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139th IPU ASSEMBLY AND RELATED MEETINGS

Geneva, 14-18.10.2018

Executive Committee
Item 5

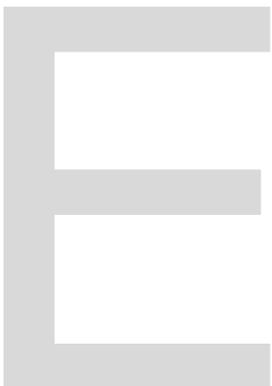
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139th Assembly Agenda of the Standing Committee on Democracy and Human Rights

On the occasion of the 137th Assembly in St. Petersburg (October 2017) and the 138th Assembly in Geneva (March 2018) the IPU Standing Committee on Democracy and Human Rights considered a proposal by the Belgian IPU Group to hold a panel discussion on the issue of ending discrimination based on sexual orientation and gender identity.

At the 138th Assembly, the Standing Committee decided by vote to place the item on its agenda for the next Assembly. At the last sitting of the Assembly, several delegations took the floor to express their objection to the inclusion in the Committee agenda of a panel on this issue. Delegations also asked that the Secretariat provide an interpretation of the Rules governing the prerogatives of the Assembly and of the Standing Committees when deciding their respective agendas. In light of the late hour and the absence of a quorum required for a formal decision, it was decided to adjourn the meeting and to re-examine the issue on the occasion of the 139th IPU Assembly.

The Executive Committee will be invited to examine a legal opinion commissioned by the Secretariat on this matter and to propose a way forward for resolving the issue.



#IPU139

Mr. Martin Chungong
Secretary-General
Inter-Parliamentary Union
Geneva

Geneva, 17 June 2018

Dear Secretary-General,

I am referring again to your letter of 17 May, in which you request my views on a number of procedural issues concerning the Statutes and Rules of the IPU. I am referring here in particular to the following question, as quoted from your letter:

"an independent legal interpretation of the IPU Statutes and Rules, as this pertains to the relationship between the IPU Assembly, as the principal deliberative organ of the IPU, and the IPU Standing Committees, which assist the Assembly in its work - preparing reports and/or draft resolutions for the Assembly and performing other functions as set out in the Rules. Basically, it would be important to clarify which body has the final decision, when it comes to the outcomes of the Standing Committee, including the establishment of the agenda and work plans of the Standing Committees."

At the outset, your question acquires practical and political importance in case of a difference of opinions between the Assembly and the Standing Committees with regard to the agenda and work plan of the latter, as was the case in the incident mentioned in your letter. This particular problem did not arise in the past as I understand from our conversation, so that the implications of the Statutes and Rules on this point were not considered before. As I understood from our discussion, Standing Committees in practice enjoy considerable latitude in deciding on the subject items to discuss. As my analysis below points out, however, neither the Statutes nor the applicable Rules are very clear on this important issue and would benefit from a review by IPU's membership to avoid such ambiguities in the future.

My reply to your question is divided in three parts: 1) the position of the Standing Committees in the institutional structure of the IPU; 2) the main functions of the Standing Committees and the relationship between the Standing Committees and the Assembly in the performance of those functions, and 3) conclusions. My views are based on the text of the Statutes and the Rules and the practice of IPU as I understood it from my conversation with you and Ms. Filip.

1. The position of the Standing Committees in the institutional structure of the IPU.

The main organs of the IPU are listed in Article 8 of the Statutes and do not include the Standing Committees. The latter are mentioned in Article 13 of the Statutes, which forms part of Chapter III on the Assembly. That Article provides that the functions of the Standing Committees is to assist the Assembly, "normally" through the preparation of "reports and/or draft resolutions". Paragraph 3 of Article 13 and Rule 6.3 of the Standing Committees add that the Standing Committees may also be "instructed by the Governing Council" to study and report on items included in the latter's agenda. On the basis of the Statutes and the Rules, therefore, Standing Committees appear to be derivative organs, established by the Governing Council to support the latter as well as the Assembly in the discharge of their constitutional mandate. This conclusion is partially qualified by the fact that under Article 13 Standing Committees may "perform other functions as set out in the Rules". Rule 1 of the Standing Committees adds that the Standing Committees "shall be able to address all issues within the competence" of IPU. Notwithstanding these qualifications, however, the overall institutional design of the IPU justifies the conclusion that the Standing Committees are organically under the authority of the Assembly and play a supportive role vis-a-vis the Assembly and the Governing Council with regard to the substantive aspects of their work.

This role fits logically within the overall design of the IPU where the Assembly is the deliberative organ, the Governing Council is the directing authority of IPU's activities and the Executive Committee is its administrative organ. Standing committees play what could be defined as a substantive supporting role in this architecture, feeding into the Assembly's deliberations, enriching its deliberative function through their own debates and carrying out studies and preliminary consideration of questions at the request of the Assembly or the Governing Council.

2. The main functions of the Standing Committees and the relationship between the Standing Committees and the Assembly in the performance of those functions.

The main statutory function of the Standing Committees under the Rules is proposing subject items for the agenda of the Assembly together with draft resolutions, subject to approval by the Assembly (Assembly Rules 10, 13, 15; Standing Committees Rules 6.1, 6.3 and 13).

At the same time and besides the aforementioned function, the Rules of the Standing Committees make it clear that the latter enjoy a considerable independence in setting their own agenda, discussing topics and performing other functions within the scope of the IPU's competence. In particular, Rule 6.4 states that "without prejudice" to preparing subject items for the agenda of the Assembly, Standing Committees "shall establish their own work plans and set their agendas". Any IPU Member may submit proposals for subject items (Rule 18), which shall then be considered by the Bureau of the Committee concerned (Rules 10.3 and 20). The Standing Committee eventually takes a decision pursuant to Rule 19. The Rules in question do not foresee a direct role of the Assembly in this process; the Assembly does not have to approve the agenda of the Standing Committees and does not seem to have the authority to propose or include items in their agendas. It should also be noted that, under Rule 6.5, Standing Committees appear to enjoy a considerable amount of authority over the implementation of their work plan since they can "inter alia commission research, discuss reports on good practices, review implementation of and follow-up action on previous IPU resolutions, organize field missions and hold hearings".

Whether Standing Committees have final authority to adopt their own agendas and decide on items to discuss, however, is not without ambiguity given the language of the Rules. For example, Rule 14 provides that the Secretary-General, when communicating the agenda of the Standing Committees to IPU Members, "shall give effect to the decisions taken by the Governing Council and the Assembly"; without further elaboration in the Rules, this expression could be interpreted as giving some authority to the Assembly and the Governing Council with regard to the content of the agenda, that the Secretary-General then has to implement. Furthermore, Rule 19 states that "A Standing Committee shall decide on t h e subject item to be proposed for discussion at the next Assembly" (emphasis added). This passage does not distinguish between items proposed for the Assembly's agenda and items to be solely discussed with in the Standing Committee (it refers to discussion "at" the next Assembly rather than discussion "by" the next Assembly), so that it may be read as giving Standing Committees the authority to propose subject items to discuss but not the absolute final authority which, by implication, would rest with the Assembly. It can also be added that Standing Committees report to the Assembly on their conclusions (Rule 17). Even though Rule 17 does not foresee any action by the Assembly on the Standing Committees' reports, it does not seem consistent with the Assembly's institutional position to imagine that the latter is deprived of any authority in this connection and can note the reports; if it were so, it would give Standing Committees a final authority on a par with the Assembly and the Governing Council. If that was the intention of IPU's Members, it is not clearly spelled out in the Rules.

3. Conclusions

Standing Committees are bodies established under the general purview and authority of the Assembly but not in a clear situation of subordination to the latter with regard to their work as in the case, for example, of the Main Committees of the World Health Assembly or the UN General Assembly. Having said that, the Rules of the Assembly and those of the Standing Committees present a somewhat contradictory picture with the question you posed to me, namely, who between the Assembly and the Standing Committees has final authority over the agenda and work plans of the latter. Textual arguments could be found for either conclusion as discussed above.

However, if we place the Rules within the overall context of the Statutes and we consider the organic relations among the organs of the I PU, it seems to me on balance that, while Standing Committees normally enjoy broad independence with regard to their own agendas and work plans, that independence is still placed under the ultimate authority of the Assembly. If the latter decides, for serious reasons and in exceptional circumstances, that a Standing Committee should reconsider the inclusion of a particular item on its agenda or even that a particular item should not be included in its agenda, in my view that Standing Committee has to comply with that request. I underline that this conclusion is justified only in exceptional circumstances to be carefully assessed by the Assembly so as to remain within the balance expressed in the current formulation of the Rules. I also reiterate that, as stated at the beginning of this letter and explained above, there should be a clear policy decision on such an important point and the Rules should be revised accordingly so as to avoid ambiguities and confusion.

I hope that the foregoing responds to your question, and I remain at your disposal should you have further questions.

Yours sincerely,

(Signed)

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