

Report of the Secretariat on proposals on strengthening the process to include a Site on the List of Wetlands of International Importance

Action requested

The Standing Committee is invited to:

- i. take note of the Secretariat's report on proposals on strengthening the process to include a Site on the List of Wetlands of International Importance; and
- ii. consider proposed actions as presented in Table 1 of the present document.

Background

1. In Resolution XIV.13 on *The Status of Sites in the List of Wetlands of International Importance*, paragraph 21, the Conference of the Contracting Parties requested the Secretariat to prepare a technical report on the procedure which it undertakes to include a site on the List of Wetlands of International Importance, that covers all the steps of this process, for consideration by the Standing Committee at its 62nd meeting (SC62). A technical report was presented to SC62 in document SC62 Doc.23 *Report of the process undertaken by the Secretariat to include a site on the List of Wetlands of International Importance*.
2. In Decision SC62-55, the Standing Committee instructed the Secretariat to send a notification to National Focal Points (NFPs) inviting the submission of proposals on strengthening the process to include a Site on the List of Wetlands of International Importance, and to prepare a report compiling these inputs, accompanied by the opinion of the Legal Advisor, for consideration at SC63.
3. In a notification sent on 17 October 2023, the Secretariat invited Contracting Parties to submit to the Secretariat proposals on strengthening the process to include a Site on the List of Wetlands of International Importance. The Secretariat received 13 submissions from Contracting Parties.
4. A synthesis of challenges identified by Contracting Parties as well as proposals made is presented in Table 1 below, organized into themes: (1) location of sites being designated; (2) transparency; (3) capacity of Contracting Parties; and (4) capacity of the Secretariat. Comments and recommended actions for consideration by the Standing Committee are provided, where relevant reflecting the opinion of the Legal Adviser.
5. A Note prepared by the Legal Advisor on the designation and listing of sites on the List of Wetlands of International Importance is included as Annex 1 to the present document.

Recommendation of the Secretariat

6. The Secretariat will strengthen the process for including sites on the List of Wetlands of International Importance and address the challenges identified by Contracting Parties through the actions proposed in Table 1. The Secretariat will further develop its standard operating procedure (SOP) for reviewing site designations and adding sites to the List, as well as reviewing Ramsar Information Sheet (RIS) updates, with a view to enhancing efficiency of the process and supporting Secretariat staff in fulfilling their duties.

Table 1: Proposals on strengthening the process to include a Site on the List of Wetlands of International Importance

| Thematic area | Challenges identified by Contracting Parties | Proposals made by Contracting Parties | Proposed actions by Secretariat for consideration by the Standing Committee |
|-------------------------------------|---|---|--|
| Location of a site being designated | Verification of the location of a site to ensure it is fully within the territory of the designating Contracting Party. | <ul style="list-style-type: none"> As part of the review process the Secretariat should verify the map and the GIS file of sites being designated to ensure sites are entirely within the territory of the country concerned, using United Nations data on national boundaries and territorial disputes. | <p><i>Opinion of the Legal Adviser:</i></p> <p>Article 2.1 of the Convention requires Contracting Parties to designate suitable wetlands within their territory for inclusion on the List of Wetlands of International Importance.</p> <p>According to Article 2.1, to be in compliance with the treaty, Contracting Parties should designate wetlands in their territory. When designated by the Contracting Party, the Contracting Party is to inform the Secretariat of the site, and to provide relevant information to the Secretariat, including Information Sheets (RISs).</p> <p>When designating a site, and before submission of a site for listing, it is important that the submitting Contracting Party abides by geographical and legal recognition of the area – Contracting Parties should ensure that they abide by international law in submission of sites.</p> <p>On the proposal for the Secretariat to verify the map and the GIS file of sites being designated to ensure sites are entirely within the territory of the country concerned, using United Nations data on national boundaries and territorial disputes – this is outside the mandate of the Secretariat. The Secretariat is not obliged to actively ensure</p> |

| Thematic area | Challenges identified by Contracting Parties | Proposals made by Contracting Parties | Proposed actions by Secretariat for consideration by the Standing Committee |
|---------------|--|--|--|
| | | | <p>compliance with the obligations arising from the treaty – this is a function of a treaty body such as the Conference of Contracting Parties. Further, the Secretariat does not have the responsibility and has not been accorded such a mandate by the Conference of the Contracting Parties, to handle disputes between Contracting Parties, on designation.</p> |
| | | <ul style="list-style-type: none"> • Add a checkbox in the Ramsar Information Sheet (RIS) to allow Parties to indicate whether a site being designated or an extension of boundaries is in an area under dispute. • Upon receiving a designation and prior to initiating the process of inscription of a site, the Secretariat will draw the attention of the Contracting Party to the importance of complying with Article 2.1 of the Convention. | <p><i>Opinion of the Legal Adviser:</i></p> <p>These actions can be taken.</p> |
| | | <ul style="list-style-type: none"> • In cases where a site being designated extends over the territories of more than one Contracting Party, the Secretariat should take necessary steps to facilitate consultation between the Contracting Parties during the designation process. | <p>The Secretariat is available on request by the Parties concerned to provide guidance and advice to support Parties in the designation of sites on their territory as parts of a bigger “Transboundary Ramsar Site”, of which the authorities on both or all sides of the border agree to collaborate in the management. Guidance for Parties can be found in the “Guidelines for International Cooperation under the Ramsar Convention” adopted in Resolution VII.19.</p> |

| Thematic area | Challenges identified by Contracting Parties | Proposals made by Contracting Parties | Proposed actions by Secretariat for consideration by the Standing Committee |
|---------------------------------|--|---|---|
| Transparency | Inadequate transparency in the process of adding a site to the list of Wetlands of International Importance. | <ul style="list-style-type: none"> The Secretariat should notify all Contracting Parties when a new site designation is received and the review process is initiated. The Secretariat should develop an online portal, or modify the existing RSIS, to enable Contracting Parties to view a list of all sites in the process of being designated as Wetlands of International Importance. | Contracting Parties may consider requesting the Secretariat to provide a continuously updated list of all site designations under review, in the Ramsar Sites Information Service (RSIS) or on the Convention website. |
| Capacity of Contracting Parties | Inadequate knowledge among Contracting Parties of the process for designating new Wetlands of International Importance | <ul style="list-style-type: none"> The Secretariat should implement an annual capacity-building activity to raise the awareness of Contracting Parties on essential elements of the Strategic Framework and the process for designation of sites for inscription on the List of Wetlands of International Importance | The Secretariat provides annual training webinars on the use of the RSIS which, <i>inter alia</i> , encompass the process of designation and updating RISs. The Secretariat will consider the challenges raised by Contracting Parties in preparing future webinars, and will update or develop training materials such as web tutorials as needed. |
| Capacity of the Secretariat | Recently hired staff may not be familiar with the process for adding new sites to the List. | <ul style="list-style-type: none"> The Secretariat should establish a system whereby newly recruited Senior Advisers can be supported by more experienced colleagues until they have gained sufficient experience to take on full responsibility. | The Secretariat provides training to newly recruited staff, with new staff supported by colleagues in relation to site designations. |
| | Slow processing of site designations due to limited number of staff in the Secretariat. | <ul style="list-style-type: none"> The Secretariat could hire additional staff to support the review and publication of RIS both for the designation and updating processes. | The current core budget does not include provisions for additional staff. Contracting Parties may consider making budgetary provisions for the Secretariat to hire consultants (on a retainer or on a part-time basis) to support RIS review when required. |

Annex 1

Note of the Legal Advisor

Note on designation and listing of sites on the List of Wetlands of International Importance

Convention on Wetlands of International Importance

February 2024

1. This note dated 22 February 2024 is prepared by the International Rules and Procedures Unit, Environmental Rule of Law Branch, Law Division, United Nations Environment Programme (UNEP), in a capacity of Legal Advisor to the Convention, in response to a request from the Secretariat of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (“the Convention”), concerning implementation of Resolution [14]XIV.13 on the status of Sites in the List of Wetlands of International Importance, further to Decision SC62-55 of the Standing Committee of the Convention at its 62nd meeting (SC62) from 4 to 8 September 2023.
2. The Conference of Contracting Parties at its 14th session (COP14) through Resolution XIV.13 on the status of Sites in the List of Wetlands of International Importance: [Requested] the Secretariat to prepare a technical report on the procedure undertaken by the Secretariat to include a Site on the List of Wetlands of International Importance, that covers all the steps of this process, for consideration at SC62.
3. During consideration of the matter at SC62, concern was raised with respect to the designation and listing of sites in the List, especially concerning the duties of Contracting Parties, and responsibilities of the Secretariat in fulfilling the mandate outlined in the Convention. Concern was raised concerning designation of Sites in disputed territories or territories on the United Nations list of Non-Self-Governing Territories.
4. Through Decision SC62-55, the Standing Committee instructed the Secretariat to send a notification to National Focal Points inviting the submission of proposals on strengthening the process to include a Site on the List of Wetlands of International Importance, and prepare a report compiling these inputs, accompanied by the opinion of the Legal Advisor, for consideration at SC63.

This opinion of the Legal Advisor outlines information on the duties of Contracting Parties and responsibilities of the Secretariat, for consideration by the Standing Committee of the Convention at its 63rd meeting (SC63) from 3 to 7 June 2024.

Mandate through the Convention with respect to designating Ramsar Sites

5. The purpose of the Convention, and the overarching aim of the Conference of the Contracting Parties, the Contracting Parties themselves, as well as the Secretariat, as also referenced in discussions leading to conclusion of the resolution in question during COP14, is to protect wetlands of international importance, especially as waterfowl habitat.
6. In accordance with Article 8.2(b) of the Convention, the Secretariat (“continuing bureau”) shall maintain the List of Wetlands of International Importance and be informed by the Contracting Parties of any additions, extensions, deletions or restrictions concerning wetlands included in the List provided in accordance with paragraph 5 of Article 2; The Secretariat draws its mandate for the process for placing a designated site on the List of Wetlands of International Importance, and the steps in the process, from the Convention text, and the Strategic Framework and guidelines

for the future development of the List of Wetlands of International Importance of the Convention on Wetlands (Ramsar, Iran, 1971), as contained in Resolution XI.8 Annex 2 (Rev. COP14)¹

7. According to Article 2.1 of the Convention: “Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as "the List" which is maintained by the Bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.” (Emphasis added) The term “bureau” in this article refers to the Secretariat of the Convention.
8. It must be noted from the above that designating Ramsar Sites is a process led by Contracting Parties. According to Article 2.1, to be in compliance with the treaty, Contracting Parties should designate wetlands in their territory. When designated by the Contracting Party, the Contracting Party is to inform the Secretariat of the Site, and to provide relevant information to the Secretariat, including Information Sheets (RISs). Once completed, the RIS (and accompanying map(s)) should be submitted to the Secretariat. Compilers should provide an electronic (MS Word) copy of the RIS and, where possible, digital copies of all maps. Resolution VI.13 (1996) urged Parties to review and update the data provided in the RIS at least every six years. The RISs including their accompanying maps are held by the Secretariat of the Convention. Since 2015 Parties directly provide Site data and information through the Ramsar Sites Information Service (RSIS), which is managed by UNEP-GRID under contract from the Secretariat.
9. According to Article 2.6 of the Convention: “Each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands within its territory.” As such, Contracting Parties exercise rights to designate entries, and to change entries in the List.
10. When designating a Site, and before submission of a Site for listing, it is important that the submitting Contracting Party abides by geographical and legal recognition of the area – Contracting Parties should ensure that their submission of Sites are in line with sovereignty claims. However, according to Article 2.3 of the Convention: “The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated.” In line with this provision, the fact that a wetland has been included in the List does not interfere with the sovereignty of the Contracting Party in whose territory the wetland is located.
11. According to Article 2.1, it is the responsibility of the Secretariat to maintain the list. The Secretariat does not have the responsibility and has not been accorded such a mandate by the Conference of the Contracting Parties, to handle disputes between Contracting Parties, on designation.
12. The responsibilities of Contracting Parties and of the Secretariat are further clarified in the Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance of the Convention on Wetlands (Ramsar, Iran, 1971), as updated in 2022, with relevant sections reproduced below:

¹ https://www.ramsar.org/sites/default/files/documents/library/cop11-res08-e-anx2_revcop14.pdf

Section 9. Understanding Ramsar Site designation processes and responsibilities

Paragraph 404. The Ramsar Site Information Sheet (RIS) is an official document of the Convention and is made publicly available by the Secretariat.

Paragraph 405. There are three main stages to the designation process:

- i) the designation of a Ramsar Site,
- ii) the Site being placed on the formal List of Wetlands of International Importance (the Ramsar List), and
- iii) the data and information provided in an RIS being entered into the Ramsar Sites Database and, with any additional information, this being made available through the Ramsar Sites Information Service (RSIS) website.

Paragraph 406. The key roles and responsibilities are that:

- i) Contracting Parties are responsible for identifying, compiling information, and designating wetlands within their territory that qualify as internationally important;
- ii) The Ramsar Secretariat is responsible for checking and confirming that the RIS and its map(s) confirm that the site qualifies for designation under the Ramsar Criteria, and that the RIS and its map(s) have been correctly completed in line with the adopted guidance for this, and then for placing the designated site on the Ramsar List; and
- iii) Under a longstanding arrangement decided by the Standing Committee, Wetlands International is responsible for maintaining the Ramsar Sites Database and RSIS, under a contractual arrangement with the Ramsar Secretariat.

Section 9.1 Designating a Ramsar Site (and updating Ramsar Site information)

Paragraph 407. It is solely the role and responsibility of a Contracting Party to a) designate a wetland within its territory as being internationally important under the Ramsar Convention, and b) to prepare and submit the RIS (including maps) in the correct format to the Secretariat.

13. It is important to outline that the Convention on Wetlands, as a treaty, must be interpreted in conformity with international law (see Article 31 Vienna Convention on the Law of Treaties) which includes any agreements between the Parties and “any other applicable rules between the Parties”. As State Parties are equally member states of the United Nations, it would seem advisable that, for the purpose of designating sites “within their territory”, State Parties to the Convention align with United Nations law and practice, including with regard to the determination of international boundaries. These may be defined in (a.) legally binding instruments such as bi- and multilateral treaties, or judgments of the International Court of Justice, (b.) authoritative documents such as Resolutions of the General Assembly or (c.) practical tools, including maps produced by the United Nations Cartographic Section, and the United Nations Geospatial network or similar. Similarly, the Secretariat, while not a United Nations Entity, would be well advised to consult and adopt applicable United Nations standards as necessary, including use of United Nations maps and networks, in placing designated sites on the List.
14. Whereas the prime obligation to guarantee compliance with the Convention resides with the Contracting Parties, the Secretariat is bound to ensure that its own conduct is in conformity with the aforementioned standards. The Secretariat is not obliged to actively ensure compliance with

the obligations arising from the treaty – this is a function of a treaty body such as the Conference of Contracting Parties. Nevertheless, the Secretariat has to ensure that its own conduct complies with the Convention and international law in general. This principle has been widely accepted and is duly reflected in Article 3 of the Draft articles on the responsibility of international organizations.² As such, paragraph 407 does not discharge the Secretariat from observing compliance with Article 2 of the Convention on Wetlands.

15. To facilitate engagement between Contracting Parties with respect to a Contracting Party designating a Site where there may be a dispute with another Contracting Party, Contracting Parties can include a part of the process where, between designation and listing, there is an opportunity for other Contracting Parties to react to the designation, for the listing of new sites. Such an additional step in the process is found neither in the Convention text, the resolution, nor the Strategic Framework. This would require either a resolution by the Conference, as the Strategic Framework was agreed to as an annex to a resolution at COP14; or otherwise through amendment of the Strategic Framework, which would in the same vein need to be through a resolution of the Conference of Contracting Parties.

Proposed way forward by the Standing Committee:

16. Resolution 3.3: Establishment of a Standing Committee: Describes the Standing Committee as a “permanent advisory committee for matters relating to the organization of meetings and for the continuous implementation of the Convention”. Paragraph 1 of resolution 3.3 outlines that the Standing Committee’s role is to: a) Carry out, between one ordinary meeting of the Conference of the Contracting Parties and the next, such interim activity on behalf of the Conference as may be necessary, such activity being limited to matters on which the Conference has previously recorded its approval; b) Make recommendations for consideration at the next meeting of the Conference of the Contracting Parties;
17. It is important to note that the Standing Committee can only conduct intersessional activities that the Conference has mandated, i.e. through a resolution. It is also important to note that the mandate extends to making recommendations to the Conference for matters to be considered at its next meeting.
18. As such, the following may be considered: The Standing Committee may make recommendations to the Conference on how to potentially improve the process, based on the technical report by the Secretariat, which may be potentially through revising the Strategic Framework by way of Resolution; or adopting a stand-alone resolution on the process. The Standing Committee may propose that the Conference of the Contracting Party issues guidance to the secretariat on procedure for treating an application for listing if an application is made, but then contested by another State on account of designation of areas outside the Contracting Party’s territory.

The above would be in line with paragraph 22 of Resolution 14.13 where the Conference: [Decided] to defer consideration of the amended draft resolution on the Ramsar List (document COP14 Doc.18.16 Rev.1) to COP15, to be informed by the results of the technical report and relevant discussions at the upcoming Standing Committee meetings.

² International Law Commission, Draft articles on the responsibility of international organizations, 2011, Adopted by the International Law Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/66/10, para. 87). Yearbook of the International Law Commission, 2011, vol. II, Part Two.