, notwithstanding their well-recognized flaws.
26. If the Ordinary Session declined to proceed immediately with revision of the Statutes, it would be necessary to take a decision based on the proposals of the working group, possibly including options for further discussion, which would provide an agreed basis for subsequent finalization taking account of such resolutions as the General Conference may adopt at its 39<sup>th</sup> session. In this case, the revised Statutes could be approved by the General Conference only at its 40<sup>th</sup> session.

27. Consideration could also be given to adoption of proposals for revision of the Statutes limited to correction of technical flaws, leaving substantive issues to be addressed at a later date in light of the resolutions adopted in due course by the General Conference.
28. Revision of the Rules of Procedure falls within the competence of the IGC under Article VI of the currently applicable Statutes, in conjunction with Rule 31 of the Rules of Procedure. Regardless of the timeline adopted for revision of the Statutes pursuant to paragraphs 24-26 above, the 13<sup>th</sup> Ordinary Session in March 2017 could therefore adopt revised Rules of Procedure. Further revision might in that case be required at a later date to ensure consistency of the Rules of Procedure with the revised Statutes as adopted in due course by the General Conference. Alternatively, if certain issues are judged to require additional consultation and/or technical review, revision of the Rules of Procedure could be delayed.
29. Pursuant to 38 C/Res. 101, the rationale for the IGC's decision on revision of its Statutes and Rules of Procedure, along with the implications thereof for broader issues relating to UNESCO governance, will be reported by the IGC President to the Chairperson of the open-ended working group established by the General Conference.