

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Sixty-ninth meeting of the Standing Committee
Geneva (Switzerland), 27 November – 1 December 2017

Strategic matters

Rules of procedure

REVIEW OF THE RULES OF PROCEDURE OF
THE CONFERENCE OF THE PARTIES

1. This document has been prepared by the Secretariat.

Introduction

2. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Rules of Procedure for CoP17¹. At the same time, the Conference of the Parties noted the statement made by the European Union to CoP17, contained in summary record CoP17 Plen. 2, Annex 2. It also adopted Decision 17.1 directed to the Standing Committee as follows:

With the support of the Secretariat, the Standing Committee shall review the Rules of Procedure for the Conference of the Parties, including, but not limited to, rules 4, 5, 9, 25, 26, 27, 28 and 32; and propose amendments, as appropriate, at the 18th meeting of the Conference of the Parties with a view to ensuring the effective conduct of meetings.*

* This refers to the rule numbers in Annex 2 of document CoP17 Doc. 4.1 (Rev. 1).

Background

3. At its 66th meeting (SC66, Geneva, January 2016), the Standing Committee requested the Secretariat to work in close collaboration with the Chairs of the Animals, Plants and Standing Committees to draft a revised set of Rules of Procedure of the CITES bodies. In addition to the revisions necessary after a regional economic integration organization (REIO) had become a Party to the Convention, the revisions should focus on:
 - a) inconsistencies and omissions;
 - b) ensuring a balanced representation in the working groups;
 - c) simplifying the number of working groups, and
 - d) revision of the postal procedure contained in the rules of procedure of the Standing Committee.
4. As directed by the Standing Committee, the Secretariat worked in close cooperation with the Chairs of the permanent committees to prepare draft rules of procedure for the Conference of the Parties and circulated a draft for wider input by the Parties. Based on the comments provided during this process, two

¹ The consolidated Rules of Procedure of the Conference of the Parties can be found here:
<https://cites.org/sites/default/files/eng/cop/E17-CoP-Rules.pdf>

teleconferences were held with Parties from all regions who had submitted comments on the draft rules. Based on these discussions, the Secretariat prepared a revised set of Rules for consideration by the Conference of the Parties, contained in Annex 2 of document CoP17 Doc. 4.1 (Rev. 1).

5. The results were presented to CoP17 in document CoP17 Doc. 4.1 (Rev. 1). The CoP agreed that certain rules required further discussion and the Conference therefore adopted Decision 17.1 mentioned in paragraph 2, directing the Standing Committee with the support of the Secretariat to further review the Rules, in particular those Rules where divergent views persisted.

Rules identified by CoP17 for review

6. To assist the Standing Committee in its review of the specific rules identified by CoP17 in Decision 17.1, a short description of the background and the issues related to each of the rules are provided in the following paragraphs.

Rule 4 Observers

7. Rule 4 on observers builds on paragraph 7 of Article XI of the Convention and further integrates provisions that were previously set out in Resolution Conf. 13.8 (Rev. CoP16) on *Participation of Observers in meetings of the Conference of the Parties*. The present Rule 4 hence sets out the conditions and requirements for participation in meetings of the CoP by non-State actors and reads as follows:

1. *The United Nations, its specialized agencies, the International Atomic Energy Agency, as well as any State not a Party to the Convention may be represented at the meeting by observers who shall have the right to participate in the plenary sessions and sessions of Committees I and II but not to vote.*³

2. *Any body or agency technically qualified in protection, conservation or management of wild fauna and flora which is either:*

- a) *an intergovernmental or a national governmental agency or body; or*

- b) *an international or national non-governmental agency or body, including a private sector entity;*

and which has informed the Secretariat of the Convention of its desire to be represented at the meeting by observers 60 days before the meeting⁴, shall be permitted to be so represented in the plenary sessions and sessions of Committees I and II, unless one-third of the Representatives present and voting object. Once admitted, these observers shall have the right to participate but not to vote.⁵ However, the right of observers to participate may be withdrawn if so agreed by one-third of the Representatives present and voting.

3. *A body or an agency referred to in paragraph 2 of this Rule desiring to be represented at the meeting by observers shall submit the names of these observers, pay the standard participation charge to the Secretariat at least 60 days prior to the opening of the meeting and provide:*

- a) *evidence of the approval of the State in which it is located in the case of a national non-governmental body or agency; or⁶*

- b) *evidence that it has a legal persona and an international character, remit and programme of activities in the case of an international non-governmental body or agency.*

Footnotes:

³ See Convention, Article XI, paragraph 6.

⁴ Where justified, the Secretariat may exceptionally accept late registrations.

⁵ See Convention, Article XI, paragraph 7.

⁶ See Convention, Article XI, paragraph 7 (b)

8. In its proposal to the Conference of the Parties, the Secretariat had suggested that evidence requested in paragraph 3 (a) and (b) would not be needed if the body or agency had already been registered by the Secretariat. As explained in paragraph 20 of document CoP17 Doc. 4.1 (Rev. 1), the Secretariat proposed *“that a national or international non-governmental agency or body that has already been registered for previous meetings would generally not be required to submit the same documents for the next meeting. The Secretariat maintains the records of approved international and national non-governmental agencies and*

bodies from one meeting of the CoP to the next and hence, such observers would generally only need approval once, although there may be exceptions to this general rule.” This suggestion is in accordance with the practice and principles of the United Nations, see Economic and Social Council Resolution 1996/31.² During the discussions of the Rules at CoP17, some Parties suggested that the document should be valid only for one consecutive meeting, whereas others thought the documentation should be provided for each meeting in accordance with the provisions of the Convention. The CoP therefore requested the Standing Committee to revisit the rule.

Rule 5 Credentials

9. At CoP17, paragraph 1 of the Rule 5 on credentials was adapted to take into account that a regional economic integration organization (REIO) had become a Party to the Convention. The current Rule reads as follows:
 1. *The Representative and any Alternative Representative of a Party as well as any Adviser in the delegation shall have been granted powers by a proper authority, i.e. the Head of State, the Head of Government or the Minister of Foreign Affairs, or, in the case of a regional economic integration organization, by the competent authority of that organization, enabling him/her to represent the Party at the meeting.*
10. As noted by the Secretariat in paragraph 21 of document CoP17 Doc. 4.1 (Rev. 1), “During the consultations on the draft, it was suggested that an obligation be included for REIOs to indicate in their credentials the matters on the agenda of the CoP within their competence.” Specific proposals to include this obligation in this paragraph were put forward by some delegations (see information document CoP17 Inf. 12) but were opposed by other Parties. The only REIO that was a Party to the Convention at the time of CoP17, i.e. the European Union (EU), shared an information document (CoP17 Inf. 29) on the distribution of the exercise of the voting rights between the EU and its member States, which addressed the issue for CoP17. The Standing Committee was requested to review this rule in conjunction with Rule 26 on the Right to vote (see below).

Rule 9 Quorum

11. At CoP17, Parties adopted the following rule on quorum reflecting the fact that a REIO had become a Party to the Convention:

A quorum for a plenary session of the meeting or for a session of Committee I or II shall consist of one-half of the Parties having delegations at the meeting. No plenary session or session of Committee I or II shall take place in the absence of a quorum. For the purposes of calculating the quorum, a regional economic integration organization shall not be counted in addition to its member States.
12. During the discussions of this rule, some Parties noted that the rules on quorum with regard to REIOs should reflect the distribution of the exercise of the voting rights between the REIO and its member States, i.e. that different rules should apply according to whether the REIO or its member States were competent on a specific matter. They considered that the current rule does not accurately reflect this, but no alternative text was agreed and the rule was included in the review by the Standing Committee.

Rule 25 Procedure for deciding on proposals for amendment of Appendices I and II

13. Paragraph 6 of Rule 25 contains the current rules to be applied when different proposals for amendment of the Appendices relate to the same taxon, but are different in substance. The current rule reads as follows:
 6. *If two or more proposals including proposals amended in accordance with Rule 22, paragraph 2, and proposals made in accordance with Rule 23, paragraph 5 relate to the same taxon, but are different in substance, the Conference shall first decide on the proposal that will have the least restrictive effect on the trade and then on the proposal with the next least restrictive effect on the trade, and so on until all proposals have been submitted to decision. When however, the adoption of one proposal necessarily implies the rejection of another proposal, the latter proposal shall not be submitted to decision.*

² <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>.

14. As mentioned in the Secretariat's report to CoP17 [CoP17 Doc. 4.1 (Rev.1)], "In their comments during the consultations, some Parties noted that the rules for considering documents and for deciding on proposals for amendment of Appendices I and II remained ambiguous and merited further consideration by Parties. Specific suggestions for changes have also been proposed." The Secretariat, however, suggested that discussions on the possible amendment of this rule be held at the Standing Committee as part of the deliberations on the rules of procedure to be adopted for its 18th meeting (CoP18). For CoP17, Israel put forward a proposal on this rule, see document CoP17 Doc. 4.3 (Rev.1).
15. It is recalled that the present paragraph 6 in the Rule has existed without changes since the 12th meeting of the Conference of the Parties (CoP12, Santiago, 2002). In preparing for that meeting, the Secretariat proposed two substantive changes to the rule to the Standing Committee in document SC46 Doc. 7.4. The relevant part of the document reads as follows:

"In new paragraph 6, two substantive changes are proposed.

- The first is to suggest an unambiguous approach to deciding which proposal to consider first when there are two amendment proposals that relate to the same taxon but are different in substance. The existing text requires determination of which proposal will have the "greatest effect on the trade". Experience has shown that this can be interpreted in different ways. The Secretariat suggests that an improvement would be to decide first on the least trade-restrictive proposal and then on the next least trade-restrictive proposal. In this way the Conference can decide by stages what level of trade-restriction is adequate. This approach is further consistent with generally accepted principles, such as that trade restrictions should be imposed only when they are necessary and that any measures imposed should be the least trade-restrictive required.*
- The second change deals with the case where one of the proposals relating to the same species is rejected. The change suggested is intended both to provide clarification and, by using the language of Rule 21, paragraph 6, to apply the same principle to discussion of amendment proposals as to draft resolutions."*

These proposed changes to the Rule were adopted without further discussion at the 46th meeting of the Standing Committee and subsequently by CoP12.

16. In preparing for the 16th meeting of the Conference of the Parties (CoP16, Bangkok, 2013), the Secretariat had suggested several amendments to the rule set out in document CoP16 Doc. 4.1 (Rev. 1). The proposals dealt with three concerns related to the rule: firstly, the order in which proposals to amend Appendices I and II are considered; secondly, the order for the considerations of proposals to amend those proposals; and thirdly the adoption of proposals to amend the Appendices that have been changed during the discussion.
17. At CoP16, the Secretariat withdrew these proposals during its introduction of the document and they were never considered by the CoP. For ease of reference, the text of the proposals is therefore included in the annex to this document.

Rule 26 Right to vote

18. At CoP17 Parties adopted an amendment to paragraph 1 of the rule on the right to vote reflecting the fact that a REIO had become a Party to the Convention to read as follows:

1. Each Party shall have one vote, except as provided for in the Convention.

19. Article XXI, paragraphs 4 and 5, of the Convention contain the provisions to which this rule refers. At the time of the adoption of the Rules of Procedure at CoP17, it was understood that the Rules of Procedure would apply to CoP17 and that the Standing Committee would be tasked with reviewing the rules prior to the next meeting of the CoP. Further, the REIO presently Party to the Convention read out the following statement on its exercise of the voting right of the REIO and its Member States at CoP17:

Statement by the EU to CoP17 in relation to agenda item 4.1

- 1. The EU attends this COP together with the 28 Member States of the Union who are all present and accredited at this meeting. We acknowledge that this being the first time a REIO joins the Convention, there are questions by other Parties how this works in practice.*

2. *We have already shared information documents ahead of CoP 17 on the practical implications of the EU's accession and on the distribution of the exercise of voting rights between the EU and the Member States.*
 3. *From this information document you can see on which agenda point the EU will exercise its right to vote and on which ones the 28 Member States will press the buttons. Where the EU will vote it does so in line with Article XXI of the Convention which says clearly that "In the fields of their competence, regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention. Such organizations shall not exercise their right to vote if their Member States exercise theirs, and vice versa".*
 4. *The 28 EU Member States will remain present during the entire CoP 17 and it is understood that the EU Member States will attend each session of the CoP and it is understood that no Party will challenge the EU's exercise of its right to vote at CoP.*
20. As noted above, the Conference noted the statement contained in summary record CoP17 Plen. 2, Annex 2. The revised paragraph 1 and the statement by the European Union replaced the suggested amendments to Rule 26, put forward by the Secretariat in document CoP17 Doc. 4.1 (Rev. 1), on which there was no agreement by the Parties.

21. It is recalled that this Rule should be considered in conjunction with Rule 5 on credentials, see above.

Rule 27 Methods of voting – secret ballot

22. Paragraph 2 of Rule 27 concerns voting by secret ballot. It currently reads as follows:

2. *All votes in respect of the election of officers or of prospective host countries shall be by secret ballot when there is more than one candidate and, although it shall not normally be used, any Representative may request a secret ballot for other matters. The Presiding Officer shall ask whether the request is seconded. If it is seconded by 10 Representatives the vote shall be by secret ballot.*

23. The Conference of the Parties have discussed this rule several times, notably at its 16th meeting where two different proposals were put forward: document CoP16 Doc. 4.2 (Rev. 1) suggested that a simple majority should be required to decide that a vote should be taken by secret ballot, while document CoP16 Doc. 4.3 (Rev. 1) suggested that a secret ballot should be triggered if at least one-third of the representatives present and voting supported a motion to that effect. Further, the second proposal specified that the vote on whether to take a decision by secret ballot could not be taken by secret ballot itself. It is recalled that none of the proposals were accepted by CoP16.

24. At CoP17, the issue was raised again in document CoP17 Doc. 4.3 (Rev. 1) which contained the following proposal to amend the last sentence of paragraph 2 of the rule:

If it is seconded by ~~40~~ a simple majority of the Representatives present and voting, then the vote shall be by secret ballot. The determination of whether a vote shall be by secret ballot, shall not be made by secret ballot.

25. In view of the fact that the Conference decided to direct the Standing Committee to review the Rules, it was agreed not to discuss this proposal at CoP17.

Rule 28 and Rule 32 Amendment of the Rules of Procedure

26. The issue relates to the majority required to amend the Rules of Procedure. The Rule on amendment of the Rules of Procedure currently reads as follows:

Rule 32 Amendment

These Rules are established by the Conference of the Parties and shall remain valid for each meeting of the Conference unless they are amended by decision of the Conference.

27. The Rule does not explicitly state how such decisions should be made in the absence of consensus and the general rule on majority therefore applies. This is contained in paragraph 1 of Rule 28 which currently reads as follows:

Rule 28 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.*
28. At CoP16, it was discussed which majority would be required to change the Rules of Procedure in the absence of consensus; by a simple majority or by a two-thirds majority of the Representatives present and voting. The question was put to a vote which resulted in a decision which “clarified that any proposal to amend the Rules of Procedure would be decided by a two-thirds majority.” (See summary record CoP16 Plen. 4).
29. In document CoP17 Doc 4.1 (Rev. 1), the Secretariat proposed to codify this decision by amending the two Rules (28 and 32) to make it clear that when no consensus can be found on proposals to amend the Rules of Procedure and they are put to a vote, such decisions shall be taken by a two-thirds majority. A similar proposal was put forward in document CoP17 Doc. 4.2.
30. At CoP17, Parties did not agree to these proposals and the Rules remained unchanged.

Recommendations

31. It is recalled that, at its 68th meeting, the Standing Committee agreed to form a working group on the review of the Rules of Procedure of the Conference of the Parties at its 69th meeting (SC69) and that Canada, China and Israel were selected as the interim leads for initiating any possible work before SC69.
32. The Secretariat recommends that an intersessional working group be formally established at the present meeting and a chair and members appointed, noting that previous work on the review of the Rules of Procedure has been chaired by the Chair of the Standing Committee.
33. Using the information contained in the present document and working via electronic means, the working group shall present the results of its work to the Standing Committee at its 70th meeting to enable the Committee to “propose amendments, as appropriate, at the 18th meeting of the Conference of the Parties with a view to ensuring the effective conduct of meetings” as mandated by CoP17.
34. As requested by the CoP, the Secretariat is ready and available to continue to support the work of the Standing Committee and its working group.

Proposed amendments to the Rule 23 on Procedure for deciding on proposals for amendment of Appendices I and II, as put forward by the Secretariat in document CoP16 Doc. 4.1 (Rev. 1)

4. a) If two or more proposals for amendment of Appendices I and II relate to the same taxon and have the same substance, the Conference shall decide on one proposal only. If this proposal is adopted or rejected, the other or others is or are deemed to be adopted or rejected also.
- b) If two or more proposals for amendment of Appendices I and II relate to the same taxon, but are different in substance, the Conference shall first decide on the proposal that would have the least restrictive effect on trade and then on the proposal that would have the next least restrictive effect on the trade, and so on until all proposals have been submitted to decision. When however, the adoption of one proposal necessarily implies the rejection of another proposal, the latter proposal shall not be submitted to decision.
5. a) Any Representative may propose an amendment to a proposal for amendment of Appendix I or II to reduce its scope or to make it more precise. The Presiding Officer may permit the immediate discussion and consideration of such a proposed amendment even though it has not been circulated previously. When such an amendment is moved, the amendment to the proposal shall be decided on first.
- b) If two or more proposals are made, in accordance with Rule 23, paragraph 5.a), to amend a proposal to amend Appendix I or II, the Conference shall first decide on the proposed amendment that would have the least restrictive effect on the trade and then on the proposed amendment that would have the next least restrictive effect on the trade, and so on until all proposed amendments have been submitted to decision. When however, the adoption of one proposed amendment necessarily implies the rejection of another, the latter shall not be submitted to decision.
6. ~~If two or more proposals including proposals amended in accordance with Rule 22, paragraph 2, and proposals made in accordance with Rule 23, paragraph 5, relate to the same taxon, but are different in substance, the Conference shall first decide on the proposal that will have the least restrictive effect on the trade and then on the proposal with the next least restrictive effect on the trade, and so on until all proposals have been submitted to decision. When however, the adoption of one proposal necessarily implies the rejection of another proposal, the latter proposal shall not be submitted to decision.~~
- If one or more amendments to a proposal to amend Appendix I or II are agreed, the amended proposal shall then be decided upon.