



World Scout **Bureau** Mondial du Scoutisme

P.O. Box 91
CH-1211 Geneva 4
Switzerland

Rue du Pré-Jérôme 5
CH-1205 Geneva
Switzerland

Tel: (+41 22) 705 10 10
Fax: (+41 22) 705 10 20

worldbureau@world.scout.org

CIRCULAR N° 31/2004

To: International Commissioners

November 2004

Evaluation Group Report: Recommendations having constitutional implications

Dear Colleagues,

1. At its meeting on 2-5 April 2004, the World Scout Committee discussed the report of the Evaluation Group which was submitted last year. A reference to that discussion is made in Circular No. 9/2004, the relevant section of which is quoted below:

"The WSC also further discussed the recommendations contained in the Evaluation Group report submitted last year. Most of these fall under the responsibility of the WSC and/or World Scout Bureau (WSB) and – in conformity with the WSC decisions previously announced – are now being implemented. A few recommendations will require approval of the next World Scout Conference in Tunisia if they are to be implemented. Details of these will be submitted to National Scout Organisations for consultation in due course, prior to the Conference".

2. In effect, all the recommendations of the Evaluation Group Report have been, or are being, implemented, except those requiring the approval of the World Conference because they imply constitutional amendments.

These six "constitutional" recommendations (N^{os} 3, 8, 9, 24, 25 and 26) were discussed at length by the World Committee at its meeting in April 2004. The key points raised during that discussion were studied by its Constitutions Committee, which drafted a structured paper to assist the World Committee in considering the subject at its meeting on 29-31 October 2004.

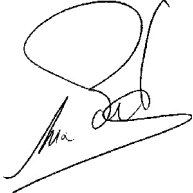
For the sake of transparency and to enable National Scout Organisations to understand fully the wider implications of these amendments, the paper produced by the Constitutions Committee is attached.

3. At its meeting on 29-31 October 2004, the World Committee fully agreed with the concerns expressed by its Constitutions Committee. It is therefore strongly against the presentation of these amendments, either as a whole or individually, for consideration by the next World Conference in Tunisia in September 2005, primarily because of their negative impact on the unity of WOSM. The Committee also agreed with the suggestion contained in the Constitutions Committee paper that the issue of voting rights of the Secretary General and the Treasurer could be resolved without the need to amend the Constitution.
4. In reaching this conclusion, the Committee emphasised that its position is not in any way due to an opposition to the principle of amendment of the WOSM Constitution. Quite the contrary – the World Committee has already decided to undertake a global review of governance in WOSM, within the wider framework of the strategic priority "an Organization for the 21st Century". This work will have far-reaching effects on how WOSM functions; this will need to be reflected within the WOSM Constitution, and will require the creation, in due course, of a constitutional review task force. But this process needs time and can only be completed, at the earliest, by the World Conference in 2008.

The World Scout Committee would be happy to have the opinion of your National Scout Organization on the issues covered by this circular.

With best regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M.L. Correa', with a large, stylized flourish above the name.

Dr. Marie-Louise Correa
Chairman, World Scout Committee

CONSTITUTIONAL AMENDMENTS RECOMMENDED BY THE EVALUATION GROUP

(Paper prepared by the Constitutions Committee for consideration by the World Scout Committee at its meeting on 29-31 October 2004)

Introduction

The Evaluation Group, established by the World Scout Committee in October 2002, presented its Report to the Committee in April 2003. This Report made 27 recommendations, 6 of which (n° 3, 8, 9, 24, 25 and 26) would, if implemented, require amendments to the WOSM Constitution.

This paper has been prepared by the Constitutions Committee to assist the World Committee in considering the recommendations requiring constitutional amendments. It is largely based upon points raised during the discussion by the World Committee of these constitutional recommendations at its meeting on 3 April 2004.

The first part of the paper expresses comments of a general nature relating to the 6 constitutional recommendations considered as a whole.

The second part of the paper comments upon the substance of each of the 6 constitutional recommendations.

I. General comments on the constitutional recommendations considered as a whole

1. Some of the constitutional amendments recommended have a far-reaching impact on WOSM as a World Organization and on the system set up by the Constitution of WOSM. Yet this fact is not acknowledged in the Evaluation Group Report or within the recommended amendments themselves.

An obvious example of this is recommendation n° 25 which transforms WOSM, at least in part, from an organization composed of national associations to a federation of Regions. This is in direct conflict with Article XII, paragraph 1, of the WOSM Constitution which clearly states that the members of the World Scout Committee "shall consider the interests of the Movement as a whole and shall neither consider themselves, nor be considered, as representing any particular Member Organization or Region".

Another, less obvious but equally important example, is recommendation n° 3. By proposing to amend the title of the Chairman of the World Committee to that of the President of WOSM, this recommendation produces a radical change not only in the nature of the function of the Chairman but also in the method of his/her designation; in order to be the President of WOSM, it is logical that he/she be elected by the WOSM constituency, i.e. the World Conference.

The fact that the amendments recommended by the Evaluation Group do not take into account their implications on other articles of the World Constitution, and therefore on WOSM as an organization, is a serious flaw. A constitution is not just a series of articles; it sets up a legal system based on a certain logic. As with all systems, any change in one part affects the totality, to an extent which of course varies depending on the nature of the change. The two examples mentioned above are fundamental changes, and their acceptance without a thorough reconsideration of the legal system set up by the WOSM Constitution would result in total incoherence.

2. A second comment, closely related to the first comment (and which actually largely explains it), is that each of the six amendments recommended by the Evaluation Group is in response to circumstantial problems, particularly personal conflicts, that arose during the past triennium and that led to a dysfunctioning of the system. Yet there is a golden rule in relation to constitutions: they should never be amended in the heat of circumstantial considerations and personal conflicts. The personal problems and conflicts that arose during the past triennium could and should have been resolved in other ways rather than by a systemic constitutional change.

3. When dealing with constitutional amendments of the type proposed by the Evaluation Group, the procedure for handling the amendments is closely related to their substance and must be closely considered by the World Committee. This is because the WOSM Constitution can only be amended by a two-thirds majority of the votes cast. Such a majority is likely to be achieved only if:

- the World Committee itself is strongly in favour of the amendments
- the amendments are supported by the vast majority of NSOs.

Ignoring this aspect can have far-reaching consequences on the unity of WOSM. Proposed amendments that are not massively supported by associations might obtain a simple majority, but not a two-thirds majority; this would be a worst case scenario, since the Movement would be strongly divided, while the Constitution would remain unchanged. To this should be added that, as mentioned earlier, all the amendments recommended by the Evaluation Group respond to a specific problem and/or person, and are therefore likely to be perceived as politically loaded and divisive.

3.1 In the circumstances, the World Committee's decision on whether or not to put the amendments recommended by the Evaluation Group to a vote at the next World Conference must be based upon:

- a clear position of the Committee itself in relation to the amendments (which, in light of the Committee's discussion on 3 April 2004, was one of considerable concern regarding at least some of the amendments recommended).
- a clear indication of what the position of NSOs is in relation to the amendments. The Committee would thus need to consult all NSOs well in advance of the Conference, by circulating the text of the amendments and asking NSOs for their position. This consultation could either be sent in a completely neutral manner, without any comment on the part of the Committee, or it could include the Committee's own position in relation to the amendments, both as individual proposals and as a total package.

Whichever option the Committee chooses, it should remind NSOs that amendments to the WOSM Constitution require a two-thirds majority of the votes cast, and that its decision on whether or not to put the amendments to a vote at the next World Conference will take into account the results of the consultation.

3.2 It should be noted that if the consultation reveals that the majority of associations are not in favour of the proposed amendments and the Committee therefore decides not to put them to a vote, nothing precludes individual NSOs themselves from proposing some or all of the amendments – it is their absolute right. In this case, however, these NSOs would have been forewarned that their proposals are unlikely to be carried.

3.3 Finally, it should be borne in mind that once a process of constitutional amendments starts, it is impossible to know when it will stop. Proposed amendments inevitably lead to counter-amendments, which in turn lead to further counter-amendments. This could produce a chaotic situation at the World Conference, which would therefore probably be unable to agree on any constitutional amendments. This whole process would be very disruptive to Scouting's unity and would take place at the expense of the Conference's primary function, which is to promote the unity of the Movement and to facilitate its expansion and development.

II: Comments on each of the six amendments

As mentioned in the introduction of this paper, the six amendments recommended by the Evaluation Group have been discussed at length at the meeting of the World Committee on 3 April 2004, and the comments below are largely based upon that discussion.

Recommendation n° 3

"In order to have a gender-free title in English, but more importantly, to enhance the status of the position, the chairman of the WSC should in future be referred to as the WSC President, and the President of WOSM. In consequence of this change of title, the Vice Chairmen should be re-titled Vice Presidents."

A first reading creates the impression that this recommendation is a minor one of style and terminology. A closer examination shows otherwise:

- a. first, a "President", in English, has many different connotations. Today, within the business world, a President is very often the Chief Executive Officer, which is obviously not the case of the Chairman of the World Committee, who is a volunteer, not a paid professional. Within the WOSM Constitution, it is the Secretary-General who is defined as being the "chief administrative officer" (Article XVI, 1). This proposal is therefore confusing, and in conflict with the WOSM Constitution.
- b. more important still, the recommendation states that the Chairman of the WSC should in future be referred to "as the WSC President, and the President of WOSM" (emphasis added). If a person is to become the President of WOSM, the natural legal process is for that person to be elected by the WOSM constituency, i.e. the World Conference (which in itself would require another amendment to the WOSM Constitution). This is the case in the Federation of the Red Cross, which has paralysed that body and made it a highly politicised one. Judging by the Red Cross experience, the key item on the agenda of future World Conferences would be the election of the President, rather than the strategy and the growth of the Movement.

Thus, this apparently minor recommendation would have far-reaching consequences on WOSM as an organization. It introduces a major systemic change, the consequences of which have been totally overlooked in the Evaluation Group Report.

Recommendation n° 8

"The SG should cease to have a vote at WSC meetings following the Tunis Conference and the new SG should be appointed on this basis. The SG should attend all WSC meetings as Secretary to the WSC but should not be a member of the WSC. This will require a constitutional amendment."

This proposal is particularly controversial. There are various examples of chief executives being entitled to vote in some cultures and not having a vote in others, and it would be possible to mention an equal number of arguments in favour, or against, either situation. But it would perhaps be more useful to provide some background information on the Secretary-General's voting right within the WOSM Constitution.

- a. The explanation provided in the Evaluation Group Report (p. 29) that "the only reason the Secretary-General has a vote is because the WOSM Constitution does not allow the Chairman of the WSC to have a casting vote" is incorrect and has no historical basis. The WOSM Constitution never intended to provide for a casting vote either through the Chairman or the Secretary-General (see comment to recommendation n° 9). The Secretary-General was given a voting right in the late sixties as a result of an overall review of WOSM and its Constitution, where the chief executive was expected to have a much more proactive and prominent role than had been the case with former directors of the World Bureau.

While it could be argued that there were other ways of strengthening the Secretary-General's position than by giving him a voting right, the fact remains that the system set up by the WOSM Constitution over 30 years ago has functioned effectively.

- b. The Secretary-General is an ex-officio member of the World Committee, as is the Treasurer. The ex-officio nature of the membership requires a judicious use of the voting right, which is derived from a specific function, and cannot be the same as that of an elected member.

In practice, the first Secretary-General to have been given a voting right has stated repeatedly that he never used that right in any situation, while the second used that right but never on the question of the election of the Chairman and Vice-Chairmen of the World Committee.

The accusation that the Secretary-General sought to influence elections on the World Committee (Evaluation Group Report, p. 26) is unrelated to his voting right, since that right was never used in the election process; the problem could have arisen even if the Secretary-General did not have a voting right.

- c. Should the Committee consider it desirable, there are ways of clarifying to the WOSM constituency the special nature of the Secretary-General's (and Treasurer's) voting rights deriving from the ex-officio nature of their membership, without the need to amend the Constitution and to pursue this matter as a divisive issue. One possibility would be for the World Committee to move a resolution to the World Conference clearly defining the nature of voting rights of ex-officio members, which would, for example, not include the right to take part in the Committee elections.

Reconsidering the Secretary-General's voting right, as indeed any part of the WOSM Constitution, would be a legitimate thing to do in a future revision of the WOSM Constitution as a whole, but this can only be done in a neutral, objective environment unrelated to circumstantial considerations and specific individuals.

Recommendation n° 9

"The WOSM Constitution should be amended to provide a casting vote for the chairman of the meeting in the event of a tied number of votes at any meeting of the WSC."

The WOSM Constitution (Article XIV, 2) states clearly that in the event of a tie in the votes of the World Scout Committee, the motion is defeated. This is a procedure in common use and in the case of the World Scout Committee it has worked quite satisfactorily in the past.

The normal working of the WSC aims to achieve consensus and, with the exception of the last triennium, a formal vote is comparatively rare.

The alternative procedure, whereby a Chairman is forced to cast two votes in the event of a tie, is rather less democratic and more outdated today.

Recommendation n° 24

"The WOSM Constitution should be amended by deletion of Article XII.2.(c), the deletion of which would remove the Treasurer from the WSC."

In some cultures, it is normal practice for the Treasurer of a voluntary organization to be a voting member of its executive body and in some places the law requires this, whereas this is not the case in other cultures.

The Treasurer, like the Secretary-General, is a member by virtue of his function and his voting right is therefore not the same as that of an elected member. In practice the Treasurer of WOSM has attended for discussion on the budget and annual accounts and is not normally expected to be involved in non-financial decisions, nor should he be.

As in the case of the Secretary-General and if the Committee considers it desirable, a clarification of the nature of the voting right of the Treasurer could be made to NSOs, without the need for a constitutional revision.

Recommendation n° 25

"There should be 12 elected members of the WSC. One place should be reserved for candidates from each of the six regions of WOSM. These WSC members would be elected for six year terms on the first ballot where all candidates would be presented in regional panels and each NSO would have six votes to cast within each panel. The existing rules for co-options and part terms would be maintained. Because of the six year terms, this proposal should be phased in so that places for each of only three regions come up for election at any one conference. If no candidate is validly proposed for election to any of the places reserved for each of the six regions, the WSC should be authorised to fill the place by co-option for up to a maximum of three years only with that person eligible to stand for election for a further three years only to prevent such persons serving for just short of three years plus a further six years.

There should be six places for candidates elected for three years with the possibility of them seeking re-election for a second term of three years.

To prevent persons being elected for three years and subsequently being elected for six years, a maximum term of 8 years, inclusive of a period of co-option should be introduced into the Constitution."

and Recommendation n° 26

"Article XII.3 of the WOSM Constitution which allows for the attendance of Regional Chairmen and honorary members at WSC meetings should be deleted (with the consent of the World Scout Conference)."

These two recommendations are considered together because they are closely related.

- a. Article XIX, 1 of the Constitution of WOSM states that *"Regional Scout Organizations may be established in conformity with the requirements of this Constitution, comprising Members of the World Organization so desiring within a geographical area to be defined from time to time by the World Committee"*.

The number of Regions may vary from time to time, and it has indeed done so. Furthermore, membership of a Region by an NSO is optional. Consequently, Regions cannot be used as a stable basis for elections to the World Scout Committee. In addition, there is the important fact, mentioned earlier, that this proposal changes the nature of WOSM from an organization composed of national associations to a federation of Regions.

- b. The formula proposed is complicated and goes against what the Report as a whole seeks to achieve, which is to strengthen relations between the world and regional levels. For example, the proposed candidates from each Region would be elected in fact by the votes of those outside their Region, whereas the persons who are actually elected by members of their own Region, the Regional Chairmen, are to be denied access to the WSC meetings. Regions would therefore no longer be able to identify with anyone present at World Committee meetings as expressing their views and representing their interests.

The exclusion of Regional Chairmen from the World Scout Committee would break an important link between the Committee and Regional Committees, resulting in a lack of cohesion within the World Organization, especially in important matters such as WOSM's global strategy and budget.