

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



Sixteenth meeting of the Conference of the Parties  
Bangkok (Thailand), 3-14 March 2013

Administrative matters

Rules of Procedure

PROPOSAL TO IMPROVE TRANSPARENCY OF VOTING DURING  
MEETINGS OF THE CONFERENCE OF THE PARTIES

1. This document has been submitted by Denmark on behalf of the European Union Member States acting in the interest of the European Union<sup>1</sup>.

Background

2. Strengthening transparency in the context of international environmental cooperation is a major goal. This has been confirmed most recently by the Outcome Document of the Rio+20 Conference "The Future We Want", which reaffirms that "*to achieve our sustainable development goals we need institutions at all levels that are effective, transparent, accountable and democratic,*"<sup>2</sup> and acknowledges "*the vital importance of an inclusive, transparent, reformed, strengthened and effective multilateral system in order to better address the urgent global challenges of sustainable development today.*"<sup>3</sup> Promoting transparency also forms part of the CITES Strategic Vision: 2008 – 2013.
3. The EU and its Member States consider that this requirement for transparency and accountability needs to be reflected in the provisions relating to voting in the CoP Rules of Procedure.
4. The current provisions in the Rules of Procedure (Rule 25.2) state that: "*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*". In other words, the Rules of Procedure consider open voting as the rule and - outside elections and venue questions - provide for secret voting only as an exception.
5. Nevertheless, there has been a considerable practice of secret voting since the introduction of the current wording during CoP 9. Document 10.3 prepared by the Secretariat for SC 61 shows that since CoP 9 a total of 69 votes were taken by secret vote, relating partly to important conservation matters, in particular on marine species or subjects, elephants and ivory trade. This practice over the last six CoPs shows that the current wording of Rule 25.2. is not sufficient to ensure that the exceptional character of secret votes is maintained.
6. The EU and its Member States are concerned about this development which runs counter to the agreed goal of promoting transparency and accountability in international fora. Based on this goal, secret votes are

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<sup>1</sup> *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

<sup>2</sup> *Para 10.*

<sup>3</sup> *Para 77.*

neither accepted in the main international decision-making forum, the UN General Assembly<sup>4</sup>, nor, for example, under the major UN human rights conventions<sup>5</sup>.

7. The EU and its Member States acknowledge the position of several parties that it may be important to maintain the possibility of secret voting in exceptional circumstances, even beyond the decisions on elections and meeting venues. However, the current practice is a clear departure from the spirit of the Rules of Procedure. In addition, the current threshold of ten delegates supporting a request for secret voting does no longer appear adequate in light of the increased membership of CITES since CoP 9 in 1994 when the current wording was adopted. Since that time, 55 additional countries have become Party of the Convention, raising the number of State parties from 120 to 175.
8. The regular use of secret ballot voting undermines the integrity of the Convention: while a number of agreed criteria are supposed to guide the Parties in their implementation of the Convention, the use of secret ballots makes it impossible to determine on which basis or for which reasons decisions are adopted or rejected within CITES and casts doubts that those agreed criteria are actually being taken into consideration by Parties.
9. The EU and its Member States therefore consider that the Rules of Procedure need to be further clarified. To preserve the exceptional nature of the use of secret ballot and avoid that this restriction is too easily circumvented, the decision on whether or not to hold a secret vote on a certain matter should be treated like other decisions by the CoP on "procedural matters relating to the conduct of the business of the meeting". Therefore, it should be taken by a simple majority of the Representatives present and voting, in line with Rule 26.
10. The proposed system corresponds to the system used under CITES during CoPs 6 to 8 (1987 to 1992). It is also the system used by a number of international conventions dealing with the conservation and management of species and protection of biodiversity, such as the Convention on Migratory Species<sup>6</sup> and the Ramsar Convention on Wetlands<sup>7</sup>.
11. Other conservation and species management Conventions, the International Whaling Commission<sup>8</sup> and the Bern Convention on the Conservation of European Wildlife and Natural Habitats<sup>9</sup> go even further and limit secret ballots entirely to elections and venue decisions.

#### Proposal by the EU and its Member States

12. The EU and its Member States therefore propose that the CoP at its 16th meeting decides to amend the Rules of Procedure as follows:

##### **Rule 25**

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.~~

**[ADD] The request for a secret ballot shall immediately be voted upon. The motion for a secret ballot may not be conducted by secret ballot.**

#### COMMENTS FROM THE SECRETARIAT

- A. Considering that the present document and document CoP16 Doc. 4.3 deal with the same issue, but propose different solutions, the Secretariat recommends that they be considered together.

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<sup>4</sup> See Rule 87 a of the Rules of Procedure.

<sup>5</sup> See e.g. Rules of Procedure of the Human Rights Committee under the Covenant on Civil and Political Rights, the Committee on Economic, Social and Political Rights, Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women.

<sup>6</sup> Rule 15 of the Rules of Procedure for Meetings of the Conference of the Parties.

<sup>7</sup> Rule 46 of the Rules of Procedure for Meetings of the Conference of Contracting Parties.

<sup>8</sup> Rule E (3) (d) of the Rules of Procedure.

<sup>9</sup> Rule 8 of the Rules of Procedure of the Standing Committee.

- B. The appropriate majority for deciding whether a vote should be taken by secret ballot is entirely a matter for the Parties. However, the Secretariat wishes to recall what it said in paragraph 7 of document SC62 Doc. 10.3, presented at the 62nd meeting of the Standing Committee (Geneva, July 2012) (paragraph of the present document incorrectly refers to SC61), as follows:

*Since 1976, there have been three different approaches to the use of secret ballots in the Rules of Procedure of the Conference of the Parties.*

- a) *From CoP1 (Berne, 1976) to CoP5 (Buenos Aires, 1985) a vote would be taken by secret ballot if this was requested by any Party;*
  - b) *From CoP6 (Ottawa, 1987) to CoP8 (Kyoto, 1992) the rule was that a vote would be taken by secret ballot only if this was requested by a Party, supported by a second Party, and then supported by a simple majority; and*
  - c) *From CoP9 (Fort Lauderdale, 1994) to CoP15 (Doha, 2010) the rule was that a vote would be taken by secret ballot if this was requested by a Party and supported by 10 Parties. This rule remains in effect.*
- C. In paragraph 6 of the present document, it is stated that secret votes are "neither accepted in ... the UN General Assembly nor, for example, under the major UN human rights conventions". While this statement is correct in relation to substantive issues, Rules 92 and 103 of the Rules of Procedure of the General Assembly do specify that elections are taken by secret ballot.
- D. Different approaches are taken by the Parties to different multilateral environmental agreements (MEAs). For example:
- i) The Rules of Procedure of the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants and the UN Framework Convention on Climate Change (in Rules 46, 50 and 48 respectively) provide that, "If at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question."
  - ii) The Rules of Procedure of the Convention on Migratory Species and of the Ramsar Convention (Convention on Wetlands of International Importance) both provide for voting by secret ballot if the request to do so is supported by a simple majority. This is the approach that the authors of the present document are proposing.
- E. The proposed amendment to Rule 25 is itself silent on the question of the majority required to decide on a motion for a secret ballot. This is because Rule 26.1 already provides that:

*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.*

Therefore, if the proposed amendment to Rule 25.2 is accepted, any motion that a vote be taken by secret ballot will require a simple majority to succeed.

- F. 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;

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