The handling of the proposal to conserve the name *Acacia* at the 17th International Botanical Congress—an attempt at minority rule

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ABSTRACT

The handling of controversial Proposal 1584 to conserve the name *Acacia* with a conserved type for the Australian acacias during the Nomenclature Section meeting at the 17th International Botanical Congress (Vienna) in 2005 is reviewed. Through a simple majority vote, this Section adopted rules requiring a 60% majority of votes to approve any proposal to modify the International Code of Botanical Nomenclature and a simple majority to approve all other motions; motions not receiving the required majority were to be rejected. However, for the motion addressing Proposal 1584, 45.1% voted to conserve the type of the name *Acacia* for Australian acacias, and 54.9% voted to retain the current African type for the name *Acacia*. Even though this motion failed to get a 60% majority either way as required by the Section's own rules, Section officials have concluded that the name *Acacia* is to be conserved for Australian acacias. Treating a motion as approved, even though it received only minority support, also violates the fundamental principle of standard parliamentary procedure—the right of the majority to approve proposals. For *Acacia* to be formally conserved, the Nomenclature Section needed to approve a motion addressing Proposal 1584 with a majority vote, and this never happened in Vienna. Recommendations are made on how this process might be improved.

Introduction

The Nomenclature Section of the 17th International Botanical Congress met during July of 2005. Division III, Provision 1 of the International Code of Botanical Nomenclature (Code) states that the Code 'may be modified only by action of a plenary session of an International Botanical Congress on a resolution moved by the Nomenclature Section of that Congress' (McNeill et al. 2006: 117). The Section at Vienna acted on numerous proposals to amend the Code, including proposals to conserve and reject names, and the decisions made by the Section have been incorporated into the latest printed version of the Code (McNeill et al. 2006).

One of the proposals that the Section addressed was Proposal 1584 (Orchard & Maslin 2003) to conserve the name *Acacia* Mill. with a conserved type. This proposal was made so as to maintain the name *Acacia* for the bulk of Australian species that would otherwise have to go by the name *Racosperma* C.Mart. under a pending new taxonomy (Pedley 2003).

Unlike proposals to amend the rules of the Code, proposals to conserve or reject names are usually first reviewed by two committees, the relevant nomenclature committee (Committee for Spermatophyta in the case of Proposal 1584) and the General Committee, before a decision is taken by the Nomenclature Section (Articles 14.12, 56.2 in McNeill *et al.* 2006: 31, 99). Proposal 1584 was met with strong resistance but did receive positive recommendations from the Committee for Spermatophyta and General Committee, although the vote was divided in both committees. This set the stage for action on Proposal 1584 by the Nomenclature Section and Congress. At the Nomenclature Section meeting, when the motion dealing with Proposal 1584 was put up for a vote, Section officials required that 60%

of the votes cast on this matter be opposed to Proposal 1584 in order for that proposal to be rejected. The vote on this motion received only 45.1% to conserve the name *Acacia* for Australian acacias.

Despite the minority support of 45.1% for Proposal 1584 by the Nomenclature Section, Section officials treat Proposal 1584 as having been approved, leading Rijckevorsel (2006) to ask, 'Is it possible that the Nomenclature Section made a decision to modify the Code, i.e. to include the name *Acacia* with a conserved type by voting 54.9% against?' In order to address Rijckevorsel's question, a detailed examination of the history of the process of the conservation and rejection of names is provided. A review is also provided on what occurred at the Nomenclature Section meeting in Vienna. Given that the Section at Vienna, through voting, adopted rules of procedure that required a 60% majority vote for any motion to pass, an answer of 'no' is given to Rijckevorsel's query.

Review of procedure for conservation of names

Prior to the Paris Congress of 1954, proposals to conserve names, like proposals to amend the rules of the International Code of Botanical Nomenclature, were presented directly to the Nomenclature Section. For example, at the Stockholm Congress of 1950, over 39 sets of 250+ individual proposals to conserve names of families or genera were made by over two dozen botanists (Lanjouw 1950). This led Acting Rapporteur Lanjouw (1950: 221) to note that all these proposals could not be individually dealt with at the Nomenclature Section meeting, and he recommended they be handled by various special (nomenclature) committees.

While there was general agreement by the Nomenclature Section with Lanjouw's suggestion, there was considerable discussion regarding what the relative authorities should be among the special (nomenclature) committees, General Committee and Nomenclature Sec-

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tion. A relevant portion of this discussion is given below (Lanjouw1953: 538, 539):

'DR ROGERS asked what was the power of the Special Committee[s] with regard to nomina conservanda proposita.

PROF. MERRILL said they had power to conserve.

Prof. Lanjouw thought they would refer to the General Committee.

Dr Sprague said in the last Congress these committees had been given power and they had worked in some cases exceedingly well, especially where the committee had an energetic secretary. He suggested power be given to the committee and then it should secure the sanction of the General Committee for conservation.

PROF. BAEHNI asked how we were to know what names were conserved.

PROF. LANJOUW asked if he meant between Congresses.

PROF. BAEHNI: Yes.

Prof. Lanjouw: By means of our new association [International Association for Plant Taxonomy] we will publish new lists as soon as they are available.

DR BLAKE inquired whether the list of *nomina generica conservanda* would be published in a preliminary way so that the names would be subject to criticism before final adoption.

DR RAMSBOTTOM replied that the names would be accepted informally in the interim, the list to be tentative until formally approved by the next Congress.

DR ROGERS said he agreed to that.

Prof. Merrill put the motion before the meeting that *Committees have* power to select names for conservation but the list will be tentative until the next Congress. [Italics in original.]

This was carried by a large majority. [Italics in original.]'

The current procedure for the conservation and rejection of names has remained largely unchanged since its establishment with the founding of the International Association for Plant Taxonomy in 1950 and the addition of Division III to the Code at the Paris Congress of 1954. The following overview is from Rickett & Smith (1958: 151; see also Figure 1):

- '[C]onservation can be effected only by action of a plenary session of an International Botanical Congress, as specified in Division III, Provision I of the Code....
- (1) the author sends his proposal to the rapporteur, and it is published in *Taxon*;
- (2) by this publication the proposal is brought to the attention of the
- (3) the proposal, with advance agreement by the General Committee, is automatically referred to the appropriate study committee;
- (4) after study of the case, this special [nomenclature] committee publishes its report in *Taxon*;
- (5) the General Committee studies this report and any collateral information sent to it, reaches a decision on each proposal by mail ballot, and prepares a recommendation for the next International Congress;
- (6) the next Congress at a plenary session affirms or rejects the recommendation of the General Committee;
- (7) the nomen conservandum propositum, if all decisions up to this point are affirmative, is listed in the next edition of the Code and becomes a part of that document.'

My only quibble with Rickett & Smith's overview is that (6) actually involves two steps: first the Nomenclature Section approves or rejects the proposal to conserve or reject, taking into consideration the committees' recommendations, and then a plenary session ratifies (or not) the Nomenclature Section's decision. To summarize, the committees recommend, the Nomenclature Section decides and the International Botanical Congress, through a plenary session, ratifies. The new printed edition of the Code that incorporates the decisions taken by the previous Nomenclature Section is also subject to approval by the next Nomenclature Section (see Greuter *et al.* 2000: 15). Under the current Code (McNeill *et al.* 2006), besides the conservation of

names of families and genera, it is also possible to conserve the names of species and reject names at any rank.

Proposals to conserve or reject names are clearly proposals to amend the Code, since conserved or rejected names must appear in one of the Code's Appendices (II, III, IV, V); hence Rickett & Smith's (1958) citation of Division III, Provision I of the Code that governs the procedure for its modification. Stafleu & Lanjouw (1954: 8): 'Dr Lanjouw explained that at present the Appendices are parts of the Code and that some of them even contain rules'.

Currently, the nomenclature committees (Committees for Vascular Plants*, Bryophyta, Fungi, Algae, Fossil Plants) and the General Committee operate under a procedure whereby it takes a three-fifths (60%) majority to either recommend acceptance or rejection of a proposal (Nicolson 1996). Proposals that fail to receive a 60% vote either way remain unresolved. Previously, committees have operated under rules requiring a simple majority (Voss 1979: 179) or a two-thirds majority (Greuter et al. 1989: 215) to recommend acceptance of a proposal, and proposals that were not approved were automatically considered as rejected. Recently, proposals to conserve or reject names have not been included in the synopses of proposals prepared by the rapporteurs (Greuter & McNeill 1993; Greuter & Hawksworth 1999; McNeill & Turland 2005), although they were included in the past (Stafleu & Voss 1969; Voss & Greuter 1981; Greuter & McNeill 1987).

The Nomenclature Sections' voting majority required to approve proposals to amend the Code has varied from Congress to Congress, with a simple majority (Lanjouw 1953: 488, 489; 1959: 29), two-thirds majority (Stafleu 1954: 192) and three-fifths majority (Stafleu 1966: 8) being used. The Nomenclature Section at Seattle in 1969 required a 60% majority to approve proposals to amend the articles (rules) of the Code and a simple majority to approve proposals to amend other portions of the Code (Stafleu & Voss 1972: 4, 5). Nomenclature Sections since Leningrad in 1975 have required a 60% majority for all proposals to modify the Code; in the case of competing proposals, a vote of 60% has been required to authorize the change, and a simple majority to choose between the competing proposals (Voss 1979: 132; Greuter & Voss 1982: 9; Greuter et al. 1989: 14; 1994b: 12; 2000: 14, 15; McNeill et al. 2005: 1058).

Occasionally there has been debate at Nomenclature Sections regarding what type of majority vote (e.g. simple, three-fifths, two-thirds) was required to approve a proposal to amend the Code. During the Section meeting at Leningrad in 1975, Greuter moved for a 60% majority for proposals to amend the Code (Voss 1979: 132), but at Yokohama in 1993 (Greuter *et al.* 1994b: 12), he moved for a simple majority; Brummitt objected both times, in Leningrad (Voss 1979: 132) arguing for a simple majority, stating 'a 59% vs 41% vote would be frustrating', but in Tokyo (Greuter *et al.* 1994b: 12) defending the 60% majority, noting that the 60% requirement

^{*}Prior to the Vienna Congress there was not a Committee for Vascular Plants but rather separate committees for Spermatophyta and Pteridophyta.

At the next Nomenclature Section meeting, the Code as a printed document is approved.



If the proposal to conserve or reject is approved by the Nomenclature Section and ratified by a plenary session of the International Botanical Congress, the name appears in one of the Code's appendices.

A plenary session of the International Botanical Congress ratifies (or not) the decisions of the Nomenclature Section.



The Nomenclature Section at the next International Botanical Congress decides whether or not to approve the proposal, taking into consideration the recommendation of the General Committee.



The General Committee issues recommendation. If the General Committee recommends the proposal's acceptance, the Code authorizes (Art 14.14) 'retention (or rejection) of that name...subject to the decision of a later International Botanical Congress'.



The Nomenclature Committee issues recommendation, publishes a report in Taxon.



The General Committee refers proposal to the appropriate permanent Nomenclature Committee. At this point, the Code recommends (Recs. 14A.1) that authors 'should follow existing usage of names as far as possible' pending the recommendation of the General Committee.



Proposal is published in Taxon

FIGURE 1.—Steps a proposal to conserve or reject a name must go through under the current procedure authorized by the International Code of Botanical Nomenclature (McNeill et al. 2006) and administered by the International Association for Plant Taxonomy.

'has always been applied in these sessions and that it had worked very well'.

The primary justification for the 60% requirement to approve any proposal to amend the Code is to ensure that changes to it are generally accepted (Greuter et al. 2000: 14). The 60% requirement is similar to the procedure in Robert et al. (2000), which recommends a two-thirds majority to amend existing rules. Sturgis (2001: 132), however, suggests that requiring greater (e.g. three-fifths, two-thirds) than a simple majority is unwise because of the 'power it gives to a minority' to reject proposals thereby overriding 'the majority's wishes.' Neither Robert et al. (2000) nor Sturgis (2001) permits the approval of a motion when it receives a minority vote.

Actions on proposals to conserve or reject names by Nomenclature Sections: Paris Congress (1954)—St Louis Congress (1999)

Since the establishment of the current nomenclature committee structure in 1950, proposals to conserve or reject names have always been subject to the approval of the Nomenclature Section. At earlier Nomenclature Section meetings, proposals to conserve names were presented as proposals to amend the relevant appendices in the Code where the entries would appear if approved (Rousseau *et al.* 1960: 30–33; Stafleu 1966: 61–65; Voss 1979: 173) or as a batch of *nomina conservanda proposita* (Stafleu & Voss 1972: 125). At the Section meeting

at Sydney in 1981, proposals to conserve or reject were addressed when the General Committee reported; two votes were taken, one accepting the General Committee report and a second 'to accept the proposals to conserve and reject names as approved by the General Committee' (Greuter & Voss 1982: 105). At the Nomenclature Section meetings at Berlin in 1987, Yokohama in 1993 and St Louis in 1999, a single vote was taken approving the General Report and the proposals to conserve and reject as recommended by the General Committee (Greuter et al. 1989: 215; 1994b: 252, 253; 2000: 237, 238).

The changes in how proposals to conserve or reject names have been presented to Nomenclature Sections (i.e. proposals to amend appendices, nomina conservanda proposita, General Committee reports) should not be taken as evidence that the Section's authority on this matter has declined, while that of the committees has expanded. The full authority given to the Nomenclature Section and the International Botanical Congress to modify the Code under Division III, Provision 1 has not changed since it was introduced with the Paris Code in 1956 (Lanjouw et al. 1956).

While there has always been considerable debate by Nomenclature Sections regarding proposals to amend the rules of the Code, there has seldom been discussion on the proposals to conserve or reject individual names (see Greuter *et al.* 1989: 215, 216 for an example involving the conservation of the name *Lycopersicon esculentum* Mill.), and these proposals have always been approved

by the Section. There has also never been any serious discussion of decisons taken by Nomenclature Section meetings during any of the plenary sessions responsible for ratifying the proposals passed at the Section meetings, although a question was raised at the plenary session at Vienna regarding the proposal to conserve the name *Acacia* with a conserved type. The plenary sessions have always ratified the decisions of the Nomenclature Sections through a single resolution.

Actions on proposals to conserve or reject names at Vienna (2005)

Orchard & Maslin (2003) proposed (Proposal 1584) to conserve the name Acacia Mill., replacing the name's current type, A. scorpioides (L.) W.F.Wight (= A. nilotica (L.) Delile), with A. penninervis Sieber ex DC. The aim of the proposal is to preserve the name Acacia for the vast majority of species known from Australia (± 1 000 spp.) that would otherwise have to go by the name Racosperma C.Mart. under a proposed new classification (e.g. Pedley 2003). Under the new classification, and provided the proposal was accepted, the generic names of many African and American species traditionally in Acacia would change to Vachellia W.F.Wight & Arn., whereas other species would change to Senegalia Raf., regardless of the proposal's acceptance.

The proposal was reviewed by the Committee for Spermatophyta, with many submissions by both those in favour and those opposed, and it was approved by a 9-6 (60%) vote in early 2004 (Brummitt 2004). (For the sake of transparency, 1 mention that at the time 1 was a member of this committee and I voted to reject this proposal, although, working in a floristic region with no species of Acacia, I did not have a strong opinion on the case.) This proposal was strongly supported by the committee's Secretary, Richard Brummitt (Smith et al. 2006), who along with Tony Orchard, one of the authors of Proposal 1584, subsequently posted dozens of letters from Australian citizens in support of Proposal 1584 on several notice boards outside the lecture hall in Vienna where the Section meetings were taking place; correspondence submitted to the Committee for Spermatophyta from opponents of Proposal 1584, such as letters signed by twelve legume taxonomists and 24 African botanists, was not posted. Prior to the Vienna Congress there was much debate within the botanical community with articles for (Maslin 2004a, b; Maslin & Orchard 2004; Orchard & Maslin 2005) and against (Walker & Simpson 2003; Pedley 2004; Luckow et al. 2005) the proposal being published.

The General Committee had still not issued its recommendation on Proposal 1584 when the Nomenclature Section convened in July 2005, over one year after the Committee for Spermatophyta had made its recommendation. During the Section meeting, the General Committee finally voted to approve the recommendation of the Committee for Spermatophyta by a vote of 14-6-2 (63.6%; percentage figure assumes three positions on the General Committee were vacant or had been eliminated at the time of the vote, since the Nomenclature Section at St. Louis elected 25 members to serve; see Nicolson

1999). In the 1 July 2006 General Committee circular to members, the Secretary of the General Committee, Fred Barrie, concluded 'the best approach for the GC would be to approve this report, thus providing the foundation for the inevitable debate in Vienna'. This advice may have influenced committee members to cast a positive vote, even though debate on Proposal 1584 could have occurred at the Nomenclature Section meeting in Vienna regardless of the outcome of the General Committee's vote (Smith *et al.* 2006).

Action on the General Committee's recommendations occurred on the last day of the Nomenclature Section meeting (16 July). After the nomenclature committees' reports were received, the General Committee reported. Instead of a single report, the Section received two reports from the General Committee. The first covered all recommendations, except the one for Proposal 1584 to conserve the name Acacia with a conserved type. This first report, and therefore the recommendations regarding proposals to conserve or reject contained therein, was approved by a show of hands vote. The Nomenclature Section then received a second report from the General Committee that contained only one recommendation, that to approve Proposal 1584. Section officials stated that there would have to be a 60% vote in order to reject any recommendation made by the General Committee.

There is some confusion on the wording of the motion regarding the General Committee report on *Acacia*. The official report (McNeill *et al.* 2005: 1059) indicates that it was a vote on a motion from the floor to *reject* the report, whereas the unedited transcript (copy of the relevant portion provided by John McNeill) states that the vote was on a motion to *adopt* the report (and therefore the recommendation on Proposal 1584). Regardless of the wording of the motion, the Nomenclature Section, after a lengthy and reasoned debate, took a card vote with 203 (45.1%) in favour of adopting the General Committee's recommendation on Proposal 1584 and 247 (54.9%) voted for rejecting the recommendation. Therefore, the General Committee's recommendation on Proposal 1584 received only minority support from the Section.

Article 14.14—the justification for the procedure used for Proposal 1584 at Vienna

Article 14.14 of the Code is central to those who defend the procedure used at Vienna for Proposal 1584. The essential language of this article dates back to a proposal (Ramsbottom et al. 1929: 11; Hall 1926) to the 5th International Botanical Congress at Cambridge in 1930. Despite Rapporteur Briquet's (1930: 14) initial negative reaction to the proposal ['Le rapporteur éprouve un sentiment de malaise à voir consacrer par un article spécial (20bis) des Regles un régime de nomenclature provisoire.'], it was passed at the Cambridge Congress (Briquet 1931) and appeared in the Cambridge Code (Briquet 1935) as Article 22: 'When a name proposed for conservation has been provisionally approved by the Executive Committee [a precursor to the General Committee], botanists are authorized to retain it pending the decision of the next International Botanical Congress'.

Rickett & Smith's (1958) successful proposal to amend this language—deleting the word 'provisionally' and adding the phrase 'after study by the Committee for the taxonomic group concerned'—did not change its meaning but simply clarified that the rule did not take effect until after the General Committee approved the recommendation of the special [nomenclature] committee rather than when the proposal was first published in Taxon. Starting with the Sydney Code (Voss et al. 1983), language was added to cover the rejection of names, giving Article 14.14 its current language (McNeill et al. 2006: 31, 32): 'When a proposal for the conservation of a name, or its rejection under Article 56, has been approved by the General Committee after study by the Committee for the taxonomic group concerned, retention (or rejection) of that name is authorized subject to the decision of a later International Botanical Congress'.

Prior to the Tokyo Code (Greuter et al. 1994a), Article 14.14 was used as justification for provisionally listing in the Code, names recommended by the General Committee for conservation or rejection but not ratified by an International Botanical Congress, with a statement that such names were subject to a decision by a later Congress. In the Seattle (Stafleu et al. 1972), Leningrad (Stafleu et al. 1978), Sydney (Voss et al. 1983) and Berlin Codes (Greuter et al. 1988), names approved by the General Committee but not acted on by the Nomenclature Section or International Botanical Congress were asterisked, indicating 'conservation approved by the General Committee; use authorized under Article 15 [currently Article 14.14] pending final decision by the next Congress'. Earlier Codes (Lanjouw et al. 1956, 1966) also listed provisional entries that still required action by a later International Botanical Congress.

The justification for the 60% vote to reject the General Committee's recommendation to conserve the name *Acacia* Mill. with a conserved type was, that once the General Committee recommended the name *Acacia* for conservation, it had *de facto nomen conservandum* status under Article 14.14 (McNeill 2006; Stafleu 1964: 6). Therefore, opposition to the General Committee's recommendation was viewed as analogous to a proposal to amend the Code since the name *Acacia* could appear as a provisional entry in a future printed edition of the Code if no action were taken at a Congress (McNeill 2006).

Was the procedure used at Vienna appropriate?

The intent of Article 14.14 was not to give primary authority of conservation/rejection of names to the General Committee, as the previously cited discussion from the Nomenclature Section at Stockholm in 1950 (Lanjouw 1953: 538, 539) makes clear. The intent was simply to prevent the possible creation of 'superfluous names' (Ramsbottom *et al.* 1929: 38) by giving authors guidance during the interim period when a General Committee recommends a proposal for approval and action at the next Congress (there was a 20 year interval between the Cambridge Congress of 1930 and the preceding Brussells Congress in 1910 where the Ramsbottom *et al.* proposal was passed). For example,

if the General Committee recommended conservation of a name shortly after a Congress had adjourned, Article 14.14 would allow users to retain this name until the next Congress.

However, in the case of Proposal 1584, the interim period between the General Committee finalizing its recommendation and the vote of the Nomenclature Section was not years but a mere few days! The continent of Africa did not suddenly abandon the name *Acacia* and adopt the names *Vachellia* and *Senegalia* during those few days.

More importantly, such provisionally conserved names have de facto conserved status but not de jure conserved status. It is obvious that not everything in the printed book that goes by the name International Code of Botanical Nomenclature is part of the de jure Code as approved by the Nomenclature Section and Congress (Rijckevorsel 2006). Examples of such items include tables of contents, prefaces, and indices. Likewise, things can be part of the de jure Code although they do not appear in the printed version of the Code, such as what appears on the errata slip accompanying some printed copies of the Tokyo Code (Greuter et al. 1994a). Furthermore, even when a new version of the Code is published, it itself is provisional until it is approved by a subsequent Nomenclature Section and International Botanical Congress (e.g. Greuter et al. 2000: 15; McNeill et al. 2005: 1058). Ramsbottom, the lead author of the proposal (Ramsbottom et al. 1929) that resulted in the basic language now in Article 14.14, was very clear that names recommended for conservation by the General Committee were to be 'accepted informally in the interim, the list to be tentative until formally approved by the next Congress' (Lanjouw 1953: 539).

Most critically, the procedure used when voting on the General Committee recommendation on Proposal 1584 at the Nomenclature Section meeting in Vienna violated the most fundamental principle of parliamentary procedure—the right of the majority to approve decisions, as noted in the following passage from Sturgis (2001: 130): 'The most fundamental rule governing voting is that at least a majority vote is required to take an action. ... Jefferson said, "Until a majority has spoken, nothing has changed". It is obvious that to permit fewer than a majority to decide for any group would subject the many to the rule of the few, and this would be contrary to the most basic democratic principle. Democratic peoples universally accept decisions by majority vote'.

While it is standard parliamentary practice (Robert et al. 2000) to permit in some cases a supermajority vote to approve a motion (such as the rule adopted by the Nomenclature Section in Vienna to require a 60% vote to amend the Code) and therefore permit a minority vote to result in the rejection of a proposal, it is against standard parliamentary practice (Robert et al. 2000; Sturgis 2001; Sylvester 2004) to allow a motion to be considered approved when the motion receives only minority support, such as the motion to approve the General Committee's recommendation on Proposal 1584. Declaring a proposal approved when the vote on it registered a majority disapproving, also belies basic common sense.

The procedural switcheroo—forcing the 60% requirement on those opposed to changing the Code—used for the General Committee's recommendations on proposals to conserve or reject names, also created much confusion at the Nomenclature Section meeting. This confusion is not surprising when one considers that, like all preceding Nomenclature Section meetings, the Section at Vienna required a positive majority or supermajority to approve all motions. However, when the General Committee's recommendation on Proposal 1584 was up for a vote, they were told the vote would require 60% to reject. What was the Section being asked to reject? A proposal from the floor not to accept the General Committee's recommendation on Proposal 1584? Or the General Committee recommendation itself? These two different interpretations would require different votes from supporters and opponents of Proposal 1584. Nothing perhaps exemplifies this confusion better than the fact that the official report (McNeill et al. 2005: 1059) and the unedited official transcript give different interpretations as to what was meant by a 'yes' vote, the official report indicating that it was to support a motion from the floor to reject the General Committee's recommendation on Proposal 1584 (the vote being reported as 247:203, 54.9%) and the official transcript indicating a 'yes' vote supported adoption of the recommendation (the vote here being reported as 203:247).

Further evidence of confusion at the Nomenclature Section meeting at Vienna was that when the vote on Proposal 1584 was being readied 'Africa' and 'Australia' were written on the whiteboard with '60%' written next to Australia seemingly indicating that 60% would have to vote to move the type to the name of the Australian A. penninervis. The '60%' was later erased and written next to 'Africa'. Robert et al. (2000: 100): 'It is preferable to avoid a motion containing a negative statement even in cases where it would have meaning, since members may become confused as to the effect of voting for or against such a motion. ... In this connection, it should be noted that voting down a motion or resolution that would express a particular opinion is not the same as adopting a motion expressing the opposite opinion, since—if the motion is voted down—no opinion has been expressed'. Such procedures may have been especially confusing for those at the Section meeting whose first language was not English. (Requests to officials of the Nomenclature Section to receive a copy of the audio recording of the proceedings of the Nomenclature Section meeting so as to better understand the precise wording of the motion concerning Acacia were not honoured.)

It is also important to remember that, unlike the nomenclature committees which rarely meet, the Nomenclature Section meeting is the only time botanists truly deliberate on the Code (Robert et al. 2000: xx): '[T]he opportunity for simultaneous aural communication among all participants is central to the deliberative character of a meeting... [A]lthough e-mail or faxes may provide a suitable substitute for postal mail (the primary methods of communication used by the nomenclature committees)...they are not suited for the conduct of the deliberative process....' Furthermore, the Nomenclature Section meeting is more likely to better represent all users of plant names due to its openness and, therefore,

greater number of participants. All of this argues for the vote of the Nomenclature Section to prevail when it conflicts with the vote of the General Committee. No exceptions.

Was there a valid outcome at Vienna on Proposal 1584?

There are no bylaws or standing rules that govern the procedure to be used at a Nomenclature Section meeting, Division III, Provision I of the Code stating merely that the Code can be modified 'only by action of a plenary session of an International Botanical Congress on a resolution moved by the Nomenclature Section of that Congress'. Therefore, each Nomenclature Section is free to establish its own rules of procedure.

On the first day, the Nomenclature Section at Vienna, like all Sections since the Leningrad Congress in 1975, approved through a simple majority vote, rules requiring a three-fifths (60%) majority to pass any proposal to amend the Code and a simple majority to pass any other motion; motions not receiving the required majority were to be rejected. The Section never voted to suspend these rules, nor was a rule permitting a motion to be carried with less than a majority vote, ever voted on and approved (such a rule would be highly unorthodox with respect to standard parliamentary practice).

The statement from the Nomenclature Section officials that the vote on the General Committee recommendation on Acacia would not require a majority vote for approval was in direct conflict with the rules of procedure the Section had previously established and was therefore operating under invalid circumstances—Sturgis (2001: 130): 'Any requirements permitting decisions by less than a majority vote...are not valid unless they are included in the law, the rules of parliamentary law, or the bylaws' (italics in original). Robert et al. (2000: 332): '[M]otions are out of order if they conflict with a motion that has been adopted by the society and has neither been rescinded, nor reconsidered and rejected after adoption. Such conflicting motions, if adopted, are null and void unless adopted by the vote required to rescind or amend the motion previously adopted'.

Therefore, in no way can the vote on the General Committee's recommendation on Proposal 1584 be taken as an approval of that recommendation, since the motion received only minority (45.1%) support. Nothing done at the plenary session (held on 23 July 2005) resolved this matter, since it simply approved the decisions taken by the Nomenclature Section (Stuessy 2006: 246).

Some will say that the arguments in this paper have come too late and that the time to object was at the Nomenclature Section meeting. However, most botanists are not experts on parliamentary procedure, and should not be expected to have an objection 'at the ready' when something like the unusual procedure used for Proposal 1584 occurs. Furthermore, Section officials never indicated that they were establishing a new procedure by requiring only a 40% positive vote to approve the General Committee recommendation on *Acacia*, but rather simply presented this approach as though it were

established procedure (Rijckevorsel 2006). And it is never too late to point out that the procedure used for the motion on the General Committee recommendation on *Acacia* was invalid.

Conclusions

The procedure used at the Nomenclature Section meeting at Vienna on the General Committee recommendation on *Acacia* was not only inappropriate, unprecedented, and confusing, but conflicted with the Section's established rules of procedure (Rijckevorsel 2006). Therefore, the vote by the Section on the General Committee's recommendation on Proposal 1584 cannot be taken as an approval of the proposal. Indeed, based on the Section's established rules of procedure, the vote on the General Committee's recommendation on Proposal 1584 resulted in its rejection. Nonetheless, *Acacia* is now listed in the Vienna Code in Appendix III as a conserved name with a conserved type (McNeill *et al.* 2006: 286).

This matter can be raised again at the 18th International Botanical Congress at Melbourne in 2011 when the printed version of the Vienna Code comes up for ratification. Such challenges to the printed version of the Code, while rare, are not unprecedented (Stafleu 1966: 6).

Such a challenge to what occurred at Vienna is needed because of the unfortunate precedent this case will set if not challenged. Up until the *Acacia* entry in the Vienna Code, nothing substantive or nonprovisional had ever been added to or deleted from the Code without obtaining approval from a Nomenclature Section through a majority vote. This is a history that spans over 100 years.

To quote from Greuter & McNeill (1994: xiv): "... plant nomenclature is not governed by a bureaucracy of committees but, in an open and democratic manner, by the community of its users represented by the enrolled members of International Botanical Congresses. The user-driven process by which plant nomenclature is regulated is of utmost importance for a Code, which, having no 'teeth' in the way of penalties for infringements, entirely depends on user consensus for its universal application and implementation'.

However, if committee recommendations are allowed to be treated as approved even though a majority of the votes cast at the Nomenclature Section meeting was opposed to them, has not plant nomenclature indeed become a bureaucracy of committees? Incredibly, some who opposed Proposal 1584 were further told that even if the Section had rejected the General Committee's recommendation on *Acacia* this 'still would not necessarily have resulted in its absence from the Vienna Code, in which it could have been included with an asterisk, pending further discussion at the 2011 International Botanical Congress' (Smith *et al.* 2006: 224, 225). Apparently, this bureaucracy of committees also ignores Section decisions that are not to its liking.

The primary reason for Nomenclature Sections requiring a 60% supermajority to amend the Code is to ensure

that there is widespread acceptance of these changes (Greuter *et al.* 2000: 14). Treating motions as approved even though they fail to get majority support is a recipe for the opposite.

It has been argued that the special procedure used for the Acacia case was because 'overturning a decision of the General Committee is clearly a momentous step and, like an amendment to the Code, is not to be taken lightly' (McNeill 2006). However, until the Acacia debacle, there had never been serious opposition by a Nomenclature Section to a recommendation by the General Committee, clear evidence that Section members do not take it lightly. The precedent set in opposing this General Committee recommendation does not justify the precedent-setting procedure used for handling this recommendation, because there was a long history of requiring majority votes to approve General Committee recommendations on proposals to conserve or reject names. While a proposal's controversial status may justify it being handled differently with respect to a separate consideration and a longer debate, it does not justify a change in the voting requirement.

It should also be lost on no one that much of the opposition to the proposal to conserve Acacia largely came from parts of the world, Africa and South America, that are under-represented in plant taxonomy in general and in plant nomenclature specifically. For example, of the nine officers of the Nomenclature Section at Vienna (McNeill et al. 2005: 1058), five were from Europe, three from North America, one from Australia and none from Africa or South America. At the end of the Nomenclature Section meeting at the 16th International Botanical Congress at St. Louis, C. Kabuye from Kenya noted (Greuter et al. 2000: 239), 'Several African botanists would have been interested in being present at the sessions, to learn more about nomenclature through discussion and debate, but they could not afford to come on their own'. Nonetheless, some complained about all of the proxy institutional votes from Africa and South America that were carried to Vienna, even though this was wholly within the rules, and, at best, probably served only to counteract the lack of individual voting members at the Section from these areas.

Looking to the future, I propose the following recommendations that might improve this process:

Recommendations for future Nomenclature Sections

1. Nomenclature Sections should determine what the voting procedure will be regarding the approval of General Committee recommendations to conserve or reject names. All recommendations of the General Committee should be subject to the same vote requirement—a straight up or down vote to approve; all proposals not receiving a majority vote should be rejected.

Based on the published proceedings, the Nomenclature Section at the Seattle Congress in 1969 (Stafleu & Voss 1972: 4, 5) is apparently the only recent (post 1950) Section to adopt a voting procedure that made a clear distinction between the rules of the Code and the other portions of the Code, requiring a 60% majority to amend the rules and a simple majority for proposals to amend portions other than the articles (Rolla Tryon at the Edinburgh Congress unsuccessfully proposed that this procedure be included in the Code; see Stafleu 1966: 8). Subsequent Sections have not been clear as to what the procedure was when voting on General Committee recommendations—was a 60% or simple majority required? In the absence of an explicit rule for voting on these recommendations, I argue that the procedure used for amending the Code would apply, since such proposals, when approved, effect changes to the Code. Therefore, the proposals to conserve or reject names at the Nomenclature Section meeting (presented as General Committee recommendations) at Vienna should have been subject to a 60% vote to approve since they would effect changes to the Code.

The second sentence of this recommendation prevents the voting inconsistency and confusion that occurred at the Nomenclature Section meeting in Vienna regarding Proposal 1584. It also ensures that majority rule prevails.

2. A specific recommendation/proposal within a package of recommendations/proposals must be considered separately, if one person in the assembly so moves.

Robert *et al.* (2000: 265) and Sturgis (2001: 96–100) state that when 'a series of independent resolutions relating to completely different subjects is offered by a single main motion...any resolution in the series must be taken up and voted on separately at the request of a single member'. This allows efficiency when there is no disagreement, and debate when there is. If a General Committee recommendation rejects a proposal to conserve or reject a name, the original proposal is rejected and the name should not appear in the Code. If a General Committee recommendation to conserve or reject is rejected by the Section, this action does not approve the original proposal (Robert *et al.* 2000: 100). A separate motion would have to be made on the original proposal and it would be subject to approval by the Section.

3. Rules for voting and membership for the General Committee should be re-evaluated.

Currently, all members can vote on all proposals before the General Committee. All Secretaries of the nomenclature committees (committees for Algae, Bryophyta, Fossil Plants, Fungi, and Vascular Plants) are also ex-officio members of the General Committee. In addition, some ad hoc members of the General Committee are also members of a nomenclature committee. These dual members, therefore, can vote twice on the same proposal. Procedures should be enacted preventing double voting by these members. The purpose of the General Committee is to evaluate the recommendations made by the nomenclature committees, and this should be done with as much independence as possible. This double voting is tantamount to a judge simultaneously sitting on a lower court and a supreme court and ruling twice on the same case, and it conveys an image that the General Committee, at least in part, is simply a rubber stamp of the nomenclature committees. Perhaps those who are already members of a nomenclature committee should not serve on the General Committee. Secretaries of the other committees need to be members

to explain specific cases before the General Committee, but perhaps they should not vote on cases in which they have already voted as a member of the other committee.

It is up to the General Committee to determine how it will evaluate the nomenclature committee recommendations. For example, should the General Committee consider the merits of the case or should it limit its evaluation to technical aspects, such as making sure a nomenclature committee interpreted the rules of the Code correctly? However, members of the General Committee should never vote to recommend a proposal simply so it can be sent to the Nomenclature Section for action. The Nomenclature Section is omnipotent with respect to the Code and is free to consider any topic with or without the General Committee's recommendation.

4. After the General Committee receives recommendations on proposals to conserve or reject names by a nomenclature committee, the General Committee should act on these recommendations within a reasonable time frame. General Committee recommendations should be published in advance of the Nomenclature Section meeting.

Stafleu (1964: 6) suggested that the General Committee should act within three months of publication of the nomenclature committee recommendation. This seems like a reasonable time frame. A General Committee report needs to be published before the Congress (no such report was published prior to the Vienna Congress), so it is clear which proposals will be up for approval at the Nomenclature Section meeting. While it may be impossible to publish the recommendations made on all proposals, 'last minute' General Committee recommendations that go unpublished prior to the Nomenclature Section meeting in which they are acted on, should be kept to a minimum.

5. Consideration should be given to expanding the content in Division III of the Code to clarify the charge and relative roles of the General Committee and the nomenclature committees that report to it.

While the Code spells out the charge of the Editorial Committee, it says little regarding the roles of the nomenclature committees. Language should be added here explaining the general roles of these committees. Any language would have to be as general as possible, so as not to hamstring future congresses' ability to assign these committees with new duties.

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