

Compilation of comments received on the thought starter on the preparation of the reports on credentials for the ordinary meetings of the conferences of the parties to the Basel, Rotterdam and Stockholm conventions in 2015

(as of 28 April 2014)

1. During their teleconferences held respectively on 23 January, 3 February and 19 February 2014, the bureaux of the conferences of the parties (COPs) to the Basel, Rotterdam and Stockholm conventions agreed to a process for preparing the reports on credentials for the 2015 COPs.
2. The process involves the development of a thought starter which provides a possible approach for the preparation of the reports on credentials for the 2015 COPs.
3. The thought starter was sent by the Secretariat to the three bureaux on 7 April 2014, inviting comments on the document by 21 April 2014.
4. Following this invitation, the Secretariat received comments from several bureaux members.
5. A compilation of all comments received is set out in the annex to the present note. Comments are reproduced as received and have not been edited.
6. In line with the agreed process, the compilation of comments received will also be made available to the bureaux of the COPs to the Basel and Stockholm conventions in advance their individual Bureau meetings in May/June 2014.

Annex

Comments received from members of the bureaux of the conferences of the parties to the Basel, Rotterdam and Stockholm conventions

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Comments received from Mr. Hadi Farajvand (Islamic Republic of Iran - Asia and Pacific group), member of the Bureau of the Conference of the Parties to the Basel Convention

- acceptable forms

In second bullet, since there is no ways or means to verify any doubt about the validity of the copy of credential, I propose to delete the phrase "In case of doubt as to whether a copy constitutes a valid credential". I believe if the copy of credential is accompanied by a letter or note from authorities mention in that paragraph would be adequate.

Comments received from Mr. Yorg Aerts (Belgium - Western European and other group), member of the Bureau of the Conference of the Parties to the Basel Convention

At the last COP the pragmatic way out was that parties even could submit their credentials after the COP and would then still be considered as duly represented during the COP. I think we should keep this work method and not also accepting copies of credentials which would eventually render the system of credentials irrelevant.

Comments received from Mr. Luca Arnold (Switzerland- Western European and other group), member of the Bureau of the Conference of the Parties to the Basel Convention

For the Basel Convention and on behalf of the JUSCANZ part of the WEOG group I would like to share the following comments:

We still remember the problems at the last COPs regarding credentials which have triggered this thought starter. There was a general reluctance about accepting also copies of credentials because each delegation has time in advance to organize its credentials and if a delegation does forget their credentials it still has almost two weeks time to organize them during the COP. At the last COP the pragmatic way out was that parties were allowed submit their credentials even after the COP and would still be considered as duly represented during the COP. This is considered as a better solution than accepting also copies of credential and also a flexible enough solution. Furthermore credentials alone should not be sufficient proof that a person is physically present in the meeting and can be elected (compare with bottom of page 1 of the respective thought starter). Finally the secretariat should also consider the option of providing the possibility to submit credentials in an electronic way as a timely and practical solution and an additional assistance.

Comments received from Ms Jimena Nieto, Chair of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention, and *ex officio* member of the Bureau of the Conference of the Parties to the Basel Convention

First of all, let me say that the thought starter on credentials is an excellent document, I enjoyed reading it and I think the process will help us to avoid situations such as the one that occur at the past COP's in the future. It will also create a good precedent for COP's under other MEA's.

I don't have comments to the text, however at the Bureau meeting I will seek further clarification on the practicalities of the following paragraph:

o copies of credentials. In case of doubt as to whether a copy constitutes a valid credential, the copy will need to be accompanied by an original letter or note verbale from a ministry, embassy, permanent mission or other government office/authority of the Party.

I think we might want to add some clarity on what kind of situations are we referring to when we say "in case of doubt etc."

Comments received from Mr. Jürgen Helbig, Chair of the Chemical Review Committee of the Rotterdam Convention, and *ex officio* member of the Bureau of the Conference of the Parties to the Rotterdam Convention

(amendment inserted in track change mode in the thought starter, as follows)

...

The importance of credentials

Credentials are the official designation by a Party of its representatives for a meeting of the Conference of the Parties. The decision taken by the meeting of the Conference of the Parties following submission by the Bureau of the report on credentials has very concrete implications as it determines:

- whether a quorum has been reached¹;
- which Party may participate in decision-making²;
- whether a representative of a Party is present at the meeting and can, therefore, be elected as officer of the BC, RC or SC COP Bureau³.

¹ BC rule 30 (two thirds of the parties must be present for declaring a session of the meeting open, for permitting the debate to proceed and for any decision to be taken), RC rule 35 and SC rule 35 (one third of the parties must be present for declaring a session of the meeting open and for permitting the debate to proceed; and two thirds of the parties must be present for any decision to be taken).

² BC rule 39, RC rule 44 and SC rule 44: each Party shall have one vote (a special rule applies for political and /or economic integration organizations). For matters of procedure, decisions shall be taken by a simple majority vote (BC rule 40, RC rule 45 and SC rule 45). For matters of substance, all efforts shall be made to reach agreement by consensus. If all such efforts have been exhausted, a decision by the BC COP shall, as a least resort be taken by a two-thirds majority vote of the parties present and voting, unless otherwise provided by the BC, the financial rules or the rules of procedure. Similar language is not agreed under the RC and SC rules, which means consensus is required for decision-making on matters of substance under RC and SC.

³ BC rule 21.1 and SC rule 22.1 provide that at each ordinary meeting of the COP, a President, and nine Vice-Presidents, one of whom will serve as Rapporteur, are to be elected *from among the representatives of the parties present at the meeting*. Under RC, such a requirement of presence at the meeting only existed for COP-1. For subsequent RC meetings, rule 22.1 provides that the election of officers is to take place *from among the parties to the Convention*.

Comments received from Ms. Elena Dumitru (Romania – Central and Eastern European group), member of the Bureau of the Conference of the Parties to the Stockholm Convention

(amendments and comments inserted in track change mode in the thought starter, as follows)

Preparation of the reports on credentials for the ordinary meetings of the conferences of the parties to the Basel, Rotterdam and Stockholm conventions in 2015

Thought starter on information to be provided to the parties of the three conventions

(version 25 March 2014)

Introduction

During their teleconferences held respectively on 23 January, 3 February and 19 February 2014, the respective bureaux of the conferences of the parties (COPs) to the Basel, Rotterdam and Stockholm conventions (BRS) agreed on the process pertaining to the preparation of the reports on credentials (see annex). The first step in the process is the development of a thought starter.

The present thought starter provides information on the relevant rules of procedure and past practice of the BRS COPs and presents a proposal for the consideration of the bureaux. As a second step, the Secretariat will draft a note on the preparation of the reports on credentials, for the consideration and approval of the bureaux during their joint meeting on 11-12 November 2014.

The importance of credentials

Credentials are the official designation by a Party of its representatives for a meeting of the Conference of the Parties. The decision taken by the meeting of the Conference of the Parties following submission by the Bureau of the report on credentials has very concrete implications as it determines:

- whether a quorum has been reached⁴;
- which Party may participate in decision-making⁵;
- whether a representative of a Party is present at the meeting and can, therefore, be elected as officer of the BC, RC or SC COP Bureau⁶.

The BRS rules of procedure

In line with the rules of procedure for meetings of the conferences of the parties to the BRS, the Bureau of any meeting shall examine the credentials and submit its report to the Conference of the Parties⁷.

The respective rules of procedure⁸ set out:

⁴ BC rule 30 (two thirds of the parties must be present for declaring a session of the meeting open, for permitting the debate to proceed and for any decision to be taken), RC rule 35 and SC rule 35 (one third of the parties must be present for declaring a session of the meeting open and for permitting the debate to proceed; and two thirds of the parties must be present for any decision to be taken).

⁵ BC rule 39, RC rule 44 and SC rule 44: each Party shall have one vote (a special rule applies for political and /or economic integration organizations). For matters of procedure, decisions shall be taken by a simple majority vote (BC rule 40, RC rule 45 and SC rule 45). For matters of substance, all efforts shall be made to reach agreement by consensus. If all such efforts have been exhausted, a decision by the BC COP shall, as a least resort be taken by a two-thirds majority vote of the parties present and voting, unless otherwise provided by the BC, the financial rules or the rules of procedure. Similar language is not agreed under the RC and SC rules, which means consensus is required for decision-making on matters of substance under RC and SC.

⁶ BC rule 21.1 and SC rule 22.1 provide that at each ordinary meeting of the COP, a President, and nine Vice-Presidents, one of whom will serve as Rapporteur, are to be elected *from among the representatives of the parties present at the meeting*. Under RC, such a requirement of presence at the meeting only existed for COP-1. For subsequent RC meetings, rule 22.1 provides that the election of officers is to take place *from among the parties to the Convention*.

⁷ BC rule 19, RC rule 20 and SC rule 20.

⁸ BC rule 18, RC rule 19 and SC rule 19. Under BC, a regional political integration organization may also become a Party to the Convention.

- who may issue the credentials: either the Head of State or Government or the Minister of Foreign Affairs or, in the case of a regional economic integration organization, the competent authority of that organization;
- to whom the credentials should be submitted: the Secretariat/the Executive Secretary; and
- when the credentials should be submitted: *if possible* no later than twenty four hours after the opening of the meeting.

The respective rules of procedure also stipulate that, pending a decision by the meeting to accept the credentials, representatives shall be entitled to participate provisionally in the meeting⁹, as well as any later change in the composition of the delegation shall also be submitted to the Secretariat.

These rules, however, do not specify that the credentials should be submitted in a specific form, for instance in original form, and they do not specify the ultimate deadline by which credentials should be submitted. Also, the rules do not specify at what time during the ordinary meetings of COP, the report on credentials should be submitted by the Secretariat.

For reference purposes, with respect to the form and deadline for the submission of credentials, the rules of procedures of other MEAs (eg. CBD/Cartagena Protocol, UNFCCC, Vienna Convention/Montreal Protocol) are similar to the BRS rules of procedure¹⁰. In practice, acceptance of copies of credentials appears to be standard practice under the Montreal Protocol, and periods of grace for the submission of original credentials subsequent to the closing of the Conference/Meeting of the Parties have been given under the CBD/Cartagena Protocol and the UNFCCC.

The BRS bureaux and COPs' practice

In examining the credentials, the bureaux will need to take into account the respective rules of procedure and ensure they are respected. As evidenced by the practice over the years under the three conventions, the flexibility provided by these rules with respect to both the form in which, and the deadline by which, credentials should be submitted has been used by the bureaux and COPs to ensure that the required quorum was reached and the meeting could proceed with its work.

With respect to the form in which credentials should be submitted, the practice has varied over the years under the three conventions, from being very lenient to requiring originals¹¹. With respect to the deadline for the submission of the credentials, the agenda item pertaining to the examination of credentials is taken up early in the meeting, on the morning of the first day, at what time parties are reminded of the rules of procedure pertaining to the matter. Consideration by the COP of the report on credentials submitted by the Bureau usually takes place immediately prior to the COP entering in decision-making mode, i.e. on the morning of the last day of the COP.

During the 2013 COPs, because of the number of decisions to be taken by the six meetings, consideration of the six reports on credentials took place in the afternoon session of the day before the last day of the meeting. Parties were informed in the course of the meetings that their credentials in original form therefore needed to be submitted by noon on the day before the last day of the meetings. Parties failing to do so would be considered as participating as observers for the remainder of the meetings. As such, these parties would not be taken into account for the purpose of determining whether a quorum was reached, they would not participate in decision-making, and their representatives would not be considered as being "present" at the meeting for the purpose of the election of the BC and SC COP officers. The COPs however agreed that representatives of parties without

⁹ BC rule 20, RC rule 21 and SC rule 21.

¹⁰ CITES may be cited as an exception since its rules of procedure provide that the Credentials Committee shall recommend acceptance of credentials only if the signed original has been presented.

¹¹ For RC, the Bureau has recommended and the COP accepted: only original credentials (COP-3, COP-4, COP-6), original and copies of credentials (COP-5), all forms of nominations (original credentials, copies of credentials, nominations in the form of letters or notes verbales not signed by the proper authority) for the purpose of participation and only original credentials for the purpose of decision-making on the location of the Secretariat (COP-1). The approach followed during RC COP-2 is unclear from the meeting report. For SC, the Bureau has recommended and the COP accepted: only original credentials (COP-6), original or copies of credentials (COP-3, COP-4 and COP-5), all forms of nominations - original credentials, copies of credentials, nominations in the form of letters or notes verbales not signed by the proper authority - on the understanding that formal credentials would be submitted "as soon as possible" (COP-1, COP-2). For BC, the Bureau has recommended and the COP accepted: only original credentials (COP-11), original credentials for decision-making and other forms of nominations for the purpose of participation (COP-8 and COP-9), all forms of nominations - original credentials, copies of credentials, nominations in the form of letters or notes verbales not signed by the proper authority - on the understanding that formal credentials would be submitted "as soon as possible" (COP-10).

original credentials at that time could still submit original credentials within a week following the closing of the meetings and be listed as parties in the final reports of the meetings. Six parties submitted such credentials.

Possible approach for the 2015 COPs

The bureaux are invited to consider the following approach with respect to the form and deadline for the submission of credentials, based on the respective BRS rules of procedure, taking into account past practice and mindful of the need to reach a quorum for meetings of the COP to proceed.

- Acceptable forms:
 - original credentials or
 - copies of credentials. In case of doubt as to whether a copy constitutes a valid credential, the copy will need to be accompanied by an original letter or note verbale from a ministry, embassy, permanent mission or other government office/authority of the Party.
- Deadline: submitted by the end of the session before that which immediately precedes the session during which the COP enters into decision-making mode (i.e. if the COP enters in decision-making mode on Thursday at 3:00pm, the deadline for the submission of the credentials is the end of the Wednesday afternoon session).
- Consequences: Parties without valid credentials will be considered as participating as observers during the meeting. They will not be taken into account for the purpose of determining whether a quorum is reached, their representative cannot be a candidate for election in the BC and SC bureaux, and they will not participate in decision-making. These parties will be listed as observers in the meeting report and list of participants.

The approach would need to be brought to the attention of all parties well in advance of the meeting, for instance with the invitation letter, at the web page and through the bureaux members. It is also important to remember that each COP retains ultimate decision-making power with respect to credential matters.

Comment: it is important to specify the deadline for the submission of the Secretariat report on credentials to the COP meetings, i.e. on the morning before the COPs enters into decision-making mode.