

Submission by Norway and Switzerland

Virtual meetings under the UNFCCC

The outbreak of the COVID-19 pandemic makes it urgent to consider the possibility of virtual meetings, including COP under the UNFCCC. This paper considers the opportunities for virtual formal meetings under the UNFCCC from a legal as well as practical perspective given a potential continuation of Covid-19 pandemic which would not allow for Parties to, fully or partly, engage in in-person meetings in 2021. In such a situation, planning for alternatives to in-person meetings may be necessary.

The proceedings of the COP and its subsidiary bodies are governed by written draft rules of procedure (RoP), FCCC/CP/1996/2. The RoP are not yet formally adopted (consensus needed: Art. 7.2.k UNFCCC) as there has been no agreement on the majority rule (rule 42). The draft rules of procedure are still applied at each session, with the exception of the mentioned rule on voting.

General appreciation

The starting point is that face-to-face meetings are preferable as the established norm. Virtual meetings should therefore remain the exception. During the pandemic the UNFCCC have already explored several alternative forms of gatherings, consultations, webinars, etc. using virtual meetings platforms. The June Momentum and the Climate Dialogues have demonstrated that it is possible to gather Parties for fruitful discussions with broad participation. The virtual platform for Climate Dialogues included several virtual meeting rooms. The platform also had space for participants to interact and network informally through informal lounges and exhibitions booths.

Some constituted bodies have also agreed on decisions making processes using virtual platforms, for instance the CDM Executive Board and, Paris Agreement compliance committee (PAICC), and KP compliance committee. Under the financial mechanisms the GCF and the AF have both proceeded with decisions on funding proposals in a virtual setting.

Challenges in regard to the relevant rules of procedures

It follows from article 16.5 to the Paris agreement and 13.5 of the Kyoto Protocol, that the UNFCCC RoP shall be applied in the same way (*mutatis mutandis*) unless as the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (the CMA) or Kyoto Protocol (CMP) decides otherwise. The RoP themselves state that they also apply in the same way for the subsidiary bodies.

Place of sessions (rule 3)

The RoP ensures a great deal of flexibility to Parties with regard to location of the sessions, which in the RoPs is called "place of sessions". It follows from the RoP (rule 3) that:

The sessions of the Conference of the Parties shall take place at the seat of the secretariat, unless the Conference of the Parties decides otherwise, or other appropriate arrangements are made by the secretariat in consultation with the Parties.

The rule entails three alternatives:

1. The COP could be held in Bonn, where the seat of the Secretariat is placed.
2. The COP could be held somewhere else if Parties so decide (generally the COP Presidency and venue rotates among the five recognized UN regions, Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe and Western Europe and Others.)
3. Appropriate arrangements for the COP could be made by the Secretariat in consultation with the Parties

"Appropriate arrangements" would in our view include virtual arrangements. A decision by the Parties to arrange the COP virtually would be preferable, but may not be possible to achieve beforehand. There is however, no need for a decision as long as consultations among Parties are made. Such consultations could be arranged through the Bureau, or by the outgoing and incoming Presidencies.

The appropriateness of making other arrangements would in this case be determined by the pandemic hindering face-to-face meetings and the urgent need to make progress in the UNFCCC process. "Appropriate arrangements" also points to a process which promote trust in the transparency and inclusiveness of the UNFCCC process. Other procedural rules embodied in the draft rules of procedures will also need to be respected for plenary meetings.

Observers (rule 6-8)

Observers play a central role at United Nations climate change conferences. Three key categories of observer organizations attend sessions of the COP and its subsidiary bodies: United Nations organizations, admitted IGOs with observer status and admitted NGOs with observer status. Observers may attend meetings of the COP and subsidiary bodies without the right to vote, unless at least one-third of Parties object (rule 6). Furthermore, meetings shall be public unless the COP decides otherwise (rule 30). This means that the Secretariat in a virtual meeting of the SBs or the COP, must provide a virtual platform designed so that observers who are listening to or watching the virtual meeting, rather than participating, can hear the participants speaking at the meeting. The Climate Dialogue successfully demonstrated the possibility of conducting such open a meetings.

Representation and credentials (rule 17-21)

To ensure the integrity of the intergovernmental processes only accredited representatives should be entitled to participate and represent the respective Parties (rule 17-20). Parties and their representatives submit credentials to the Secretariat for examination by the Bureau (rules 17 and 19). The virtual platform can be designed in a way so to that only accredited Parties are allowed to speak in certain meetings. Controlling that it is the Party behind the microphone is not possible; however, this would not be a unique problem for virtual sessions, and could be minimised by the use of video cameras when speaking.

Conduct of business (rule 30-40)

The draft rules of procedure set out general rules for debating and negotiating, for example that delegates may only speak when they are given the floor by the President or Chairperson (rule 3). At least one third of the Parties need to be present for the President to declare a meeting open or permit the debate to proceed, and a quorum of two-thirds of Parties must be present for a decision to be taken (rule 31). The RoP does not require Parties to meet physically for the meetings and debate to proceed. Negotiating and debating virtually will require that Parties are disciplined to time limits, mute themselves when not speaking etc. Again, the Climate Dialogues demonstrated that Parties are disciplined and adhere to guidelines of virtual participation. Moreover, some virtual platform already allow persons leading the negotiation to give the floor when required and to forbid any unannounced intervention. The RoP also does not define a quorum as Parties being physically present at a specific place to be counted. The presence of two-thirds of Parties could thus be ensured virtually. This year's experience has shown that this does not pose any practical problems.

Voting and decision-making (rule 41)

The RoP also include voting rules. There is no agreement with regard to rule 42 on majority vote. There has evolved a practice to adopt outcomes of the session by general agreement. The RoP establish no physical presence requirement with respect to decision making. This could be done virtually. If necessary, the voting procedure may take place by roll call as set out in rule 48 (the calling of a list of names). We would also point out that the phrase "Parties present and voting" related to the voting process remains unaffected by the virtual nature of the meetings, since rule 42.5 of the draft RoP specifies its meaning which is: Parties present at the meeting at which voting takes place and casting an affirmative or negative vote. In other words, "present and voting" in our view does not necessarily mean "physical presence", but also "virtual presence".

Finally, in our view decisions taken at virtual meetings should be deemed to have been taken at the seat of the Secretariat, in Bonn, as it happened for example at the meeting of the compliance committee under the Kyoto Protocol.

Languages (rule 54-56)

Interpretation of statements and translation of documents at the session needs to be arranged for (rule 29 and rule 55 and 56). Therefore, the issue of use of languages must be taken into account in the same way as for real meetings, which require that discussions must be simultaneously translated. However, this remains only a practical challenge, which requires a team of simultaneous translators included in the videoconference communication process itself and therefore all commodities both for participants and translators.

Options assessment

In a scenario where no physical meeting is possible an option is to conduct the meeting fully virtually with no physical attendance. This will require amongst other arrangements facilitating improved connectivity from locations with connectivity challenges. Several support measures are already made available, including use of UN offices located in the country. However more work and resources will be needed to accommodate full participation. Further translation into UN languages will be necessary. This will also require considerable resources and are to date still associated with technical challenges. However, in the coming months it can be expected that this will improve as technical platforms are evolving. While this option must be considered in the case of a continued absence of opportunities for physical meetings, there might prove difficult to ensure global participation in fully virtual formal meetings.

In scenarios with limited size of physical meetings, another option is to arrange the COP in a hybrid format: partly virtual, and partly with physical attendance. In such case only a limited number (equal for all Parties and observers) of accredited delegates receive access badges to the UN Campus where formal plenary meetings are conducted and broadcasted in all official UN languages. Contact and working groups will still take place, but in a very limited manner, and with the possibility of virtual attendance. Both options would in our view be in accordance with the Rules of Procedure. In short, in our opinion, the rules offer the necessary flexibility for the organization of virtual or even hybrid sessions, as proposed. In particular, the decision-making process does not seem to be challenged by this format and the RoPs can be observed.