Points of Order: The Case of the Russian Federation at the 2012 Doha Climate Change Conference (UNFCCC COP18/CMP8)\(^1\)

The Draft rules of procedure of the UNFCCC Conference of the Parties (COP) which, though not adopted, are applied at each Conference with the exception of rule 42 on voting majorities, provide as follows with respect to points of order:

### Rule 34

During the discussion of any matter, a representative may at any time raise a point of order which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately and the ruling shall stand unless overruled by a majority of the Parties present and voting.

During the process of adoption of Decision 1/CMP.8 (document UNFCCC/KP/CMP/2012/L.12) through which the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) adopted the Doha Amendment to the Kyoto Protocol as well as the implementation rules relating to its second commitment period, the Russian Federation, also on behalf of Ukraine and Belarus, raised both substantive and procedural concerns\(^2\). When the President tabled the draft decision for adoption, the representatives of Belarus, the Russian Federation and Ukraine raised their country flags requesting for the floor on points of order. However, the President gavelled the decision as adopted.

After the adoption of the package of decisions constituting the Doha Climate Gateway in the COP and the CMP, as appropriate, the representative of the Russian Federation was given the floor on a point of order. He raised two issues. First, that the President had failed to notice that he had raised his country’s name-plate on a point of order before the President began adopting elements of the package with a view to raising concerns “on the way the work was carried out”. Secondly, that the President failed to “understand that the essence” of the preceding consultations with the Russian Federation was that “the meeting would be given a proposal made by a group of countries” for its consideration before the adoption of the draft decision.

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decision contained in document L. 9. He affirmed that he had raised a point of order under rule 34 of the Draft rules of procedure and it was wrong for the President to ignore it. He therefore appealed to the President that the delegates “be presented the proposal that would lead us to general consensus and agreement”.

The President took note of the statement of the Russian Federation and ruled that “it will be reflected in the report of the session along with your proposal.” The President reiterated that “it was my sense that the decisions adopted today reflected the will of the Parties to mark the result of Doha.” In effect, the President ruled that there was consensus.

At this stage, if still not satisfied, the option was available for the Russian Federation to appeal the ruling of the President under rule 34 of the Draft rules of procedure. The appeal would then have been put to the vote immediately and the ruling of the President would stand unless overruled by a majority of the Parties present and voting.

It would seem that the representative of the Russian Federation was well aware of the procedural options open to his delegation and their implications. In his second intervention on a point of order he referred to rule 34 and the right conferred on a Party therein to appeal the decision of the President. He indicated, however, that such “a decision cannot be submitted to a vote because that is not applied in our Conference of the Parties”.

However, rule 34 allows a representative to appeal a procedural ruling of the President and the appeal shall be put to a vote immediately. It is apparent that the Russian Federation did not want to breach the long tradition in the UNFCCC process of decision-making by consensus even though in this particular instance the rules clearly allowed voting. The representative of the Russian Federation emphasized that he was simply seeking an opportunity to explain to delegations the concerns of the Russian Federation, Belarus and Ukraine and the proposals they made to address the issue. In this regard, since the President had failed to bring these proposals to the attention of Parties he wished to formally “register the proposals we made, which would then be included in the report of the Conference of the Parties”. He noted that this was their understanding of the procedure and hoped that the President would this time listen to the request.

In response, the President reiterated his understanding “that the decisions adopted today reflected the will of the Parties as a whole to mark the result of Doha” and gave assurance to the Russian Federation that its views will be reflected in the report of the Conference.

In its last intervention, the delegation of the Russian Federation made a declaration which it requested should be reflected in the record of the proceedings of the Conference. The declaration has three elements: a statement regarding its disagreement with the outcome of the Conference as well as the procedural errors committed by the Presidency; an interpretive statement regarding some provisions of both Decision 1/CMP.8 and the text of the Doha Amendment; and the proposal prepared by the delegations of Belarus, the Russian Federation, and Ukraine to address their concerns.

It is evident from the above that the Russian Federation did not table a formal objection to the adoption of the decision although there is reference to “general consensus and agreement”. It is also clear from the point of view of procedure that the President made an error in ignoring the raised flags of the three delegations on points of order and proceeding to gavel the decision regardless of these.