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Elaboration of the Proposal for a New Rule of Procedure

by

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The Scientific Council has occasionally found it difficult to proceed with meetings, when both the Chairman and Vice-chairman have been absent. In this and similar situations where decisions have to be taken under the terms of Article X(2), the main difficulty has been the lack of a quorum.

After discussion, at the June 1985 Meeting, of a possible procedure suggested by the Executive Secretary, the Scientific Council concluded that it would be worthwhile to study applying the procedure as part of a more general Rule, which could be resorted to when an urgent decision could not be taken for lack of a quorum. The Executive Secretary was requested to work out and explain the main features of such a proposal (see Appendix I). This paper aims to comply with that request.

The features of the proposal are justified as follows:

1. The solution is seen as an "ad hoc" representation of Contracting Parties at a meeting through a proxy obtained by the Executive Secretary before the meeting. It is therefore fitting to place the rule in the context of Rule 1 (Representation). Because Section 1.1 of Rule 1 deals with representatives, alternates, experts and advisers and Section 1.2 deals with observers, the new rule dealing with representatives should be included in Section 1.1.
2. This extraordinary method of representation must be adequately limited and conditioned to encourage a Contracting Party to feel that it is safe and acceptable to extend its representation in this manner.
3. Condition (1) of the proposal gives a procedure to entail that the powers given by the Contracting Party will be usually valid for one year, but not longer, as it was deemed practical by the Scientific Council. The minimum time of 24 hours should perhaps be longer, because these powers should be given well before the start of the meetings, in which they may be necessary. On the other hand, since the Contracting Parties are widely scattered and some of them, as the saying goes, only remember the thunder bolt as they hear the thunder, it is probably wiser not to require longer than 24 hours.
4. Condition (2) of the proposal ensures that action of the "proxy" representatives will only make it possible for a vote to be taken but that it will not alter the result of the votes thus cast. This is so because voting is done only under the terms of Article X(2) of the Convention, where it is clear that votes of "Abstain" do not count for the majority.
5. Condition (3) of the proposal ensures that, although the Executive Secretary is and stays empowered to vote "Abstain" for a Contracting Party, the "proper" representative of the Contracting Party, when present at the meeting, is the one to participate in the vote; thus eliminating a conflict of representation.
6. Regarding condition (4) of the proposal, "proxy" powers, for representation and voting, are not normally supposed to be subrogated without express authorization of the principal. This aspect is even more serious in international law. It would be understood that no subrogation was possible if no mention were made of the subject. Bringing it up makes it clear that subrogation will be possible under some specific conditions. It seems obvious that the representation of any Contracting Party should not pass from one person to another without the knowledge of and assent from that Contracting Party.
7. When the Executive Secretary participates in a vote as a special representative, he should call for a roll call so that an official record of his voting will exist. This would eliminate any doubts that might arise if a roll call had not been taken.
8. Since seven or eight out of a total of 14 Contracting Parties are usually represented at Scientific Council meetings, a maximum of three "proxy" representations at any one time will usually ensure the existence of a "quorum" in situations where a formal vote may be required under Article X(2) of the Convention.

Appendix I. Proposal for a New Rule of Procedure

In the "Rules of Procedure for the Scientific Council", it is proposed that the present Section 1.1 of Rule 1 (Representation) be subdivided into two subsections. Subsection 1.1a will read exactly as the present Section 1.1, and Subsection 1.1b will read as follows:

A Contracting Party may be represented at a meeting by the Executive Secretary provided that:

- 1) He has been thus empowered by that Contracting Party not less than 24 hours and not more than 12 months before the start of the meeting.
- 2) He is only empowered to cast a vote of "Abstain".
- 3) No other representative of that Contracting Party is present at the meeting.
- 4) No one may be subrogated to the Executive Secretary's "proxy" rights without the expressed authorization of the Contracting Party, whose representation is involved, dated not more than one month before the beginning of the meeting for which subrogation will be applicable.
- 5) The vote is by roll call and a *maximum* of two (three) Contracting Parties may thus be represented at any one vote.