

Agenda item 13.1

**Legal status of the Ramsar Convention Secretariat**

**Action requested:** The Standing Committee is invited to a) provide comments about the actions so far undertaken in this matter, and b) provide guidance on the further exploration of options to be presented to SC37 for consideration at COP10.

1. Although the Ramsar Convention itself is recognized by the United Nations as an accredited intergovernmental treaty (UN Treaty Series No. 14583), the Secretariat of the Convention has no recognition *per se*, as it is administered by The World Conservation Union (IUCN)(Article 8.1 of the treaty text). In one sense, this is not different from the status of the secretariats of the CBD or CITES within UNEP – but the umbrella of UNEP gives a different and unchallenged status to those secretariats.
2. In Resolution IX.10, the Conference of the Contracting Parties instructed the Secretary General “to engage in a consultative process with appropriate bodies such as IUCN and UNESCO, as well as the government of the host country and other interested organizations and governments, regarding the options, as well as legal and practical implications, for the transformation of the status of the Ramsar Secretariat towards an International Organization or other status whilst still recognizing and maintaining its links with IUCN and the host country.”
3. In Decision SC35-32 (2007), the Standing Committee “agreed to seek the views of the IUCN Commission on Environment Law, UNESCO, and UNEP on the legal status of the Secretariat and invited interested Parties to collaborate, and it called on the Secretariat to provide a more informative and comprehensive paper on the problem and options for solutions for its next meeting. The Committee agreed that the Director General of IUCN should be formally approached about interim solutions to ensure that the Secretariat is properly represented at all relevant UN meetings.”
4. In response to the Standing Committee’s instruction, the present Secretary General appointed a small group to prepare a more informative background on the problem and tentative options for the consideration of the Standing Committee at its 36th meeting.
5. Preliminary results of that assessment are attached, with the following elements:
  - a) steps so far taken by the Secretariat;
  - b) a list of current issues and problems related to the legal status of the Secretariat;
  - c) recommendations on the way forward giving available options; and
  - d) a chronological/historical brief with short summaries of the relevant decisions and key provisions in the past.

## **Assessment of the legal status of the Ramsar Secretariat**

### **Activities and progress from COP9 to date:**

In the period following the 9<sup>th</sup> meeting of the Conference of the Contracting Parties, the Secretariat made initial contact with the government of Switzerland (Ministry of Foreign Affairs, Political Division III, United Nations and other international organizations) and received the advice that the government of Switzerland would prefer to have the views of other bodies in a consolidated form before taking any further action. Consequently, the Secretariat approached UNESCO in December 2005; the response from UNESCO was that, “while UNESCO’s legal office is not in a position to provide detailed advice on this matter, we would like to suggest that the Ramsar Secretariat may find inspiration from precedent and models that exist in the cases of Secretariats of other international conventions that have signed seat agreements with their host country”.

### **Standing Committee 34**

In Decision SC34-11, the Standing Committee encouraged a consultative process with the missions of Ecuador, Gabon, and the Islamic Republic of Iran to assist the Secretariat in moving forward in its efforts to resolve the legal status of the Secretariat and requested a report to SC35, at which time the desirability of creating a working group would be revisited.

The SC instructed the Secretary General to write to the Director General of UNESCO to request a more expeditious reply to the Convention’s inquiry. The Director-General of UNESCO has responded to an invitation to comment on the legal issues involved. His reply did not advance the consideration any further.

An approach was made by the Chair of the Standing Committee and the then-Secretary General to the UN Economic and Social Council (ECOSOC) to request that body to grant observer status to the Secretariat. After considerable discussion, it was agreed with the ECOSOC secretariat not to proceed with this matter.

### **Standing Committee 35**

In Decision SC35-32, the Standing Committee “agreed to seek the views of the IUCN Commission on Environment Law, UNESCO, and UNEP on the legal status of the Secretariat and invited interested Parties to collaborate, and it called on the Secretariat to provide a more informative and comprehensive paper on the problem and options for solutions for its next meeting. The Committee agreed that the Director General of IUCN should be formally approached about interim solutions to ensure that the Secretariat is properly represented at all relevant UN meetings.”

### **Actions taken following SC35**

In response to that decision, the Secretariat discussed many aspects of the situation but felt that the focus should first be upon agreeing a list of the perceived problems caused by the present legal situation. A small study group was set up within the Secretariat, and these are the problems that were identified (not necessarily in order of importance):

1. Frequent difficulty in obtaining travel visas for Ramsar staff without international organization legitimization.
2. Difficulty in obtaining recognition of our delegation at major international meetings.
3. Impossibility of obtaining work permits for spouses of non-Swiss staff members.
4. Occasional impossibility in making binding contracts as the Ramsar Secretariat, which actually has no legal power to sign contracts.
5. Legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.). (Budgetary disputes with IUCN, formerly cited as a problem, seem to have been resolved.)
6. Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity for the Secretariat.
7. Non-Swiss employees do not pay Swiss salary taxes (by agreement with the Swiss government, the equivalent sum is retained by Ramsar as income) and they may be losing privileges of being taxpayers in their communes. The employees themselves do not benefit from tax-exempt status. [The Swiss tax on "fortune", as opposed to salary, is not exempted.]
8. IUCN controls our financial procedures in ways that may not be suitable for us.
9. When in the field, our staff do not have access to a network of logistical and security assistance, as UN staff would.

Some of these problems have to do with IUCN specifically, but most are problems caused by not having some kind of status as an international organization.

A number of potential options for solution are being explored. Some have already been tried in the past, and all require further study. Very briefly, these are:

- 1) obtaining significant improvement of the conditions under the IUCN management, including legitimate and authoritative credentials regarding the Ramsar Secretariat: for instance, obtaining recognition as an international organization by UNGA, ECOSOC, etc.;
- 2) obtaining recognition by Switzerland as an international organization seated in this country;
- 3) joining the United Nations system in some way.

### **Meeting with CITES Secretariat staff**

A number of Ramsar staff met with representatives of the staff of the CITES Secretariat on 11 October 2007 to learn about their transition from IUCN to UNEP in the mid-1980s and about how well the above problems might have been resolved, new problems created, etc.

At first, IUCN agreed to administer the CITES Secretariat on behalf of UNEP. However, CITES moved from under the IUCN umbrella in Morges in 1985, after the then-DG of IUCN is said to have interfered with decisions of the then-SG of CITES. As a result, CITES is administered by UNEP, and UNEP's staff rules apply. Discussion with CITES staff revealed the following noteworthy points.

### **Advantages in being under UNEP's administration**

UNEP and the UN Office in Geneva (UNOG) provide to CITES in return for the 13% of budget that is charged for services:

- A P4 staff position for fund management;
- Two General Service staff positions for Finance and Personnel;
- A back-up administration team in Nairobi;
- Payroll handled by UNOG;
- Protocol handled by UNOG;
- Visa processing and some travel arrangements provided by UNOG (for official travel of 8+ hours, business class is allowed);
- Medical services for duty travel provided by UNOG;
- Language classes;
- Diplomatic pouch;
- Staff at Grade P5 and above get Corps Diplomatique (CD) plates for their cars;
- Petrol card for duty free petrol + use of UN duty free shop for liquor and cigarettes;
- UN privileges and immunities are extended to CITES Secretariat staff, and they travel on official business under the authority of a UN laissez-passer, which is not recognized by the US and Switzerland;
- Carte de légitimation is issued by the Swiss for P5s and above (equivalent to a "C" 'permanent resident' and work permit for Switzerland), but has different colours for different grades

In addition, the CITES Secretariat can use the Geneva International Conference Centre infrastructure for free (services have to be paid for).

### **Shortcomings in being under UNEP's administration**

- Staff hiring is handled entirely by the UN "Galaxy" system, whereby the post is classified by the UN (UN guidelines for classifying posts can be obtained), and sometimes this results in mistakes over the actual requirements of the post. All posts are advertised internally to the UN. The SG informed us that only once had his choice of candidate been overruled by the UN.

### **Problems encountered by CITES regarding their "Legal Capacity"**

It is worth noting that the CITES Secretariat is also experiencing problems with their "international identity". During the 54th Meeting of the CITES Standing Committee (October 2006), the CITES Secretariat introduced SC54 Doc.8, "*Legal Personality of the Convention and the Secretariat*", "to describe the types of legal challenges that had hindered the Secretariat's ability to perform its functions and asked for the Standing Committee's assistance in clarifying its legal status. The Secretariat has had discussions with the Swiss authorities about concluding a separate

host government agreement, which will clarify the Secretariat's legal capacity, but it has been advised that is not possible. [CITES document SC54 doc.8 is included here as an annex.]

## **Analysis of other experiences of MEAs administered by UNEP**

### **Convention on the Conservation of Migratory Species of Wild Animals (CMS)**

Article IX of the Convention establishes the Secretariat of this convention as follows: "Upon entry into force of this Convention, the Secretariat is provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable intergovernmental or non-governmental, international or national agencies and bodies technically qualified in protection, conservation and management of wild animals. If the United Nations Environment Program is no longer able to provide the Secretariat, the Conference of the Parties shall make alternative arrangements for the Secretariat."

The functions of the Secretariat described in the text of the CMS do not provide any provisions that allow the Secretariat to enter into administrative and contractual arrangements as may be required for the effective discharge of its functions. Therefore, like CITES, the CMS Convention Secretariat did not initially have a legal capacity.

However, in addition to the general agreement between the United Nations and the Federal Republic of Germany, a complementary host government agreement was concluded in 2002 between the Federal Republic of Germany, the United Nations, and the Secretariat of the CMS. Article 4 (Legal Capacity) of the 2002 agreement provides that:

- 1) The Convention Secretariat shall possess in the host country the legal capacity to:
  - a) Contract
  - b) Acquire and dispose of movable and immovable property; and
  - c) Institute legal proceedings
- 2) For the purpose of this Article, the Convention Secretariat shall be represented by the Executive Secretary.

### **Convention on Biological Diversity**

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols. Article 24 about the Secretariat states:

1. A secretariat is hereby established. Its functions shall be:
  - (a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;
  - (b) To perform the functions assigned to it by any protocol;
  - (c) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
  - (d) To coordinate with other relevant international bodies and, **in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;** and
  - (e) To perform such other functions as may be determined by the Conference of the Parties.

2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Therefore, unlike CITES, the Secretariats of CBD and the CMS have the legal capacity to enter into administrative and contractual arrangements with other relevant international bodies despite the fact that CITES, CMS and CBD Secretariats are all administered by UNEP.

**Analysis of other conventions that are institutionally linked to the United Nations without being integrated in any programme, and administered under UN Rules and Regulations:**

**United Nations Framework Convention on Climate Change (UNFCCC)**

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and protocols adopted in accordance with article 17. Article 8 of the Convention establishes the Secretariat and its functions, including the following functions:

- “To ensure the necessary coordination with the secretariats of the relevant international bodies;”
- To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions”.

The secretariat is institutionally linked to the United Nations without being integrated in any programme, and administered under United Nations Rules and Regulations. The Executive Secretary reports to the Secretary-General through the Under-Secretary-General heading the Department of Management on administrative and financial matters, and through the Under-Secretary-General heading the Department for Economic and Social Affairs on other matters.

**United Nations Convention to Combat Desertification (UNCCD)**

The Secretary-General of the United Nations shall be the depositary of the Convention. Article 23 of the Convention text establishes the Secretariat and its functions, which *inter alia* specify:

“To enter, under the guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions.”

**SUMMARY**

In summary, the Secretariats of the CBD, UNFCCC, and UNCCD have the legal capacity to enter into administrative and contractual arrangements because this is explicitly established in the text of these conventions. The CMS Convention has this capacity because of a complementary arrangement signed with the host country. CITES does not have this capacity.

The Secretariat of the Ramsar Convention can enter into administrative and contractual arrangements provided it receives a delegation of authority from the IUCN Director General.

## Potential solutions to current issues and problems

### Resolved problems::

Problem N°2: Difficulty in obtaining recognition of our delegation at major international meetings:

For purposes of access to major meetings, the IUCN Director General has agreed to include Ramsar representatives in IUCN delegations to major UN meetings, such as CSD and UNGA, including ECOSOC. The Ramsar Secretary General's office will inform IUCN in time of the name of our delegates to be included on their list. Although registered as part of the IUCN delegation, the Ramsar staff members would intervene explicitly for the Convention and not as part of the IUCN representation.

The Ramsar Secretariat is invited separately to attend the meetings of UNEP, including the sessions of the Governing Council. The Secretariat is taking part in the UN-Water process and the UN Environmental Working Group, chaired by UNEP.

The Ramsar Secretariat was considered as representing an intergovernmental treaty at the UNFCCC COP10 in Bali. The Secretary General presented the Convention's view during the high-level segment of that COP and will take similar action at the UN Convention to Combat Desertification. With the CBD the Ramsar Secretariat has close working relationships through the implementation of the Joint Work Plan and the discussions in the Biodiversity Liaison Group.

The recent International Conference on Combating Desertification (Beijing, January 2008) was convened as an intersessional event in contribution to the 16th Session of the United Nations Commission on Sustainable Development (CSD) in May 2008, which will address the issue of desertification, along with agriculture, land, drought, rural development. The Secretary General addressed that meeting and found that it has provided an even better opportunity than the CSD Session itself to integrate wetlands and water issues into the debate. If we had missed that opportunity, we would not have been able to promote wetland issues into the CSD conclusions even if we were to attend the 16<sup>th</sup> Session.

### Proposed solutions for unresolved/difficult problems:

Three options are being explored:

#### 1. IUCN to continue hosting of the Secretariat with significant improvements

IUCN is discussing with the Swiss government the possibility of being registered as a Legal International Organization. Simultaneously, a dialogue is underway between the IUCN legal Advisor and the Ramsar Secretariat concerning possible collaboration in the results of this exploration.

In addition, the arrangement between IUCN and the Ramsar Secretariat is under review to compare it with hosting in part of the UN system, which would give clear parity with other similar Multilateral Environment Agreements.

## **2. The Ramsar Secretariat to be registered as a Legal International Governmental Organization**

Following discussion with the IUCN legal advisor, it is understood that there are three requirements under international law for the Secretariat to be registered as a Legal International Governmental Organization:

- a) To be an international treaty
- b) To have a separate secretariat
- c) To be registered as a separate entity:

It is point c) that we are missing so far – we need to be recognized by Switzerland in order to be registered under international law. According to a statement made during the ECOSOC Session in Geneva by the representative of Switzerland on 26 July 2006, Switzerland was in the process of adopting a law that could enable the Ramsar Secretariat to be registered.

### **Approach and steps to adopt this option**

To adopt this scenario, a headquarters agreement would have to be made with the Ramsar Convention on the model of existing headquarters agreements. According to the Swiss Federal Department of Foreign Affairs, in addition to the headquarters agreement, it would be necessary to conclude an exchange of letters regarding the status of international civil servants who are Swiss nationals with regard to Swiss social insurances.

### **Comparative advantages:**

This option would solve problems 1, 2, 4, 5 and 8.

### **Remaining problems:**

Problems 3, 6, 7, and 9 would not be solved through this scenario.

### **Other factors to consider**

If this scenario were to be adopted and implemented, the Swiss staff members would have the possibility to continue to be affiliated with the Swiss social security insurances, but they would have to pay the total amount of the dues themselves.

On the other hand, the non-Swiss staff members would not have the choice to remain in the Swiss social insurance system, even if they were willing to pay the required dues. Since they would not be allowed to remain part of the Swiss social insurances system, they would have to be covered exclusively by the system to be set up by the new secretariat.

As a result of becoming an independent intergovernmental body, the Ramsar Secretariat would have to consider a new system and clarify who will pay for the cost of:

- a new pension scheme,
- a new health insurance scheme, and
- new conditions of services

### **New problems that would result from this scenario**

In addition to the remaining problems, the Secretariat would have to embark upon new challenges:

- loss of all existing social security schemes, especially the pension scheme;
- need to have a higher budget to cover a new salary scale and provide social security allowances;
- need to find a new alternative for office space (including rent and running costs), administrative, financial and accounting services that are currently provided by IUCN.

### **3. The Ramsar Secretariat to be administered by a UN agency such as UNEP or UNESCO**

This option seems to be the only realistic and plausible alternative if the Ramsar Secretariat were to join the UN system, since the text of the Ramsar Convention does not specify any direct institutional link between the Secretariat and the United Nations. Apparently, even if the Secretariat were to move into the UN system, it would not be directly administered under UN Rules and Regulations without being integrated into a specific program or organization.

#### **Comparative advantages**

Problems N° 1, 2, 5 and 9 would be solved.

#### **Remaining problems:**

Problems N° 3, 4, 6, 7 and 8 would not be essentially solved although they might take a different form in the UN system.

#### **Probable advantage for the Convention as a whole**

A better recognition of the Secretariat as an international body would certainly enhance the work of the Convention as an international treaty, by solving problem N°1.

#### **Uncertainty**

It is not clear, however, that moving within the UN system would allow direct access to present the view of the Convention to the UN Commission on Sustainable Development (CSD) and to the UN Economic and Social Council (ECOSOC).

#### **Probable advantages for the Secretariat staff**

The advantages would probably be similar to those enjoyed by CITES as indicated above in the section dealing with CITES' experience. The adoption and implementation of this option would lead to a higher salary for the staff. The position of non-Swiss staff who have 'permanent resident' status in Switzerland has not been clarified.

#### **Probable shortcomings with regard to:**

- Pension scheme
- General conditions of services
- Specific conditions of services, especially with regard to the types of contract for employment.

Therefore, to clarify the situation we would need to have a formal analysis by a competent body with the required legal authority. Accordingly, the first step for this option would be to identify and contact such a competent body.

**Enduring problems:**

Apparently, none of the following problems would be solved by being an international independent body or by moving into the UN system:

3. Impossibility of obtaining work permits for spouses of non-Swiss staff members.
6. Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity.
7. Non-Swiss employees do not pay Swiss taxes and may be losing privileges in their communes.

### Summary of possible solutions to current problems, following a preliminary analysis

Issue/Problem	Potential result		
	Option 1: IUCN to continue hosting of the Secretariat with significant improvement	Option 2: The Ramsar Secretariat to be registered as a Legal International Governmental Organization	Option 3: The Ramsar Secretariat to be administered by a UN agency such as UNEP or UNESCO
1. Difficulty in obtaining travel visas for our staff without international organization legitimization	May remain unsolved	Would be solved	Would be solved
2. Difficulty in obtaining recognition of our delegation at major international meetings.	Being solved	Would be solved	Would be solved
3. The problem of not being able to obtain work permits for spouses of non-Swiss staff members.	Will remain unsolved	Will remain unsolved	Will remain unsolved
4. Potential impossibility in making binding contracts as Ramsar, which has no legal power to sign contracts.	Unsolved	Would be solved	May remain unsolved
5. Legal liability of IUCN for Ramsar actions (in case of staff disputes, the Regional Initiatives, misappropriation of funds, etc.).	Remains unsolved	Would be solved	Would be solved
6. Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity.	Will remain unsolved	Would be solved	Would remain unsolved

7. Non-Swiss employees do not pay Swiss taxes and may be losing privileges in their communes.	<b>Will remain unsolved</b>	<b>Will remain unsolved</b>	<b>Will remain unsolved</b>
8. IUCN controls our financial procedures in ways that may not be suitable for us.	<b>Remains</b>	<b>Would be solved</b>	<b>May remain unsolved</b>
9. When in the field, our staff does not have access to a network of logistical and security assistance, as UN staff would, for example.	<b>Will remain unsolved</b>	<b>Will remain unsolved</b>	<b>Will be solved</b>
New problems that may emerge when adopting an option	<b>Current problems remain</b>	Ramsar would need to set up its own social security and pension schemes <b>Ramsar could continue to engage IUCN or UNEP for specific services required.</b> Find a new alternative for office space (including rent and running cost), administrative, financial and accounting services that are currently provided by IUCN. Need to get a higher budget to cover new salary scale and provide social security allowances	Need to get a higher budget to cover new salary scale and provide social security allowances  Find a new alternative for office space (including rent and running cost), administrative, financial and accounting services that are currently provided by IUCN.

## Next steps

1. A formal approach to the UN relevant bodies, including UNEP, UNOG and UNESCO, for information about general conditions of such a transition, salary comparisons, legal status and benefits of employees.
2. Further discussions with IUCN Director General.
3. Further discussions with the Swiss authorities, and a planned visit to relevant authorities in Berne, to indicate our problems and solicit their ideas and interest about some kind of host arrangement, making clear to them that we are not considering relocation outside of Switzerland.

**The pros and cons of various options** (including implications for Swiss and non-Swiss staff members), and the positive aspects of the status quo within IUCN (such as the equivalent tax revenue, freedom for hiring and for the STRP, the valuable contributions of the International Organization Partners (IOP) in the implementation of the Convention, etc.), will be discussed further when we have more information.

## Documentary historical background

**The Convention on Wetlands of International Importance especially as Waterfowl Habitat**, signed on 2 February 2 1971.

“Article 8

1. The International Union for Conservation of Nature and Natural Resources shall perform the continuing bureau duties under this Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.

The Representative of IUCN stated that he was authorized to accept on behalf of IUCN the bureau duties specified in the final text of the Convention.

**Formal establishment of the “Ramsar Bureau” by the 3rd Meeting of the Contracting Parties (COP3).**

In Resolution 3.1 (1987), the Conference of the Parties agreed that:

- A Convention Bureau shall be provided by IUCN through the establishment of an integrated unit which is funded from the Convention budget and which performs all the tasks required by the Conference of the Contracting Parties. It shall comprise a section attached to IUCN and a section attached to IWRB;
- The policy to be followed by the Bureau shall be determined by the Conference of the Contracting Parties and, between meetings of the Conference of the Contracting Parties, the Bureau shall operate under the supervision of the Standing Committee;
- IUCN shall enter into a cooperative agreement with IWRB for the establishment of a distinct section at IWRB Headquarters to provide technical and scientific advisory services for the Bureau;
- The Convention Bureau provided by IUCN shall be administratively responsible to the Director General of IUCN who shall be responsible to the Conference of the Contracting Parties for financial and personnel administration;
- The distinct section established by IWRB under the terms of the cooperative agreement concluded with IUCN shall be administratively responsible to the Executive Director of IWRB who shall be responsible to the Conference of the Contracting Parties for financial and personnel administration. For all other purposes, it shall be a component of the Bureau and shall be responsible to the Head of the Convention Bureau at IUCN;
- The civil service salary scale applicable in the country where IUCN is located along with IUCN personnel provisions shall apply to the distinct section established by IUCN;

- The civil service salary scale applicable in the country where IWRB is located along with IWRB personnel provisions shall apply to the distinct section established by IWRB;
- The Convention budget, as approved by the Conference of the Contracting Parties, shall be administered by IUCN. Funds shall be disbursed according to budgetary provisions and instructions given by the Conference of the Contracting Parties;
- IUCN shall keep a separate bank account for all income received and expenditures incurred in the performance of Bureau duties under the Convention. Annual audits shall be carried out in accordance with procedures mandated by the Conference of the Contracting Parties.

This change, whereby IUCN was asked to provide an integrated Bureau rather than perform itself continuous bureau duties, was accepted by IUCN in a letter from the IUCN Director General to the Ramsar Standing Committee in June 1987.

#### **Transformation of the “Ramsar Bureau” into an independent unit co-located with the Headquarters of IUCN (Decision of COP4).**

In 1990, by decision of the 4th meeting of the Conference of the Contracting Parties, the Bureau was transformed into an independent unit co-located with the Headquarters of IUCN. The Secretary General was given sole responsibility for administration of the Convention funds and for all administrative matters other than those requiring the exercise of the legal personality. For those latter matters, formal responsibility rests with the Director General of IUCN. In addition the mandate of the Standing Committee was expanded to include supervision for personnel issues.

#### **Delegation of Authority to the Secretary General of the Convention on Wetlands (document signed on 28.01.1993 between IUCN and Ramsar)**

The development of the Convention over the years including increased membership from countries throughout the world, and an expanded conservation programme, has led the Standing Committee to seek increased authority and flexibility for the Secretary General in the implementation of the Convention’s programme. The Director General of IUCN, who participated in the discussion regarding the above changes, indicated to the Conference that he concurred with the terms of the decisions.

The document then goes into detail on the major areas of Authority to the Secretary General:

- I) Financial and Budgetary Matters
- II) Personnel Management
- III) Facility Management

#### **Eleventh meeting of the Standing Committee 20-23 October 1992 (Kushiro, Japan)**

Document SC11E-12/1031R-A: “Legal Status of the Ramsar Bureau and its Relationship with IUCN”

To summarize, the status of the Bureau has continually evolved since the Convention was signed by the will of the Parties to the Convention and with the concurrence of IUCN. Until 1987 IUCN was the body responsible for the performance of continuing bureau duties for the

Convention. In 1987 the Bureau was established as an autonomous unit within IUCN headed by a Secretary General administratively responsible to the Director General of IUCN. The latter remained responsible to the Parties for the administration of the Convention budget and personnel. In 1990 the Bureau became an independent unit co-located with IUCN. The Secretary General became responsible for the administration of the Convention funds and for all matters other than those requiring the exercise of legal personality. The Standing Committee assumed an increasingly important role as the representative of the Contracting Parties and as a partner in negotiations with IUCN, as evidenced by the signing of the agreement on the use of facilities of the new headquarters building.

**Delegation of authority from the IUCN Director General to the Secretary General of the Ramsar Convention: Supplementary Note: 29 January 1993**

The Legal and Financial Liability of IUCN, as the legal *persona* to which the Ramsar Bureau is attached, must inevitably retain ultimate liability for the actions of the Secretary General, in exercising the authority delegated to him. A list of the administrative and financial responsibilities of the Secretary General to the Director General of IUCN are elaborated on.

**Resolution IX.10: Use of the term and status of the “Ramsar Secretariat” (2005)**

9. INSTRUCTS the Secretary General to engage in a consultative process with appropriate bodies such as IUCN and UNESCO, as well as the government of the host country and other interested organizations and governments, regarding the options, as well as legal and practical implications, for the transformation of the status of the Ramsar Secretariat towards an International Organization or other status whilst still recognizing and maintaining its links with IUCN and the host country; and
10. REQUESTS the Secretary General to report on the outcome of these consultations through the Standing Committee to COP10.

**Additional annex: CITES SC34 DOC. 8 (2006), “*Legal Personality of the Convention and the Secretariat*” (PDF)**

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES  
OF WILD FAUNA AND FLORA



Fifty-fourth meeting of the Standing Committee  
Geneva (Switzerland), 2-6 October 2006

Strategic and administrative matters

LEGAL PERSONALITY OF THE CONVENTION AND THE SECRETARIAT

1. This document has been prepared by the Secretariat.
2. As used in this document, the term 'legal personality' includes both legal capacity within the host country and international personality.

Background

3. Under international law, the legal personality of an international organization need not be specified expressly in the instrument which creates it, but may be derived from implied institutional powers. Some of the general rights and duties of international organizations have been codified in the 1969 Vienna Convention on the Law of Treaties, but the bulk of legal rules in this field continues to evolve through international practice, custom and case law.
4. As with many multilateral environmental agreements, the text of CITES creates an entity, the Secretariat, to perform stated functions and any other function as may be entrusted to it by the Parties. This is why the Secretariat is sometimes characterized as a treaty body. The Secretariat is provided by the Executive Director of the United Nations Environment Programme (UNEP) but its duties are legally and functionally distinct from those of UNEP and could be transferred to one or more other suitable intergovernmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora (see Article XII of the Convention). Indeed, the Secretariat was previously provided by IUCN.
5. Under similar arrangements, UNEP provides secretariat functions for other multilateral environmental agreements and offers an administrative infrastructure within which those secretariats operate. There is no significant substantive difference in the independent legal natures of the secretariats of other conventions and that of the CITES Secretariat.
6. The Secretariat has always operated under the assumption that it possesses both the legal capacity and international personality (as an autonomous treaty body) needed to perform its functions under the Convention. This legal personality, however, has been implicit rather than explicit in nature.
7. Article XI, paragraph 3 (a), of the Convention authorizes the Conference of the Parties to "make such provision as may be necessary to enable the Secretariat to carry out its duties". To date, the Conference has not found it necessary to make express reference to the Secretariat's legal personality.

Legal capacity

8. The absence of any express recognition of the Secretariat's legal capacity in the Convention, and its derivative legal capacity under the host government agreement between the United Nations and Switzerland, has led to occasional challenges regarding that capacity. For example, questions have

arisen regarding the Secretariat's legal capacity to conclude a host government agreement for organizing meetings of the Conference of the Parties and to enter into a memorandum of understanding with an intergovernmental organization. More recently, its request for the '.int' domain on the Internet was rejected.

9. Article XII, paragraphs 2 (a) and 2 (b), of the Convention authorizes the Secretariat "to arrange for and service meetings of the Parties" and "to perform any other function as may be entrusted to it" by the Parties, but it does not make specific reference to the Secretariat's legal capacity. By contrast, Article 24, paragraph d), of the Convention on Biological Diversity authorizes the CBD Secretariat "to coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions".
10. Section 1 of Article I of the 1946 Agreement on Privileges and Immunities of the United Nations, concluded between the Swiss Federal Council and the Secretary-General of the United Nations, states that:

*The Swiss Federal Council recognizes the international personality and legal capacity of the United Nations. Consequently, according to the rules of international law, the Organization cannot be sued before the Swiss Courts without its express consent.*

11. The above language has been interpreted by Switzerland to afford UNEP and the Secretariat (as well as other MEA secretariats located in Switzerland) derivative legal capacity. The Secretariat has had discussions with Swiss authorities about concluding a separate host government agreement, which would clarify the Secretariat's legal capacity, but it has been advised that this is not possible.
12. By contrast, the 1995 Agreement between the United Nations and the Federal Republic of Germany concerning the Headquarters of the United Nations Volunteer Programme expressly provides that it "may also be made applicable, *mutatis mutandis*, to other intergovernmental entities, institutionally linked to the United Nations, by agreement among such entities, the Government and the United Nations" (see Article 4, paragraph 8). Under this provision, a complementary host government agreement was concluded in 2002 between the Federal Republic of Germany, the United Nations and the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS). Article 4 (Legal Capacity) of the 2002 Agreement provides that:
  - (1) *The Convention Secretariat shall possess in the host country the legal capacity to:*
    - (a) *contract;*
    - (b) *acquire and dispose of movable and immovable property; and*
    - (c) *institute legal proceedings.*
  - (2) *For the purpose of this Article, the Convention Secretariat shall be represented by the Executive Secretary.*

13. The CITES Secretariat has argued that its legal capacity is implicit in the Convention and the host government agreement between the United Nations and Switzerland. It has also argued that such implicit legal capacity has been exemplified by its entry into a wide range of administrative, contractual and other legal arrangements (e.g. contracts for goods or services, host government agreements and memoranda of understanding) over its more than 30 years of existence. This argument has proven persuasive in the face of most challenges but the Secretariat has had to expend a great deal of time and energy to make it, and often to reiterate it. In some cases, the argument has failed. The Secretariat now appears to be the only secretariat of a multilateral environmental agreement whose legal capacity has not been made explicit in writing. It therefore seems timely to consider formalizing the Secretariat's legal capacity in some way.
14. CITES Parties have been reluctant to consider and adopt additional amendments to the text of the Convention. There might be scope, however, for the Secretariat to work with the United Nations Office in Geneva and the Swiss Government to craft a written text – other than a host government agreement – which would clarify the Secretariat's capacity to enter directly into administrative and contractual arrangements. Alternatively, the Parties might consider adopting a resolution which clarifies the implicit legal capacity of the Secretariat to perform its functions under the Convention. The Annex to this document contains a draft of such a resolution.

### International personality

15. Staff of the CITES Secretariat are staff of the United Nations, though their contracts are generally limited to service in the Secretariat. As such, they (and the CITES Trust Fund) are subject to both UNEP and UN administrative and financial rules and regulations. It is in this context that the Secretary-General reports to the Deputy Executive Director and Executive Director of UNEP. UN privileges and immunities are extended to Secretariat staff, and they travel on official business under the authority of a United Nations laissez-passer.
16. UNEP's provision of the CITES Secretariat, however, does not affect the independent status of the Convention, which has its own standing under international law. This independence is exemplified by the 1997 Agreement between the Standing Committee of the Conference of the Parties to CITES and the Executive Director of UNEP.
17. It may be argued that the Secretariat similarly possesses an international personality, separate from that of UNEP, as a treaty body which is directed by and answerable to the Conference of the Parties. The Secretariat is not a programme within the primary structure of UNEP and is not guided by the Governing Council of UNEP. Indeed, it is UNEP's responsibility to ensure that the Secretariat has the autonomy needed to perform its functions under the Convention and in accordance with the policy, budgetary and operational guidance it receives from the Conference of the Parties. UNEP does not speak for CITES in international meetings. Rather, the Secretariat participates as an independent entity in such fora, speaking on behalf of the Convention and its Parties.
18. Despite being provided with information on the Secretariat's operation and its similarity to other MEA secretariats, the International Assigned Numbers Authority (whose functions are now performed by the Internet Corporation for Assigned Names and Numbers) decided recently that neither CITES nor the CITES Secretariat had independent legal personality and that therefore it did not qualify for the '.int' domain. Other UNEP and UN-administered secretariats were nevertheless determined by IANA to possess independent legal personality and were thereafter granted the '.int' domain.

### Recommendation

19. The Secretariat recommends that a discussion document incorporating the draft resolution on clarification of the legal capacity and international personality of the Convention Secretariat, contained in the Annex to this document, be submitted for consideration at the 14th meeting of the Conference of the Parties.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Legal personality of the Convention's Secretariat

RECOGNIZING that the legal personality of the Secretariat is implied, but not explicitly stated, in Article XII of the Convention;

AWARE that the Secretariat has generally operated and been treated as though it possesses both the legal capacity and independent international legal personality needed to perform its functions under the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOGNIZES that the Secretariat possesses independent international legal personality;

RECOGNIZES FURTHER that the Secretariat possesses the legal capacity:

- a) to contract;
- b) to acquire and dispose of immovable and movable properties; and
- c) to perform any legal act in furtherance of its functions and objectives; and

ENTRUSTS the Secretariat to coordinate with other relevant international bodies and, in particular, to enter into such administrative and contractual arrangements as may be required for the effective performance of its functions.