

Agenda Item 7.3: Draft Resolutions for MOP 4

**Draft Resolution No. 1: Headquarters Agreement for and
Juridical Personality of the Agreement Secretariat**

Submitted by: Secretariat



ASCOBANS

NOTE:

**IN THE INTERESTS OF ECONOMY, DELEGATES ARE KINDLY REMINDED TO BRING
THEIR OWN COPIES OF THESE DOCUMENTS TO THE MEETING**

Secretariat's Note

A. Headquarters Agreement

1. An agreement between the Government of the Federal Republic of Germany, the United Nations and the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals concerning the Headquarters of the Convention Secretariat, and an exchange of notes was finalised for signature between respective parties during the course of 2002.
2. On 18 September 2002 this agreement was signed by representatives of the Federal Republic of Germany, the United Nations and the Convention Secretariat in the presence of the Executive Secretaries of the Agreement Secretariats that are co-located with the Convention Secretariat.
3. The agreement shall regulate matters relating to or arising out of the applicability *mutatis mutandis* of the UNV Headquarters Agreement to the Convention and, on their consent, to the Agreements concluded under CMS auspices, whose Secretariats are co-located with the CMS Secretariat.
4. In brief summary, the Headquarters Agreement will *inter alia*:
 - a) grant persons on official business to CMS Headquarters the same legal status as that provided to persons on official business to the headquarters of UNFCCC and UNCCD;
 - b) provide the Secretariat staff with the same legal status as that of the staff of other United Nations agencies in the Federal Republic of Germany;
 - c) supply the CMS Secretariat with the necessary legal capacity in the Federal Republic of Germany to contract, acquire and dispose of property and institute legal proceedings;
 - d) extend, on their consent, the same rights to the Agreements concluded under CMS auspices whose Secretariats are co-located with the Convention Secretariat.

B. Juridical Personality

1. For a number of years the Convention Secretariat's juridical personality in the host country was unclear. At the Sixth Meeting of the Conference of the Parties, it was noted that the United Nations Office for Legal Affairs and UNEP had advised, for the avoidance of any doubt, that a decision along the lines of other conventions (e.g. UNFCCC and UNCCD) should be expressly adopted by the respective competent body, that is the Standing Committee or the Conference of the Parties, to confer juridical personality and legal capacity on the Convention Secretariat. In Resolution 6.9 the CMS COP decided that "The Convention Secretariat should possess in the host country such legal capacity as is necessary for the effective discharge of its functions under the Convention, in particular to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings."
2. Article 4 (Legal Capacity) of the Headquarters 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."
3. An outstanding issue not addressed by the Sixth Meeting of the Conference of the Parties was the international juridical personality of the Secretariat. In Resolution 6.9 the COP requested the

Standing Committee "to clarify, with the assistance of the Secretariat, any relevant outstanding legal questions in consultation with the Legal Branch of the United Nations and the relevant United Nations conventions, to bestow the appropriate competence on the Secretariat and to report to the Conference of the Parties at its seventh meeting."

4. So far the issue of international juridical personality could not be clarified and the CMS Secretariat has requested COP7 to defer further consideration to COP8.

C. Action Requested of the Meeting of Parties

The Secretariat will invite the Meeting of the Parties to

- a) acknowledge the results achieved by UNEP, the Federal Government of Germany and the Convention Secretariat;
- b) express their appreciation that a provision has been made in the Headquarters Agreement (Article 2 paragraph 2) to also apply this Agreement to the Agreements Secretariats that are co-located with the Convention Secretariat and integrated into UNEP;
- c) endorse formally the Headquarters Agreement by adoption of Resolution 1;
- d) take note of the outstanding issue on international juridical personality.

4th MEETING OF PARTIES

DRAFT RESOLUTION No. 1

HEADQUARTERS AGREEMENT FOR AND JURIDICAL PERSONALITY OF THE AGREEMENT SECRETARIAT

Recalling the Resolution on the Establishment and the Location of the ASCOBANS Secretariat adopted by the Meeting of Parties at its Second Session (Bonn, FRG, November 1997), which provided for the establishment of a permanent Secretariat in Bonn, to be located at the UN Premises in Bonn on an interim basis pending its full integration into the CMS Agreements Unit from 1 January 2001,

Recalling Resolution No. 1 adopted by the Meeting of Parties at its Third Session (Bristol, UK, July 2000), accepting the offer of the United Nations Environment Programme to administer the Agreement Secretariat within the Agreements Unit to be established from January 2001 in co-location with the Secretariat of the Convention on Migratory Species (UNEP/CMS) in Bonn,

Aware that the establishment of the Agreements Unit and the integration of the ASCOBANS Secretariat into the Agreements Unit took place on 1 January 2001,

Further aware that for the functioning of the Agreement's Secretariat a similar legal status as granted by the Government of the Federal Republic of Germany to other United Nations bodies in the Federal Republic of Germany is desirable,

Acknowledging the efforts made by the Government of the Federal Republic of Germany, the United Nations and the Convention Secretariat to conclude a headquarters agreement, which will provide a legal status to the Convention Secretariat,

Aware that the headquarters agreement between the Government of the Federal Republic of Germany, the United Nations and the Convention Secretariat was concluded and signed on 18 September 2002 in Bonn,

Appreciating that a provision has been made in article 2, paragraph 2, of the headquarters agreement, subject to the consent of the competent bodies of Agreements concluded under article IV of the Convention, to apply the headquarters agreement *mutatis mutandis* to the secretariats of such Agreements, which have been co-located with the Convention Secretariat and are institutionally linked to the United Nations,

The Meeting of the Parties:

Welcomes and endorses the agreement between the Government of the Federal Republic of Germany, the United Nations and the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals concerning the headquarters of the Convention Secretariat;

Endorses that, in accordance to article 2, paragraph 2, of the headquarters agreement, the agreement shall apply *mutatis mutandis* to the Secretariat of the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas,

Expresses its sincere gratitude to the Federal Republic of Germany for the financial and other support to the Agreement Secretariat.

Agreement

between

the Government of the Federal Republic of Germany,

the United Nations

and

the Secretariat of the Convention on the Conservation of

Migratory Species of Wild Animals

concerning

the Headquarters of the Convention Secretariat

The Government of the Federal Republic of Germany

the United Nations

and

the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals,

Whereas the United Nations Environment Programme (UNEP) provides secretariat services for the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), in accordance with Article IX of the Convention,

Whereas the Government of the Federal Republic of Germany has a special responsibility towards the Convention and its Secretariat, in view of its role in the Convention's early development and its present function as Depositary,

Whereas paragraph 2 of Article 4 of the Agreement between the Federal Republic of Germany and the United Nations concerning the Headquarters of the United Nations Volunteers Programme concluded on 10 November 1995 provides that it "shall also apply *mutatis mutandis* to such other Offices of the United Nations as may be located in the Federal Republic of Germany with the consent of the Government",

Whereas paragraph 3 of Article 4 of the Agreement between the Federal Republic of Germany and the United Nations concerning the Headquarters of the United Nations Volunteers Programme concluded on 10 November 1995 provides that it "may also be made applicable *mutatis mutandis* to other inter-governmental entities, institutionally linked to the United Nations, by agreement among such entities, the Government and the United Nations",

Whereas paragraph 2 of Article 4 of the Agreement between the Government of the Federal Republic of Germany and the United Nations concerning the Occupancy and Use of the United Nations Premises in Bonn concluded on 13 February 1996 *inter alia* provides that "the United Nations shall make available appropriate space in the Premises ..., subject to the availability of space, to other inter-governmental entities institutionally linked to the United Nations", and

Desiring to conclude an Agreement regulating matters arising from the applicability *mutatis mutandis* of the Agreement concluded on 10 November 1995 between the Federal Republic of

Germany and the United Nations concerning the Headquarters of the United Nations Volunteers Programme to the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals,

Have agreed as follows:

Article 1
Definitions

For the purpose of the present Agreement, the following definitions shall apply:

- (a) “the UNV Headquarters Agreement” means the Agreement between the Federal Republic of Germany and the United Nations concerning the Headquarters of the United Nations Volunteers Programme concluded on 10 November 1995, and the Exchange of Notes of the same date between the Administrator of the United Nations Development Programme and the Permanent Representative of Germany to the United Nations concerning the interpretation of certain provisions of the Agreement. The Agreement and Exchange of Notes are appended in the Annex;
- (b) “the Convention” means the Convention on the Conservation of Migratory Species of Wild Animals, adopted in Bonn on 23 June 1979;
- (c) “the Conference of the Parties” means the Conference of the Parties to the Convention, the decision-making organ of the Convention, under Article VII thereof;
- (d) “the Convention Secretariat” means the Secretariat established under Article IX of the Convention;
- (e) “Executive Secretary” means the Head of the Convention Secretariat;
- (f) “Officials of the Convention Secretariat” means the Executive Secretary and all members of the staff of the Convention Secretariat, irrespective of nationality, with the exception of those who are recruited locally and assigned to hourly rates; and

- (g) “Headquarters” means the premises made available to, occupied and used by the Convention Secretariat in accordance with this Agreement or any other supplementary Agreement with the Government of the Federal Republic of Germany.

Article 2

Purpose and Scope of the Agreement

- (1) This Agreement shall regulate matters relating to or arising out of the applicability *mutatis mutandis* of the UNV Headquarters Agreement to the Convention Secretariat.
- (2) Subject to the consent of the competent bodies of Agreements concluded under Article IV of the Convention, this Agreement shall apply *mutatis mutandis* to Secretariats of such Agreements which have been administratively integrated within the Convention Secretariat and are institutionally linked to the United Nations by agreement among such Secretariats, the Convention Secretariat and the United Nations.

Article 3

Application of the UNV Headquarters Agreement

- (1) The UNV Headquarters Agreement shall be applicable *mutatis mutandis* to the Convention Secretariat in accordance with the provisions of the present Agreement.
- (2) Without prejudice to the provisions in paragraph 1 above, for the purposes of the present Agreement the references to:
- (a) “the United Nations”, in Article 1 (m), in Article 4 paragraph 1, in Article 19 paragraph 2, in Article 23 and with respect to paragraph 1 (a) of Article 26 of the UNV Headquarters Agreement, shall be deemed to mean the Convention Secretariat or the Conference of the Parties; and, with respect to Article 19 paragraph 3 of the same Agreement shall be deemed to mean the United Nations and the Convention Secretariat;

- (b) “the UNV”, in Article 5 paragraph 2 and in Articles 7, 8, 9, 10, 11, 12, 14, 17, 19, 21 and 26 of the UNV Headquarters Agreement, shall be deemed to mean the Convention Secretariat;
 - (c) “the Executive Co-ordinator”, in Articles 8, 11, 14, 19 paragraph 3, and in Articles 20, 21 and 22 of the UNV Headquarters Agreement, shall be deemed to mean the Executive Secretary;
 - (d) “the representatives of Members”, throughout the UNV Headquarters Agreement, shall be deemed to comprise the representatives of Parties and observer States to the Convention;
 - (e) “officials”, “officials of the UNV” or “officials of the Programme”, throughout the UNV Headquarters Agreement, shall be deemed to include officials of the Convention Secretariat;
 - (f) “persons”, in Articles 20 and 21 of the UNV Headquarters Agreement, shall be deemed to include all persons referred to in the present Agreement, including interns of the Convention Secretariat;
 - (g) “Party” or “Parties”, in Article 19 paragraph 3, and in Articles 24 and 26 paragraph 2 of the UNV Headquarters Agreement, shall be deemed to mean the Parties under the present Agreement; and
 - (h) “Headquarters district”, throughout the UNV Headquarters Agreement, shall be deemed to mean the Headquarters of the Convention Secretariat.
- (3) Without prejudice to the provisions in Article 21 of the UNV Headquarters Agreement, arrangements shall also be made to ensure that visas, entry permits or licences, where required for persons entering the host country on official business of the Convention, are delivered at the port of entry to the Federal Republic of Germany, to those persons who were unable to obtain them elsewhere prior to their arrival.

Article 4
Legal Capacity

- (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.

Article 5
Tenure

Without prejudice to paragraph 2 of Article 4 of the Agreement between the Government of the Federal Republic of Germany and the United Nations concerning the Occupancy and Use of the United Nations Premises in Bonn concluded on 13 February 1996, the Convention Secretariat shall be guaranteed permanent and rent-free tenure of sufficient space for it to carry out its work in a satisfactory manner, so long as its operations remain based in the Federal Republic of Germany, subject to the availability of space to other intergovernmental entities, institutionally linked to the United Nations.

Article 6
Immunity of Persons on Official Business of
the Convention

Without prejudice to the pertinent provisions of the UNV Headquarters Agreement, all persons invited to the Headquarters on official business of the Convention shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of their business. They shall also be accorded inviolability for all papers and documents.

Article 7
Final Provisions

- (1) The provisions of this Agreement shall be complementary to the provisions of the UNV Headquarters Agreement. Insofar as any provision of this Agreement and any provision of the UNV Headquarters Agreement relate to the same subject matter, each of these provisions shall be applicable and neither shall narrow the effect of the other.
- (2) This Agreement may be amended by mutual consent at the request of either Party to the present Agreement.
- (3) The present Agreement shall cease to be in force twelve months after any of the Parties gives notice in writing to the others of its decision to terminate the Agreement. This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of activities of the Convention Secretariat in the Federal Republic of Germany and the disposition of their property therein, and the resolution of any dispute among the Parties to the present Agreement.

- (4) Any bilateral dispute between any two of the Parties concerning the interpretation of this Agreement or the regulations of the UNV, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal composed of three members. Each Party to the dispute shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their Chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.
- (5) Any dispute amongst the three Parties concerning the interpretation or application of this Agreement or the regulations of the UNV, which cannot be settled amicably, shall be submitted, at the request of any Party to the dispute, to an arbitral tribunal composed of five members. Each Party shall appoint one arbitrator and the three arbitrators thus appointed shall together appoint fourth and fifth arbitrators and the first three shall jointly designate either the fourth or the fifth arbitrator as Chairman of the arbitral tribunal. If any of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from another Party to make such an appointment, such other Party may request the President of the International Court of Justice to make the necessary appointment. If the three arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the fourth or fifth arbitrator or designation of the Chairman, any Party may invite the President of the International Court of Justice to make the necessary appointment or designation.

- (6) The Parties shall draw up a special agreement determining the subject of the dispute. Failing conclusion of such an agreement within the period of two months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon the application of any Party. Unless the Parties decide otherwise, the arbitral tribunal shall determine its own procedure. The expenses of the arbitration shall be borne by the Parties to the dispute as assessed by the arbitrators. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide *ex aequo et bono*. The decision shall be final and binding on all Parties to the dispute, even if rendered in default of one or two of the Parties to the dispute.
- (7) The provisions of this Agreement shall be applied provisionally, as from the date of signature, as appropriate, until its entry into force referred to in paragraph 9 below.
- (8) The headquarters agreement concluded between the Government of the Federal Republic of Germany and the United Nations Environment Programme by an exchange of letters dated 30 November and 17 December 1984, as amended by an exchange of letters dated 15 and 24 August 1989, shall expire upon entry into force of this Agreement, except paragraph 1 of the former agreement which shall remain applicable.

(9) This Agreement shall enter into force on the day following the date of receipt of the last of the notifications by which the Parties will have informed each other of the completion of their respective formal requirements.

Done in Bonn, on 18 September 2002, in triplicate, in the German and the English languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany

Julius Georg Luy, Ambassador

Jürgen Trittin, Federal Minister for the Environment, Nature Conservation and Nuclear Safety

For the United Nations

Shafqat Kakakhel, Deputy Executive Director UNEP

For the Secretariat of the Convention on the Conservation
of Migratory Species of Wild Animals

Arnulf Müller-Helmbrecht, Executive Secretary UNEP/CMS