

## **Review of the legal status of Ramsar Regional Initiatives and the implications for the Convention**

1. In the context of a discussion of the draft resolution on Ramsar Regional Initiatives 2019-2021 and their Operational Framework, at its 54th meeting the Standing Committee adopted Decision SC54-30 as follows:

*The Standing Committee instructed the Secretariat to conduct a review of the legal status of Ramsar Regional Initiatives and the implications for the Convention; and to edit, finalize and publish the draft resolution contained in document SC54-Com.11 and its Annex for consideration at COP13, with both the text of the draft resolution and the Annex placed in square brackets, but otherwise without additional amendment, noting that Parties held a range of views requiring further discussion at the COP.*

2. Regarding the instruction to conduct a review of the legal status of Ramsar Regional Initiatives, the Secretariat requested the Ramsar Legal Adviser to conduct the required analysis and to prepare a report for the 55th meeting of the Standing Committee.
3. The report of the Ramsar Legal Adviser is attached to the present document.

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08 October 2018

Dear Martha,

**Re: Legal status of Ramsar Regional Initiatives**

1. I have been asked to advise as to the legal status of Ramsar Regional Initiatives (**RRI**), as well as the implications for the Ramsar Convention on Wetlands (**Convention**) should one or more RRI adopt a formal legal structure under national or state laws,<sup>1</sup> which in turn confers legal personality. For the sake of completeness, I will also consider the implications for the Convention of a RRI becoming formally recognised as an international organisation and obtaining international legal personality.
2. To clarify, it is beyond the scope of this advice and my expertise to analyse the laws concerning corporate structure and legal personality in each relevant (national or state) jurisdiction and to provide advice as to a suitable structure for the RRIs located within these jurisdictions. If such advice is deemed necessary and appropriate by a Contracting Party, that Party should consider engaging a local lawyer with suitable expertise in these matters.
3. However, I will draw on general principles concerning legal personality to illustrate the possible implications for the Convention of RRIs being formally accorded this status under relevant national or state or laws.<sup>2</sup>
4. In order to complete this advice, I have referred to and analysed the Recommendations and Resolutions of the Conference of the Parties and Standing Committee Decisions (**SC Decisions**) set out in **Annex 1** of this advice.
5. This advice is divided into six parts:
  - **Part 1: Executive Summary**
  - **Part 2: Relevant Recommendations, Resolutions and Decisions**
  - **Part 3: Current status of RRIs under the Convention**
  - **Part 4: Legal personality: the fundamentals**
  - **Part 5: The implications for the Convention of RRIs being granted legal personality**
  - **Part 6: Recommendations**

**Part 1: Executive Summary**

6. There are currently 19 RRIs that have been endorsed by the Standing Committee as operating within the framework of the Convention. This endorsement does not in and of itself confer any particular legal status at the national level (although I am instructed that

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<sup>1</sup> In a federated nation state, corporate structure (which in turn affects legal personality) may be regulated at the state (or provincial), rather than national, level.

<sup>2</sup> Ibid.

two of the 19 RRIs have adopted a particular legal structure under relevant national laws).

7. Neither the most recently adopted Operational Guidelines<sup>3</sup> nor their predecessors have authorised RRIs to adopt a formal legal structure under relevant national laws (that would in turn confer legal personality). However, in endorsing the two RRIs that have been accorded formal legal status within their host nations, the Contracting Parties have approved their structure and legal status.
8. The precise implications of a RRI adopting a legal structure that confers domestic legal personality varies from jurisdiction to jurisdiction. However, as a general rule, such entities have far greater capacity to operate as autonomous, financially independent organisations (and may, depending on local laws, be eligible to granted tax deductible status). Such entities may also be able to apply for membership of an international non-governmental organisation (**International NGO**) or become accredited with the United Nations Environment Program (the desirability of which should be considered by the Contracting Parties).
9. The implications of a RRI being formally recognised as an international organisation with international legal personality may include: entering into formal agreements with other international organisations and/or nation states;<sup>4</sup> becoming party to a treaty;<sup>5</sup> and becoming a permanent observer to the General Assembly of the United Nations. The Contracting Parties should therefore consider whether it is – in their view – desirable for a RRI to be eligible to engage in such processes.
10. Part 5 sets out some of the possible legal and reputational implications and risks for the Convention if RRIs obtain either domestic legal personality or international legal personality. Part 6 sets out a series of recommendations to mitigate these risks.

## **Part 2: Relevant Recommendations, Resolutions and Decisions**

11. Part 2 of this advice will provide an overview of the genesis, evolution and current framework for endorsing RRIs. To clarify, it will not discuss each Recommendation, Resolution and Decision set out in **Annex 1**. Rather, it will focus on those that illustrate the development of the framework governing these initiatives, and any associated legal structure conferred by relevant Resolutions and SC Decisions (or lack thereof).
12. The genesis of what are now known as RRIs can be traced to **Recommendation 5.14: Collaboration for Mediterranean Wetlands (CoP 5, 1993)**. This Recommendation, *inter alia*, noted that ‘this initiative is carried out jointly by the Governments of France, Greece, Italy, Portugal and Spain, the Commission of the European Communities, the Ramsar Bureau, Fondation de la Tour du Valet, IWRB and WWF-International.’ It went on to welcome ‘this regional collaboration activity’, which it considered to be ‘a very promising approach to wetland conservation at an international level’ and requested ‘the MedWet partners to present a full report on progress of the MedWet initiative at the Sixth Meeting of the Conference of the Contracting Parties in 1996.’

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<sup>3</sup> It is important to note that while the most recently adopted Operational Guidelines do not include any clear, explicit instruction or authorisation for RRIs to adopt a formal legal structure and acquire legal personality, certain phrases are ambiguous in this regard. This issue is discussed in Part 2 of this advice.

<sup>4</sup> This may depend on the terms of its charter/originating treaty.

<sup>5</sup> *Ibid.*

13. This was followed by **Recommendation 6.11**: Continuing Collaboration for Mediterranean Wetlands (CoP 6, 1996). This Recommendation, *inter alia*, welcomed ‘this form of concerted and integrated collaboration between government and non-government partners for the conservation and wise use of Mediterranean wetlands’ which it considered to be ‘a promising model for wetland activities in other regions.’ Relevantly, the Recommendation did not include any clear guidance regarding the formal corporate structure to be adopted by MedWet, or its legal status. Rather, it described the initiative as a ‘collaboration’. Furthermore, while the Recommendation did not formally authorise the creation of other entities (in the mould of MedWet), it did encourage the Contracting Parties to consider the value of cooperating in a similar manner at the regional level.
14. **Resolution VII.22**: Collaborative structure for Mediterranean Wetlands (CoP 7, 1999), formally approved the ‘establishment of the Mediterranean Wetlands Committee (MedWet/Com) within the framework of the Convention, as a forum for collaboration on wetland issues in the Mediterranean and as an advisor to the Convention in this region.’ MedWet and the Committee appear to be effectively one and the same entity. This implies that the CoP was yet again endorsing a collaborating framework (as suggested by the title of the Resolution), rather than a formal corporate structure with any particular legal status or personality.
15. **Resolution VIII.30**: Regional initiatives for the further implementation of the Convention (CoP 8, 2002), marked a turning point insofar as it was the first time the CoP had formally developed and endorsed general guidelines concerning RRIs. Entitled ‘Guidance for the development of Regional Initiatives in the framework of the Convention on Wetlands’ (**Guidance Document**), it set out a simple set of principles divided into four areas: ‘Aim’, ‘Substantive Elements’, ‘Financial and other Support’ and ‘Governance’. Relevantly, the Guidance Document states that the ‘overall aim of regional initiatives should be to promote the objectives of the Convention in general and to implement the Ramsar Strategic Plan in particular...’. Furthermore, RRIs should establish their own advisory mechanism, involving all of the stakeholders, and shall report to the CoP (through the Bureau).
16. In summary, the Guidance Document did not stipulate any specific legal structure for regional initiatives and did not provide for the creation of entities with legal personality. Rather, it appears to be endorsing an informal structure to facilitate cooperation between relevant stakeholders (including Administrative Authorities) so as to enhance implementation of the Convention and its Strategic Plan in regional areas. Additional details regarding the contents of this Resolution are contained in **Annex 2**.
17. **Resolution IX.7**: Regional initiatives in the framework of the Ramsar Convention (CoP 9, 2005), formally endorsed the RRIs listed in Annex I.A as being within the framework of the Convention and further recognised the potential for the RRIs listed in Annex I.B to become operative within the framework of the Convention. The initiatives listed in Annex I.A were divided into two categories: regional and subregional networks for capacity building and cooperation and regional and subregional centres for training and capacity building, respectively. Neither of these descriptions suggests a need for the RRIs in question to adopt any sort of formal legal structure which would in turn confer legal personality. Rather, the Resolution simply recognised these ‘networks’ and ‘centres’ as operating ‘within the framework of the Convention’. That is, it did not endorse or stipulate any particular formal legal structure conferring legal personality.
18. I am instructed that in 2003, MedWet was recognised under Greek law as a not-for-profit association. It is unclear whether this status also conferred legal personality under the relevant law(s). In any case, this Resolution implicitly endorsed the continuation of MedWet, thanked the Greek Government for ‘hosting the MedWet Coordination Unit in

Athens' and accepted the government's offer to 'continue providing office facilities and financial support during the triennium 2006-2008...'. In other words, in endorsing MedWet, the CoP implicitly approved its legal status under Greek law (and, if relevant, the conferral by those laws of legal personality upon the initiative). Further details regarding this Resolution are contained in **Annex 2**.

19. **Resolution X.6:** Regional Initiatives 2009-2012 in the framework of the Ramsar Convention (CoP 10, 2008) replaced the Guidance Document with the 'Operational Guidelines 2009-2012 for regional initiatives in the framework of the Convention on Wetlands' (**Operational Guidelines 2009-12**). The Operational Guidelines 2009-12 were divided into six areas: the aim of regional initiatives; coordination between regional initiatives and the Secretariat; governance of initiatives; substantive elements of initiatives; financial and other support; and reporting and evaluation.
20. The Operational Guidelines 2009-12 stipulated that RRI's are intended as an 'operational means to provide effective support for an improved implementation of the objectives of the Convention and its Strategic Plan in specific geographical regions, through international cooperation on wetland-related issues of common concern.' They further clarified that RRI's must establish their own governance and advisory mechanisms, for which the support of a host country or host intergovernmental organisation is 'essential'.
21. In summary, the Operational Guidelines 2009-12, while more detailed than the Guidance Document, did not stipulate a specific legal structure or provide for the creation of entities with legal personality. Rather, they again provided for the creation of a 'mechanism' underpinned by support from a host Contracting Party or a host intergovernmental organisation. Further, they reinforced the need for RRI's to become financially independent and to report to the Secretariat. It was implied<sup>6</sup> that RRI's must furnish satisfactory reports to continue to be endorsed as operating within the framework of the Convention and to continue to receive funding from the core budget. Additional details regarding this Resolution are contained in **Annex 2**.
22. **SC 40 Decisions 15 and 16** adopted 'evaluation criteria for regional initiatives operating in the framework of the Ramsar Convention 2009-2012' and a 'format for annual financial and work plan reporting by regional initiatives', respectively.<sup>7</sup> The 29 evaluation criteria were taken from the Operational Guidelines 2009-12.
23. **Resolution XI.5:** Regional Initiatives 2013-15 in the framework of the Ramsar Convention (CoP XI, 2012), approved the continued validity of the Operational Guidelines 2009-12 for the period 2013-15. In summary: funding continues to be contingent on satisfactory reporting and compliance with the Operational Guidelines 2009-12; emphasis continues to be placed on RRI's becoming financially independent; and RRI's are to identify themselves as independent entities (which is not tantamount to requiring a formal legal structure and legal personality). Further details regarding this Resolution can be found in **Annex 2**.
24. **SC Decision 46-28** adopted revised Operational Guidelines for 2013-15 (**Operational Guidelines 2013-15**). The Operational Guidelines 2013-15 are divided into the same six categories as the Operational Guidelines 2009-12 and their contents are largely the

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<sup>6</sup> When read in conjunction with X:6, paragraph 12. This paragraph 'INSTRUCTS all initiatives under the present Resolution, and particularly those funded from the core budget, to submit to the Standing Committee annual reports on progress and operations of the initiatives concerned, **and specifically on their success in fulfilling the Operational Guidelines** (my emphasis).'

<sup>7</sup> As stipulated in Resolution X.6 at paragraphs 15 and 16.

same. To that extent, there were no (new) directions regarding the creation of entities with a formal legal structure and legal personality.<sup>8</sup>

25. **Resolution XII.8:** Regional initiatives 2016-2018 in the framework of the Ramsar Convention, approved the validity and use of the Operational Guidelines 2013-15 for the period 2016-18, until the ‘amendments requested are adopted by the Standing Committee.’ Relevantly, the Standing Committee was instructed to undertake a review of these Operational Guidelines, taking into account, *inter alia*, ‘issues...of governance, capacity, fundraising, and programmatic approach in alignment with the Ramsar Strategic Plan, and adopt the necessary amendments no later than the 52<sup>nd</sup> meeting of the Standing Committee (SC52).’
26. **SC Decision 52-16** adopted the revised Operational Guidelines submitted by the Standing Committee by the Working Group for the Ramsar Regional Initiatives as ‘Operational Guidelines for Ramsar Regional Initiatives to support the implementation of the Convention’ (**Revised Operational Guidelines 2016-18**). The Revised Operational Guidelines 2016-18 (which remain valid)<sup>9</sup> are divided into eight chapters. These eight chapters are as follows: the aim and scope of RRIs; governance and functioning of the RRIs; status of the RRIs; participation in RRI; relation between the Ramsar Secretariat and the RRIs; the role of the RRIs to implement the Ramsar Strategic Plan; financing of the RRIs; and reporting and evaluation of the RRIs.
27. In summary, RRIs continued to be described as an ‘operational means of support for the effective implementation of the Convention and its Strategic Plan’; may be either physically established centres focussing on training and capacity building, or regional cooperation networks with no physical centre, or a combination of both; do not form part of the Secretariat of any national authority or organisation that hosts them; are ‘encouraged to establish their own identity, which specifies their independence, their status and their role’; and must ‘apply relevant provisions of national legislation and seek to obtain formal recognition in their host country.’
28. This Resolution does not explicitly require RRIs to adopt a specific legal structure which in turn confers legal personality. However, the clear emphasis on establishing a separate, independent identity and the use of the phrase ‘formal recognition’ renders the intentions of the CoP with respect to this matter somewhat ambiguous. On the one hand, ‘formal recognition’ could simply mean formal acknowledgment or endorsement by the host country of an independent RRI. On the other, it could imply formal legal status, although the absence of the word ‘legal’ (as in ‘formal *legal* recognition’) tends to suggest otherwise. In any case, and in light of this ambiguity, Part 6 will *inter alia* recommend that the Contracting Parties clarify this matter. Further details regarding the contents of this Resolution can be found in **Annex 2**.

### **Part 3: Current status of RRIs under the Convention**

29. There are currently 19 RRIs endorsed as operating within the framework of the Convention. These RRIs were most recently endorsed at the 52<sup>nd</sup> meeting of the Standing Committee (SC 52, Decisions 17 and 20). Further details regarding these RRIs can be found in **Annex 3**.

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<sup>8</sup> It is worth noting that the evaluation criteria approved in SC Decision 40-15 were tied to the Operational Guidelines 2009-12. As such, they technically ceased to be relevant upon endorsement of the Operational Guidelines 2013-15. By way of contrast, the reporting format adopted in SC Decision 41-21 was approved and to that extent maintained its relevance.

<sup>9</sup> Note that pursuant to SC Decision 53-11, some Parties would be authorised to continue to implement the Operational Guidelines approved at CoP 12 (namely Operational Guidelines 2013-15).

30. As noted in Part 2 of this advice, the relevant Resolutions and Decisions have not explicitly required or authorised RRI to adopt any sort of formal legal structure which would in turn confer legal personality. However, I have been instructed that MedWet obtained formal recognition under Greek law in 2002 and French law in 2014 (although it is unclear whether the resulting legal structure confers legal personality under French law). Regardless, MedWet has been continuously endorsed as operating within the framework of the Convention, which in turn means that its legal structure and status under Greek and then French law was approved by the CoP or Standing Committee.
31. I have also been instructed that the Ramsar Regional Centre for Training and Research in the Western Hemisphere (**CREHO**) is recognised as a regional international organisation (and has full legal personality) under the relevant law(s) in Panama.<sup>10</sup> Again, the continued endorsement of this RRI is tantamount to approving this legal framework.
32. I have not received any further instructions regarding the specific legal status of the remaining RRIs under relevant national laws. I have therefore assumed that they have not formally acquired a legal or corporate structure and do not have legal personality. I do not have any further details regarding their status within their host country. On that basis, I can only advise that they have been endorsed as operating within the framework of the Convention, which means that they continue to be eligible – subject to ongoing approval by the CoP and/or Standing Committee – to receive funding and to identify themselves as RRIs. However, and to clarify, this does not confer any particular legal status at the national level as this is dependent on recognition under the relevant national or state laws.
33. It is worth noting that relevant Resolutions (including Operating Guidelines) continue to emphasise the importance of RRIs becoming financially independent. Similarly, the most recently endorsed Operating Guidelines (Revised Operating Guidelines 2016-18) state that RRIs are separate from their host country or organisation, and encourage RRIs to establish their own identity. The focus on financial independence and the creation of entities with separate identities is potentially undermined by the absence of any clear, unambiguous authorisation from the CoP to adopt a formal legal structure at the national level (with or without legal personality). Part 6 will *inter alia* recommend that the Contracting Parties clarify this matter.

#### **Part 4: Legal personality: the fundamentals**

##### ***Legal personality pursuant to national law***

34. The law governing the formation of entities either possessing or lacking legal personality varies from jurisdiction to jurisdiction (that is, from country to country). Similarly, the implications of an entity operating with or conversely without legal personality vary from jurisdiction to jurisdiction. However, for the purposes of this advice, the concept of legal personality may be reasonably described as legal status that confers upon its beneficiary:
- the right to sue and be sued;
  - the capacity to enter into contracts and agreements, hold assets and hire staff (rather than relying on a host organisation to do so on their behalf or pursuant to a legally recognised instrument of delegation).

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<sup>10</sup> I have not been instructed as to whether a treaty was entered into between the relevant Contracting Parties to enable this RRI to be accorded the status of a regional international organisation under Panamanian law. If not, it is unclear as to whether it would be considered an IGO under international law.

35. The entity may also be entitled to acquire tax deductibility status under relevant national or state laws, and may be subject to rigorous financial and other reporting requirements. Furthermore, office bearers or members of a corporate entity (or association) with legal personality may be shielded from liability. Conversely, the members of an association lacking legal personality may be found to be personally liable (for any outstanding debts or for breach of contract, for example).
36. The choice of whether to form an association or organisation that possesses or lacks legal personality therefore depends on a variety of factors, including: the objectives of the association or entity; whether it intends to employ staff; whether it intends to enter into contracts; whether it intends to hold assets; and the benefits and risks associated with either choice (noting that these will vary from jurisdiction to jurisdiction).

### ***International legal personality***

37. There is no one, codified definition of ‘international legal personality’.<sup>11</sup> Rather, there are several theories which attempt to describe the circumstances in which it may exist.<sup>12</sup> Significantly, most international lawyers acknowledge that the concept of international legal personality is problematic precisely because it is nebulous and subject to a variety of interpretations.<sup>13</sup> However, ‘[i]n general, most authorities agree that an international legal person is an entity with a certain capacity for international rights and obligations.’ However, there is debate as to what these ‘rights and obligations’ actually amount to.<sup>14</sup>
38. It is widely acknowledged that nation states and intergovernmental organisations (IGOs) (also known as international organisations)<sup>15</sup> possess international legal personality.<sup>16</sup> The most ‘orthodox’ definition of an IGO is probably captured in the Draft Articles on the Responsibility of International Organizations 2011. These Articles define an IGO as ‘an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.’<sup>17</sup> It is also generally argued that IGOs possess a degree of autonomy.<sup>18</sup>

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<sup>11</sup> There is no “formal criteria” for international legal personality: Klabbbers, Jan, *International Law*. Cambridge University Press, 2013, p. 68. Cambridge Books Online. See also: See Roland Portmann, *Legal Personality In International Law*, Cambridge University Press, 2010.

<sup>12</sup> The “Reparations for Injuries Suffered in the Service of the United Nations” (“Reparations case”) was an advisory opinion issued by the International Court of Justice in 1949. Two core theories regarding the notion of international legal personality (subjective v objective) emerged from this case. However, there does not appear to be any consensus amongst international lawyers and scholars regarding which of these two theories takes precedence. For further discussion see: Sognnæs, Cecilia, *International legal personality - an assessment of the International Committee of the Red Cross and its legal status*, UiO: Det juridiske fakultet, 2014.

<sup>13</sup> See for example: Worster, William Thomas, *Relative International Legal Personality of Non-State Actors*, (October 28, 2015), pp. 1-2. Available at SSRN: <https://ssrn.com/abstract=2682444> or <http://dx.doi.org/10.2139/ssrn.2682444> (Accessed 02 October 2017).

<sup>14</sup> *Ibid*, pp. 1-2.

<sup>15</sup> Note that the terms ‘international organisation’ and ‘intergovernmental organisation’ tend to be used interchangeably. See Vienna Convention on the law of treaties, Article (2)(1)(i).

<sup>16</sup> The ‘Reparations for Injuries Suffered in the Service of the United Nations’ (‘Reparations case’) established that an IGO – in this instance the United Nations - could have international legal personality.

<sup>17</sup> Drafted by the International Law Commission. Available online: [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_11\\_2011.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf) (Accessed 02 October 2017).

<sup>18</sup> Collins, Richard, White, Nigel, *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order*, Routledge, 2011, P. 121

39. The significance of domestic legal personality and international legal personality for RRI and the Convention will be elaborated upon in Part 5 of this advice.

## **Part 5: The implications for the Convention of RRI being granted legal personality**

### ***Legal personality under national laws***

40. As noted in Part 4, the precise implications of adopting a legal structure that confers domestic legal personality varies from jurisdiction to jurisdiction. However, as a general rule, such entities have far greater capacity to operate as autonomous, financially independent organisations. Additionally, such entities:

- may also be able to apply for membership of an International NGO, although this would depend on the charter or treaty of the International NGO, as well as the charter or constitution of the RRI;
- may be eligible to be accredited with the United Nations Environment Program, which in turn allows participation in the United Nations Environment Assembly.<sup>19</sup>

41. The implications for the Convention of one or more RRI being able to function in this manner would depend on a range of factors. I will present two basic scenarios to illustrate this point.

42. First, a RRI with a formal legal structure and legal personality under national law that complies with the Operational Guidelines, and to that extent continues to be formally endorsed by the CoP or Standing Committee, would arguably not pose any significant reputational or legal threat to the Convention. This is particularly true if reporting by the RRI is sufficiently detailed to ensure that the CoP or Standing Committee is properly apprised of all financial, fundraising and partnership arrangements, and all proposed MoUs between the RRI and Secretariat are scrutinised by a lawyer before being signed and entering into force. Part 6 will accordingly include recommendations regarding these matters.

43. Second and conversely, a RRI with a formal legal structure and legal personality under national law that does not comply with the Operational Guidelines and is not endorsed as operating within the framework of the Convention could *potentially* pose such a threat. This is largely because, even devoid of any formal status under the Convention, it may continue to operate under the relevant national law (unless, for example, its constitution indicates otherwise). While the RRI in question would technically lose its ability to use the Ramsar name and logo (which is protected under Article 6ter of the Paris Convention for the Protection of Industrial Property),<sup>20</sup> if unlawful use continued, the Ramsar Secretariat (or the IUCN on its behalf) would be required to take legal action, or to request that the relevant host nation take action on its behalf. While this would be an undesirable outcome, it is important to note that it is a worst-case scenario.

44. Similarly, a RRI that has failed to comply with the Operational Guidelines and which has not been endorsed as operating within the framework of the Convention would nonetheless be able to maintain its membership of an IGO or International NGO (barring any agreement between the IGO or International NGO and RRI to the contrary). While this may not pose any specific legal threat to the Convention, the desirability or otherwise of such a scenario is ultimately to be determined by the Contracting Parties.

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<sup>19</sup> Subject to meeting the stipulated criteria:

<http://wedocs.unep.org/bitstream/handle/20.500.11822/20737/Accreditation%20modalities%20%20Flyer2.pdf?sequence=1&isAllowed=y>

<sup>20</sup> See: <https://www.ramsar.org/resources/logo-and-name-of-the-ramsar-convention-on-wetlands>

45. It is also important to note that granting formal legal structure and legal personality to a RRI could generally be expected to protect the host country or organisation, as well as any other members of the RRI, from incurring liability as a result of the RRI breaching a contract or acting negligently. However, this would not necessarily be the case if the host country or organisation or any other members were implicated in the breach or negligent act, or if contractual arrangements between any or all of these entities and the RRI indicated otherwise. One could equally expect a similar level of protection to be conferred upon the Secretariat and IUCN (assuming neither entity was implicated in the breach or act of negligence, and absent any contractual arrangements to the contrary).
46. To reiterate, as I am not an expert in the national and state laws of each Contracting Party, I can only provide general advice about such matters. Additional advice from an appropriately qualified, domestic lawyer should therefore be sought by the relevant Contracting Parties if steps are taken to grant formal legal status and legal personality to a RRI under national laws. This matter is also touched on in the recommendations contained in Part 6.

### ***International legal personality***

47. It is necessary to briefly consider the implications for the Convention of a RRI becoming a legally recognised IGO and subsequently acquiring international legal personality and being subject to international law. By way of background – and as a general rule – an IGO is formed when a treaty is entered into between two or more nation states. An IGO may also be eligible in some jurisdictions to obtain formal, legal recognition as an IGO under national or state laws.
48. A RRI that is legally recognised as an IGO may be able to, *inter alia*: enter into formal agreements with other IGOs and/or nation states;<sup>21</sup> become party to a treaty;<sup>22</sup> and become a permanent observer to the General Assembly of the United Nations.<sup>23</sup> Again, the Contracting Parties will need to contemplate the desirability – or otherwise – of a RRI potentially being able to enter into such arrangements or accorded such status in an international forum. It will also need to consider the desirability – or otherwise – of a RRI being viewed (rightly or wrongly) as a general representative of the Convention within such contexts.

### **Part 6: Recommendations**

49. I have devised a series of recommendations for the Contracting Parties to consider. These recommendations are based on the analysis undertaken for, and specified in, this advice.
50. First, should the Contracting Parties wish to authorise one or more RRI to adopt a formal legal structure under relevant national laws (which in turn confers legal personality), they should ensure that this is clearly articulated in a Resolution.<sup>24</sup> Any conditions on the

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<sup>21</sup> This may depend on the terms of its charter/originating treaty.

<sup>22</sup> Ibid.

<sup>23</sup> Subject to complying with UN Decision 49/426 of 9 December 1994, and the Sixth Committee of the United Nations recommending to the United Nations General Assembly accept the IGO's request to become a permanent observer.

<sup>24</sup> Refer to Part 2, which describes the ambiguous nature of the Operational Guidelines 2016-18 with respect to the nature of the structure that may be adopted by a RRI.

adoption of such a structure and status should also be clearly set out in that Resolution.<sup>25</sup> For example, the Resolution could require that: first, the RRI obtain legal advice from a suitably qualified local lawyer specifying the rights and obligations that the RRI would accrue should it adopt a particular legal structure under the relevant local law(s); and second, that this advice must be provided to the Standing Committee (via the Secretariat) which may then choose to approve the proposed structure for the RRI.

51. Second and conversely, should the Convention wish to prohibit one or more RRI from adopting a formal legal structure and legal personality under national laws, this should be clearly articulated in a Resolution.<sup>26</sup>
52. Third, the Secretariat should refrain from entering into any MoUs<sup>27</sup> with RRIs or hosting countries or organisations without first obtaining legal advice regarding the implications for Secretariat and the Convention of entering into the MoU in question. Furthermore, the Secretariat should seek advice as to the legal implications of entering into a funding agreement with an entity that lacks a formal legal structure and legal personality.<sup>28</sup>
53. Fourth, the Operating Guidelines could include more specific and stringent reporting and auditing requirements, particularly in relation to financial matters. This would be particularly prudent in the event that the CoP decides to formally authorise one or more RRI to adopt a formal legal structure and legal personality. Advice should be sought from a suitably qualified accountant or auditor regarding this matter.
54. Fifth, the Contracting Parties may wish to consider the implications of exhorting RRIs lacking a formal legal structure and personality to become financially independent. For example, in some jurisdictions it is necessary for an entity to adopt a particular legal structure before it can be granted tax deductible status. Relevantly, failure to obtain tax deductible status may affect the ability of a RRI to fundraise and in turn become financially independent.
55. Sixth and as noted in Part 5 of this advice, the Contracting Parties should consider whether it is, in their view, desirable for a RRI to be potentially eligible: to be granted observer status in the United Nations General Assembly or to enter into agreements with States or IGOs (if it obtains the status of an IGO); to be accredited with the United Nations Environment Program, which in turn allows participation in the United Nations Environment Assembly (if it is a NGO under national law); or to obtain membership of an International NGO (if it is a NGO under national law).

Please do not hesitate to contact me if you have any questions regarding this advice.

Kind Regards,



Dr Emma Carmody  
Legal Advisor

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<sup>25</sup>Please note that this advice applies in respect of RRIs becoming formally recognised as an IGO under national and/or international law. That is, this should be clearly articulated in a Resolution, which should set out any relevant conditions on obtaining status.

<sup>26</sup> Ibid.

<sup>27</sup> Excluding basic funding agreements.

<sup>28</sup> Noting that RRIs receive funding from the core budget. I understand that this is then distributed under a funding agreement between the RRI and Secretariat.

## Annex 1

- 2018 - SC54-30:** Instructs the Secretariat to undertake a review of the legal status of RRI and the implications for the Convention, and to edit the draft resolution for consideration at COP13
- 2017 - SC53-37/38:** Allocation of budget
- 2017 - SC53-12:** Asks the Secretariat to prepare a draft resolution, taking into account information in the report by the working group, for COP13
- 2017 - SC53-11:** Notes that some Parties would continue implement the Operational Guidelines in effect as of COP12 (cf. SC46-28 – Guidelines to 2015)
- 2017 - SC53-09:** allocates core budget funds to 4 new RRI for their activities in 2017
- 2016 - SC52-20:** endorses 4 new RRI operating in the framework of the Convention (cf. in the table below)
- 2016 - SC52-19:** Asked Working Group with help of Secretariat to present a summary report of any issues re. RRI and any related proposals
- 2016 - SC52-18:** Asked Working Group to assess applicability of Operational Guidelines as approved before SC53
- 2016 - SC52-17:** Endorses 15 ongoing RRI operating in the framework of the Convention in 2016-2018 (cf. in the table below)
- 2016 - SC52-16:** Adopted Operational Guidelines
- 2015 - SC51-14:** Asked proposed new RRI to submit relevant information for consideration by SC52
- 2015 - SC51-13:** Asks a workshop to revise the Operational Guidelines immediately before SC52
- 2015 - SC51-12:** Asks the Secretariat to complete the assessment of existing RRI and to support a common communications strategy
- 2015 - SC51-11:** Establishes a working group to examine implications of proposed new Operational Guidelines for RRI
- 2015-COP12 Res. XII.8:** Defines an operational framework for RRI during 2016-2018, instructs SC to review the *Operational Guidelines* adopted through Decision SC46-28, no later than SC52
- 2015 - SC48-25:** Approves the draft resolution on RRI to be submitted to COP12
- 2014 - SC47-26:** Endorses 15 ongoing RRI operating in the framework of the Convention 2013-2015 and asked Secretariat to help RRI to develop ties with regional conventions to strengthen local rootedness etc.
- 2014 - SC47-10:** Allocates core budget funds to 6 RRI for their activities in 2014
- 2013 - SC46-28:** Adopts revised *Operational Guidelines 2013-2015* for RRI
- 2013 - SC46-23:** Allocates core budget funds to 6 RRI for their activities in 2013
- 2013 - SC46-13:** Endorses 15 ongoing RRI operating in the framework of the Convention during 2013, and highlights shortcomings

- 2012-COP11 Res. XI.5:** Defines an operational framework for RRIs during 2013-2015, approves continued validity of the Operational Guidelines 2009-12 for 2013-2015
- 2011 - SC43-11:** Asks for an independent assessment of the Ramsar Centres in Asia and Africa, and its results to be incorporated in the draft resolution for COP11
- 2011 - SC42-20:** Endorses ongoing 11 RRIs operating in the framework of the Convention in 2011 and withdraws 3 inactive initiatives
- 2010 - SC41-23:** Endorses 3 new RRIs operating in the framework of the Convention
- 2010 - SC41-22:** Welcomes the “letter of agreement” for disbursement of annual Ramsar core budget allocations to RRIs. See DOC. SC41-13, annex II, which is model contract or ‘letter of agreement’.
- 2010 - SC41-21:** Approves the ‘combined format for annual reporting and forward planning’ for RRIs
- 2010 - SC41-20:** Allows accrual of unallocated funds for RRIs to 2011
- 2010 - SC41-19:** Allocates Ramsar core budget funds to 10 RRIs
- 2009 - SC40-18:** Endorses 10 ongoing RRIs for 2009-2012 as meeting OGs (and 3 RRIs provisionally for one year. CF SC41-23)
- 2009 - SC40-15:** Adopted Evaluation Criteria to ensure operating in framework of the Convention CF Annex I of DOC. SC40-10
- 2009 - SC40-16:** ‘Format for annual financial and work plan reporting’, to be used by Regional Initiatives when reporting annually to the Secretariat
- 2008-COP10 Res. X.6:** Defines an operational framework for RRIs and provides *Operational Guidelines for 2009-2012*
- 2008 - SC37-07:** Approves the amended draft resolution on RRIs for transmission to COP10
- 2008 - SC36-19:** Instructs the Management Working Group to make a proposal to SC37 on ‘umbrella’ RRIs
- 2008 - SC36-13:** Approves Ramsar core budget allocations to 6 RRIs
- 2007 - SC35-7/8:** Budget and directs Secretariat to prepare overview for each SC meeting.
- 2006 - SC34-21:** Regulates Ramsar core budget funding to eligible RRIs
- 2005-COP9 Res. IX.7:** Endorses 9 RRIs for 2006-2008, recognizes 4 potentially new RRIs, decides on Ramsar budget support for 2006 to 4 RRIs, approves MedWet budget 2006-08
- 2005 - SC31-24:** Provides instructions how to finalise the draft resolution on RRI for submission to COP9 (consistently with recommendations of Sub Group on Finance)
- 2004 - SC30-18:** Welcomes the bringing to life of CREHO
- 2003 - SC29-04:** Endorses “proposed agreement” between Panama and the Secretariat on the establishment of CREHO.
- 2002-COP8 Res. VIII.41:** Approves the proposal to establish RRC-CWA, a Ramsar Regional Centre for Training and Research on Wetlands in Central and West Asia

- 2002-COP8 Res. VIII.30:** Establishes Ramsar budget line for RRIs, adopts Guidance for the development of RRIs, approves MedWet budget 2003-05
- 1999-COP7 Res. VII.26:** Approves the establishment of CREHO, the Regional Ramsar Centre for Training and Research on Wetlands in the Western Hemisphere
- 1999-COP7 Res. VII.22:** Approves the establishment of MedWet, i.e. the Mediterranean Wetlands Committee
- 1999-COP7 Res. VII.19:** Provides Guidelines for international cooperation as a framework for collaboration between CPs and other partners
- 1996-COP6 Rec. 6.11:** Welcomes the MedWet collaboration between government and non-government partners and requests a report to COP7
- 1993-COP5 Rec. 5.14:** Welcomes the MedWet initiative as a promising approach and requests it to report on progress to COP6

## Annex 2

Resolution re. RRIs	Key points
<p><b>Resolution VIII.30:</b> Guidance Document</p>	<ul style="list-style-type: none"> <li>• A regional initiative should from the start include the participation of the Administrative Authorities, as well as all other relevant stakeholders including ministries responsible for environmental and water issues, intergovernmental bodies, NGOs, academia and economic actors.</li> <li>• ‘The strategic and operational targets of a regional initiative should be fully aligned with the Strategic Plan of the Convention by means of policy and site technical work and activities.’</li> <li>• Specific arrangements regarding the coordination between a regional initiative and the Convention should be worked out by the Bureau under the guidance of the Standing Committee (with the CoP ultimately approving such arrangements).</li> </ul>
<p><b>Resolution X.6:</b> Operational Guidelines 2009-12</p>	<ul style="list-style-type: none"> <li>• RRIs are intended to provide ‘lasting, structural and operational support to facilitating and improving the implementation of the Ramsar Convention...’. Accordingly, ‘it is important to make sure that there is support from all participating Contracting Parties or a significant number of Contracting Parties in the regions concerned.’</li> <li>• The Secretariat must receive regular reports from RRIs to enable it to report to the Standing Committee and CoP as required.</li> <li>• Contracting Parties or other members participating in a RRI need to provide professional staff to ensure a minimum level of coordination between members of the RRI.</li> <li>• The strategic and operational targets of the RRI should be fully aligned with the Strategic Plan of the Convention.</li> <li>• RRIs need to raise the visibility of the Convention and general awareness of Ramsar objectives.</li> <li>• After an initial period of support, RRIs should become financially independent.</li> <li>• RRIs that are recognised as operating within the framework of the Convention must submit progress reports to the Secretariat to allow time for it to report to the following CoP. Further, RRIs requesting funding from the Ramsar core budget must submit annual reports of progress and financial status to the Secretariat in time for the following Standing Committee meeting.</li> <li>• RRIs are to be subject to periodic assessment and review processes, to be coordinated by the Secretariat. These are to ensure that RRIs are operating within the framework of agreed work plans and following the approaches approved pursuant to Resolutions.</li> <li>• This Resolution further authorised the Standing Committee to examine and approve, between meetings of the CoP, new RRIs which fully meet the Operational Guidelines 2009-12, and to develop evaluation criteria against which to assess whether RRIs operating within the framework of the Convention.</li> </ul>
<p><b>Resolution IX.7:</b> Regional initiatives in the framework of the Ramsar Convention</p>	<ul style="list-style-type: none"> <li>• Authorised the Secretary-General to conclude MoUs with relevant governments and bodies with regard to the specific financial and institutional arrangements for the initiatives listed in the Annex.</li> <li>• Instructed all initiatives under the Resolution to submit to the Standing Committee a progress report, including their success on complying with the Guidance Document and ‘actions taken to replace Ramsar funds with alternative sustainable funds.’</li> </ul>
<p><b>Resolution XI.5:</b></p>	<ul style="list-style-type: none"> <li>• Instructs RRIs to provide the Standing Committee with annual reports on their progress and operations and specifically their success in</li> </ul>

<p>Regional Initiatives 2013-15 in the framework of the Ramsar Convention</p>	<p>fulfilling the Operational Guidelines.</p> <ul style="list-style-type: none"> <li>• Instructs the Standing Committee to revise the 'guidelines on Regional Initiatives'<sup>29</sup> so that a precise evaluation of their activities and their administration and financial management and long-term sustainability is possible and to use these new guidelines to determine the level of support (financial and otherwise) in the coming triennium.</li> <li>• Agrees to provide core budget funding to RRI that are determined by the Standing Committee to fully meet the Operational Guidelines.</li> <li>• Strongly urges RRIs that receive financial support from the core budget to strengthen their financial sustainability.</li> <li>• Decides that RRI Centres that meet the Operational Guidelines can be funded for up to six years.</li> <li>• Instructs RRI Centres and Networks operating in the framework of the Convention to 'describe themselves as an operational means to provide support for the implementation of the objectives of the Ramsar Convention, but to present themselves with their own independent and individual identities to the public and other partners...'. This is to avoid any confusion between the different roles of RRIs, Administrative Authorities at the national level and Secretariat at the international level.</li> </ul>
<p><b>SC Decision 52-16:</b> Revised Operational Guidelines 2016-18</p>	<ul style="list-style-type: none"> <li>• The complementary role of RRIs and the Secretariat may be defined in written arrangements.</li> <li>• Equitable and transparent governance and coordination structures should be laid down in a set of operational procedures to be made public and shared with the Secretariat.</li> <li>• RRIs are intended to provide lasting structural and operational support to facilitate and improve the implementation of the Convention in the relevant region. Support of participating Contracting Parties is required.</li> <li>• To be eligible for funding from the Convention, a letter of support from the relevant Administrative Authorities is required.</li> <li>• It is the responsibility of the involved stakeholders, in particular the heads of the Administrative Authorities which engage in the governance of RRIs, to develop and coordinate RRIs.</li> <li>• Each RRI is encouraged to have professional staff involved to supervise or coordinate regional projects and programs.</li> <li>• When a RRI is hosted by an institution, a hosting agreement should recognise the specific status of the initiative and its operational independence with regard to the host institution, following the format adopted by the Standing Committee.</li> <li>• RRIs are approved by the CoP and/or Standing Committee, provided that their establishment is justified as a response to the needs of the regions and that they comply with the Operational Guidelines.</li> <li>• RRIs should be aligned with the Strategic Plan.</li> <li>• The work program of RRIs improves the visibility of the Convention and general awareness of the objectives of its Strategic Plan.</li> <li>• RRIs generate their own resources and should take the necessary measures to establish financial sustainability.</li> <li>• RRIs are to report annually to the Secretariat.</li> <li>• RRIs that satisfy the Operational Guidelines are approved by the Standing Committee as operating within the framework of the Convention for the period between two meetings of the CoP, and receive the status of RRI.</li> <li>• All RRIs that do not report on their activities to the Secretariat in time will have their status as a RRI withdrawn by the Standing Committee.</li> </ul>

<sup>29</sup> This is presumably a reference to the Operational Guidelines 2009-12.

### Annex 3

Ramsar Regional Initiative (RRI) and year of initial endorsement	Endorsement by CoP or Standing Committee as operating within the framework of the Convention
Ramsar Centre for Eastern Africa (RAMCEA) <b>2009 (SC40)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorses for 2011 SC40-18: <b>endorses for 2009-2012</b>
Ramsar Regional Centre for Training and Research in the Western Hemisphere (CREHO) <b>1999 (COP7)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorses for 2011 SC40-18: endorses for 2009-2012 SC30-18: welcomed new developments in bringing this Centre to life. Res. IX.7: endorses for 2006-2008 Res. VII.26: <b>endorses this new RRI 1999</b>
Ramsar Regional Centre – Central and West Asia (RRC-CWA) <b>2002 (COP8)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorses for 2011 SC40-18: endorses for 2009-2012 Res. IX.7: endorses for 2006-2008 Res. VIII.41: <b>endorses this new RRI 2002</b>
Ramsar Regional Centre – East Asia (RRC-EA) <b>2009 (SC40)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC40-18: endorses for 2009-2012
RRI for West African Coastal Zone Wetlands (WaCoWet) <b>2005 (COP9)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorses for 2011 Res. IX.7: <b>endorses for 2006-2008</b>
RRI for the Niger River Basin (NigerWet) <b>2005 (COP9)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 C42-20: endorses for 2011 Res. IX.7: <b>endorses for 2006-2008</b>
RRI for the Senegal River Basin <b>2016 (SC52)</b>	SC52-20: <b>endorses this new RRI 2016</b>
RRI for the Conservation and Wise Use of High Andean Wetlands <b>2005 (COP9)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorses for 2011 SC40-18: endorsement 2009-2012 Res. IX.7: <b>endorses for 2006-2008</b>
RRI for the Conservation and Wise Use of the Plata River Basin <b>2009 (SC40)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorsement 2011 SC40-18: <b>endorses for 2009-2012</b>
Caribbean Wetlands RRI (CariWet) <b>2010 (SC41)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015

	SC46-13: endorses for 2013 SC42-20: endorsement 2011 SC41-23: <b>endorses this new RRI 2010</b>
RRI for the Conservation and Wise Use of Mangroves and Coral Reefs <b>2010 (SC41)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorsement 2011 SC41-23: <b>endorses this new RRI 2010</b>
RRI for the Amazon River Basin <b>2016 (SC52)</b>	SC52-20: <b>endorses this new RRI 2016</b>
East-Asian Australasian Flyway Partnership <b>2005 (COP9)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC40-18: endorsement 2009-2012 Res. IX.7: <b>endorses for 2006-2008</b>
RRI for Central Asia <b>2016 (SC52)</b>	SC52-20: <b>endorses this new RRI 2016</b>
Indo-Burma RRI <b>2016 (SC52)</b>	SC52-20: <b>endorses this new RRI 2016</b>
Mediterranean Wetlands RRI (MedWet) <b>1999 (COP7)</b>	SC52-17: endorses for 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC40-18: endorses for 2009-2012 Res. IX.7: endorses for 2006-2008 Res. VII.22: <b>endorses this new RRI 1999</b>
Carpathian Wetland RRI (CWI) <b>2009 (SC49)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC42-20: endorsement 2011 SC40-18: <b>endorses for 2009-2012</b>
Nordic-Baltic Wetlands RRI (NorBalWet) <b>2009 (SC40)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 SC40-18: <b>endorses for 2009-2012</b>
RRI on Black and Azov Seas Coastal Wetlands (BlackSeaWet) <b>2010 (SC41)</b>	SC52-17: endorsement 2016-2018 SC47-26: endorses for 2013-2015 SC46-13: endorses for 2013 C42-20: endorsement 2011 SC41-23: <b>endorses this new RRI 2010</b>