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THE EXAMINATION OF RULES 37 AND 38 OF THE RULES OF PROCEDURE OF THE GENERAL CONFERENCE RELATING TO THE ACTUAL FUNCTIONS OF THE LEGAL COMMITTEE

The Legal Committee of the General Conference met at the Organization's Headquarters, from 27 to 29 November 2002, convened by the President of the General Conference. It considered, among other items, the examination of Rules 37 and 38 of the Rules of Procedure of the General Conference. This document reproduces the report adopted by the Legal Committee on the question.

1. One member having queried the precise nature of the mandate of the Legal Committee in respect of item 3 of its agenda, the Chairperson stated that the item reflected the concerns expressed on many occasions by the members of the Committee and that it should initiate a debate on the matter.
2. One member considered that it was essential to establish the Committee's position in relation to the Secretariat and that the Executive Board could be invited to give its view on the assistance which the Committee could provide to the Organization. Another member pointed out in that regard that the Executive Board had never consulted the Committee.
3. Whereas several members expressed the view that the Legal Committee could take initiatives in relation to the present item of its agenda, others thought that it was necessary to act with caution and to propose no more than practical intermediary measures. Thus informal or unofficial consultations could take place before the Legal Committee was approached in accordance with Rule 37.1(b) and (d) of the Rules of Procedure of the General Conference; it would also be desirable to make more frequent use of Rule 38, paragraph 1.
4. One member expressed concern with regard to the retranscription of the opinions expressed by each of the members of the Committee in its report to the plenary. In the view of another member such reports always mentioned the differences expressed even if they necessarily reflected the consensual position adopted by the Committee.

5. One member, making a comparison with the Sixth Committee of the United Nations General Assembly, expressed concern about the scant attention paid to purely legal considerations in the Committee's proceedings. The Chairperson, for his part, mentioned the Legal Committee of FAO by way of example. One member suggested that an in-depth study should be conducted of the practice of the other international organizations in that regard, emphasizing the anomaly which prevented the Legal Committee of UNESCO from conducting in-depth examinations of the conventions concluded within the framework of the Organization.

6. In the view of one member the discussion raised the more general issue of the place of law in the functioning of the Organization. In relation to the Legal Committee, it was not certain that the provisions of the Rules of Procedure of the General Conference which endowed it with competence took account of the intersessional meetings, which represented an innovation for the Committee. In general one of the main difficulties related to the fact that the Rules of Procedure entrusted only to the Legal Committee for examination items which also had policy aspects whereas bodies of the General Conference could submit legal matters to it without suspending their own work on those matters.

7. One member made the point that the Legal Committee should not be prevented from examining a matter because it contained both policy and legal aspects.

8. Following a proposal by the Chairperson, while noting that the Member States could always hold informal consultations to propose amendments to the Rules of Procedure, the Legal Committee decided to invite the President of the General Conference to propose to the Executive Board that it create an open-ended ad hoc group (whose participants would include members of the Legal Committee) to carry forward reflection on the role and place of the Legal Committee within the Organization.