

THE ISSUE OF SECRET BALLOT: CHAPTER II

Method of voting for amendments to Rules of procedure

By IWMC

What method of voting to use to amend the Rules of procedure?

INTRODUCTION

The Rules of Procedure for meetings of the Conference of the Parties to CITES remain valid from one meeting to the next, during which they may be amended by the Conference. Neither the Convention nor the Rules specify the method of voting for the adoption of such amendments, although this was considered and agreed at CoP9 (Fort Lauderdale, 1994). Now, the Secretariat is making new recommendations on that issue, with which IWMC is not in agreement. This is discussed below.

Rule 26 Majority

- 1. Except where otherwise provided for under the provisions of the Convention, these Rules or the Terms of Reference for the Administration of the Trust Fund, all votes on procedural matters relating to the conduct of the business of the meeting shall be decided by a simple majority of the Representatives present and voting, while all other decisions shall be taken by a two-thirds majority of Representatives present and voting.*

IWMC Interpretation

- 1. "Except where otherwise provided for under the provisions of the Convention, these Rules or the Terms of Reference for the Administration of the Trust Fund, ..."*

This first part of Rule 26,1. states clearly the method of voting that shall apply in all circumstances if they are not specifically covered in the text of the Convention - like it is the case for paragraph 7 of Article XI and of Article XV, paragraph 1.(b) - the Terms of Reference for the Administration of the Trust Fund and these Rules. So if nothing is specified in these three documents, the following methods of voting will apply.

- 2. "... all votes on procedural matters relating to the conduct of the business of the meeting shall be decided by a simple majority of the Representatives present and voting..."*

The procedural matters "relating to the conduct of the business of the meeting" are decided by simple majority. Again the wording clearly indicates that the votes decided by simple majority are restricted to procedural motions in the "conduct of the business of the meeting". The

procedural motions referred to are those - and only those - which are included in Rule 18, as indicated under its title (*Procedural motions*), and Rule 19 of Part IV of the Rules of Procedure. There is absolutely no way that the meaning could be extended – even by the greatest display of imagination – to be applied to a decision of the Conference of the Parties that would call for a 2/3rd majority. Otherwise, several decisions of the Conference of the Parties could be dealt with by simple majority if they be seen as, or linked somehow to “procedural matters”. In reality certain decisions and resolutions of the Conference of the Parties could be defined as “procedural matters relating to the conduct of the business of the meeting”, by extending the notion of “procedural matters” as the Secretariat does.

As such, Resolution Conf. 13.8 on *the participation of Observers at CoPs*, and Conf. 4.6 (Rev. CoP15) on the *submission of draft resolutions and other documents* - such as draft amendments to the Rules of Procedure - could, in principle, have been decided by simple majority, being considered as “procedural matters “. This is definitely not the case.

3. *“...while all other decisions shall be taken by a two-thirds majority of Representatives present and voting.”*

This should apply to any substantial decisions by the Conference of the Parties unless otherwise covered by one of the three documents referred to in the first part of paragraph 1 of Rule 26. When the Rules of Procedure were adopted by the Conference of the Parties they would have required a 2/3rd majority, should they have been put up for vote. The adoption of the Rules was a “substantial” issue; any amendment to the same Rules requires the same method of voting, therefore a 2/3rd majority.

CRITICISMS OF THE CITES SECRETARIAT OPINION

Note: This is assuming that the opinion reported in the document CoP16 Doc. 4.2 (Rev.1), submitted by Denmark on behalf of the European Union, is a true reflection of the Secretariat position. If such is the case, the Secretariat has concluded its position on two baseless and wrong assertions:

- a) an the absence of specific provisions in the text of the Convention, the simple majority should apply; and
- b) an amendment to the Rules of Procedure is a “procedural matter”.

Doc. 4.2 (Rev.1) *“A related issue that has been raised with the Secretariat is what majority is required to amend the Rules of Procedure of the Conference of the Parties. The Secretariat considers that amendment of the Rules of Procedure of the Conference of the Parties requires a simple majority, and bases this view on four points:*

- i) *The text of the Convention, in several places, indicates the majority required for the making of decisions by the Conference of the Parties. In one case, it is one-third (Article*

XI, paragraph 7); in two cases it is two-thirds (Article XV, paragraph 1. (b); Article XVII, paragraph 1). However, with regard to adoption of the Rules of Procedure of the Conference of the Parties (Article XI, paragraph 5), the Convention is silent regarding the majority. The Secretariat interprets this to mean that decision should be taken by a simple majority unless the Conference decides otherwise;”

IWMC comments: The first part of the final sentence of this paragraph is baseless and flawed. There is absolutely nothing leading to the conclusion reached by the Secretariat. The absence of specific provisions shall be interpreted in the light of the extent of the few specific ones found in the text. The exception of paragraph 7 of Article XI of the text of the Convention provides an indication that the intent is to have all other substantial issues decide by a 2/3rd majority if a vote is called.

Regarding the last part of the final sentence, it must be noted that the Conference of the Parties agreed at CoP9, after extensive discussions, that a 2/3rd majority was required to adopt amendments to the Rules of procedure. Consequently, an amendment was adopted and another one was withdrawn; then the Rules were adopted by consensus.

The Convention carries several provisions – or absence thereof – which have called for a stricter and more defined interpretation by the Parties. Rule 26 of the Rules of procedure is one of them and erases any doubt as to the 2/3rd requirement, by limiting the simple majority to motions of procedure raised during sessions. Those are the only one that logically can be called “procedural matters relating to the conduct of the business of the meeting.”

Doc. 4.2 (Rev. 1)

ii) “As indicated in Rule 26.1 (see paragraph E. above), if the amendment of the Rules is considered to be a procedural matter relating to the conduct of the business of the meeting, then it shall be decided by a simple majority. Otherwise, it shall be decided by a two-thirds majority. It is self-evident that the substance of the Rules relates to the conduct of the meeting;”

IWMC comments: The word “if” here is key to the understanding of the conclusions reached by the Secretariat. Of course “if it is”, it is. But it is not! If an amendment to a text of the importance of that of the Rules of Procedure is a procedural matter, then any amendment to any resolution or decision previously taken by the Parties could also be considered as such.

This is confirmed by Rules 20 and 21 concerning the submission and decision making on draft resolutions, draft decisions (if the amendments proposed elsewhere by the Secretariat are adopted) and other documents, the last term including without any doubt the Rules of Procedure and any proposed draft amendments to them. This is why the amendments to the

Rules proposed for consideration at CoP16 have been submitted in accordance with Rule 20 and why they have to be considered in accordance with Rule 21.

The case below may be also of some reference. At CoP10, in Committee II, under Agenda XIV Interpretation and Implementation of the Convention:

[... Enforcement

b) Working Group on Illegal Trade in CITES Specimens, the following record is found:

“The Chairman stated that he would call a roll-call vote on the principle of establishing a working group as discussed in document Doc. 10.29. The Chairman of the Credentials Committee reported that, as of 09h00 that morning, delegations of 114 Parties had submitted credentials and 112 of these had been accepted. The Chairman considered that the subject of the vote was a substantive issue and would therefore require a 2/3 majority of those Parties voting to be accepted. The delegations of the United Kingdom and the United States of America both considered that the matter was procedural rather than substantive but deferred to the opinion of the Chairman.”

This record indicates that, in accordance with the Rule of Procedure, the establishment of a working group was treated as a substantial matter.

Doc. 4.2 (Rev. 1)

iii) The question of which majority applies to the amendment of the Rules of Procedure will be decided first by the Presiding Officer. If the decision is appealed, it shall be immediately put to a vote and decided by a simple majority, in accordance with Rule 18.1;

IWMC comments: Experience has shown that any Chairperson will always rely on the expertise of the Secretariat when ruling on such complicated issue. CITES has had several Chairpersons of tremendous knowledge and political skills. None of them had a thorough knowledge of the Rules of Procedure. Nevertheless, they always had to rely on the expertise of the Secretariat for their ruling and, in several cases, seek the advice of the Bureau. At CoP9, the Chairman relied on the Secretariat to answer to a question on the majority required to adopt amendments to the Rules of Procedure, with the result indicated above, a two-thirds majority.

Doc. 4.2 (Rev.1)

iv) In the United Nations General Assembly, amend of the Rules of Procedure is decided by a simple majority (under Rule 163).

IWMC comments: CITES is not the United Nations and is not a UN convention. In addition, as indicated by the Secretariat, the majority is specified in Rule 163. It is not specified in the CITES

Rules of Procedure, although it could become so if the latter would be amended by the Conference of the Parties, either by consensus or through a vote by a two thirds majority.

Conclusion

As commonly accepted and defined by different law regimes, amending the Rules of Procedure is a substantial issue that may not, in anyway, be related to a “procedural matter”.

Such an action should therefore be decided by a 2/3rd majority.