

**Legal Memo re: Textual and/or Procedural Differentiation of Proposals
Submitted by the Secretariat on Behalf of the Standing Committee and the
Ramsar Convention Parties**

11 May 2015

I. REQUEST FOR ADVICE

The following issues were identified by a Party, raising key questions in the interpretation of the previous and proposed Ramsar Convention Rules of Procedure, at 48th Meeting of the Standing Committee: ¹

“130. Denmark stated its understanding that SC48 had to approve the final versions of DRs produced by the Secretariat on behalf of the Standing Committee, but that in the case of those submitted by Contracting Parties, SC48 would only advise the Party or Parties concerned, which would then be responsible for making amendments prior to the final submission deadline.

131. The Secretary General advised, after consulting with the Senior Legal Advisor, that DRs submitted by Contracting Parties also needed to be approved in their final form by the Standing Committee, by the end of the present meeting, in order to be submitted to COP12.

132. Denmark thanked the Secretary General for the clarification, and expressed the view that such an interpretation was not the intended or appropriate aim of the Rules of Procedure.

133. The Secretary General asked that all proposed amendments to documents discussed in the session be communicated electronically to both the submitting Contracting Parties and to the relevant Secretariat focal points by 22:00 on 29 January 2015 for resubmission to SC48 during the morning of 30 January.”

II. RELEVANT LEGAL ISSUES

According to the previous/proposed Ramsar Convention Rules of Procedure (RoP), are Draft Resolutions required to be approved by the Standing Committee prior to being submitted to the CoP for negotiations and voting if appropriate?

Is there a differentiation in the Ramsar Convention Rules of Procedure (RoP) between the procedure of approval and distribution to be followed by a proposed Draft Resolutions submitted on behalf of the Standing Committee/Conference Committee, versus those submitted by a Party to the Ramsar Convention?

¹ Ramsar, Report of the 48th Meeting of the Standing Committee (28-30 January 2015), available at: http://www.ramsar.org/sites/default/files/documents/library/sc48_report_final_e.pdf.

III. INTERPRETATION OF LEGAL ISSUES IDENTIFIED

According to the Ramsar Convention Rules of Procedure (RoP), are Draft Resolutions required to be approved by the Standing Committee prior to being submitted to the CoP for negotiations and voting if appropriate?

1. Rules of Procedure for the Ramsar Convention of relevance to this question:²

Rule 2 (k)

“Proposal” means a draft resolution or recommendation submitted by one or more *Parties or the Standing Committee or the Conference Committee*; (emphasis added)

Rule 5.1

The Secretariat shall notify all Parties of the dates, venue, and provisional agenda of an ordinary meeting at least 12 months before the meeting is due to commence. The notification shall include the draft agenda for the meeting and ***the deadline for submission of proposals by the Parties***, which normally shall be 60 calendar days prior to the opening of the Standing Committee meeting at which ***approvals are made for documents for consideration by Contracting Parties at the COP***. Only Parties, the Standing Committee and the Conference Committee shall be entitled to submit proposals. (emphasis added)

Rule 10

The documents for each ordinary meeting, as per Rule 51, and including an annotated provisional agenda based on the recommendations of the Standing Committee, shall be distributed in the official languages by the Secretariat to the Parties at least three months before the opening of the meeting.

Rule 35.1

A new proposal that was not submitted to the Secretariat at least 60 days before the opening of the ***Standing Committee meeting at which approvals are made of documents for consideration by the COP***, as required by Rule 5, and amendments to proposals, shall be *introduced in writing by the Parties and handed to the Secretariat in at least one of the official languages, for submission to the Conference Committee*.

Rule 35.2

As a general rule, no proposal shall be discussed or put to the vote at any session unless copies of it, translated into the official languages of the Conference of the Parties, have been circulated to delegations not later than the day preceding the session. Nevertheless, *the President may in cases of urgency, permit the discussion and consideration of proposals*, amendments to proposals or of procedural motions even though these documents may not have been circulated or have been circulated only the same day or have not been translated into all the official languages of the Conference of the Parties.(emphasis added)

Rule 35.3

A new proposal shall deal only with matters that could not have been foreseen in advance of the meeting or arise out of the discussions at the meeting. The Conference Committee shall decide if the new proposal meets this requirement, so as to introduce it formally for consideration by the meeting. *If a new proposal is rejected by the Conference Committee, the sponsor(s) shall be entitled to request the President to submit the question of its admissibility to a vote, as per Rule 34*. The sponsor(s) shall be given the opportunity to make one intervention to present the

² Note: Ramsar Rules of Procedure (as approved by SC-48, Jan 2015).

arguments in favour of the introduction of the new proposal, and the President shall explain the reasons for its rejection by the Conference Committee. (emphasis added)

Rule 37

A proposal or motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the motion has not been amended. A proposal or motion withdrawn may be reintroduced by any other Party.

Rule 40

The Parties present and voting 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 decision shall, as a last resort, be taken by a majority vote of the Parties present and voting, unless otherwise provided by the Convention. (emphasis added)

2. Interpretation of the RoP of relevance to this question:

The Rules of Procedure (RoP) for the Ramsar Convention at Rule 5 require notification to Parties of the logistics and provisional agenda to be provided 12 months prior to the meeting of the Ramsar Convention Conference of the Parties (COP). According to the RoP 5.1, notification to Parties shall also include the deadline for submission of proposals by Parties to the Standing Committee Meeting (SC) **at which approvals are made for documents to be considered by COP**. According to Resolution XI.19 Annex 1, the SC, comprised of Party representatives nominated on a proportionate system based on size of regional group, meets annually,³ with only Parties entitled to vote.⁴ The functions of the SC include among others: (1) **preparation of issues including draft Resolutions and Recommendations for consideration by COP**, (2) provide guidance on to the Secretariat on the implementation of the Convention, and (3) act as Conference Committee at meetings of COP.⁵ The Rules of Procedure and related practices of other international treaties and organisations vary on this point.⁶ Within these powers, the SC facilitates development of Resolutions and Recommendations. RoP Rule 40 encourages Parties to aim to reach agreement through consensus voting, which in practice is developed through debate, negotiation and textual compromise. In accordance with RoP Rule 5.1, the SC is explicitly mandated to **approve proposals**, having considered them, and send them through to the COP or not, as a draft. This interpretation is confirmed by RoP Rule 35.1, which requires documents 60 days before the opening of the Standing Committee meeting “at which approvals are made of documents for consideration by the COP, as required by Rule 5.”

A “proposal” as defined in Rule 2(k) includes draft resolutions and recommendations made by Parties, the SC, or the Conference Committee. RoP Rule 35.1 allows for new proposals which were not received 60 days prior to the SC, to be submitted in writing to the Secretariat for submission to the Conference Committee. The Conference Committee, comprised of the voting members of the SC

³ Ramsar, Resolution XI.19 (COP 11), at Annex I, Art 4, Art 18 available at:

<http://www.ramsar.org/sites/default/files/documents/pdf/cop11/res/cop11-res19-e.pdf>. [Rex XI.19]

⁴ *Supra*, ROP Rule 40.1.

⁵ *Supra*, Rex XI.19 at Annex I Art 19(b),(d) and (e).

⁶ The ROP of the FAO [Rule XI.1, Rule XXIV.1], UNFCCC [Rule 36] and CITES [Rule 20] provide mechanisms by which Parties can advance proposals to their COP or comparative decision-making body without mandatory prior approval by a standing or subsidiary body. In the CBD [SBSTTA *modus operandi*, Annex IV, point 8], proposals relating to new and emerging issues are reviewed by SBSTTA based on proposals and information submitted by Parties and relevant organizations, and SBSTTA determines which proposals are included in the compilation recommended to the COP.

and the elected President, Alternate President, and Vice Presidents of the current COP meeting, meets over the duration of COP meetings to review and guide the development of proceedings.⁷ As per RoP Rule 35.2, proposals may be discussed as long as they have been circulated in the official languages of the Convention at least the day prior to the session, with the President empowered to allow consideration of new proposals, motions and amendments (provided that a case of urgency exists and that translated copies have been circulated that day). A proposal may be withdrawn by the proposer prior to the commencement of voting, provided there are no agreed amendments. RoP Rule 10 indicates that all documents for normal meetings, including an annotated provisional agenda based on the recommendations of the SC, shall be distributed 3 months prior to the opening of the meeting.

As such, according to the Ramsar Convention RoPs 5.1 and 35.1, proposals by Parties or any others are to be submitted to the appropriate meeting of the SC, generally 60 days prior to the SC, *for the Standing Committee to give its approval* for the documents to be included, translated and circulated in advance as COP documents to all Parties. The ROPs are clear that these documents are drafts – proposals. There is nothing in the RoP which suggests that the Drafts need to be negotiated and agreed (ie, without square brackets or other elements of a draft) before being approved by the SC and forwarded to the COP.

Normally, proposals will be circulated in the official languages at least the day prior to their consideration by the COP, though the President has discretion to waive this requirement in cases of urgency. New proposals or amended versions which were unforeseeable prior, or have developed as a result of debate, may still be handed in writing to the Secretariat and considered by COP, if approved by the Conference Committee. The proposer may still speak once to them, and require a vote, if rejected by the Conference Committee.

Is there a differentiation in the Ramsar Convention Rules of Procedure (RoP) between the procedure of approval and distribution to be followed by a proposed Draft Resolutions submitted on behalf of the Standing Committee/Conference Committee, versus those submitted by a Party to the Ramsar Convention?

1. Rules of Procedure for the Ramsar Convention of relevance to this question:

Rule 2 (k)

“Proposal” means a draft resolution or recommendation *submitted by one or more Parties or the Standing Committee or the Conference Committee*; (emphasis added)

Rule 5.1

The Secretariat shall notify all Parties of the dates, venue, and provisional agenda of an ordinary meeting at least 12 months before the meeting is due to commence. The notification shall include the draft agenda for the meeting and *the deadline for submission of proposals by the Parties*, which normally shall be 60 calendar days prior to the opening of the Standing Committee meeting at which *approvals are made for documents for consideration by Contracting Parties at the COP. Only Parties, the Standing Committee and the Conference Committee shall be entitled to submit proposals.* (emphasis added)

Rule 40

The Parties present and voting 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

⁷ *Ibid*, ROP Rule 26.2.

agreement reached, the decision shall, as a last resort, be taken by a majority vote of the Parties present and voting, unless otherwise provided by the Convention. (emphasis added)

Rule 42.1

Any representative may request that any parts of a proposal or of an amendment to a proposal be voted on separately. The President shall allow the request unless a Party objects. If objection is made to the request for division, the President shall permit two representatives to speak, one in favor of and the other against the motion, after which it shall be put immediately to the vote. (emphasis added)

Rule 42.2

If the motion referred to in rule 42 is adopted, those parts of a proposal or of an amendment to a proposal which are approved shall then be put to the vote as a whole. If all the operative parts of a proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

Rule 44.2

Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

Rule 51.1

Official documents of the meetings shall be drawn up in one of the official languages and translated into the other official languages.

Rule 51.3

Any documents, including proposals, submitted to the Secretariat in any language other than an official language shall be accompanied by a translation into one of the official languages.

2. Interpretation of the RoP of relevance to this question:

RoP Rule 2 (k), Rule 5.1 and RoP Rule 40 do not appear to differentiate between draft resolutions or recommendations “submitted by one or more Parties or the Standing Committee or the Conference Committee.” In RoP Rule 5.1, it is noted that the Standing Committee is where “approvals are made for documents for consideration by Contracting Parties at the COP” and that “Only Parties, the Standing Committee and the Conference Committee shall be entitled to submit proposals.” The RoP do not further clarify that proposals from one type of submitter are subject to a distinct approval procedure, versus proposals from another type. The RoPs instead refer to the same procedure for proposals submitted by any of the three allowable sources.

Once a proposal has been approved by the SC and circulated, the Ramsar RoP Rule 42 does allow for any Party to request a part of a proposal to be voted on separately, which shall be allowed barring any objection. This allows for debate to be centralized on establishing compromise on a particular amendment or component of a draft resolution. RoP Rule 44.2, further, indicates that if an amendment necessarily implies the rejection of another amendment, and the first is adopted, the second amended proposal shall not be voted upon. All Parties are encouraged to reach consensus on Draft Resolutions that shall be submitted to the COP, so that these can be circulated ahead of time for the consideration of all Parties prior to their participation in the COP. Parties are able to sever parts of proposals and amendments for debate and voting, on the floor of the SC and in the CoP itself.

As such, proposals by their nature are generated by Parties, the Standing Committee and the Conference Committee. The RoPs provide no distinction in the SC approvals process for proposals based on the nature of the submitter. This can be compared to other international RoPs, such as the FAO Rules Article XX, which does allow proposals put forward by Parties to be considered differently if for instance the submitter is proposing a change/addition of an organizational program or obligations of the Parties under the Constitution of the Convention.⁸ However, there is nothing currently found in the Ramsar Convention RoPs which implies that such case exists for the Ramsar Convention. Parties are, however, provided the opportunity to sever particular part for a vote or to remove the proposal prior to voting if the debate is not in spirit with the Parties position in the proposal. However, nothing in the RoP suggests that the proposal should be handled in a differing manner procedurally based on these allowances.

IV. CONCLUSIONS ON THE QUESTIONS IDENTIFIED, PURSUANT TO THE ROP OF THE RAMSAR CONVENTION

The Ramsar RoPs are clear, at RoP 5.1 and RoP 35.1, that DRs are to be submitted to the Secretariat *for approval* by the SC with appropriate time to allow for translation, circulation and review to all Parties, ie. 60 days prior to the meeting of the COP, except in cases where proposals address unforeseeable matters, or those which arise from discussions during COP. The RoPs are also clear that the proposals approved by the SC for submission to the COP are *drafts*, they are not meant to be fully agreed by Parties in the SC before the COP, and indeed, there are numerous provisions to ensure that the proposals can be further refined in the COP itself. There is currently no differentiation in the RoPs between proposals (including Draft Resolutions) filed by the Secretariat on behalf of the Standing Committee or by Parties to the Ramsar Convention.

⁸ FAO, Basic Texts of the Food and Agricultural Organization of the United Nations: Book I & II (2013), at Book I, A. Article XX, available at: <http://www.fao.org/docrep/meeting/022/k8024e.pdf>.