



Conference of the Parties

Eleventh session

Windhoek, Namibia, 16–27 September 2013

Item 13 (a) of the provisional agenda

Outstanding items

Rule 47 of the rules of procedure

Rule 47 of the rules of procedure

Note by the secretariat

Summary

In accordance with decision 28/COP.10, this document provides information to the Conference of the Parties (COP) on rule 47 of the rules of procedure (majority required).

The secretariat has prepared reports on this matter since the second session of the COP, the most recent being contained in document ICCD/COP(10)/23. At its eleventh session the COP may wish to consider the relevant background information, and submissions by Parties and interested organizations of the United Nations, and may decide to remove the text in brackets within rule 47, giving final shape to this rule on the majority required for the adoption of decisions by the COP.

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I. Introduction and background information

1. The question of rule 47 of the rules of procedure of the Conference of the Parties (COP), which concerns the voting majority required for the adoption of decisions by the COP, has been an item on the agenda of the COP since its second session. Background information is provided in the present document on any development regarding this outstanding item since the tenth session of the COP. The text of rule 47 as amended by decision 21/COP.2 is annexed to document ICCD/COP(3)/13.

2. At its tenth session, the COP adopted decision 28/COP.10, which referred to document ICCD/COP(10)/23 and requested the secretariat to include consideration of this pending rule of procedure in the agenda of the eleventh session of the COP and to report on the status of similar rules of procedure under other multilateral environmental agreements.

3. In September 2012 and March 2013 the secretariat sent a note verbale to Parties and multilateral organizations reminding them to submit their views regarding this matter. As at 31 May 2013, the secretariat had received four submissions on this matter, one from a Party, Tuvalu, and three from United Nations organizations: one from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants (Basel, Rotterdam and Stockholm Conventions); one from the United Nations Framework Convention on Climate Change (UNFCCC); and one from the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). These written proposals are reproduced in their entirety, as submitted to the secretariat, on the United Nations Convention to Combat Desertification (UNCCD) website at <www.unccd.int>.

II. Submissions by Parties and United Nations organizations

A. Tuvalu

4. Tuvalu notes that decision 21/COP.2 did not resolve the impasse on this issue and that there is no consensus to adopt the first version or the amendments to rule 47 as proposed by this decision. Tuvalu believes that while expediency is important in a decision-making process, decision-making is a key principle to ensure a global approach to addressing desertification and land degradation. In this context, this Party proposes the following amendment to rule 47, to make it consistent with current practice:

Rule 47

1. Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the matter will be forwarded to the next Conference of the Parties for further consideration”.

B. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants (Basel, Rotterdam and Stockholm Conventions)

5. The Basel, Rotterdam and Stockholm Conventions underscore that rule 47, paragraph 1, of the rules of procedure to the Rotterdam Convention and the Stockholm Convention still contains bracketed text pertaining to the voting majority required on matters of substance in the event that Parties are unable to reach agreement by consensus. The status of this matter in the rules of procedure of the Basel Convention is different; rule 40, paragraph 1, provides that in the event that Parties are unable to reach agreement by consensus on a matter of substance, the decision by the Conference of the Parties shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Basel Convention, the financial rules and the rules of procedure. A similar approach could be adopted for rule 47 of the UNCCD COP, if considered in conformity with this Convention, its financial rules and rules of procedure.

C. The United Nations Framework Convention on Climate Change

6. The adoption of the rules of procedure of the COP of the UNFCCC has remained unchanged since the seventeenth and eighteenth session of the COP. Although the Parties acknowledged the importance of the adoption of the rules of procedure, delegations maintained their positions in this fundamental issue and because there were divergent views no agreement was reached. Therefore, the draft rules of procedure contained in document FCCC/CP/1996/2 continued to be applied at COP 17 and COP 18, with the exception of rule 42 (on majority required to reach agreement on matters of substance).

7. A further development on this issue is a proposal made by two Parties to amend two articles of the Convention in respect of how they deal with the draft rules of procedure and the voting majority set out in rule 42. This proposal consists of making effective the right to vote under article 18 and allows a “last resort” vote to be taken only when every effort to reach consensus has failed. This proposal was not considered fully at COP 17 and it was included in the agenda for COP 18. These two Parties amended their original proposal, and the amended proposal is contained in document FCCC/CP/2011/4/Rev.1 to be found on the UNFCCC website under the documents of COP 17. At COP 18, the Parties that put forward this proposal requested more time to carry out consultations and no formal substantive discussion took place on this matter.

D. The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

8. At its first session, the Meeting of the Parties (MOP) to the Aarhus Convention (MOP-1, Lucca, Italy, 21–23 October 2002) adopted by consensus decision I/1 on the rules of procedure, Section XIII of decision I/1 concerns decision-making and includes rule 35. In principle, Parties endeavour to reach their decisions by consensus (paragraph 1 of rule 35). If consensus is not reached, rule 35 makes a distinction between matters of substantive and those of a procedural nature. For substantive matters, in the absence of consensus decisions can be taken by a three-fourths majority vote of “Parties present and voting”,

whereas for procedural matters lacking consensus a simple majority would suffice. In substantive matters, the Convention or the rules (decision I/1) may provide otherwise, in which case this special rule would prevail over rule 35. For example, decision I/1 can be amended only by consensus (rule 47), or decisions on financial arrangements and on the establishment of arrangements on review of compliance may be decided by consensus only (see articles 10, paragraph 3, and article 15 of the Convention, respectively).¹ To date, there have been three ordinary sessions of the MOP and two extraordinary sessions. At all these sessions, Parties adopted their decisions by consensus, as required by paragraph 1 of rule 35.

III. Conclusions, recommendations and proposed action

9. Since the secretariat prepared document ICCD/COP(10)/23, the rule on majority voting has not been agreed by the UNCCD, or by the Convention on Biodiversity (CBD), the UNFCCC, the Rotterdam Convention, the Stockholm Convention or the Montreal Protocol on Substances that Deplete the Ozone Layer. The Basel Convention and the Convention on International Trade in Endangered Species (CITES Convention) have reached consensus on majority decision-making regarding matters of substance: when all efforts have been exhausted and no agreement is reached, decisions are taken by a two-thirds majority vote of the Parties present and voting.

10. As proposed in previous COP reports on this matter, the COP may wish to consider the relevant background information and the submissions by Parties and international agencies on rule 47 of the rules of procedure with a view to reaching agreement and removing the text in brackets, giving final shape to this rule on the majority required for decisions taken by the COP.

11. The alternative solutions put forward in document ICCD/COP(8)/6, ICCD/COP(9)/12 and ICCD/COP(10)/23 are still relevant for the purpose of having a final agreement on rule 47. Thus, the COP may wish to consider the following options:

- (a) Adopting the principle of consensus on all matters of substance;
- (b) Reaching agreement by a simple or qualified majority when it is not possible to reach a decision by consensus;
- (c) Determining specifically, in rule 47, which decisions should be reached by consensus and which by majority vote.
- (d) Deferring consideration of rule 47 to a future COP session when Parties feel there is consensus regarding this outstanding item.

¹ See the Aarhus Convention's website: <www.unece.org/env/pp/treatytext.html>.