

Comments by IWMC on the proposed amendments to the Rules of Procedure submitted by the Secretariat, Botswana and South Africa and Israel in documents CoP17 Doc. 4.1, 4.2 and 4.3

Introduction

The main purpose of the Standing Committee to amend the Rules of Procedure was to take into account the fact that the European Union became a Party to CITES as a regional economic integration organization, in accordance with the Gaborone amendment to Article XXI of the Convention. The Secretariat was instructed to prepare the necessary amendments to the Rules in consultation with the Chairs of the Standing Committee and the Animals and Plants Committees.

As indicated in the Secretariat document, no consensus was reached on various proposed amendments and therefore we may expect significant discussions at CoP17, and it appears doubtful that the Conference would be able to find two-thirds majority votes on certain issues, whether they would be in line or not with the proposed amendments, in particular those concerning the required majority to amend the Rules of Procedure.

At CoP16, the Conference logically decided, as it did already at CoP9, that a two-third majority was required to amend the Rules and at its 66th meeting, the Standing Committee refused to consider amendment proposals from the Secretariat to specify the required majority in the Rules. Now this issue is put again on the table.

Document CoP17 Doc 4.1, submitted by the Secretariat, must be considered carefully and may be considered as a potential trap with respect to the majority required to amend the Rules of Procedure. Although the proposed text in Annex 3 to the document clearly specifies that the required majority is two thirds, it is rather unlikely that this specific text would reach the currently agreed two-thirds majority vote at CoP17. Therefore other proposed wording would need to be carefully considered not to have the adoption of amendments to the Rules considered as a procedural matter.

This applies also to the proposals from Israel and Namibia and South Africa.

Specific comments are provided below on that particular issue, as well as on other proposed amendments in the three submitted documents. The absence of comments on a number of proposed amendments means that their adoption may be adopted, although all of them are necessary.

The numbering system used below is following that used by the Secretariat in document CoP17 Doc. 4.1.

Rule 1

Considering the text proposed in Rule 32, whether the proposed amendments are accepted or not, we may question the need of this proposed new rule. In addition, the proposed text is not appropriate as it does not provide that the Rules may be amended by decision of the Conference.

Furthermore, at our knowledge, not all Parties have accepted formally the Bonn amendment to Article XI, paragraph 3, subparagraph (a). Therefore, the footnote should be changed to also take this into account. Finally, 'rules of procedure' should read Rules of Procedure as elsewhere in the text.

Rule 2, paragraph a)

The proposed definition of 'Convention' is not correct. The Convention is the text adopted in Washington, D.C., as amended in Bonn and in Gaborone since these two amendments have been accepted in accordance with Article XVII, paragraph 3.

In addition, it would be more appropriate to include footnote 1, as amended above, in reference to this definition than to Rule 1.

Rule 2, paragraph b)

The definition of 'Party' shall make reference to Article XX of the Convention also.

Rule 2, paragraph j)

Although we may consider the Rules of Procedure as a complement to the Convention, which is therefore not considered as a working document that has to be discussed and adopted at each meeting of the Conference of the Parties, we may not agree that proposals to amend the Rules of Procedure be not specified in the definition of 'working documents', as proposed. The Conference of the Parties has always considered proposals of amendment of the Rule as any other documents including draft resolutions, draft decisions, reports, etc. Therefore, reference to proposals for amendment of the Rules of Procedure must be included in the definition. See also under Rules 22, 28 and 32.

Rule 4, paragraph 2

It would be more appropriate to include the wording of footnote 4 in paragraph 2, or as an additional subparagraph.

Rule 4, paragraph 3

This is a fully new proposed paragraph. If footnote 4 mentioned above is accepted, as proposed or as suggested above, the exception should be reflected in this paragraph as well.

Rule 4, footnote 6

This footnote 6 is in line with the whole of Article XI, paragraph 7. If it is the intent of the proposal to include it, it should be placed elsewhere in the Rule. If the intent is to refer to subparagraph a) of Rule 4, paragraph 3 only, then the footnote should refer to subparagraph (b) of Article XI, paragraph 7, only.

Rule 5, paragraph 1

The words 'him/her' should be replaced by the word them because it is proposed to replace the word 'or' in the first line by the word and.

Rule 19, paragraph 3

As under the proposed new paragraph 2, the Chairs of the AC and PC have the right to speak, paragraph 3 should indicate when they should be allowed to speak. As an alternative, this might be specified in paragraph 6.

Rule 22

If 'working documents' would be properly defined in Rule 2, it would not be necessary to repeat which documents they include in Rule 22. In addition there are inconsistencies between the definition of 'working documents' in Rule 2 and the list of documents in Rule 22, which refers also to 'other documents' without explaining what they could be. Do they include the Rules of Procedure and/or proposals for amendment of the Rules of Procedure? They should include them or at least the proposals for amendment of them, unless the definition in Rule 2 includes these proposals.

Rule 23

The title of this Rule should be in line with that of Rule 22, and refer to working documents. It refers, and the text of the Rule as well, to other documents. Are the latter those mentioned in Rule 22, paragraph 1)? And what about reports? See the comments under Rule 22, in particular concerning the Rules of Procedure and proposals to amend them, which have always been treated as those concerning resolutions and decisions, and should remain treated in the same way.

Rule 24, paragraph 1

This paragraph indicates that proposals for amendment of Appendices I and II shall be communicated to all Parties for **information** and refers to Article XV, paragraph 1, subparagraph (a). This subparagraph provides that such proposals shall be communicated for **consultation**. The difference between both terms is significant and the wording of the Convention should be followed.

Rule 25, paragraph 6

This paragraph should make reference to Rule 24 instead of Rule 23.

In addition, this paragraph makes reference to proposals **made** in accordance with paragraph 5) of this Rule. This implies that new proposals may be considered by the Conference although they have not been submitted 150 days prior the meeting. Indeed, the current paragraph 5 refers to the possibility for representatives of other Parties than the proponent(s) to propose amendments to proposals for amendment of Appendices I and II under certain conditions. Therefore, paragraph 6 should also refer to proposals so **amended**. The text should read: ... in accordance with Rule 24, paragraph 2, and paragraph 5) of this Rule

On its side, Israel, in document CoP17 Doc. 4.3, is raising an interesting issue which deserves consideration, although the example it is using in the supporting document is not relevant; indeed, a genus is not the same taxon as a species, as defined by the Convention. Therefore, a proposal concerning the listing of a genus should always be considered prior a proposal concerning a species of the same genus.

For proposals concerning effectively the same taxon, the current text of Rule 23, paragraph 6 (Rule 25 in CoP17 Doc. 4.1, Annex 3), is actually not adequate. However, the text proposed by Israel is not adequate either because it is not making a difference between proposals asking for increasing the conditions of trade and those asking for decreasing these conditions. To be appropriate, the text should state: ... the vote should be first on the proposal with the highest effect, either reducing or increasing, on the trade when the proposals are requesting either stricter or less strict regulations respectfully. The process should continue only if the proposal is rejected.

Finally, nothing is said about proposals concerning the same taxon but requesting more or less restriction on the trade in their specimens, such as proposals CoP17 Prop. 14 and 15 vs Prop. 16. Which should be considered first?

Rule 27, paragraph 2; current Rule 25

The proposal from Israel should be strongly rejected in the interest of the sovereignty of the Parties, and also to avoid repeating the discussions which took place earlier, especially at CoP16.

Rule 27, new paragraph; current Rule 25

The new paragraph proposed by Israel, referring to voting by regional economic integration organizations, should be rejected in favour of the Secretariat proposal for amendment of Rule 26 (current Rule 24). The Secretariat proposal is in line with the provisions of the

Gaborone amendment while the proposal from Israel is going beyond these provisions. This is not acceptable.

Rule 28, paragraph 1

Instead of adding the proposed text, which refers to amendments of the Rules of Procedure, this paragraph should include the words referred to in Rules 19 and 20 after ‘... matters relating to the conduct of the business of the meeting’. This should also replace the amendments proposed by Israel and by Namibia and South Africa to the same paragraph of the current Rule 26, paragraph 1. This would explain what ‘procedural matters’, which require consensus or a simple majority to be adopted, are.

Rule 30, paragraph 1

With its proposed amendment, the Secretariat tries to indicate the matters that could be treated in ‘information documents’. This may be controversial. Instead of that, the chapeau of this paragraph should refer simply to matters relevant to CITES.

Rule 32

The addition of the required two-thirds majority to amend the Rules of Procedure, proposed by the Secretariat and by Namibia and South Africa, would be redundant if Rule 28, paragraph 1, would be amended as proposed above. As this is a very controversial issue, as demonstrated at CoP16, we may wonder whether such an amendment could obtain a two-thirds majority vote at CoP17.

Conclusions

The documents submitted for consideration at CoP17 include useful proposed amendments that should be adopted by consensus or two-thirds majority votes. However as indicated in the introduction of this paper, the proposed amendments concerning documents to be used and considered by the Conference of the Parties and proposed amendments to the Rules of Procedure must be considered very carefully not to fall into a trap and to allow erroneous interpretations of the Rules. The lesson of CoP16 should be kept in mind.

We must remember, as proposed amendments to the Rules of Procedure require consensus or a two-thirds majority to be adopted, that it is likely that some proposed amendments would be adopted and others rejected and this may allow different interpretation of the Rules. In particular, if the definition of ‘working documents’ and the list of documents considered as ‘working documents’ proposed in Rule 2 and Rule 22 are adopted by the Conference as proposed but the statement in Rule 28, paragraph 1, and Rule 32 that amendments to the Rules of Procedure shall be adopted by a two-thirds majority are rejected by the Conference, this would mean that such amendments shall be adopted by a simple majority as procedural matters.

In case this would occur at CoP17, it would be necessary to reject the whole text, which shall be submitted for adoption at the end of the process, as provided in the last sentence of Rule 23, paragraph 6 (current Rule 21). Indeed, in such circumstances, it would be preferable to keep the Rules of Procedure unchanged and to keep in mind the decision of CoP16, which was actually in line with the current Rules of Procedure.

Lausanne, 23 June 2016

Comments on the comments from the Secretariat on documents CoP17 Doc. 4.2 and 4.3

The Secretariat has provided comments on the amendments to the Rules of Procedure proposed by Namibia and South Africa, and by Israel in documents CoP17 Doc. 4.2 and 4.3. While IWMC has no additional comments with respect to the document from Namibia and South Africa than those made in the first part of this paper, it has the following additional comments on the comments from the Secretariat on document CoP17 Doc. 4.3 from Israel.

No comment on **paragraphs A and B**.

Paragraphs C and D may be accepted, although it could be useful to have the rules clarified for the consideration of more than one proposal of amendment of Appendices I and II on the same taxon at CoP17 already, since the Rules of Procedure should be considered several days before these proposals would be considered. In the absence of an acceptable solution then the issue would be referred to the Standing Committee. See as a partial solution the above comments on Rule 25, paragraph 6 (which refers to amending Rule 23 of the current Rules).

In **paragraph E**, the Secretariat refers to paragraph 6 of the present document (the document from Israel) when it should have referred to paragraph 3, or to paragraph 6 of Rule 23.5. Then it is less explicit than IWMC on the fact that a genus is not a same taxon than a species, under the definition of species provided by the Convention in its Article I. The Secretariat states that they may not refer to the same taxon.

IWMC agrees that paragraph 3 of the document of Israel is somehow confusing but it disagrees that paragraph 3 of Rule 23.5, on the possibility to consider parts of a proposal separately, may be used to decide which proposal should be considered first. For IWMC, a proposal on a genus or higher taxon should always be considered before a proposal on a species (as well as on a species before a subspecies or a separate population), which should be considered afterwards only if the proposal on the genus is rejected. When more than one proposal are actually on the same taxon, then the procedure described above under Rule 25, paragraph 6, should be followed. This is logical under the principle of 'who can the more can the less' and also because proposals may be amended to reduce their scope but not to

increase it. Unfortunately this is not the order followed by the Secretariat under the numbering of the proposals, e.g. for proposals CoP17 Prop. 25 and 26 or Prop. 54 and 55.

Finally deciding which proposal should be considered first when more than one proposal concern the same taxon but request on one side more restrictions or on the other side less restrictions on the trade in their specimens remains an unsolved question, such as for proposals CoP17 Prop. 14 and 15 vs Prop. 16. In the light of the numbering of these proposals, the Secretariat appears to consider that those proposing a reduction of the restrictions have to be considered first. This may be argued.

Regarding **paragraph F**, the Secretariat is right in stating that deciding which majority is needed to decide that a vote should be taken by secret ballot is entirely a matter for the Parties. Indeed this is also valid for any decision of the Conference, included that referred to in **paragraph M**. In addition, for secret ballot, a majority is not currently required, only the secondment of 10 Representatives.

Furthermore, the Secretariat is in error in stating that the proposal from Israel does not contain any new element. It is proposing that a simple majority of the Representatives present and voting be required. Therefore, the Conference shall consider the proposal and the Rule would be amended accordingly if the proposal is adopted by consensus or a two-thirds majority vote. This means that the same discussions than at CoP16 may occur again.

Paragraph G is correct but, in accordance with Resolution Conf. 4.6 (Rev. CoP16), the Secretariat is directed *to update the Decisions after each meeting of the Conference of the Parties, to contain all the recommendations (or other form of decisions) that are not recorded in Resolutions and that remain in effect*. Therefore after CoP16, the Secretariat should have recorded in the list of Decisions the decision of the Conference that a two-thirds majority is required to amend the Rules of Procedure. This would have solved the issue of the required majority even without amending the Rules of Procedure but this has not been done. If necessary, this might be done after CoP17.

IWMC has no other comments on **paragraphs H, I and J** than those made above under Rule 27, new paragraph; current Rule 25.

IWMC has no other comments on **paragraphs K and L** than those made above under Rule 28, paragraph 1.

Lausanne, 5 August 2016