

The issue of Secret Ballot: Chapter I

Sovereignty versus Transparency by *IWMC*

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I. Secret ballots at CITES: Sovereignty *versus* Transparency

- For many developed countries secret ballots at international meetings like CITES serve little purpose. Their political systems are characterized by a level of openness and accountability that makes it necessary for voting information to be available to the public, and the nation is large enough and powerful enough to be able to protect its own interests without attracting any negative repercussions from other nations for the way it has voted. This applies even more to a group of States like the European Union.
- The economies of small nation States and developing countries are often dependent on a few vital industries and are particularly vulnerable to changing trading relationships with larger economies.
- Secret ballots make it difficult for powerful countries to hold smaller countries hostage in international fora like CITES. By knowing how they vote on different proposals, rich countries can apply unfair pressure on small nation States and developing countries by, for example, threatening to introduce trade restrictions on key industries or withdraw aid packages.
- Similarly, many politicians and officials in developed nations are strongly influenced by domestic audiences. Some political systems in particular are flooded with wealthy and unaccountable non-governmental organizations (NGOs) that win favor by providing backing to political candidates. At international meetings like CITES, NGOs use this network of political support to push their agendas on other countries.
- Many developed countries have promoted populist bans on trade in products for many years to satisfy perceptions that this would preserve the species concerned.

For that purpose, they have also needlessly maintained certain species in Appendix I of CITES. These policies have created unnecessary hardships in other countries while netting billions of dollars in revenue for western campaign groups.

- By supporting populist and simplistic measures overseas, rich countries can “export environmentalism” and distract public attention from important domestic environmental issues.
- Secret ballots protect against intimidation in the same way that they protect voters in general elections and political leadership elections in democracies. In this way, they help preserve the sovereignty of small countries in international meetings. No delegates should need to explain their voting behaviour, or be accountable, to delegates from other countries or to NGOs. Meanwhile, since all countries are free to disclose how they **will vote or** have voted on individual issues as they wish, secret ballots do not undermine the desire for accountability in developed countries.

II. Historical background

- From CoP1 (Bern, 1976) to CoP5 (Buenos Aires, 1985), any representative of a CITES Party could request that a vote be taken by roll call or by secret ballot. Such requests did not require any support and were immediately granted. At that time, CITES was, in fact, applying the Rules of Procedure currently in force in several international conventions, such as the Convention on Biological Diversity. These international conventions allow for easy and simple access to the secret ballot for any issue or matter.
- From CoP6 (Ottawa, 1987) to CoP8 (Kyoto, 1992), any representative could request a vote by secret ballot. If supported by another representative, the request was put to the vote and decided by simple majority. This made the actual use of secret ballot almost impossible.
- Since CoP9 (Fort Lauderdale, 1994) any representative may request a vote by secret ballot. If seconded by 10 other representatives, the vote by secret ballot takes place.
- Prior to CoP11 (Gigiri, 2000), under pressure from members of the “Species Survival Network” and from the US CITES Management and Scientific Authorities, a notice was published in the Federal Register (Vol. 64, No.130/Thursday July 8, 1999/Notices) on the use of the secret ballot at CITES meetings. The notice indicated that the secret ballot should “be eliminated at CITES meetings or made more difficult to obtain”, because at CoP10 the secret ballot “precluded meaningful debate on many issues and did not foster transparency in the decision-making process”. Nothing resulted from this notice and the US never submitted a formal proposal about the secret ballot.

- Nevertheless, NGOs found a medium at CoP12 (Santiago, 2002) with a proposal from Chile. The rule on secret ballot was not changed but Decision 12.100 requesting the Standing Committee to consider the general issue was adopted. The Standing Committee considered the issue and decided not to propose any change to the Rules of procedure (see document CoP13 Doc. 1.1).

Since CoP9, major progress has been realized on this issue of the secret ballot. While the system is far from being in line with other conservation conventions, the use of secret ballot at meetings of the Conference of the Parties to CITES has proven to be an important factor in the protection of the sovereign rights of party States.

In spite of this, the issue was not forgotten by those opposed to secret ballots and at the 61st meeting of the Standing Committee (2011) a document was submitted by Hungary, on behalf the Member States of the European Union, to make them more difficult to obtain. The Secretariat was directed to prepare a document on the issue, as the Standing Committee was in 2002.

At SC 62 (2012), the Secretariat submitted document SC62 Doc. 10.3 with an extensive historical presentation of secret ballots in CITES. The Standing Committee noted the document and that Member States of the European Union were considering submitting a proposal to amend the Rules of Procedure of the CoP.

III. Proposals for CoP16: documents CoP16 Doc. 4.2 (Rev. 1) and 4.3 (Rev. 1)

Document CoP16 Doc. 4.2 (Rev. 1) submitted by Hungary contains proposals from the Member States of the European Union. In particular, it is proposing to delete from Rule 25, paragraph 2, of the Rules of procedure the sentences “The Presiding Officer shall ask whether the request is seconded. If it is by 10 Representatives, the vote shall be by secret ballot.”, and to replace them with the sentences “The request for a secret ballot shall immediately be voted upon. The motion for a secret ballot may not be conducted by secret ballot.”

In addition, it is stated in the accompanying document that the decision on the proposals should be taken by a simple majority.

Document CoP16 Doc. 4.3 (Rev. 1) submitted by Chile and Mexico is also proposing to amend Rule 25, paragraph 2. The proposal is nevertheless different from that of the Member States of the EU as it is asking that a request for secret ballot shall be seconded by ‘one third of the Representatives’ instead of ‘10 Representatives’ to be adopted. Surprisingly, it is also proposed to add, at the end of the paragraph, the sentence “The vote on the motion for a secret ballot shall not proceed through secret ballot.”, although no vote is required either under the current text or under the text as proposed.

Once again, "transparency" is portrayed as the main motivating factor. Why is there so much emphasis on "transparency" and not on "privacy"? When casting a vote isn't "privacy" essential?

With the electronic voting system now obligatory in CoP meetings, the argument that secret ballots are time consuming is of course not valid anymore.

IV. Why have secret ballots? The situation in CITES

THE ROLE OF INTIMIDATION: OR THE REAL MEANING OF TRANSPARENCY

The party States would feel less pressure in using Secret Ballots whenever the sovereignty of the Parties or the integrity of the Convention is in jeopardy. The voting rights of people and nations should always remain sacred. Opponents to the secret ballot say it would diminish the so-called "transparency" of the proceedings and destroy the credibility of the institution. This is far from being true.

To begin with, the actions of a delegation must be transparent to its own government and people. **But no delegates should need to explain their voting behaviour, or be accountable, to delegates from other countries or to NGOs.** In CITES, the only benefit to open voting is that it permits coercion and pressure on small nations from more powerful nations and wealthy NGOs.

International organisations are using secret ballots more and more as a means of protecting members from coercion. It is important to ensure that a delegate's vote reflects principles, national philosophy, cultures and traditions... and not fear of reprisal. Coercion is highly polarising and brings an end to constructive diplomatic discussions. Outrageous behaviour creates tension, fear, and distrust and fuels the fire of discord. The only entities who benefit from such actions are the NGOs who proudly trumpet their obstructive activities for fundraising and other purposes.

V. Why do extreme NGOs so strongly oppose the use of Secret Ballot?

In many States, mainly developed, many politicians spend their political lives under the fear of being "categorized" by environmental extremists. Any animal rights and/or protectionist issue, law, proposal or even comment is, in the language of the extremists, "a conservation issue" that needs to be supported by any politician. Whoever does not is quickly classified as "anti-conservationist" and becomes a pariah to political correctness. The outcast politician sees his political career seriously jeopardized. On the other hand, politicians supportive of "environmental" issues see their careers enhanced by the support of extreme NGOs.

In the process of influencing voting within States, NGOs deprive the public of their rights to proper representation. Human rights become irrelevant.

In order to safeguard their political and financial capital internationally, the animal rights and protectionist NGOs need to identify clearly how each nation votes on a specific subject. The open vote of a nation at CITES is subject to interpretation. Prior to the use of the secret ballot in CITES, some CITES Party States felt pressure to vote in a manner incompatible with their national philosophy, interests, culture and traditions. In such cases, not only the Human Rights but Sovereign Rights are eroded. In addition, since some NGOs refuse to contribute the CITES Sponsored Delegates Project and prefer to directly sponsor delegates of their own choice, it became more important for these NGOs to know how 'their' sponsored delegates are voting.

The theorem is simple. The secret ballot when used at a meeting of the Conference of the Parties to CITES is an important means for independent States to protect their Sovereign Rights.

VI. Use of Secret Ballots in International Conventions and Agreements

Among the international environmental conventions, some provide for the possibility of secret ballot by simple request of one State Party Representative with this clear provision: *"... if at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question".*

In fact, granting a secret ballot by the simple request of one single representative of a State Party can be found in the Rules of Procedure of each one of the following organizations:

1. The 1992 Convention on Biological Diversity (CBD)
2. The Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols
3. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
4. The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer
5. The 1985 Vienna Convention for the Protection of the Ozone Layer.
6. The 1995 Framework Convention on Climate Change:

VII. Conclusions

The proposed amendments to the CITES Rules of Procedures, submitted by the Member States of the EU and Chile and Mexico, should be rejected outright, as representing a serious threat to the Sovereign Rights of CITES Parties.

If any modifications to the procedure for secret ballot shall take place, it should be to render CITES procedures in line with the Convention on Biodiversity and other conservation conventions, by allowing a secret ballot on any issue when requested by a representative of a party State.