

**Agenda item 5**

**Roles and responsibilities of the Standing Committee**

**Action requested:** The Standing Committee is invited to consider the assessments and recommendations on a) Resolution VII.1 and the COP Rules of Procedure as they apply to the Standing Committee; and b) issues concerning Permanent Observers and other observers to the Standing Committee. In particular the Standing Committee may wish to:

- i) consider requesting the Secretariat to prepare a briefing paper for the Standing Committee which provides an explanation of the application of each COP Rule of Procedure to the operations of the Standing Committee, derived from the text of Resolution VII.1 and the COP Rules of Procedure interpreted *mutatis mutandis*;
- ii) consider recommending to COP11 that the host government of the Ramsar Secretariat be added to the full voting membership of the Standing Committee;
- iii) consider the extent to which the conferral of Wetlands International host country permanent observer status to the Standing Committee remains appropriate, in relation to the status of other organizations such as other International Organization Partners and the host countries of their headquarter offices; and in the light of these considerations,
- iv) request the Secretariat to draft a COP11 Resolution concerning these matters to update Resolution VII.1, for consideration at its 42<sup>nd</sup> meeting.

**A. Background**

1. Following consideration of DOC. SC40-4, the 40<sup>th</sup> meeting of the Standing Committee adopted Decision SC40-20 which, among other things, determined “2) to request the Secretariat to clarify any ambiguities between Resolution VII.1 and the current Rules of Procedure and suggest improvements to SC41, and 3) to request the Secretariat to make a proposal to SC41 on the roles and status of Permanent Observers and regular Observers at individual meetings. The Committee will then consider whether a Resolution updating Resolution VII.1 should be brought to COP11.”
2. In response to Decision SC40-20, this paper first reviews issues concerning Resolution VII.1 and the COP Rules of Procedure which apply *mutatis mutandis* to the Standing Committee, and then considers issues concerning the role and status of Standing Committee observers, and makes recommendations for a way forwards.

**B. Possible inconsistencies and ambiguities between Resolution VII.1 and the current COP Rules of Procedure**

3. Resolution VII.1 (1999) sets out the specific composition, functions and procedures of the Standing Committee. This Resolution, in paragraph 22, also decided that the Standing Committee, as a subsidiary body of the Conference of the Parties, shall be governed, *mutatis mutandis*, by the Rules of Procedure for meetings of the COP. This means that the Rules apply to the Standing Committee with “the necessary changes having been made”.
4. Thus where specific issues concerning the Standing Committee are set out, as they are in Resolution VII.1, those determinations apply, but on other matters of procedure the COP Rules of Procedure continue to apply, always allowing for the interpretation of the COP Rules as necessary to reflect their application to the Standing Committee.
5. An example of such a “necessary interpretation” in relation to the Standing Committee would be that where the COP Rules of Procedure say (Rule 39) that “Each Party shall have one vote”, in the context of the Standing Committee this means that “Each voting member of the Standing Committee shall have one vote”.
6. Thus far, however, no document has yet been prepared that undertakes this *mutatis mutandis* interpretation of the COP Rules as they apply to the Standing Committee. Thus when a matter of Standing Committee procedure arises, it is necessary to cross-reference to both Resolution VII.1 and the COP Rules of Procedure to determine how the Standing Committee should proceed. This is not always easy, and it can risk lengthy discussion and potential confusion about the interpretation of specific points of procedure.
7. In addition, some of the COP Rules of Procedure do not appear directly relevant to the operations of the Standing Committee. Examples include:
  - i) Rule 8 concerning the approval by Standing Committee of the provisional COP agenda. and Rules 16-19 concerning “Representation and Credentials” of official delegations to COP;
  - ii) aspects of Rule 4 in relation to the convening of Extraordinary meetings;
  - iii) Rule 21 concerning the election of Presidents and Vice-Presidents to preside over the COP; and
  - iv) Rules concerning the Standing Committee acting as the Conference Committee for the duration of a COP.
8. Aspects of the Rules of Procedure on voting in relation to elections may also not be relevant, or at least may seem unduly complicated for the *modus operandi* of the Standing Committee. For example, the complex COP Rules of Procedure (Rules 39-51) concerning voting on substantive matters at the COP could profitably be simplified for the Standing Committee.
9. Rule 5 concerning the submission of proposals to COP, and who may submit them, also requires considerable interpretation to speak accurately to the manner, and from which bodies, documents are provided for Standing Committee consideration.
10. Whilst there appear to be no obvious major inconsistencies between Resolution VII.1 and the COP Rules of Procedure which cannot be covered under the *mutatis mutandis* approach, there may nevertheless be some gaps concerning what is and is not covered in Resolution VII.1. One such gap concerns the timing of provision of documentation for a meeting of the Standing Committee – whereas Resolution VII.1 para. 12 requires the Secretariat to

notify Parties of the date and agenda of a Standing Committee meeting at least three months prior to the meeting, the Resolution is silent on the deadline for the provision of other meeting documents, which by long-established practice is not later than one calendar month prior to the meeting.

11. In view of this assessment, one approach which could clarify and simplify understanding of, and reference to, the Standing Committee's procedures and operations could be to prepare a briefing paper for the Standing Committee which provides an explanation of the application of each COP Rule of Procedure to the operations of the Standing Committee, derived from the text of Resolution VII.1 and the COP Rules of Procedure interpreted *mutatis mutandis*, for consideration at the 42<sup>nd</sup> meeting of the Standing Committee.
12. Annexed to this document would be the text of the "Roles and responsibilities of the Chair and appointed members of the Standing Committee" provided in DOC. SC40-4 paragraphs 10-13 and itself in turn derived in part from Annex II to Resolution VII.1. No decision concerning this matter was taken by SC40.
13. At least one other multilateral environmental agreement (the Convention on Migratory Species) has adopted a separate Rules of Procedure for its Standing Committee, and such an approach for Ramsar's Standing Committee would be another possibility: i.e., a specific "Standing Committee Rules of Procedure" document, derived from the text of Resolution VII.1 and the COP Rules of Procedure interpreted *mutatis mutandis*.
14. However, this is not recommended as an approach, since it would break the link between the COP Rules of Procedure and the Standing Committee's Rules of Procedure. The existing linkage recognized in Resolution VII.1 ensures that any change in Parties' views about Convention procedures which are decided by the sovereign body (COP) translate automatically to the delegated body (Standing Committee).
15. A separate Standing Committee Rules of Procedure would introduce the need actively to manage it for any divergence from amended COP Rules of Procedure, and would likely lead to the need for a subsequent re-adoption of amended Standing Committee Rules of Procedure following a change to the COP Rules of Procedure relevant to the operations of the Standing Committee. Since adoption of a separate Standing Committee Rules of Procedure would require a COP decision, this could also lead to procedural complications as to when any such re-adoption could be done and to time-lags between the content of the two sets of Rules of Procedure.

**B. The role and status of Permanent Observers and other observers at Standing Committee meetings**

16. This section considers first the role and status of Permanent Observers and then that of other observers at Standing Committee meetings.

**Historical background to Permanent Observer status**

17. The Standing Committee was established in 1987 by COP3 Resolution 3.3, which considered "the usefulness of a small permanent advisory committee for matters relating to the organization of meetings and for the continuous implementation of the Convention".

18. In paragraph 2(a) of Resolution 3.3 concerning the Committee's composition, in addition to defining SC membership as Contracting Parties appointed by the COP on a regional basis and the host countries of the previous and next meeting of the COP, this paragraph also determined that "the Contracting Parties which are host countries for the two sections of the Bureau [i.e., Secretariat] shall be invited to participate as observers in the work of the Committee".
19. It needs to be recalled that at that time the Secretariat functions were being delivered partly by IUCN based in Switzerland and partly by the International Waterfowl and Wetlands Research Bureau (IWRB) based in the United Kingdom.
20. Thus Switzerland and the UK were specifically recognized as Standing Committee observers, and according to Cyril de Klemm in his 1995 publication, *The legal development of the Ramsar Convention on Wetlands of International Importance especially as waterfowl habitat (2 February 1971)*, this meant that these two host country Parties were recognized as having "permanent observer status". This stems from the term "shall be invited", i.e., the decision to invite is mandatory rather than optional.
21. This participation was reaffirmed by COP4 DOC. C4.14 and its annex (1990). However, at the same COP the Parties also adopted the Annex to DOC. C4.15 concerning Secretariat matters, which approved the consolidation of the two sections of the Secretariat in Switzerland but which also recognized the need to ensure a continuing formal role of IWRB in the provision of scientific and technical support to the Bureau. This support included *inter alia* the maintenance on behalf of the Convention of the data and information services on Ramsar sites.
22. In 1995 the IWRB merged with the Asian Wetland Bureau and Wetlands for the Americas to form the global organization Wetlands International (WI), with IWRB becoming the Africa, Europe and Middle East (AEME) component of WI, based in the UK. However, in autumn 1996 AEME and the international unit of WI relocated to Wageningen in The Netherlands, and the organization remains there.
23. Thus whilst Switzerland has retained its permanent observer status on the Standing Committee as the Secretariat's host country, the UK relinquished this status in favor of The Netherlands from the time of the 19<sup>th</sup> meeting of the Standing Committee in October 1996, though the report of that meeting does not record a formalization of that transition.
24. In 1999 COP7 Resolution VII.1 (paragraph 11) reaffirmed that two host countries have Permanent Observer status to the Standing Committee: the country hosting the Bureau [Secretariat] and the country hosting the International Office of Wetlands International (currently The Netherlands).
25. Resolution VII.1 also recognized others to be invited as observers to the meetings of the Standing Committee – to be consistent with Cyril de Klemm's 1995 interpretation of the language of Resolution 3.3, these too are "permanent observers". These are:
  - a) the Chairperson of the Scientific & Technical Review Panel (STRP); and
  - b) the official International Organization Partners (IOPs).

### **The distinction between Permanent Observers and other categories of observers to the Standing Committee**

26. The Convention has not adopted any language or criteria which explicitly set out the types or characteristics of Parties, organizations and bodies which are, or can be, recognized as permanent observers. However, in the language of the various Resolutions concerning Standing Committee observers it is clear that the common feature of those currently recognized as Permanent Observers is that the term refers to Parties, bodies, and organizations which continue to provide long-term support to the implementation of Convention, including to the work of the Standing Committee, in one way or another.
27. It is thus a matter for decision by the Parties at the COP to recognize any another Party or other body or organization as being given permanent observer status, if that is deemed appropriate. Such a further Resolution would be required in order to supersede the terms of Resolution VII.1.

### **The status and role of Permanent Observers**

28. The COP has not adopted specific guidance on the status and roles of Permanent Observers. However, Permanent Observers are by definition “observers” to the Standing Committee. Thus any rules of procedure concerning Standing Committee observers (as opposed to the elected members - see below) apply to all observers, whether or not they are permanent.
29. Procedurally, this distinction means that those Parties and organizations recognized by a COP decision as permanent observers are automatically invited and admitted to meetings of the Standing Committee as observers, rather than following the procedure for other categories of Standing Committee observers – they need not request admission as observers and be formally admitted to a Standing Committee meeting by decision of the Committee at the beginning of each meeting. Under the relevant COP Rule of Procedure (Rule 6.2), “Such observers may, upon the invitation of the President, participate without the right to vote in the proceedings of any meeting unless at least one third of the Parties present at the meeting object.” As this applies to the Standing Committee, observers can be admitted on the invitation of the Chair of Standing Committee unless at least one third of voting members of the Committee present at the meeting object to their admission.
30. One issue raised at SC40 by those Parties who are currently recognized as Permanent Observers (Switzerland and The Netherlands) was that this recognition effectively disadvantaged them from fully participating in the work and decision-making of the Standing Committee, since with this status they could not be proposed for appointment by the COP as one of the voting members representing their region.
31. However, there would appear to be nothing in the terms of Resolution VII.1 or the COP Rules of Procedure that precludes a Standing Committee Permanent Observer Party from being nominated by its regional group at the COP for election as a voting regional member of the Standing Committee.
32. If this was done, it would presumably then mean that the voting member status would take precedence, for that triennium, over their long-term Permanent Observer status, but expert legal advice may need to be sought to confirm this interpretation.

33. An alternative, which would need a further decision by the COP concerning the composition of the Standing Committee, would be to recognize these Permanent Observer Parties as full voting members of the Committee. There is precedent for this in relation to Secretariat host countries in the composition of the Standing Committees of two other MEAs (CITES and the Convention on Migratory Species). In each of these cases the “Depositary Government” (Switzerland for CITES and Germany for CMS) is a full member of the Standing Committee.
34. Thus the Standing Committee may wish to consider recommending to COP11 that the host government of the Ramsar Secretariat be added to the full membership of the Standing Committee.
35. As described above, the Permanent Observer status of The Netherlands has different origins, since it was an historical consequence of Wetlands International’s long-term role in delivering scientific and technical support as an International Organisation Partner (IOP) of the Convention, and in its continuing maintenance and development of the Ramsar Sites Information Service (RSIS) on behalf of the Convention under contractual arrangements with the Secretariat. The Standing Committee may wish to consider whether this conferral of host country permanent observer status continues to be appropriate in this case, in relation to the status of other organizations such as other IOPs and the host countries of their own headquarter offices.

#### **The role and status of other observers at Standing Committee meetings**

36. Resolution VII.1 recognises four categories of other observers who may be admitted to individual Standing Committee meetings. These are:
  - a) all Contracting Parties, who can, as appropriate, make arrangements to be represented at the meeting as observers (paragraph 12);
  - b) countries which are not Contracting Parties but which have expressed an interest in joining the Convention (paragraph 13);
  - c) other experts (besides the STRP Chairperson) and/or institutions that the Standing Committee may deem appropriate for assisting in its consideration of particular agenda items (paragraph 14); and
  - d) the host country of any extraordinary meeting of the COP held between two ordinary COP meetings, specifically as an observer only on matters related to the organization of the extraordinary meeting, and provided that the host country is not already a member or permanent observer to the Standing Committee (paragraph 16).
37. Such observers may request this participation in a specific Standing Committee meeting and be formally admitted by decision of the voting members of the Standing Committee early in each meeting.
38. Since under Resolution VII.1 para. 22 the Standing Committee is governed *mutatis mutandis* by the COP Rules of Procedure, formally such observer admissions are conditional on no objection to the admission being made by at least one third of voting members of the Committee objecting (cf. COP Rules 6.2 and 7.1).

39. It should be noted that whilst Resolution VII.1 paragraphs 12-16 precisely set out the categories of countries, organizations and experts that may be admitted and the specific purposes for such admissions, COP Rules of Procedure Rules 6.1 and 7.1 provide for a broader range COP observer participation, covering:

- a) the United Nations and its specialized agencies and the International Atomic Energy Agency, and any State not a Party to the Convention (Rule 6.1); and
- b) any body or agency, national or international, whether governmental or non-governmental, qualified in fields relating to the conservation and sustainable use of wetlands, which has informed the Secretariat of its wish to be represented (Rule 7.1),

but such bodies are not currently invited to nor would necessarily be able to be admitted as observers to Standing Committee meetings, under the terms of Resolution VII.1 para. 22.

- 40. The status of the representative(s) of any Party, body or organization admitted as an observer to a Standing Committee meeting is that of observing the business of the Committee.
- 41. It is a well-established process at both COPs and Standing Committee meetings, and consistent with the COP Rules of Procedure, that the Chair of a session can decide to accept an intervention from an observer, whether a permanent observer or another observer admitted to a particular meeting. It is also well-established that observer representatives may, as appropriate, participate and express their views in any SubGroup established by the Standing Committee in the conduct of its work.
- 42. Under COP Rule of Procedure 29.1 & 2 (“Sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise” and “Sessions of subsidiary bodies shall be held in public unless the subsidiary body concerned decides otherwise”) – “in public” meaning all participants that have been admitted to the COP – sessions of the Standing Committee and any of its Subgroups are open to admitted observers, unless the Committee or the Subgroup decides otherwise.
- 43. Whilst observer representatives may contribute their views concerning agenda items and decisions being considered by the Standing Committee, all decisions are taken by the voting members of the Committee alone (i.e., the elected regional representative members and the previous and next hosts of the COP).
- 44. Likewise, should the Standing Committee determine that a vote is necessary on a decision, the COP Rules of Procedure concerning voting apply (Rules 39-51), and that vote would be taken by the voting members of the Standing Committee.