

Voting Process for the Nuclear Security Resolution at the 66th IAEA General Conference and the Issue of Rules of Procedure at Multilateral Meetings

EunBee Park* and Sangcheol Hyung
Korea Institute of Nuclear Nonproliferation and Control

**Corresponding author: ebpark@kinac.re.kr*

1. Introduction

The 66th Annual Regular Session of the International Atomic Energy Agency (IAEA) General Conference was held from the 26th to the 30th of September 2022 at the IAEA headquarters in Vienna, Austria. Despite the excitement of resuming a full-scope-multilateral meeting after the COVID-19 Pandemic, pending and rising issues such as nuclear power propulsion submarines, unmanned aerial vehicles (UAV), and climate changes made the Agency and its Member States anxious about upcoming intense debates. Especially the air was tensed to see how the bisected positions between the Western world and Russia would unfold at this conference, whose result was already forewarned and repeated at the other international fora.

Although many already have expected such conflicts, the discussion for adopting this year's Nuclear Security Resolution revealed that the red line between the Western world and Russia was thicker than anticipated. Consequently, the Committee of the Whole (CoW) failed to reach a consensus for the Nuclear Security Resolution. After it was brought to the Main Committee, there were attempts to use the rules of procedure strategically to enforce or block the adoption of the Resolution.

This paper describes a) the significance of rules of procedure at multilateral meetings, b) the main issues regarding the rules of procedure for the process of adopting the Resolution, c) observations of the event from the viewpoint of the meeting participant and the legal expert, d) assessment of fairness and validity of the rules of procedure, and e) implications from the strategic usage of the rules of procedure.

2. Rules of Procedure in Multilateral Meetings

Rules of procedure for international conferences mean rules regarding the arrangement, proceedings, and voting, which are agreed upon by the member states of international organizations [1]. These rules are necessary to ensure democratic and rational discussion when consensus is not immediately met during decision-making and to protect minority rights. Therefore, the states should comply with the rules, which cannot be amended once the meeting begins.

There are different academic interpretations of the rules and their legal obligations or socio-customary expectations. Sabel, who wrote Rules of Procedure [2], observed its features in five elements; a) treaty, b)

voting, c) tacit consent, d) general principles of law, and e) customary international law.

To sum up his findings, rules of procedure of international conferences should be utilized not as a legal obligation but as a tool for agreement and convenience, which is expected to comply reciprocally.

3. Main Issues Regarding the Contents of the Resolution

The CoW meeting could not conclude with an agreed draft of the Nuclear Security Resolution due to a wide gap between the Western world and Russia regarding their position on the texts about the Russia-Ukrainian war.

Russia objected to several clauses of the draft resolution because they referenced the Board of Governors resolutions that explicitly condemned Russia's actions. Russia also argued that Nuclear Security Resolution should be about nuclear security in general, so it is inappropriate to include a particular state or region. Russia also made amendments and suggestions unrelated to the Ukrainian situation, not because of their contents but to prolong the discussion and delay the Resolution's adoption.

4. Main Issues Regarding the Adoption of the Resolution

The draft Nuclear Security Resolution, which did not reflect Russia's and some other Member States' suggestions, was presented to the Main Committee late at night on the last day of the conference. In the end, the conference adopted the Resolution with 62 votes in favor, no objection, and 29 abstentions. The process of reaching such a conclusion was controversial since the Western world and Russia used rules of procedure against each other.

4.1. Closure of Debate and Presenting Amendments

In order to proceed with voting, the first step is to close the debate. The Chair announced the closure of the debate based on the majority decision of the member states. However, Russia wished to present its amendments even after, but the Western world had a different view on whether it was allowed after the closure of the debate. So the Office of Legal Affairs (OLA) advised that if the amendments were presented before, they could also be presented and put to the vote.

The Western world argued that only suggestions circulated by the document were eligible, but Russia, China, and Iran refuted that any form of suggestion could be considered. The Chair acknowledged Russia's argument, so its amendments were put to the vote.

4.2. Adjournment of the Meeting

While the debate about the abovementioned issue continued, the clock in the meeting room showed that it had passed midnight on the 30th of September. Russia pointed it out, insisted that no decision could be made since the meeting was adjourned, and added that the General Committee agreed on the official duration of the conference [3]. However, the Chair and OLA decided to continue the meeting since there were pending agendas, and no other objections were observed.

4.3. Utilization of Quorum

After a long debate, the meeting reached the final vote for adopting the Resolution. However, Russia called the states to leave the meeting room to interrupt the quorum. Out of 175 member states, 88 is the quorum, but it was seen that 90 states were present in the meeting room, and only several states had to leave to hinder the proceeding. Although 91 states participated in the final vote, Russia's idea was clever enough to block the adoption of the Resolution nearly.

5. Assessment of the Voting Process

Three assessments can be drawn from observing the controversial voting process from the viewpoint of international conferences' rules of procedure and customs.

5.1. Strategy of 'Point of Order'

At the Main Committee meeting on the night of the 30th of September, the United States (US) and Russia raised one 'Point of Order' each. By Rule 56, the Point of Order can be raised at any point, and the presiding officer should immediately make a decision. If strategically used, it can effectively swing the direction of the discussion, which the US and Russia did as well.

5.2. Neutrality and Validity of 'Presiding Officer's Ruling'

The presiding officer presides, coordinates, and makes decisions regarding the meeting proceedings. Rule 50 describes such rights of the presiding officer. However, the range and depth of the Chair's role can vary by the type and atmosphere of the meeting or even by the chairperson's personality. Such liberality may affect the result of the meeting.

The Chair of the Main Committee of the 66th General Conference had to make two major decisions for this meeting; a) whether Russia's amendments were presented before, b) whether the meeting could continue after the official duration of the session. Although he tried his best to keep neutrality, considering how critical the abovementioned elements were for adopting the Resolution, one cannot neglect that Chair's decisions affected the conclusion, directly and indirectly.

5.3. Hampering Proceedings by Utilizing Elements of Rules of Procedure

The National Assembly of the Republic of Korea (ROK) also has its own Rules of Procedure as *National Assembly Act*. Several elements of the meeting were analyzed comparatively.

Regarding the quorum issue, even if Russia could hinder voting by inquoracy, no specific rule guides the meeting to take certain measures. ROK's *National Assembly Act* specifically prescribes suspending or adjourning the meeting. However, by ROK's Supreme Court's judgment, the decisions can be considered valid even if a quorum was temporally not met during the meeting [4]. Likewise, if IAEA proceeded with the voting without satisfying the quorum, it does not mean that the decisions are invalid. However, it is always recommended to be safe and avoid controversies by strictly enforcing the Rules.

As for the adjournment of the meeting, IAEA's rules of procedure and ROK's National Assembly Act similarly prescribe the procedures to establish the duration of sessions. While the *National Assembly Act* does state the maximum duration of the meeting, the Rules do not have a specific limit nor strict instructions related to extension, which explains why the Chair and OLA decided to continue the meeting past midnight. Nevertheless, the primary purpose of setting the official duration is to ensure all delegations' participation. Therefore, when meeting decisions get delayed, extending the meeting by official decision-making measures is desirable to avoid unnecessary conflicts.

6. Implications of Multilateral Meetings' Rules of Procedures

In conclusion, rules of procedure are not an aim but a supplementary tool to enable discussions. The voting process for Nuclear Security Resolution demonstrated ambiguity and subsidiarity of the rules of procedure. However, it does not mean it needs thorough rewriting to make a stricter version. United Nations (UN) explains that rules of procedure are not perfectly defined from the beginning but are settled through precedents [5]. Therefore, a majority vote decision is acceptable even if a meeting violates the rules.

On the other hand, at meetings based on the Vienna Spirit, a consensus is prioritized over majority rule. Even if the decision has to be made by the majority, ensuring discussion and debate is the premise. Considering the rights of the minority, it is crucial to comply with the rules of procedure to make a decision that is rational and fit for purpose.

A common point that transcends such ambivalent interpretations is that rules of procedure are a way to ensure fair and harmonious proceedings but should not be used as a part of the strategy to acquire the national interest in a slanted and selfish way. Therefore, questions regarding the clauses' adequacy and legitimacy of the procedural decisions can be put aside. However, Russia's deliberate attempts to delay the discussion can be condemned diplomatically, even though it may not have violated the rules.

Considering this acute tension in international society, similar cases of not reaching a consensus will be repeated in future multilateral meetings. In addition, there is an ominous forecast that more and more states might strategically use rules of procedure as Russia did to protect their position. This case teaches the meeting participants that a thorough understanding of the rules of procedure is as important as studying the agenda.

It is the face of the time that we are in a situation where only a very instrumental and supplementary element like rules of procedure can affect the decisions of the international society, the community that has been making a great effort for its shared goal of reaching consensus by compromising and yielding. As a middle-powered country, ROK should be able to play a vital role in reminding such spirits to encourage discussions and resolve world conflicts.

REFERENCES

- [1] United Nations Division, Ministry of Foreign Affairs, Republic of Korea, Rules of Procedure, 2006.
- [2] Sabel, R. Procedure at International Conferences, Cambridge University Press, 2009.
- [3] IAEA, Provisional Agenda, GC (66)/GEN/1, 2022.
- [4] Confirmation of invalidity of the General Conference's Resolution, 2020 ㄱ 25162, Daegu Supreme Court, 2021.4.22.
- [5] Bailey S. D. the General Assembly of the United Nations: A Study of Procedure and Practice, rev. edn, Pall Mall Press, p.112, 1964., as cited in Sabel, 2009.