

Advice from OLA regarding the new provisions of draft Revision 3 to the 1958 Agreement on the proxy voting procedure

The following excerpt of IWVTA working papers SG58-08-04 and SG58-06-03-Rev.1 reproduces the responses given by UN Office of Legal Affairs (OLA) New York on the proxy voting procedure.

SG58-08-04: OLA's advice for clarifications on Appendix 1, Article 8 (Delegation of Vote)

QUESTION (a):

Clarification on Appendix 1, Article 8 (Delegation of Vote): In the email message dated on 18 June 2013, OLA advised the Secretariat that a delegation of vote is legally possible and mentioned that in the General Assembly, the delegation of the right to vote has to be limited to specific instances, so that there can be no case of a general proxy. In this respect, the Secretariat decided to insert into new draft article 8 (as reproduced below) of the 1958 Agreement the wording "in special cases" (as reflected in document SG58-07-03.doc):

"For the quorum and the vote referred to in Articles 5, 6 and 7 of this Appendix, a Contracting Party may delegate, in special cases, in writing its presence for the determination of the quorum and the right to vote on its behalf to another Contracting Party or to a regional economic integration organization to which the Contracting Party belongs. The written mandate ... "

During its recent September meeting, the IWVTA group preferred to keep the text of this sentence unchanged, i.e. not to insert the wording "in special cases", with the justification that this would again be subject to interpretation of "what is a special case".

Is the first sentence of Article 8 legally acceptable as reproduced above without the wording "in special cases"?

ANSWER by OLA on QUESTION (a):

With respect to the delegation of the right to vote, as explained in the e-mail of 18 June 2013, OLA initiated an internal consultation with colleagues dealing with procedural matters for input on this matter in order for the negotiating Parties to have further elements to decide on the draft clause regarding delegation of vote. As a result of these consultations, it is up to the negotiating Parties to decide how specific the provision on the delegation of vote must be, should they decide to include such a provision. Accordingly, the IWVTA group's preference to not to insert the wording "in special cases" included in the previous draft is legally acceptable.

SG58-06-03-Rev.1: OLA's reply for clarifications on Appendix 1, Article 8 (Delegation of Vote):

We asked our colleagues in the Office of the Legal Counsel about quorums, and received the following advice, which is drawn from the experience at the General Assembly. In the General Assembly, the delegation of the right to vote has to be limited to specific instances and there can be no case of a general proxy. The specific proxy is signed by the Head of State/Government/Foreign Minister for a state which has no Mission or Permanent Representative at UNHQ; in the case of other Missions who do have representation, the proxy can be signed by the Permanent Representative granting a delegate from another Mission the right to act/vote on its behalf.
