



8th Meeting of the Advisory Committee

Røros, Norway, 12 – 14 May 2003

Draft Resolution No. 4.2

Headquarters Agreement for and Juridical Personality of
the Agreements Secretariat
(Memorandum prepared by the Secretariat)

A. Headquarters Agreement

1. An agreement between the Government 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 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 Germany;
 - c) supply the CMS Secretariat with the necessary legal capacity in 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 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 Agreement Secretariats that are co-located with the Convention Secretariat and integrated into UNEP;
- c) endorse formally the Headquarters Agreement by adoption of Resolution 4.2;
- d) take note of the outstanding issue on international juridical personality.

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The Meeting of the Parties to the Agreement on the Conservation of Populations of European Bats (hereafter "the Agreement"),

Recalling the Resolution on the Establishment and the Location of the EUROBATS Secretariat adopted at its First Session (Bristol, July 1995);

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

Appreciating that the establishment of the Agreements Unit became effective on 1 January 2001;

Aware that for the functioning of the Agreement's Secretariat a similar legal status as granted by the government of Germany to other United Nations bodies located in Germany is desirable;

Acknowledging the efforts made by the Government of Germany, the United Nations and the UNEP/CMS Secretariat to conclude a Headquarters Agreement, which will provide a legal status to the Convention Secretariat;

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 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;

1. *Welcomes and endorses* the agreement between the Government 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;
2. *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 European Populations of Bats; and
3. *Expresses* its sincere gratitude to the Government of Germany for the financial and other support to the Agreement Secretariat.