

Intervention by South Africa, under Agenda Item 5: Organisational works and reports of subsidiary bodies, with specific reference the matters raised by the African Group in its non-paper on the voting procedure for members of the Executive Council.

Thank you Chairperson for giving me the floor.

Under General Provisions of the Rules of Procedure of the CSP, Rule 79 provides for the election of members to the Executive Council. Rule 81 provides for a procedure to be followed when two or more places are to be filled at one time and further sets out a procedure to be followed to fill the remaining position(s), in the event that the number of candidates obtaining the requisite majority is less than the number of elective places to be filled.

It is incontrovertible that Rule 81 contemplates the possibility of more than one round of voting when two or more vacant places are to be filled. Indeed, Rule 84 provides that there shall be a single ballot in respect of all the elective places to be filled, specifying elective places which are to be designated by each regional group in the order that these groups are referred to in the CWC.

To be clear, however, the reference to “a single ballot” under this Rule is only to a ballot paper on which the names of all the candidates competing for the vacant positions to be filled must appear, providing a space on which a mark denoting a “Yes” vote may be placed. South Africa respectfully submits that, contrary to the interpretation by some, the phrase “a single ballot” does not imply a single round of voting. Such an interpretation is ineligible as it would lead to an absurdity by making a nonsense of the provisions of Rule 81 which provides for multiple rounds.

Rule 85 provides for specified instances where a vote cast in the election of a Member of the Organisation to the Executive Council shall be declared invalid, specified under (a) and (b). That is followed by the footer of Rule 85 which specifically provides that a ballot paper containing more names than the number of seats assigned to it will be declared invalid.

It is common course, however, that Rule 85 is silent on the status of a ballot paper on which a State Party places a mark to denote a “Yes” vote on fewer names of candidates than there are seats available to be filled. South Africa believes the silence is conscious, deliberately designed to allow each State Party to exercise its legitimate and sovereign right to choose the candidate or candidates as it may deem appropriate, in accordance with its foreign policy, subject only to the reasonable limitation set out in the footer of Rule 85.

South Africa is of the firm view that the prevailing practice which, as far as we could ascertain, was first introduced for convenience during CSP22 in 2017, in terms of which a ballot on which a mark that clearly denotes a “Yes” vote in favour of a candidate or a number of candidates less than the number of seats available to be filled, is declared invalid, is iniquitous.

The prevailing practice, which has since then been followed, is unjustifiable. As it happens, there is no official record of a decision by the CSP to give it any legislative legitimacy. In any event, the effect of this prevailing practice constitutes an assault on the cardinal principle of the equality and sovereignty of States, which is at the heart of the UN Charter.

In its international dimension, sovereignty entails the right of a state to rule itself and exercise its legitimate choices freely, subject to established rules of international law. It is the most essential attribute of a state in the form of its complete self-sufficiency within the frames of its territory, that is its supremacy in the domestic policy and independence in the foreign one.

Admittedly, the list of instances set out under Rule 85, where a ballot may be declared invalid under Rule 85, is not exhaustive. However, South Africa respectfully submits that the Rules of the CSP, when promulgated, only provided for the explicit limitation set out in the footer of Rule 85. Accordingly, the rules of interpretation direct that what is not specifically included is excluded.

This implies that the introduction of any new or additional limitation to the Rules of Procedure of the CSP, in respect of which the right to vote may be exercised by the States Parties constitutes an amendment to the Rules of Procedure, which would only be valid if it has followed the provisions of Rule 93 which govern the Amendment of the Rules of Procedure, subject to the provisions of the CWC and in accordance with procedures for decisions on matters of substance as set forth in rule 69 of the Rules of Procedure of the CSP, provided that the Conference has received a report on such amendment from an appropriate committee.

As far as we could determine, there is no record confirming that the introduction of this practice, which has in effect amended the Rules of Procedure of the CSP, has followed the provisions of Rule 93 on amendments or Rule 63 regarding the handling of proposals and amendments. This alone is a fatal defect that renders the so-called practice to be of no legal force and effect.

In any event, even if its legal standing was otherwise, which is contested, this practice which offends the sovereign right of States to freely exercise their choice cannot be said to be any of the additional instances contemplated for inclusion in the list set out under Rule 85. The so-called practice, due to its consequences for State Sovereignty, stands outside the letter and spirit of the CWC.

For the record, South Africa has been agnostic about the outcome of the elections of members to the Executive Council during this session of the CSP. It is part of the non-paper process on the basis of principle, not any desired electoral outcomes.

The African Group deliberately adopted the approach of a non-paper, as opposed to a draft decision, seeking is a timely, bona fide discussion, instead of a side show that this important matter has now been reduced to. Regrettably, the discussion on the non-paper, under Agenda Item 5 has clearly been muzzled out of the ordinary sequence of Agenda Items to only take place in the aftermath of the elections which took place in this session of the CSP, when its import and effect can no longer be immediately felt.

For what it worth, as part of the way forward towards a speedy finalisation of this matter, South Africa requests that the Office of the Legal Advisor of the OPCW be invited to offer a written advisory legal opinion on the matter legal questions raised in this intervention. In particular, the South Africa requests the legal opinion to examine legal classification of the practice complained of, taking into account the purpose for which it was introduced, how and when it was introduced, its purported legal effect on the rights of State Parties.

In the event that the introduction of the practice in during CSP22 in 2017 and the impact thereof are confirmed to be constitute an amendment of the Rules of Procedure of the CSP, the legal opinion is requested to examine whether or not the process followed in the introduction of the practice complained of conformed to the provisions Rule 93, read together with Rule 69 of the Rules of Procedure of the CSP.

Chairperson, let the rules prevail, not arbitrariness.

South Africa request that this document be accepted as an official document of this session and published on catalyst and the external server of the organisation.