

REVIEW OF DECISIONS (RESOLUTIONS AND RECOMMENDATIONS)

Summary

All recommendations proposed in this paper are re-produced here for ease of reference. They also appear in the relevant part of the paper.

It is recommended that:

1. The Standing Committee agrees the following definitions be adopted:
 - 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 The list of Recommendations may be revised after such a Conference at which time decisions which are out-of-date are deleted.

2. The Standing Committee agrees:
 - a. Resolutions or Recommendations that could be Retired (i.e. those no longer in force): the Working Group request the Secretariat to prepare a table similar to that in meeting paper UNEP/CMS/Conf.10.24/Rev.1, Annex II for its consideration. The table should highlight:
 - i. The Resolution or Recommendation number
 - ii. The Resolution or Recommendation name
 - iii. The proposed status of the Resolution or Recommendation
 - iv. The reason a Resolution or Recommendation status is “No Longer in Force” (Work Completed, Superseded, Incorporated Elsewhere)
 - b. Resolutions or Recommendations that could be Partly Retired (“Partly in Force”): the Working Group request the Secretariat to prepare a table similar to that specified above for its consideration. The Secretariat is also requested to 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.

- c. The Working Group examine the content of the Tables and Appendix and determine its agreement or disagreement, and propose any desired modifications to the Tables and Appendix.
3. The Standing Committee agrees:
 - a. The Standing Committee, assisted by the Secretariat, is tasked with continuous review of Resolutions and Recommendations with a view to proposing their timely retirement (or retirement of elements) as appropriate. This review should occur prior to each COP and a recommendation made to COP (but the Standing Committee may decide, by vote, that in exceptional circumstances this may be deferred by one COP).
 - b. A Draft Resolution to give effect to the proposals arising from recommendation (a) above will be prepared by the Secretariat for consideration by the Standing Committee.
 4. The Standing Committee agrees:
 - a. When preparing a new COP Resolution or Recommendation, the proposer shall be required to examine all relevant past COP 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 on completion of the event.
 - c. A Draft Resolution to give effect to the recommendation above can be prepared for consideration by the Standing Committee for onward transmission to COP11, if The Standing Committee agrees with the approach outlined above.
 5. The Standing Committee agrees:
 - a. A register of current active Resolutions and Recommendations will be maintained on the Convention website along with a complete register of all Resolutions and Recommendations. The register of current active COP Resolutions and Recommendations is to be organized by the relevant COP and thematically, with the register being updated by the Secretariat after each COP.
 - b. A Draft Resolution to give effect to the recommendation in (a) above be prepared for consideration by the Standing Committee for onward transmission to COP11, if The Standing Committee agrees with the approach outlined above.

Introduction

6. At the Tenth Meeting of the Conference of the Parties to the CMS (November 2011, Bergen, Norway), a process for retirement of resolutions and recommendations from previous COPs (see UNEP/CMS/Conf.10.24/Rev.1) was considered. The proposed Resolution was withdrawn and not adopted.

7. Four sources of concern were apparent:

- 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.

8. At the 40th Meeting of the CMS Standing Committee (November 2012), the Secretariat tabled a document on this matter (UNEP/CMS/StC40/19). An inter-sessional Working Group was established with the following Terms of Reference (ToR):

To review the back catalogue of CMS Decisions (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.

9. As a starting point, it was agreed that the Chair of the Working Group (New Zealand) would draft an initial paper to guide consideration and discussion of this matter.

10. In meeting the Terms of Reference on this topic, it is recommended that the Working Group:

- a. Review all past Resolutions and Recommendations with the intention of proposing for retirement all Resolutions and Recommendations, or elements of them, which have been implemented or superseded by subsequent Resolutions or Recommendations, taking care not to retire elements which have not been implemented or reflected in subsequent Resolutions or Recommendations.
- b. Propose a procedure for review of Resolutions and Recommendations to be used in the future (in addition to the requirements suggested for the development of new Resolutions and Recommendations) to ensure that Resolutions and Recommendations are retired in a timely manner.
- c. Propose a procedure for the development of all future Resolutions and Recommendations requiring the proposer to review all related Resolutions and

Recommendations and make a proposal with respect to their retirement or revision.

- d. Propose that the Secretariat maintain a Register of current Resolutions and Recommendations on the Convention website.

11. Based on these points, the paper is divided into the following sections:

- a. proposed definitions for Resolutions and Recommendations;
- b. retirement of Resolutions and Recommendations currently in force;
- c. regular review of Resolutions and Recommendations;
- d. future Resolutions and Recommendations; and
- e. establishing a register of Resolutions and Recommendations.

Proposed Definitions for Resolutions and Recommendations

12. It is noted that from COP4 to COP9 (inclusive), the Conference of the Parties adopted Resolutions and Recommendations. Between COP1 to COP3 and at COP10, only Resolutions were adopted. There is no apparent rationale for this change.

13. It is also noted that there appears to be no current definition of Resolution or Recommendation for the Convention. For the sake of clarity, a definition of a Resolution and a Recommendation is required. In order to encourage consistency among conventions, the recommended definitions proposed draw heavily on those used by CITES.

Recommendations: It is recommended that:

14. The Standing Committee agree the following definitions be adopted:

- a. *Resolution:* Resolutions represent a decision of the 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 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.

Retirement of Resolutions and Recommendations Currently in Force

15. Decisions on Retirement or Partial Retirement of Resolutions and recommendations can only be made by the Conference of the Parties as the decision making body of the Convention. The COP may be assisted in this work by the Standing Committee but COP is the decision making body.

16. Resolutions/recommendations that can be Fully Retired: Where a Resolution or Recommendation can be retired in its entirety, all text can be noted as retired and a decision made recording this fact.

17. Resolutions/Recommendations that can be Partly Retired: Where a Resolution or Recommendation remains “Partly in Force”, it will be necessary to identify those elements that are to be retired. This identification can be either by way of notation or by way of highlighting the retired elements.

18. Insertion of expiry dates in COP Resolutions and Recommendations: The insertion of expiry dates in Resolutions and Recommendations is partially addressed by the definitions above, which suggest Resolutions have a long life expectancy and Recommendations have a shorter life expectancy. Future mechanisms, as set out below, further lessen the desirability or need to specify expiry dates.

Recommendations: It is recommended that:

19. The Standing Committee agrees:

- a. Resolutions or Recommendations that could be Retired (i.e. those no longer in force): the Working Group request the Secretariat to prepare a table similar to that in meeting paper UNEP/CMS/conf.10.24 Rev.1, Annex II for its consideration. The table should highlight:
 - i. The Resolution or Recommendation number
 - ii. The Resolution or Recommendation name
 - iii. The proposed status of the Resolution or Recommendation
 - iv. The reason a Resolution or Recommendation status is “No Longer in Force” (Work Completed, Superseded, Incorporated Elsewhere).
- b. Resolutions or Recommendations that could be Partly Retired (“Partly in Force”): The Working Group request the Secretariat to prepare a table similar to that specified above for its consideration. The Secretariat is also requested to 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.
- c. The Working Group examine the content of the Tables and Appendix and determine its agreement or disagreement, and propose any desired modifications to the Tables and Appendix.

Regular review of Resolutions and Recommendations

20. As noted elsewhere, the COP is the final decision-making body and it is assisted by the Standing Committee. However, there is no Resolution tasking either the Standing Committee or Secretariat to undertake the task of a regular review of past COP Resolutions and Recommendations with a view to making a Recommendation to the COP regarding their partial or full retirement.

Recommendations: It is recommended that:

21. The Standing Committee agrees:
- a. The Standing Committee, assisted by the Secretariat, is tasked with continuous review of Resolutions and Recommendations with a view to proposing their timely retirement (or retirement of elements) as appropriate. This review should occur prior to each COP and a recommendation made to COP (but the Standing Committee may decide, by vote, that in exceptional circumstances this may be deferred by one COP).
 - b. A Draft Resolution to give effect to the proposals arising from recommendation (a) above will be prepared by the Secretariat for consideration by the Standing Committee.

Future Resolutions and Recommendations to COP

Formulation of Future Resolutions and Recommendations

22. Some Resolutions and Recommendations that are presented to the Conference of the Parties will supersede or replace existing COP Resolutions or Recommendations. There is no requirement for those tabling the new Resolution or Recommendation text to examine past COP Resolutions or Recommendations and 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. 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 and incorporating 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.

Recommendations: It is recommended that:

23. The Standing Committee agrees:
- a. When preparing a new COP Resolution or Recommendation, the proposer shall be required to examine all relevant past COP 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.

- c. A Draft Resolution to give effect to the recommendation above can be prepared for consideration by the Standing Committee for onward transmission to COP11, if The Standing Committee agrees with the approach outlined above.

Register of Current Resolutions and Recommendations

24. It is highly desirable that a register of current active Resolutions and Recommendations be made available. This register should be available on the CMS website. It would assist Parties search previous decisions when undertaking the steps put forward above when proposing new Resolutions and Recommendations.

25. Annex I to the meeting paper referred to above (UNEP/CMS/conf.10.24 Rev.1) grouped Resolutions and Recommendations by theme. This is of considerable assistance to anybody interested in following the work of the Convention on a thematic basis.

26. There does not seem to be a requirement to maintain such registers on the website. A Resolution from the COP to this effect would provide certainty regarding the ongoing provision by the Secretariat of COP Recommendations and Resolutions in these forms.

Recommendation: It is recommended that:

27. The Standing Committee agrees:
 - a. A register of current active Resolutions and Recommendations will be maintained on the Convention website along with a complete register of all Resolutions and Recommendations. The register of current active COP Resolutions and Recommendations is to be organized by the relevant COP and thematically, with the register being updated by the Secretariat after each COP.
 - b. A Draft Resolution to give effect to the recommendation in (a) above be prepared for consideration by the Standing Committee for onward transmission to COP11, if The Standing Committee agrees with the approach outlined above.