



CONVENTION ON MIGRATORY SPECIES

Distribution: General

UNEP/CMS/COP11/Doc.18.2
4 August 2014

Original: English

11th MEETING OF THE CONFERENCE OF THE PARTIES
Quito, Ecuador, 4-9 November 2014
Agenda Item 18.2

REPEAL OF RESOLUTIONS AND RECOMMENDATIONS

Summary:

At its 41th Meeting, the Standing Committee considered the recommendations of a Working Group relating to the lack of definitions for the terms “Resolutions” and “Recommendations” and the need to retire Resolutions and Recommendations or paragraphs of Resolutions and Recommendations that are no longer in force. The Standing Committee accepted all of the recommendations of the Working Group.

The definitions, as well as a process for retiring Resolutions and Recommendations that are no longer in effect, are included in the Annex to this document.

In addition, the Secretariat proposes changing the term “Recommendation” to “Decision”. This change will make clear that “Decisions” impose obligations that must be implemented. The Secretariat also proposes a provision, included in paragraph 7 of the draft Resolution, that provides for Resolutions and Decisions to come into effect 90 days after the meeting at which they are adopted, unless otherwise specified.

The Conference of the Parties is invited to consider for adoption the draft Resolution included in the Annex.

REPEAL OF RESOLUTIONS AND RECOMMENDATIONS

(Prepared by the Secretariat on behalf of the Standing Committee)

Introduction

1. At its 40th Meeting in November 2012, the Standing Committee established a Working Group to consider the Retirement of Resolutions and Recommendations. The Working Group submitted its conclusions and recommendations to the 41st Meeting of the Standing Committee in UNEP/CMS/StC41/11/Annex IV. The Standing Committee accepted all of the Working Group's recommendations.

2. The Working Group considered two separate issues: 1) the lack of definitions for "Resolutions" and "Recommendations" and 2) the need to retire certain Resolutions and Recommendations that are no longer in force.

Definitions for Resolutions and Recommendations

3. The Working Group noted that from COP4 to COP9 (inclusive) the Conference of the Parties adopted Resolutions and Recommendations. In contrast, between COP1 to COP3 and at COP10, only Resolutions were adopted. However, the Working Group noted that no apparent rationale existed for this change.

4. The Working Group also noted that neither the Convention nor a Resolution defines Resolution or Recommendation. The Working Group concluded that, for the sake of clarity, definitions for Resolution and Recommendation were required. To encourage consistency among conventions, the proposed definitions draw heavily on those used by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). See CITES Resolution 4.6 (Rev. CoP16), *Submission of draft resolutions and other documents for meetings of the Conference of the Parties*. The Standing Committee at its 41st meeting accepted the following proposed definitions:

- a. *Resolution*: Resolutions represent a decision of Parties, adopted at the Conference of the Parties, regarding the interpretation of the Convention or the application of its provisions. Resolutions are generally intended to provide long-standing guidance with respect to the Convention. Resolutions include decisions on how to interpret and implement the provisions of the Convention, establishing permanent committees, establishing long-term processes, and establishing the budgets of the Secretariat.
- b. *Recommendation*: Recommendations represent a decision of the Parties, adopted at a Conference of the Parties, containing instructions to a specific committee, Parties, or the Secretariat. They are typically intended to remain in effect for a short period only, usually until a particular task has been completed. Recommendations may require a report to be submitted to the meeting of the Conference of the Parties following that at which they were adopted, and so would remain in effect from one meeting of the Conference of the Parties to the next. The list of Recommendations may be revised after such a Conference at which time decisions which are out-of-date are deleted.

5. The third sentence of the definition of “Recommendation” provides that “Recommendations may require a report to be submitted to the meeting of the Conference of the Parties ...”. The Secretariat believes that this sentence is intended to illustrate the types of tasks that could be included in a Recommendation. The Secretariat thus proposes that the sentence read as follows: “Recommendations may require, for example, a report to be submitted to the meeting of the Conference of the Parties ...”. The definition included in the draft Resolution attached to this document includes the phrase “for example”.

6. In addition, both definitions refer to decisions adopted at a Conference of the Parties. Because the Conference of the Parties is the decision-making body of the Convention, the definitions should use the phrase “adopted at a meeting of the Conference of the Parties”. The definitions included in the draft Resolution makes this change.

7. The Secretariat met the Chair of the Standing Committee Working Group (New Zealand) in the margins of the 18th Meeting of the Scientific Council. The Secretariat noted its concern that the definition of “Recommendation” included mandatory instructions. Thus, confusion could result as to whether the instruction was mandatory or discretionary if labelled as a “Recommendation”. The Secretariat suggested that the word “Recommendation” be replaced with “Decision”. Not only would this more clearly indicate the nature of the instruction included in the Decision, but it would also bring greater consistency between CMS and CITES because CITES uses the terms “Resolution” and “Decision”. The Chair of the Working Group was amenable to that change. As a consequence, in the draft Resolution attached to this document, the word “Recommendation” has been replaced with “Decision”.

8. As part of the review of Resolutions and Recommendations for retirement or partial retirement, the Secretariat will rename “Recommendations” that remain in force as “Resolutions” or “Decisions”, as appropriate. This will avoid confusion as to the nature of previous documents adopted by the Parties. However, because the word “Recommendation” continues to be used until the Parties decide otherwise, the remainder of this document uses the term “Recommendation”.

9. In light of other recommendations made by the Working Group on the retirement of Resolutions and Recommendations, the last sentence has been deleted from the definition. The task of reviewing Resolutions and Decisions on a continuing basis is included in paragraph 6 of the draft Resolution.

Retirement of Resolutions and Recommendations

10. At the 10th Meeting of the Conference of the Parties to the CMS (November 2011, Bergen, Norway), the Secretariat proposed a process for retirement of Resolutions and Recommendations adopted at previous meetings of the Conference of the Parties (see UNEP/CMS/Conf.10.24/Rev.1). The Parties raised several concerns and the proposed Resolution was withdrawn and not adopted.

11. Parties raised the following four sources of concern with the proposed Resolution:

- a. For Resolutions and Recommendations noted as “Partly in Force”, it was not clear which provisions within them were still valid.
- b. It was unclear who would undertake the formal review of the COP Resolutions and recommendations.
- c. The usefulness of setting an expiry date was unresolved.
- d. Some resolutions identified for retirement had already been retired.

12. At the 40th Meeting of the CMS Standing Committee (November 2012), the Secretariat tabled a document on this matter (UNEP/CMS/StC40/19). The Standing Committee established a Working Group to review the back catalogue of Resolutions and Recommendations and determine:

- a. Which are still valid and should be retained, and which are not and should therefore be retired, and which are valid in some parts and should be retained in those parts;
- b. Whether a system should be adopted to review at regular intervals the body of decisions; and
- c. Whether some or all future Resolutions should include an expiry mechanism.

13. The Working Group made specific recommendations for 1) the retirement or partial retirement of Resolutions and Recommendations, 2) the regular review of Resolutions and Recommendations, 3) drafting Resolutions and Recommendations, and 4) maintaining a register of Resolutions and Recommendations in force. The Standing Committee accepted all of the Working Group’s recommendations.

14. *Retirement or Partial Retirement of Resolutions and Recommendations.* The Standing Committee recommended the following process for the retirement or partial retirement of Resolutions and Recommendations. First, if a Resolution or Recommendation can be retired in its entirety, all text should be noted as retired and a decision made recording this fact. Second, if a Resolution or Recommendation remains “Partly in Force”, those elements that can be retired should be clearly identified. This identification can be either by way of notation or by way of highlighting the retired elements. The Standing Committee also agreed that, in the future, the inclusion of expiry dates in Resolutions and Recommendations can help identify when a Resolution or Recommendation can be retired. However, future mechanisms, as set out below, may lessen the desirability or need to specify expiry dates.

15. To assist with the identification of Resolutions and Recommendations to retire or partly retire, the Standing Committee agreed that the Secretariat should prepare a table similar to that in meeting paper UNEP/CMS/Conf.10.24/Rev.1, Annex II for consideration by the Standing Committee. The table should highlight:

- a. The Resolution or Recommendation number;
- b. The Resolution or Recommendation name;
- c. The proposed status of the Resolution or Recommendation; and
- d. The reason a Resolution or Recommendation status is “No Longer in Force” (Work Completed, Superseded, Incorporated Elsewhere).

16. The Standing Committee also agreed that the Secretariat, in preparing the table, should prepare an Appendix of Resolutions and Recommendations in which the parts of text to be retired are highlighted (preferably by way of shading for ease and clarity of examination) and the reason for that status (Work Completed, Superseded, Incorporated Elsewhere) noted alongside.

17. The Standing Committee further agreed that the Secretariat should submit the Tables and Appendix to the Standing Committee. The Standing Committee will examine the Tables and Appendix to determine its agreement or disagreement and propose any desired modifications to the Tables and Appendix. The Standing Committee will then submit the Tables and Appendix to the Conference of Parties for its consideration and final determination.

18. *Regular Review of Resolutions and Recommendations.* The Standing Committee agreed that it would be useful for implementation of the Convention to have a process for the regular review of Resolutions and Recommendations to determine whether the Resolution or Recommendation should be retired or partially retired. Thus, the Standing Committee recommended that it, assisted by the Secretariat, be tasked with the continuous review of Resolutions and Recommendations with a view to proposing their timely retirement or partial retirement, as appropriate. This review should occur prior to each Meeting of the Conference of the Parties and a recommendation made to Conference of the Parties. However, the Standing Committee may decide, by vote, that in exceptional circumstances this review may be deferred by one Meeting of the Conference of the Parties.

19. *Future Resolutions and Recommendations to the Conference of the Parties.* The Standing Committee noted that some Resolutions and Recommendations presented to the Conference of the Parties will supersede or replace existing Resolutions or Recommendations. It further noted that there is no requirement for Parties tabling the new Resolution or Recommendation to examine previously adopted Resolutions or Recommendations to determine if the proposal makes them (or elements of them) redundant. There is currently no requirement to consider and propose a process for how to treat such redundant material if such a circumstance arises.

20. The Standing Committee agreed that this is a deficiency which should be rectified by requiring the proposer to conduct a review of relevant Resolutions and Recommendations with a view to recommending their partial or full retirement. The proposer should incorporate the elements that will not be retired within the new Resolution to ensure that, going forward, there is only one Resolution pertaining to each subject. It thus made the following recommendations for inclusion in a Resolution:

- a. When preparing a new Resolution or Recommendation, the proposer shall be required to examine all relevant previously adopted Resolutions and Recommendations to identify elements that may require modification or may be made redundant. The proposer should recommend which parts to retire and which to incorporate in the new resolution.
- b. When a Resolution is linked to a specific event such as “year of” events, the Resolution will be retired after completion of the event.

21. *Register of Current Resolutions and Recommendations.* The Standing Committee agreed that a register of Resolutions and Recommendations in force should be made available on the CMS website. The register of Resolutions and Recommendations in force would assist Parties search previous decisions when undertaking the steps put forward above when proposing new Resolutions and Recommendations.

22. The Standing Committee also agreed that grouping Resolutions and Recommendations by theme (for example, concerted actions or Agreements) is of considerable assistance to anybody interested in following the work of the Convention. The Standing Committee agreed that a Resolution from the Conference of the Parties to this effect would provide certainty regarding the ongoing provision by the Secretariat of Recommendations and Resolutions in these forms.

23. The Secretariat notes that neither the Convention nor a Resolution or Recommendation describes when a Resolution or Recommendation enters into force. As a consequence, the Secretariat proposes that Resolutions and Recommendations (to be called Decisions if the draft Resolution is adopted), enter into force 90 days after the meeting at which they are adopted, unless otherwise specified in the Resolution or Decision. This recommendation is included in paragraph 7 of the draft Resolution.

Action requested:

The Conference of the Parties is requested:

- By the Standing Committee to review the draft Resolution for adoption.

ANNEX

DRAFT RESOLUTION

REVIEW OF DECISIONS

Recognizing the need for the consistent use of terminology for decision-making within the Convention;

Recognizing also that implementation of the Convention can be improved by repealing Resolutions and Recommendations and parts thereof that are no longer in effect; and

Noting the previous work of the Standing Committee (UNEP/CMS/StC41/11/Annex IV) and the Secretariat (UNEP/CMS/Conf.10.24/Rev.1) to establish a process for the repeal of Resolutions and Recommendations no longer in force;

*The Conference of the Parties to the
Convention on the Conservation of Migratory Species of Wild Animals*

1. *Adopts* the following definitions for the submission of documents:

Resolution: Resolutions represent a decision of Parties, adopted at a Meeting of the Conference of the Parties, regarding the interpretation of the Convention or the application of its provisions. Resolutions are generally intended to provide long-standing guidance with respect to the Convention. Resolutions include decisions on how to interpret and implement the provisions of the Convention, establishing permanent committees, establishing long-term processes, and establishing the budgets of the Secretariat.

Decision: Decisions represent a decision of the Parties, adopted at a Meeting of the Conference of the Parties, containing instructions to Parties, a specific committee, or the Secretariat. They are typically intended to remain in effect for a short period only, usually until a particular task has been completed. Decisions may, for example, require a report to be submitted to the Meeting of the Conference of the Parties following that at which they were adopted, and so would remain in effect from one Meeting of the Conference of the Parties to the next.

2. *Recommends* that:

- (a) when preparing a new Resolution or Decision, the proposer examine all relevant Resolutions and Decisions in effect to identify elements that may require modification or may be made redundant and recommend which parts to repeal and which to incorporate in the new Resolution;
- (b) when drafting a Resolution that is intended to treat a subject comprehensively, or to make significant changes in the way in which a subject is dealt with, a Party prepare the draft so that, if adopted, it will replace and repeal all existing Resolutions (or, as appropriate, the relevant paragraphs) on the same subject;

- (c) when a draft Resolution is adopted that merely adds elements to the recommendations (or other decisions) in existing Resolutions, or makes minor amendment thereto, the existing Resolutions be replaced by revised versions with the agreed changes;
- (d) when drafting a Decision, specify the body (e.g., the Standing Committee) that is charged with implementing the Decision and the date by which the body should complete its task; and
- (e) unless practical considerations dictate otherwise, draft Decisions, and not draft Resolutions, include:
 - i) instructions or requests to committees, working groups or the Secretariat, unless they are part of a long-term procedure;
 - ii) decisions on the presentation of the Appendices;
 - iii) “year of” events; and
 - iv) recommendations (or other forms of decision) that will be implemented soon after their adoption and will then be obsolete;

3. *Directs* the Secretariat:

- (a) to establish registers, by relevant Meeting of the Conference of the Parties and by theme (e.g., “Concerted Actions” and “Agreements”) on the CMS website of Resolutions in force and Decisions in force, as well as a register of all Resolutions, Recommendations, and Decisions adopted by the Parties (for historical purposes);
- (b) when revising its register of Resolutions in force after each meeting of the Conference of the Parties, to correct the texts of already existing Resolutions to ensure that all references to other Resolutions are accurate;
- (c) to revise the register of Decisions in force after each meeting of the Conference of the Parties, to contain all recommendations (or other forms of decision) that are not recorded in Resolutions and that remain in effect. The Decisions shall be sorted according to subject, using the subjects of the Resolutions for guidance, and within the section for each subject they shall be divided according to the body to which they are directed. The Secretariat shall distribute to the Parties a copy of the updated Decisions soon after each meeting of the Conference; and
- (d) when revising the register of Decisions in force for the purpose of suggesting amendments, deletions or continuity, the Secretariat shall provide justification of any proposed changes to a Decision at each meeting of the Conference of the Parties;

4. *Directs* the Secretariat:

- (a) to prepare a list of (1) Resolutions and Recommendations that should be repealed and (2) and parts of Resolutions and Recommendations that should be repealed;

- (b) when preparing these lists, to state the reason for repealing the Resolution or Recommendation or part thereof (Work Completed, Superseded, Incorporated Elsewhere);
 - (c) when recommending only a part of a Resolution or Recommendation to be repealed, to indicate clearly the parts of a Resolution or Recommendation to be repealed;
 - (d) when preparing these lists, to recommend renaming Recommendations as Resolutions or Decisions, as appropriate; and
 - (e) to submit these lists to the Standing Committee for its 45th Meeting;
5. *Directs* the Standing Committee to examine the content of the lists described in paragraph 4, determine its agreement or disagreement, propose any desired modifications to the lists, and submit its recommendations to the 12th Meeting of the Conference of the Parties;
6. *Directs* the Standing Committee, assisted by the Secretariat:
- (a) to continuously review Resolutions and Decisions with a view to proposing their timely repeal (or repeal of elements), providing justification for any proposed changes; and
 - (b) to make recommendations for proposed changes to each Meeting of the Conference of the Parties (but the Standing Committee may decide, by vote, that in exceptional circumstances this may be deferred by one Meeting of the Conference of the Parties); and
7. *Decides* that the recommendations contained in Resolutions and Decisions adopted by the Conference of the Parties shall enter into force 90 days after the meeting at which they are adopted, unless otherwise specified in the relevant Resolution or Decision.