

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Sixty-sixth meeting of the Standing Committee
Geneva (Switzerland), 11-15 January 2016

Administrative and financial matters

Administration of the Secretariat

COMMENTS RECEIVED FROM WG MEMBERS ON THE 'BRIEFING NOTE FOR THE CITES STANDING
COMMITTEE ON THE WORKING GROUP ON ADMINISTRATIVE HOSTING ARRANGEMENTS'
AND
BRIEF RESPONSE PREPARED BY THE CITES SECRETARIAT – OCTOBER 2015

This information document has been prepared by the Secretariat in relation to the agenda item 9.3 on *Report of the Working group on options for administrative hosting arrangements for the CITES Secretariat*.

Comments received from Working Group Members on the 'Briefing note for the CITES Standing Committee on the Working Group on Administrative Hosting Arrangements'

The Secretariat thanks all Working Group members that have submitted comments for their useful inputs, and also thanks the Chair of the Working Group for inviting the Secretariat to respond directly to the main points that have been raised, including to offer its interpretation of relevant Convention provisions.

**United Kingdom of Great Britain and Northern Ireland
(Comments received on 25 September 2015)**

In assessing the case for change we need to understand what the costs of that change will be; will the benefits of the change justify any short term administrative disruption while the transition is taking place. There is some discussion in the paper of the disadvantages of change, the need for resolutions etc. but I think the short term cost of any change is an area we would need to understand in more detail. More importantly though what would be the impact on the substantive agenda of CITES from each of these options. The paper primarily focuses on the administrative and management arrangements as you would expect but do any of the options offer advantages or disadvantages to delivery of the substantive agenda of CITES. There is some discussion of potential misalignment between the objectives of CITES and UNEP, but this is in the context of performance reporting and perception, so it would be good to explore the impact, if any, of the options presented on achievement of CITES overall aims.

The paper draws on parallels with UNFCCC and UNCCD, but there doesn't appear to be mention of the other Biodiversity Conventions in the paper, most notably CBD which has the same arrangements as CITES at present. The paper also needs to consider the implications for other agreements of any shift in Secretariat / admin provision; and linkages to the work being done on synergies between the Biodiversity Conventions and the opportunities this may provide.

**European Union
(Comments received on 25 September 2015)**

We would like to emphasise the importance of the ongoing process within UNEP to assess the effectiveness of administrative arrangements and programmatic cooperation between UNEP and UNEP-administrated Conventions. A dedicated Task Force has been appointed to work on this issue, which will be discussed at the upcoming Annual Sub-Committee of the UNEP Committee of Permanent Representatives in October 2015 and then at the UNEA meeting in May 2016. Our priority is that this work is being completed and we will remind UNEP of the urgency of making progress on this file. We consider that this process should help addressing some of the issues raised in the document by the CITES Secretariat. Bearing this in mind, we are not in a position to consider the merits of the options presented in the Briefing Note.

We would however appreciate a few clarifications on the document by the CITES Secretariat:

- We wonder why there is no mention in that document of the provisions of Article XII(1) of the CITES Convention, according to which "Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme (...)". This element should be taken into consideration when assessing options to modify the current arrangements between CITES and UNEP;
- We find some of the references to Programme Support Costs unclear and would like to understand whether the Secretariat considers that UNEP overcharges or discriminates against CITES? The 13% rate of PSC applies across the UN and has been the subject of discussion in the UNGA where there are advocates for a lower rate who consider that increasing use of IT should bring down the cost of services such as payroll. This is not a matter specific to CITES and if it is to be included in the report it should be on the basis of particular points that can be understood by the lay-reader.

We also concur with the views of the United Kingdom on the need to understand the costs of each option and their impact in terms of achievements of CITES goals, as well as on the links with the work on synergies with other biodiversity Conventions.

Switzerland
(Comments received on 30 September 2015)

Below you will find the observations of the Depository Government.

1. In accordance with Article XII of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), "a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme". This provision does not create a secretariat which would be hosted by UNEP, but charges UNEP with the task of providing the services generally attributed to a secretariat, including those set out in CITES.

Article XII mentions nothing about the possibility of changing these terms. Consequently, the authority given to the Executive Director of UNEP to provide a secretariat may only be amended in accordance with the general rules relating to amendments to the Convention.

In accordance with Article XVII of CITES, any amendments must be adopted by a two-thirds majority of Parties present and voting. An amendment to the Convention enters into force for any Party to the Convention only after that Party has deposited an instrument of acceptance, which has been adopted in accordance with its domestic law.

In practice, although the Convention provides for amendments to the text of the Convention to be adopted by a two-thirds majority, we must consider that the amendment concerning the secretariat would have to be ratified by all Parties to the Convention before it could enter into force. The resolution adopted by the Conference of the Parties should clarify this point. Indeed, an amendment can only enter into force for a Party once it has been ratified in accordance with its internal procedures. It would be difficult to imagine that in practice Article XII in its current form would remain applicable to some Parties (i.e. secretariat provided by UNEP), while a modified version of Article XII (i.e. secretariat provided by UNOG or UNON or independent secretariat) would be applicable to Parties who had submitted their instruments of acceptance of the amendment.

2. The CITES briefing note indicates the need to adopt a resolution to amend the terms applicable to the secretariat. If the option chosen by the Parties involves changes to the powers of UNEP under Article XII of the Convention, the resolution must be adopted by a two-thirds majority and requires an instrument of ratification to be deposited by each Party (in this respect, the resolution should expressly state that the amendment will enter into force only after all Parties have submitted their instruments of acceptance).
3. The status quo naturally involves no amendments to the Convention.
4. Option 1 (maintaining a secretariat administered by UNEP with direct administrative support from UNOG or UNON) does not involve an amendment to the Convention. The arrangements relating thereto should however in our view be decided by UNEP, unless the Executive Director of UNEP delegates authority to the Executive Secretary of the CITES secretariat to do this on behalf of UNEP.

On the one hand, in accordance with the Convention, the secretariat does not have a separate legal personality, as it is part of UNEP. The Convention does not in fact establish a secretariat, but instructs the director of UNEP to provide the services related thereto. The question therefore arises whether the secretariat could enter directly into administrative arrangements with UNOG or UNON (whether its Executive Secretary had the power to act on behalf of UNEP or directly on behalf of the CITES secretariat). On the other hand, Article XII of the Convention provides as follows: "To the extent and in the manner he considers appropriate, [the Executive Director of the United Nations Environment Programme] may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora." This provision refers rather to support from other agencies within the framework of CITES activities, but we see

no reason not to also apply this capacity for UNEP to call on the services of external agencies for administrative support.

- Option 2 (administration of CITES secretariat directly by UNOG) would require an amendment to the Convention within the terms presented above under 1, as the Executive Director of UNEP would no longer have a role to play. This amendment should thus stipulate that the Director-general of UNOG and no longer the Executive Director of UNEP provide a secretariat to CITES. This secretariat would thus have no more of a legal status than is currently the case.

As a UN entity, UNEP automatically comes under the headquarters agreement concluded by Switzerland with the UN. Accordingly, the CITES secretariat administered by UNEP is also covered by that same headquarters agreement. If the CITES secretariat was administered directly by UNOG (and clearly remained in Switzerland), nothing would change with regard to the applicability of the headquarters agreement with the UN. No decision in this regard would have to be taken by Switzerland as host state.

- Option 3 (independent CITES secretariat) would require an amendment to the Convention within the terms presented above under 1, as the Executive Director of UNEP would no longer have a role to play. This amendment should provide the CITES secretariat sufficient legal personality to conclude on its own behalf agreements (e.g. headquarters agreement) or contracts (e.g. employment contracts or appointment contracts with UNOG or UNON for the provision of certain services to the CITES secretariat) and determine the terms of the decisions taken by the Parties to the Convention if the powers of decision-making and conclusion were not expressly delegated to the director of the CITES secretariat.

As an independent secretariat, the CITES secretariat would no longer automatically come under the headquarters agreement concluded by Switzerland with the UN. It would therefore become necessary for a new headquarters agreement to be concluded between Switzerland and the Parties to CITES. It should be noted that such a change would be likely to have significant consequences for CITES beyond the mere negotiation of the headquarters agreement, in particular with regard to settling the terms allowing it to remain within the UN pensions system or tasks that would be carried out by the UN on the basis of a service delivery mandate.

The creation of an independent secretariat would certainly have implications in terms of finance and staff, and a detailed assessment of these costs would have to be done.

**United States of America
(Comments received on 10 October 2015)**

We appreciate the document prepared by the Secretariat providing options for consideration. It has been helpful to see the views colleagues have already shared and we look forward to hearing other Parties' perspectives as well. We agree with others that the paper is helpful and balanced and will surely be useful to our discussions.

We can see benefits in a few of the options. We would agree with the UK and the Commission that receiving additional information from the Secretariat regarding potential financial implications would be very helpful to provide further context. We realize that it takes some effort to develop that information but we hope that at least some additional details will be forthcoming to help further inform our discussion.

First a few reflections, and then some reactions to views expressed by others.

We all share the goal of improving the hosting arrangements in a way that will provide long-term benefits to the Convention and its implementation. To that end, we can see real benefits from options that facilitate streamlined and efficient means of communication and operation, which several of the options presented would help accomplish. We also consider there to be considerable advantages to having the administrative support closer to the Secretariat, both physically and bureaucratically.

We appreciate that there could be challenges created by short term disruption to the operation of the Secretariat resulting from implementation of some of the options; however, we are open to those disturbances if they ultimately benefit operations in the long term.

As the EC noted, we also appreciate that there is an ongoing process within UNEP that may have some bearing on our considerations. However, it would be most unfortunate if the EC was not in a position to engage in a process agreed by the Standing Committee at SC65 and expected to conclude its work and report out at SC66. Further, UNEP has been given the opportunity to participate in and contribute to this process. The effort we are engaged in here is the result of long-term and persistent challenges with the Memorandum of Understanding between UNEP and the CITES Secretariat, not a wider UNEP process. Many of the challenges the Secretariat faces relate to the administrative burden on the Secretariat emanating from UNEP, while others appear to come from decisions by UNEP to circumvent the terms of the MOU. In our view, it is in the best interests of the Convention that the Parties move forward on the path they have chosen. It would be unfortunate if we were not able to have this group continue to advance the discussion until the UNEA takes place next year, as this could potentially delay our work beyond COP17, which we hope all Parties would wish to avoid. As mentioned, we are not certain we understood the EC clearly in this regard.

Regarding the phrasing in Article XII, we are still considering the issue and are consulting internally with our legal counsel regarding options for various mechanisms by which the Secretariat could be changed without formally amending the treaty text. In the meantime, it may be useful for the Secretariat to provide information about any previous consideration of this article by the Parties as this may assist us in reaching a shared understanding.

Regarding synergies, it seems to us that synergies on substantive issues can be achieved regardless of the physical location of their respective administrative arrangements as they are not necessarily related to proximity of administrative support. We are not clear as to which biodiversity conventions the UK is referring. At present, CBD and CMS receive administrative support from UNEP but WHC is with UNESCO and the ITPGRFA is with FAO, so their support mechanisms are already located separately, yet they come together to discuss common objectives in a variety of fora. Some conventions, e.g., CBD and CMS were negotiated under UNEP auspices, but CITES, the UNFCCC, UNCCD, and other biodiversity related conventions were not negotiated under UNEP auspices, and thus have a different historical relationship to UNEP.

What we know is that various conventions receive their administrative support differently, based on their needs and situations. We believe that the process in which we are engaged will be best managed by the SC.

Japan
(Comments received on 13 November 2015)

Japan considers that the following points are important;

As other colleagues stated, the greater attention should be paid to financial implications. However, there is still very little information about how each options affect the financial contributions of the Parties, both in the short term and in the long term, for us to make thorough consideration.

At the same time, although we are of the view that reduction of the cost in administration and management of the Convention is necessary in general terms, we don't see enough rational ground to achieve a consensus on the need of fundamental change in the current system of the CITES implementation, which could lead to an amendment of the Convention.

We are interested in hearing in the SC66 the views from the other countries and the UNEP on these points, and are looking forward to collecting further information for us to better understand the issue.

Brief response prepared by the CITES Secretariat – October 2015

Please note that the Secretariat has only been able to prepare answers to the comments submitted by 30 September 2015.

Comments received (shown in italics – extracts only):

United Kingdom

In assessing the case for change we need to understand what the costs of that change will be; will the benefits of the change justify any short term administrative disruption while the transition is taking place. There is some discussion in the paper of the disadvantages of change, the need for resolutions etc. but I think the short term cost of any change is an area we would need to understand in more detail. More importantly though what would be the impact on the substantive agenda of CITES from each of these options. The paper primarily focuses on the administrative and management arrangements as you would expect but do any of the options offer advantages or disadvantages to delivery of the substantive agenda of CITES. There is some discussion of potential mis-alignment between the objectives of CITES and UNEP, but this is in the context of performance reporting and perception, so it would be good to explore the impact, if any, of the options presented on achievement of CITES overall aims.

Answer: This Review, in line with the mandate of the Working Group, only addresses administrative hosting arrangements. Programme-related matters, including the programmatic relationship with UNEP, are separate and distinct as recognized by the MoU signed between the CITES Standing Committee and the Executive Director of UNEP in 2010 (the [CITES/UNEP MoU](#)). Programmatic cooperation can be pursued independently of administrative hosting arrangements, as is evident from the programmatic cooperation between UNEP and the UNFCCC and UNCCD. As indicated in the Review, however, UNEP's approach to certain substantive issues is not always aligned with the views of CITES, such as how illegal trade in wildlife is characterized and addressed – as an environmental issue or more broadly as a sustainable development issue.

The current administrative arrangements require considerable time and effort (i.e. transaction costs) on the part of the Secretariat in dealing with UNEP, UNON and UNOG. The Secretariat has been seeking direct access to its service providers, wherever possible, but this has not been supported by UNEP, which has increasingly inserted itself into administrative processes. There is an ongoing lack of clarity about the respective roles of UNEP, UNON and UNOG, including the role of the Geneva-based UNEP administrative staff serving in the Operations Service Centre (OSC), which requires the Secretariat to seek clarification and action from a range of potential actors. This situation has led UNEP to create a new post of MEA Administrative Focal Point in its headquarters, in an effort to help Secretariats navigate the administrative processes and entities, in particular non-Nairobi based secretariats.

Although Umoja is intended to shift UN administrative processes from a paper-based to an electronic system, to decentralize administrative tasks and to reduce the number of administrative steps and players involved in individual transactions, these benefits have not yet accrued (acknowledging that such transitions take time). The number of administrative steps and players for many individual transactions is higher than has been experienced before, the Secretariat's administrative approval and certification powers have not yet been fully restored, and substantial administrative processing delays are being experienced.

Over time there have been many reviews of the administrative relationship between UNEP and MEAs, including one in 2007, the renegotiation of the MoU with CITES in 2010, and the current 2015 Task Team process established by the Executive Director of UNEP. Each review absorbs considerable staff time within the Secretariats and UNEP, and the CITES Secretariat has collectively invested hundreds of hours in these various review processes. In view of this history, one can envisage the new Executive Director of UNEP (June 2016) wishing to conduct his/her own review.

Any improvement in administrative effectiveness and efficiency would free up more Secretariat staff time to apply to programmatic work and would facilitate the overall planning, execution and delivery of such work, including the Secretariat's ability to assist Parties. Improvements could be achieved either within the existing arrangements or through new administrative arrangements (e.g. shifting to an arrangement under which services can be obtained directly from one primary service provider that is physically close to the Secretariat).

The historical document provided earlier to Working Group members gives an overview of the manner in which the current institutional structure has operated and evolved over time.

The paper draws on parallels with UNFCCC and UNCCD, but there doesn't appear to be mention of the other Biodiversity Conventions in the paper, most notably CBD which has the same arrangements as CITES at present. The paper also needs to consider the implications for other agreements of any shift in Secretariat / admin provision; and linkages to the work being done on synergies between the Biodiversity Conventions and the opportunities this may provide.

Answer: The UNFCCC and UNCCD are referred to as they are administered directly by the UN Secretariat through UNOG, with no UN body or agency or programme between the Secretariat and the service provider. As such, this arrangement represents an alternative model for hosting the Secretariat in the UN system. The CBD and CMS have arrangements similar to, but slightly different from, CITES. Each arrangement is specifically tailored to the Convention concerned given that there are different provisions relating to the hosting of the secretariats and different hosting arrangements negotiated with each convention. Information on the different arrangements that are in place were set out in the UNEP document submitted to the UNEP Governing Council in 2010 ([UNEP/GC/26/INF 21](#)) and in 2014 ([UNEP/GC/27/6](#)), with the later document being the most instructive.

Any changes in the administrative hosting arrangements for CITES will have no legal implications for CBD and CMS, and no policy implications, unless their Parties and Secretariats consider such changes worth exploring in order to achieve enhanced effectiveness and efficiency in the delivery of their own administrative services.

The Biodiversity Liaison Group (BLG) comprises seven conventions with four administrative hosts – FAO, UNEP, UNESCO and IUCN. The work being done through the BLG looks at areas where the conventions can collaborate regardless of their respective administrative hosting arrangements. The UNEP project on biodiversity synergies, and any related work by UNEP, takes place in the context of its sectoral mandate in the area of environment. An important aspect of such synergies that has been stressed by the CITES Secretariat is the mainstreaming of biodiversity into a number of sectors simultaneously, including those represented by FAO, UNEP and UNESCO.

A change in administrative hosting arrangements will have no impact on programmatic synergies or, if anything, will have a positive effect by enabling CITES and UNEP to focus on programmatic rather than administrative issues. It may, however, have implications for the efforts of any States that wish to see the consolidation of Secretariats within and under the direct control of UNEP.

European Union

We would however appreciate a few clarifications on the document by the CITES Secretariat:

We wonder why there is no mention in that document of the provisions of Article XII(1) of the CITES Convention, according to which "Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme (...)". This element should be taken into consideration when assessing options to modify the current arrangements between CITES and UNEP;

Switzerland

1. In accordance with Article XII of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), "a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme". This provision does not create a secretariat which would be hosted by UNEP, but charges UNEP with the task of providing the services generally attributed to a secretariat, including those set out in CITES.

Article XII mentions nothing about the possibility of changing these terms. Consequently, the authority given to the Executive Director of UNEP to provide a secretariat may only be amended in accordance with the general rules relating to amendments to the Convention.

In accordance with Article XVII of CITES, any amendments must be adopted by a two-thirds majority of Parties present and voting. An amendment to the Convention enters into force for any Party to the Convention only after that Party has deposited an instrument of acceptance, which has been adopted in accordance with its domestic law.

In practice, although the Convention provides for amendments to the text of the Convention to be adopted by a two-thirds majority, we must consider that the amendment concerning the secretariat would have to be ratified by all Parties to the Convention before it could enter into force. The resolution adopted by the Conference of the Parties should clarify this point. Indeed, an amendment can only enter into force for a Party once it has been ratified in accordance with its internal procedures. It would be difficult to imagine that in practice Article XII in its current form would remain applicable to some Parties (i.e. secretariat provided by UNEP), while a modified version of Article XII (i.e. secretariat provided by UNOG or UNON or independent secretariat) would be applicable to Parties who had submitted their instruments of acceptance of the amendment.

Answer: Recognizing that Parties are the ultimate interpreters of the Convention, particularly through the Conference of the Parties, the Secretariat would like to offer its interpretation of relevant Convention provisions for possible consideration by the Working Group. This interpretation is based not only upon the language of the Convention text itself but also related discussions, subsequent agreements between Parties on the interpretation and application of the Convention, past practice in the application of the Convention (over the past 42 years), much of which is captured in the historical record (provided earlier) to Working Group members, and the content of the CITES/UNEP MoU, which was adopted by consensus by the CITES Standing Committee in 2010.

In the view of the Secretariat, and as indicated by its title, Article XII of the Convention creates “The Secretariat.” The CITES Secretariat has been specifically recognized in two recent Resolutions of the UN General Assembly, which are set out in the Briefing Note. The functions of “the” Secretariat are set out in Article XII (2), as well as in Article XI, Article XIII and Article XIV (2) and numerous Resolutions and Decisions of the Conference of the Parties.

Paragraph 3 of the CITES/UNEP MoU states, inter alia, “the Executive Director acknowledges that Article XII of the Convention establishes a Secretariat which will carry out certain listed functions.” Article XII (1) provides that, “upon entry into force” of the Convention, “a” Secretariat shall be provided by the Executive Director of UNEP, and that he may be assisted by suitable inter-governmental or non-governmental etc. bodies in doing so. Despite use of the word “shall”, the Convention and its Parties could not oblige the Executive Director to provide “a” Secretariat, as this could only be done with the authority of the UNEP Governing Council, which it might have declined to exercise. However, approval was duly obtained in 1973 with the UNEP Governing Council adopting a decision which authorised the Executive Director “to provide secretariat services for the implementation” of CITES. The Executive Director provided “a” Secretariat through IUCN for several years, with full funding provided by UNEP. Thereafter, the Executive Director advised the CITES Parties that he could no longer provide a Secretariat and that the Parties would now have to provide their own Secretariat, though UNEP was prepared to host it. This is reflected in the historical document provided earlier to Working Group members.

For some time now, “the” Secretariat has effectively been provided by the Parties to CITES, and it has been hosted by UNEP without any amendments having been made to the original language of Article XII (1) of the Convention. This original language, with or without a description of actual practice, has been referenced in certain documents related to administrative arrangements.

The institutional host link with UNEP provides an administrative home for the Secretariat and ensures that the Secretariat operates within the context of UN administrative and financial rules and regulations. Since the creation of UNON from UNEP and UN Habitat, UNEP’s role in more recent years has come to include the facilitation and monitoring of access to primary service providers like UNON (e.g. through the hiring of in-house UNEP personnel with administrative or financial background and through service level agreements which cover MEAs and which UNEP has concluded bilaterally with UNON and UNOG). These developments mean there has increasingly been an extra layer in the process for delivering administrative services.

It is the CITES Parties that determine the size of the Secretariat, its funding and programme of work, and which fully fund the Secretariat, including payments to UNEP for all administrative and programme support costs. In the CITES/UNEP MoU, it is recognised that “the decisions of the CoP alone guide the implementation of the Convention and its programme of work and direct the management of its Secretariat on all substantive issues.”

The CITES Secretariat arranges for and services meetings of the CoP. More generally, it both supports and reports to the CoP, as the supreme governing body of CITES, its permanent subsidiary body – the Standing Committee of the CoP, and its two scientific committees. It does not report to the UNEP governing bodies – either the UNEA or the CPR – and similarly did not report to their predecessors (e.g. the Governing Council). The CITES/UNEP MoU states that “the Executive Director recognises the legal autonomy of the Convention in relation to UNEP and the role and function of the Secretariat to serve the interests of the Convention and its Parties.”

In the view of the Secretariat, Article XII (1) of the Convention is temporal (time bound) rather than permanent in nature and Parties may decide on other administrative hosting arrangements for the Secretariat, if they so wish. Article XI (3) of the Convention expressly provides that, at meetings of the CoP, the Parties “shall review the implementation of the [present] Convention and may”, inter alia, “make such provision as may be necessary to enable the Secretariat to carry out its duties.”

The Parties to CITES are free to determine the organization that they wish to serve as host institution for their Secretariat without making any amendments to the Convention text. A change to the administrative hosting arrangements could be made by following the normal CoP Rules of Procedure for the submission and adoption of an interpretive Resolution, without a related amendment to the Convention. Parties have used such Resolutions for many years to interpret the Convention’s provisions, and Article XI (3) of the Convention specifically anticipates such Resolutions in relation to the Secretariat. The adoption and revision of Resolutions also allows the Parties to improve the effectiveness of the Convention and to exercise control over the uniform, multilateral interpretation and implementation of the Convention.

By way of comparison in relation to Article XII, Article XXV of the Convention provides that the Government of the Swiss Confederation “shall be the Depositary Government”.

The language used in the Convention to create the Secretariat can be compared and contrasted with other Conventions, and comparative text can be provided upon request.

European Union

We find some of the references to Programme Support Costs unclear and would like to understand whether the Secretariat considers that UNEP overcharges or discriminates against CITES? The 13% rate of PSC applies across the UN and has been the subject of discussion in the UNGA where there are advocates for a lower rate who consider that increasing use of IT should bring down the cost of services such as payroll. This is not a matter specific to CITES and if it is to be included in the report it should be on the basis of particular points that can be understood by the lay-reader.

Answer: The Secretariat appreciates that a standard 13% PSC rate has been agreed by UN Member States and applies across the UN system, noting that a lower PSC rate of 7% has been negotiated between the UN and the European Union (and even lower rates have been negotiated on occasion between UNEP and the European Union or individual European countries). Of the standard 13% PSC paid to UNEP, approximately 67% is returned to the Secretariat in line with the MoU. The Secretariat did not mean to suggest in the Review that UNEP is ‘overcharging’ or ‘discriminating’ against CITES. Rather, the issue raised in the Review is that UNOG has stated that it can give a specific breakdown of costs for particular administrative services, while UNEP has advised that it is unable to do so as all PSC funds that are received are pooled.

European Union

We also concur with the views of the United Kingdom below on the need to understand the costs of each option and their impact in terms of achievements of CITES goals....

Answer: The Terms of Reference for the Working Group do not address the financial implications of various models but it is an area that the Secretariat nonetheless considers relevant. The Secretariat proposes that the Working Group first considers whether any of the options are of interest. Those that are not of interest can be disregarded, and those, if any, that are of interest can then be assessed for their financial implications. External support may be required for this exercise.

Switzerland

2. *The CITES briefing note indicates the need to adopt a resolution to amend the terms applicable to the secretariat. If the option chosen by the Parties involves changes to the powers of UNEP under Article XII of the Convention, the resolution must be adopted by a two-thirds majority and requires an instrument of ratification to be deposited by each Party (in this respect, the resolution should expressly state that the amendment will enter into force only after all Parties have submitted their instruments of acceptance).*

4. *Option 1...*

On the one hand, in accordance with the Convention, the secretariat does not have a separate legal personality, as it is part of UNEP. The Convention does not in fact establish a secretariat, but instructs the director of UNEP to provide the services related thereto.

In its comments, Switzerland refers to the Secretariat as 'part of UNEP' and to certain 'powers' of UNEP under Article XII. These comments also seem to imply that the Secretariat is not recognized as being legally distinct from UNEP and is somehow part of UNEP and therefore answerable to UNEP's governing bodies. The Secretariat considers that such a view is not consistent with the Convention text and related discussions, subsequent agreements between Parties on the interpretation and application of the Convention, past practice in the application of the Convention, the express recognition of "the CITES Secretariat" in two recent UN General Assembly Resolutions – referred to in the Briefing Note, the CITES/UNEP MoU agreed by all members of the Standing Committee, or the report of the UN Joint Inspection Unit referenced in the same Note. The creation of the Secretariat through the Convention is referred to in previous responses.

Switzerland

5. Option 2...

As a UN entity, UNEP automatically comes under the headquarters agreement concluded by Switzerland with the UN. Accordingly, the CITES secretariat administered by UNEP is also covered by that same headquarters agreement. If the CITES secretariat was administered directly by UNOG (and clearly remained in Switzerland), nothing would change with regard to the applicability of the headquarters agreement with the UN. No decision in this regard would have to be taken by Switzerland as host state.

6. Option 3...

As an independent secretariat, the CITES secretariat would no longer automatically come under the headquarters agreement concluded by Switzerland with the UN. It would therefore become necessary for a new headquarters agreement to be concluded between Switzerland and the Parties to CITES.

Answer: Comments made by Switzerland in relation to specific options identified in the Review indicate that no changes to the UN headquarters agreement with Switzerland would be needed for Option 2 (as UNOG comes under the same UN agreement concluded with Switzerland as UNEP), but that a new headquarters agreement would be needed for Option 3. As reflected in the Review, the Secretariat agrees with this conclusion.

The Convention text is silent on the location of the CITES Secretariat, which has in fact been hosted by the Swiss Confederation since its establishment [in Morges, Lausanne and Geneva (Châtelaine)]. By way of comparison, the location of the UNEP Secretariat was expressly identified as Nairobi in the text of its founding UN General Assembly Resolution.

CITES is a product of its time and agreements regarding its interpretation and application, and practice in the application of the treaty, has evolved quite significantly since its adoption in 1973.

CITES Secretariat

October, 2015