

Legal Memo re: Legal issues relating to the adoption of new rules of procedure at the conclusion of the meeting of the Conference of the Parties and their use in governance of meetings

I. REQUEST FOR ADVICE

1. This legal memo addresses certain legal issues relating to adoption of the Rules of Procedure (RoP) at the conclusion of the 12th Meeting of the Conference of the Parties to the Ramsar Convention (COP12), and their applicability to govern meetings over the next triennium.
2. In this memo, first, a brief background is provided highlighting the handling of the RoP at the 48th and 49th meetings of the Standing Committee (SC48 and SC49) and at COP12. Second, applicable rules are presented and discussed. Finally, the memo presents concluding legal analysis which supports the utilization of the COP12 RoP over the next triennium.

II. BACKGROUND

3. New RoP were developed and endorsed by SC48 for consideration at COP12.¹ SC49 recommended the adoption of the RoP which governed COP11 for use during COP12, with the proposed RoP to be discussed in an informal working group over the course of the COP, with the intention of adopting the revised RoP for use in the future.²
4. Following consultation and consensus-building in the informal working group, the revised 'Uruguay Rules of Procedure' (Uruguay Rules) were proposed for adoption by consensus.³ In introducing these revised RoP, the proponent Party (Denmark) specifically affirmed to the 12th Conference of the Parties that upon adoption by consensus by the COP, the revised Uruguay Rules would be valid for the coming triennium. This point was not contested by any Parties to the Ramsar Convention, or any others at COP12. With minor edits and clarifications, the new Uruguay Rules of Procedure for the Ramsar Convention were then adopted by the acclamation of the whole 12th Conference of the Parties in Punta del Este and these are now published on the Ramsar web site at:
www.ramsar.org/sites/default/files/documents/library/ramsar_rules_of_procedure_e.pdf.

¹ Ramsar, Report of the 48th meeting of the Standing Committee (28-30 January 2015), at Decision SC48-13.

² Ramsar, Conference Report of the 12th Meeting of the Conference of the Parties (1-9 June 2015), at para 16. [COP12 Conference Report]

³ *Ibid*, COP12 Conference Report, at para 246.

III. APPLICABLE RULES OF PROCEDURE AND TREATY PROVISIONS

“Ramsar Convention Rules of Procedure (as adopted in COP11)

Rule 1

These rules of procedure shall apply to any meeting of the Conference of the Contracting Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, Iran, 1971) convened in accordance with article 6 of the Convention, **subject to their adoption by consensus at the start of each meeting of the Conference of the Parties.**

Rule 56

These rules of procedure shall apply immediately after their adoption.

Rule 26.7

Unless otherwise decided by the Conference of the Parties, these rules **shall apply *mutatis mutandis*** to the proceedings of such bodies...”

“Ramsar Convention Rules of Procedure (as adopted in COP12)

Rule 52

1. These Rules **shall take effect upon adoption by the Conference of the Parties**, and shall remain valid for each of its meetings unless amended by majority vote of the Conference of the Parties.”

“Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, Iran, 2.2.1971, as amended by the Protocol of 3.12.1982, and the Amendments of 28.5.1987) Paris, 13 July 1994

Article 6

1. There shall be established a Conference of the Contracting Parties to review and promote the implementation of this Convention...

2. The Conference of the Contracting Parties shall be competent:

a) to discuss the implementation of this Convention;

...

f) to adopt other recommendations, or resolutions, to promote the functioning of this Convention.

4. The Conference of the Contracting Parties shall adopt rules of procedure for each of its meetings.”

IV. LEGAL ANALYSIS

5. In accordance with the mandate provided by SC49, the COP12 informal working group, through a series of open meetings at COP12, reviewed the text of the RoP proposed by SC48 and made

amendments. The informal working group's consensus version of the revised RoP were put forward for adoption on the final day of COP12 by Denmark. These COP12 Uruguay Rules were adopted by acclamation by all Parties as represented in COP12, as indicated in the Ramsar Convention COP12 Conference Report at paragraph 246.

6. At the time of adoption of the COP12 Uruguay Rules, the COP11 RoP were still in force, and as such, these RoP governed the decision to adopt the revised Uruguay Rules.
7. Rule 56 of the COP 11 RoP indicates that the Rules of Procedure will apply immediately upon approval by the COP, and is silent with regards further requirements to guide the actual timing of their adoption prior to their application. Rule 26.7 further indicates that the RoP apply *mutatis mutandis* to the proceedings of subsidiary bodies. As point of *obiter dictum*, in the Uruguay Rules of Procedure adopted at COP12, it is further clarified in Rule 52 that the Rules of Procedure for the meetings of the Ramsar Convention shall take effect upon their adoption by the COP, remaining valid for all subsequent meetings, with amendments requiring a majority vote.
8. In the Ramsar Convention itself, the Parties at Article 6.2 (f) decided that the COP is empowered "to adopt other recommendations, or resolutions, to promote the functioning of this Convention". The Parties also agreed at Article 6.4 that "The Conference of the Contracting Parties shall adopt rules of procedure for each of its meetings."
9. As Rule 56 is silent on the timing of the requisite adoption, the acclamation of the 2015 COP12 Uruguay Rules of Procedure by COP12 can be interpreted as sufficient to satisfy Rule 56, which states that the Rules of Procedure shall apply immediately upon approval by the COP. As such, the Uruguay Rules of Procedure adopted at COP12 can govern the subsequent meetings of the triennium. Article 6 of the Ramsar Convention does not contradict this interpretation, and the consensus decision of the COP12 during the Ordinary Meeting supports this interpretation.
10. It is, however, explicit in Rule 1 of the COP11 RoP that the RoP which shall govern the COP itself are to be adopted by consensus at the start of every Ordinary Meeting of the Conference of the Parties. It is further explicit in Article 6.4 that the COP shall adopt rules of procedure for each of its meetings. As such, while the Uruguay Rules can govern meetings of subsidiary bodies created by the COP during the intervening triennium, the RoP which are to govern COP13 shall still be adopted in the regular manner, at the start of the Ramsar COP13.

V. CONCLUSION

11. The Rules of Procedure adopted by acclamation at COP12 can govern the meetings of the Standing Committee and other bodies of the Ramsar Convention, and shall remain in force until the next Ordinary Meeting of the Conference of the Parties. The RoP to be used in that COP shall be adopted by consensus at the start of the ordinary meeting of that COP as per the Rule 1 of the Uruguay Rules of Procedure and in compliance with Article 6.4 of the Ramsar Convention.