

Rules of Procedure

VOTING BEFORE CREDENTIALS HAVE BEEN ACCEPTED

1. This document has been prepared by the Secretariat.
2. In Decision No. 1 directed to the Secretariat adopted at the ninth meeting of the Conference of the Parties, the Conference directed the Secretary General to "investigate how other conventions overcome the issue of voting before credentials have been established and report to the 10th meeting of the Conference of the Parties".
3. The Secretariat has investigated the procedures adopted or followed by other Conventions.
4. – The United Nations Framework Convention on Climate Change (UNFCCC) has not yet adopted Rules of Procedures at all. At its meetings, the Conference of the Parties to the UNFCCC apply the draft rules proposed at the first meeting but they have not yet reached agreement on Rule 42 (which refers to the majorities when voting on substantive matters takes place). Consequently, the Conference has never voted. In the provisionally applied rules, rule 21 allows only provisional participation (not voting) pending approval of credentials.
5. – The situation is similar for the Convention on Biological Diversity, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Convention on Migratory Species. All the three have, in their Rules of Procedure, a rule that "pending a decision of the meeting upon their credentials representatives shall be entitled to participate provisionally in the meeting". None of them explicitly allows voting before approval of credentials. According to their Secretariats, at meetings of their respective Conferences of the Parties, none of the three Conferences has ever voted.
6. – The rules of procedures for meetings of the Conference of the Parties of the Convention on Biological Diversity have not yet been fully adopted, since CoP3 decided "to transmit to its fourth meeting for further consideration paragraph 1 of rule 40", which also refers to voting.
7. The Secretariat has consulted the environmental law unit at the United Nations Headquarters and consequently submits to the Conference of the Parties the following comments.
8. It is clear that there is a firmly established principle, accepted by all multilateral negotiating bodies, that delegates should be allowed to vote only after the body duly designated for the purpose has approved their credentials.
9. The Conference of the Parties to CITES has accepted this principle since long ago and it is reflected in Rule 3 of the Rules of Procedure tabled at the tenth meeting of the Conference of the Parties in document Doc. 10.3. The same text was approved by the Conference at its previous meetings.
10. Most major decisions are usually taken during the later stage of the meetings of the Conference, and to date it has not experienced serious problems with the implementation of Rule 3 of the Rules of Procedure. It is obvious however that the time frame of the meeting of the Conference and the pressure for it to conduct its business as efficiently as possible necessitate that some issues are decided at the very beginning, that is before the Credentials Committee is even elected. The adoption of the Rules of Procedure, the election of the Officers of the meeting and, later, the adoption of the Agenda and the Working Programme are among such issues.
11. Although these have usually been decided by general consensus, in some cases there have been requests to vote on some issues before the approval of credentials. The most recent case was during the second plenary session at the ninth meeting of the Conference of the Parties (Fort Lauderdale, 1994), on the procedures for a secret vote. The vote on that issue was postponed until the report of the Credentials Committee had been received.
12. It is possible that, in the future, there might be a case where there is a compelling reason for the Conference of the Parties to vote before credentials have been approved.
13. The above experience has shown once again, however, that the Parties generally do not wish to change the last sentence of Rule 3, paragraph (3), of the Rules of Procedure, which contains the principle mentioned in paragraph 3 above.
14. At its ninth meeting, the Conference of the Parties accepted that, before the adoption of the Rules of Procedure for the meeting, the Rules adopted at the previous meeting would apply [see document Plen. 9.2 (Rev.), Proceedings of the Ninth Meeting of the Conference of the Parties, page 148, first paragraph].
15. Accordingly, if at the 10th meeting there is a motion for a vote before the Rules of Procedure in document Doc. 10.3 is adopted, the Chairman will have to defer a decision on the matter for which voting is required until the report of the Credentials Committee is approved by the meeting.
16. The same will apply for the opening session of the 11th meeting if the Conference approves the Rules of Procedure in document Doc. 10.3.
17. If, however, the Conference comes to the conclusion that there will often in future be circumstances when there are compelling reasons to vote before the credentials are approved, it may wish to decide to amend the Rules in order to deal with such circumstances appropriately.
18. In this case, there are several options for amending the Rules of Procedure, as follows.
19. – Add a general provision to empower the Chairman to declare an exemption from the Rules; this would allow him/her to invite an early vote under such an exemption from Rule 3.
20. – Add a provision for temporary suspension of the Rules; on the basis of this, the Chair would suspend the relevant Rules and accord the voting rights to the delegates pending the decision of the Conference on the Credentials. The same result may be obtained without changing the rules if the Conference of the Parties decides by consensus (i.e. without a vote), to suspend the rules to allow a single vote to take place.

21. – Allow delegates to vote on the basis of a 'provisional approval' of the credentials by the Chairman of the Standing Committee, who acts as the Chairman of the Conference until its officers are elected.
 22. The third option might deprive some delegates of the right to vote since some (or even many) of them might not be able to deliver their credentials to the Secretariat early enough to obtain the provisional approval for the first session.
 23. To avoid this, and many other possible delays and complications, including challenges from one or more delegations as to the correctness of the 'provisionally approved' list of those who would have the right to participate in an early vote, the Secretariat refrains from proposing any changes of the Rules of Procedure in this respect.
24. If the Parties do see a need to amend the Rules, the Conference itself, or the Standing Committee, if instructed by the Conference, would have to consider the issue in the light of paragraphs 17. to 21. above.
 25. In the meantime, the Secretariat takes the liberty to draw the attention of the Parties to the following.
 26. In order to ensure the smooth conduct of the meeting, it is extremely important that the duly signed Credentials of Representatives, or their alternates [see Rule 3, paragraph (1) of the Rules of Procedure], as well as the names of all other members of their respective delegations, are submitted to the Secretariat of the Convention before the first session of the meeting. Otherwise the preparation of the report of the Credentials Committee will be even further delayed, with negative consequences for the expedient running of the meeting.