



Ref.: SCBD/OES/AD/ar/77750

30 September 2011

NOTIFICATION

Unilateral interpretation of the Annex of Decision X/45 related to the revised Administrative Arrangements between United Nations Environment Programme (UNEP) and the Secretariat of the Convention on Biological Diversity (SCBD)

Dear Madam/Sir,

Reference is made to the approved Revised Administrative Arrangements between UNEP and the SCBD signed on 26 October 2010 in Nagoya, Japan, by the Conference of the Parties in Decision X/45.

In view of the unilateral interpretation being given to the issue of the procedure of the extension of the term of office of the Executive Secretary by Executive Director of UNEP and further the latter's presentation of the issue to the 116th session of the Committee of Permanent Representatives to UNEP in Nairobi, on the 22 September 2011, please find attached a note prepared on the relationship between UNEP and the CBD, submitted to UNEP's Governing Body by the Executive Secretary for your information.

Please accept, Madam/Sir, the assurances of my highest consideration.

Ahmed Djoghlaif
Executive Secretary

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COP 10 / MOP 5



Relationship between United Nations Environment Programme (UNEP) and the Convention on Biological Diversity (CBD)
29 September 2011

1. The report of the Executive Director of the United Nations Environment Programme (UNEP) to the 116th meeting of the Committee of Permanent Representatives dated 22 September 2011 provides, under the section Executive Secretary Term of Office, that: *“The current term of office of the CBD Executive Secretary expires on 31 December 2011. The due appointment process, as confirmed by UNSG Office, is governed by UN staff rules and by the provisions of the Revised Administrative Arrangements signed in Nagoya in December 2010, as follows:*
 - *“The CBD Executive Secretary is to be appointed by the United Nations Secretary-General as recommended by the Executive Director of UNEP in consultation with the CBD COP through its Bureau in a transparent and objective manner;*
 - *The level is explicitly provided at the level of Assistant Secretary-General;*
 - *The duration of the term of office is set by the COP Bureau;*
 - *In the new administrative arrangements, there is no longer an explicit provision on the extension of the appointment or term of office;*
 - *In the absence of specific extension procedures, the appointment procedures in Article II, paragraph 2 of the 2010 Revised Administrative Arrangements also govern the process to re-appoint or prolong or renew the appointment of the CBD Executive Secretary for a new term. These require a transparent and objective recruitment process.*
 - *UNEP concurs with the conclusions that the revised Administrative Arrangements do not contain a specific provision for extension of the ES/CBD mandate, and that any renewal process should be managed in accordance with the existing appointment procedures (ref. Art II(3) of the revised Administrative Arrangements, which stipulates that “the process to appoint the Executive Secretary shall be transparent and objective, and involve the Conference of the Parties and its Bureau”). In addition to this, the CBD Executive Secretary himself, on 8th September 2011, wrote to UNEP to propose an amendment to the current text of the revised Administrative Arrangements, in order to provide a clearer procedure for the appointment and extension of the term of office of the CBD Executive Secretary, on the grounds that “the revised Administrative Arrangements signed in Nagoya do not contain such clear procedures”. These amendments can only be agreed upon by the next COP.*

- *The proposal for a vacancy announcement is now being considered by the CBD Bureau. In this respect, UNEP has committed itself to:*
 - *Launch a four week vacancy announcement;*
 - *Involve the COP Bureau in the appointment process, to ensure full compliance with the revised Administrative Arrangements;*
 - *Conduct the selection process in a speedy manner, in order to ensure that the ES/CBD is appointed by the beginning of 2012; and*
 - *Accept and consider the application by the incumbent ES/CBD, Mr. Djoghlaflaf, as always indicated in UNEP's correspondence to the Bureau.*

In the meantime, UNEP is finalizing the 2010 and 2011 performance appraisal of the CBD/ES, which will be sent to the UNSG office and shared with the COP Bureau."

2. This note by the Executive Secretary of the CBD to the Committee of Permanent Representatives has been prepared by the Executive Secretary of the CBD in response to the interpretation by the Executive Director of UNEP of the provisions of the revised Administrative Arrangements between the Executive Director of UNEP and the Executive Secretary of the CBD.
3. During the negotiation of the Convention on Biological Diversity (CBD) from 1988 to 1992, the United Nations Environment Programme (UNEP) acted as the secretariat of the Intergovernmental Negotiating Committee. The secretariat was serviced by the Biodiversity Unit of UNEP. The Convention was opened for signature in June 1992 and is known as one of the three Rio conventions. Pursuant to Article 40 of the Convention, the Executive Director of UNEP was invited to provide the secretariat of the Convention on an interim basis, for the period between the entry into force of the Convention and the first meeting of the Conference of the Parties (COP). With the financial support of the Government of Switzerland, an interim secretariat, distinct from a UNEP division was established by the Executive Director of UNEP in Geneva from 1993 to 1995.
4. Article 24 of the Convention requested the first meeting of the COP to *"...designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention."*
5. The issue of the selection of a competent organization to host the permanent secretariat remained an active agenda item during both the first and second meeting of the Intergovernmental Negotiating Committee in 1994.
6. Among the eleven criteria agreed on by the Intergovernmental Committee at the end of its work for the selection of the organization to provide secretariat support to the Convention are the following:
 - Extent to which the organization could provide technical support to the substantive work to be undertaken under the Convention and coordinated by the Secretariat;
 - Demonstrated effectiveness of the organization in its own sphere of activities;
 - Experience in providing secretariat functions to an intergovernmental process;

- Existing organization infrastructure – information systems, communication instruments – and financial and administrative framework conducive to the discharge of the secretariat functions;
 - The extent to which the organization would ensure autonomy and independence of the secretariat, particularly in terms of governance and budget;
 - The expertise of the organization in matters of the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilization of genetic resources;
 - The organization’s ability to operate on the global, regional and national levels; the ease of its accessibility and collaboration with Governments and non-governmental organizations; the efficiency of its communications system and of its information gathering capacity;
 - The organization’s ability to accommodate any future decision by the Conference of the Parties as to the location of the Secretariat.
7. The first meeting of the COP, held in Nassau, Bahamas in 1994 had before it six offers to host the permanent secretariat from the following international organizations: UNESCO, IUCN, UNDP, IOC, FAO, as well as UNEP. By decision I/4, the COP *“designated the United Nations Environment Programme to carry out the functions of the Secretariat of the Convention while ensuring its autonomy to discharge the functions referred to in Article 24;”*. The decision was taken based on the commitment by UNEP as contained in the letter dated 4 July 1994 from the then Executive Director, Ms. Elizabeth Dowdeswell, to Ms. Angela Cropper, the then Executive Secretary of the Interim Secretariat of the CBD. The offer is contained in annex I and appendix of UNEP/CBD/COP/1/9.
8. Substantially, the offer of the Executive Director of UNEP provides:
- (i)
2.2.5 *“The Secretariat to the Convention would have ready and privileged access to the expertise, capacity and products of these (UNEP) Programme Centres in support of its work.”*
 - (ii)
2.9.2. *“UNEP will continue to take all possible measures, within its competence, to assist in the implementation of the goals and objectives of the Convention on Biological Diversity.”*
 - (iii)
3.1.1. *“UNEP stands ready to offer, within its own sphere of competence and abilities, any service and support that may be expected by the Conference of the Parties and requested by the secretariat in discharging its functions. The details of such support as and when requested will need to be agreed upon with the secretariat of the Convention.”*
 - (iv)
3.1.2. *“.....such support could include technical inputs in the work of the secretariat, administrative support systems, data and information services, **conference services**, and temporary cash advances to guarantee the secretariat’s cash flow.”*
9. On the criteria related to how the organization would ensure “autonomy and independence” of the Secretariat, particularly in terms of governance and budget, the head of UNEP committed its organization to:

(i)

2.8.1. “..... *The operational autonomy enjoyed by the Interim Secretariat of the CBD will be maintained as required by the COP. UNEP recognizes that the heads of convention secretariats are accountable to their respective Conference of the Parties for responses to their mandates and requests. It understands the role of the organization selected to provide a secretariat to a convention as providing a supportive framework to facilitate that secretariat in discharging its functions, principally through support and guidance in relation to personnel and administrative matters and financial management as required by the United Nations system. UNEP recognizes the need for flexibility in the application of its systems and practices when that is necessary to ensure efficiency and effectiveness of a secretariat in relation to the mandates and expectations of the Conference of the Parties.*”

(ii)

3.2.1. *“The legal and formal distinction between UNEP and the Interim Secretariat of the Convention, though provided by UNEP, is recognized. This relationship will continue with the secretariat, especially as the governing bodies of the Convention will have been established. Thus maximum operational autonomy can be enjoyed by the secretariat in its response to the mandates, requests and needs of the Conference of the Parties. UNEP recognizes the executive role of the secretariat in advancing the Convention and the head of the secretariat as the chief executive in that process. The secretariat is therefore recognized as the principal executive body in matters relating to the Convention. This approach of UNEP has already been reflected in its establishment of the post of head of the Interim Secretariat at a senior level within the United Nations system. Bearing in mind the role of the Conference of the Parties as the governing body of the Convention, the head of the Secretariat will be directly accountable to the Conference of the Parties for his/her independent decisions on matters affecting the functioning of the Secretariat.”*

10. However, a number of UNEP commitments have yet to be fully fulfilled. The secretariat of UNEP, until the recent ruling by the Executive Office of the Secretary General, continued to consider the Secretariat of the CBD as part of its mainstream operations as was the case from 1988 to 1992. The Rio status of the CBD has yet to be fully recognized by UNEP secretariat. It is noted that the CBD and its three associated and supplementary protocols are the sole instruments deposited with the Secretary General among all the UNEP administered conventions. The CBD is also the only UNEP administered convention headed by an Assistant Secretary-General appointed by the Secretary General. The CBD is the sole UNEP administered convention that reports yearly to the United Nations General Assembly through the report of the Secretary General “the implementation of the United Nations Environmental Convention” known as Rio conventions (United Nations Framework Convention on Climate Change as well as the United Nations Convention to Combat Desertification). The latest report of the Secretary General to the sixty-sixth session of the UNGA, A/66/291 can be found at: <http://www.un.org/en/ga/>.

11. This situation lies at the origin of the tension between the CBD Secretariat and the Secretariat of its host institution, UNEP. It has been a contentious issue which has been discussed at almost all meetings of the Conference of the Parties of the CBD and recently at most of the thirteen meetings held between 2008 and 2010.

12. At its third meeting, held in Buenos Aires, Argentina in 1996, the COP adopted its decision III/23, which states:

1. *Invites the Executive Director of the United Nations Environment Programme and the Executive Secretary of the Convention on Biological Diversity to develop procedures, making an effort to conclude by 27 January 1997, with respect to the functioning of the Permanent Secretariat of the Convention on Biological Diversity, to clarify and make more effective their respective roles and responsibilities;*
2. *Stresses that these procedures must provide for the managerial autonomy and efficiency of the Permanent Secretariat and its responsiveness to the needs of the Convention, and must ensure the administrative accountability of the Executive Secretary to the Conference of the Parties;*
3. *Stresses also that the procedures must be in accordance with the United Nations financial and staff rules and regulations and with decision I/4 of the Conference of the Parties and should as far as possible, and where appropriate, follow the Personnel, Financial and Common Services arrangements agreed to between the United Nations and the Framework Convention on Climate Change;*
4. *Requests the Executive Secretary to make available to the Parties copies of the agreed procedures on a timely basis and to report to the Conference of the Parties through its Bureau at its fourth meeting on the implementation of these arrangements.*

13. As a result, an agreement on the Administrative Arrangements between UNEP and the CBD was signed on 30 June 1997 by the Executive Director of UNEP and the Executive Secretary of the CBD in order to delineate the clear roles for the two organizations. However, after the establishment of the United Nations Office at Nairobi (UNON) in 1996, the roles of United Nations Office in Nairobi (UNON) and UNEP became unclear on the issues related to the implementation of the administrative areas covered in the Administrative Arrangements between the CBD and UNEP, signed in 1997. This is due to the fact that UNON had taken over the responsibility of conference, administrative and financial services of UNEP. It is also noted that the recent establishment of the post of Director General of UNON, distinct from UNEP and UN-Habitat, has highlighted the need for clearly defined roles and responsibilities of the CBD partners in Nairobi.

14. Further, following the upgrade of the post of the Executive Secretary of the Convention from D-2 to Assistant Secretary-General (ASG), in 2002, the procedure for the appointment and extension of the term of office of the Executive Secretary as contained in the Administrative Arrangements of 1997 became inoperable. This led to the adoption by the COP at its seventh meeting in February 2004, of decision VII/33, paragraph 6, to rectify this anomaly: *“Invites the Executive Director of the United Nations Environment Programme and the Executive Secretary of the Convention on Biological Diversity to review and revise the administrative arrangements between the United Nations Environment Programme and the Secretariat of the Convention and report thereon to the Conference of the Parties at its eighth meeting.”*

15. On 5 January 2006, immediately after taking his assignment, the Executive Secretary addressed a letter to the former Executive Director of UNEP forwarding a draft revised administrative arrangements and requested urgent attention by 20 January 2006, in time for circulation to COP 8, held from 20 to 31 March 2006 in Curitiba, Brazil. However, the former Executive Director of UNEP, unable to review the draft to meet the timelines for COP 8, in his response dated 30 January 2006, requested that DEC, UNON, PCMU and CBD undertake an analytic review of the administrative issues as well as strategic implications to be forwarded to COP 9 in 2008. The letter of the former Executive Director was circulated to COP 8 which resulted in decision VIII/10, paragraph 13: *"Takes note of the ongoing review and revision of the administrative arrangements between the United Nations Environment Programme (UNEP) and the Secretariat of the Convention and invites the Executive Director of UNEP and the Executive Secretary to finalize the revision for consideration of the Conference of the Parties at its ninth meeting"*
16. Following the commitment made by the former Executive Director on 30 January 2006, the Executive Secretary, on 15 June 2006, addressed a letter to the then new Executive Director of UNEP informing him of decision VIII/10, with a draft Revised Administrative Arrangements between UNEP and the SCBD with a view to mutually work on it for submission to COP 9 in 2008. In his response dated of 10 July 2006, the Executive Director stated that UNEP was working on addressing the broader issues related to the administrative support to UNEP administered conventions. Further, in response to a reminder sent to him on 28 January 2008, the Executive Director stated that a broad analysis and review with UNEP MEAs would be carried out by the Task Force. On 28 April 2008, the Executive Secretary of the CBD was informed of the establishment of a Task team on MEAs.
17. At COP 9, held in Bonn in May 2008, the Parties in paragraph 18 of their decision IX/29 noted as follows:

*"Takes note of the ongoing review and revision of the administrative arrangements between the United Nations Environment Programme (UNEP) and the Secretariat of the Convention and **urges** the Executive Director of UNEP and the Executive Secretary to finalize the revision for consideration by the Conference of the Parties at its tenth meeting, taking into consideration decisions IV/17, VII/33, and VIII/10, and **requests** the Executive Secretary to report to the President and the Bureau between the ninth and tenth meetings of the Conference of the Parties on progress on this matter."*
18. The COP further invited the Executive Director to analyse conference and administrative support provided to the three Rio conventions from outside their respective core programme budgets and to report thereon to the Conference of the Parties at its tenth meeting. Paragraph 29 of decision IX/34 states: *"Invites the Executive Director to analyse conference and administrative support provided to the three Rio conventions from outside their respective core programme budgets and to report thereon to the Conference of the Parties at its tenth meeting;"*
19. The Executive Secretary forwarded this decision to the Executive Director of UNEP on 11 June 2008, together with a draft Revised Administrative Arrangements. In his response,

the Executive Director sent a letter on 13 August 2008 to the German Presidency, giving his assurance that the Revised Administrative Arrangements would be finalized before COP 10.

20. Following numerous correspondence addressed to the Executive Director of UNEP by the Executive Secretary, the latter was informed at their meeting held in Leipzig on 12 August 2010 that he, the Executive Director would not negotiate an agreement with *“one of his employees”*. A draft report of the Executive Secretary on Administration and Finance for COP 10 was shared with the Executive Director of UNEP. In the draft report, the Executive Secretary invited the COP not to renew its request to the Executive Secretary to negotiate the Revised Administrative Arrangements with the Executive Director but recommended a negotiation rather between the governing bodies of the two organizations. Upon receipt of the draft report, the Executive Director sought the guidance of the Executive Office of the Secretary General in September 2010.
21. The Executive Office of the Secretary General in response to the request of the Executive Director confirmed, on 13 October 2010, that *“the CBD/COP is a treaty body and not a subsidiary organ of the United Nations and/or the General Assembly, the primary intergovernmental organ in this respect is the CBD/COP”*. The Executive Office of the Secretary General further stated that the Executive Director and the Executive Secretary should *“spare no effort to finalize the Revised Administrative Arrangements by the tenth meeting of the CBD/COP”*. Following a further request for clarification by the Executive Director, the Executive Office of the Secretary General confirmed that the Revised Administrative Arrangements should not be signed with the President of COP 10 but rather with the Executive Secretary.
22. The Revised Administrative Arrangements document was signed by the Executive Director of UNEP and the Executive Secretary of the CBD on 26 October 2010. The COP, in its decision X/45 endorsed *“the Revised Administrative Arrangements dated 26 October 2010 between the United Nations Environment Programme and the Secretariat of the Convention on Biological Diversity set out in Annex I hereto, looks forward to the rapid completion of the service agreement provided in those Arrangements and requests the Executive Secretary to report to the Conference of the Parties through its Bureau on the implementation of the Arrangements”*. The COP, at its tenth meeting, also invited *“the Executive Director of UNEP to report on the Revised Administrative Arrangements to the Governing Council of the UNEP at its twenty-sixth session to be held in Nairobi from 21 to 25 February 2011”*. The decision can be found at <https://www.cbd.int/decision/cop/?id=12311>.
23. In its resolution 65/161 on the Convention on Biological Diversity the sixty-fifth session of the United Nations General Assembly noted *“the adoption by the Conference of the Parties to the Convention at its tenth meeting of a decision on the administration of the Convention and budget for the programme of work for the biennium 2011-2012 which included the revised administrative arrangements between the Secretariat of the Convention on Biological Diversity and the United Nations Environment Programme and through which the Conference of the parties looked forward to the rapid completion of the service-level agreement provided for in those arrangements, requested the Executive Secretary of the Convention to report to the Conference of the Parties through its Bureau on the*

implementation of those arrangements and invited the Executive Director of the United Nations Environment Programme to report on those arrangements to the Governing Council of the United Nations Environment programme at its twenty-sixth session”.

24. In a note dated 29 December 2010 submitted to the 26th session of the Governing Council of UNEP on the “Evolution of the relation between the United Nations Environment Programme and the Multilateral agreement that it administers” which was ostensibly prepared as a response to the decision taken in Nagoya and the sixty-fifth session of the UNGA, the Executive Director remained silent regarding the Revised Administrative Arrangements. The note was prepared without any consultation with the secretariats of the Multilateral Environment Agreements.
25. On 17 June 2011, the Executive Secretary of the CBD paid a visit to Nairobi with a view of opening a new chapter in the relation between UNEP and the SCBD. Following a meeting with the Executive Director of UNEP, the Executive Secretary hosted a working lunch with senior UNEP managers. To this end, a draft service level agreement between UNEP and SCBD as called for by article 16 of the Revised Administrative Arrangements was sent on 23 June 2011 to the Executive Director as per his earlier request at the meeting with the Executive Secretary held on 25 February 2011 in Nairobi. A Delegation of Authority document prepared in pursuance with Article 22 of the Revised Administrative Arrangements was signed by the Executive Secretary and sent to the Executive Director on 28 June 2011. To date, there has been no reaction to the two documents from the Executive Director.
26. It is however interesting to note that the delegation of authority to the Executive Secretary of CITES and to the Executive Secretary of the Convention on Migratory Species have been signed by the Executive Director in early September 2011 and announced at the MEA teleconference held on 6 September 2011.
27. On 27 May 2011, the Executive Director of UNEP provided the President of the tenth meeting of the Conference of the Parties with the following advice: *“the appointment of the Executive Secretary expires on 31 December 2011...and I will in the coming months initiate the required appointment review procedure, which the United Nations requires that I first appraise the performance of the Executive Secretary in line with the UN rules and regulations. Following this process, and prior to making a recommendation to the Secretary General, I will consult directly the Bureau, through you ”.*
28. On receiving this note, the President of COP 10 reminded the Executive Director of the procedure regarding the evaluation of the performance of the Executive Secretary as contained in the revised administrative arrangements endorsed by COP 10, reflecting the dual accountability of the Executive Secretary. The dual reporting procedure was laid down in line with the 13 October 2010 guidance of the Executive Office of the Secretary General. The COP President further noted that in accordance with the Revised Administrative Arrangements, the Bureau at its meeting held on 5 June 2011 would review the performance of the Executive Secretary from a programme delivery perspective and the Executive Director would review the performance of the Executive Secretary on

administration and finance. As a result, on 16 June 2011, the President of the COP, in a letter sent to the Executive Director of UNEP declared its unanimous positive assessment of the performance of the Executive Secretary on programmes. This positive assessment was confirmed by the 132 Ministers of Foreign Affairs of the Group of 77 at their annual meeting held in New York on 23 September 2011.

29. On 19 July 2011, the Executive Director conducted his performance assessment of the Executive Secretary on administration and finance for 2010 without prior performance indicators in the form of a signed Performance Compact, a UN system tool for such assessments. The results are yet to be declared by the Executive Director. However, to assist the Executive Director of UNEP to carry out his part of the evaluation, on 10 June 2011, the Executive Secretary provided a three-year self-evaluation of his performance on administration and finance. The assessment by the Bureau of the programmes covered the three years of the current terms of the office of the Executive Secretary. At the 19 July 2011 evaluation, the Executive Director decided that his evaluation on administration and finance would be limited to the year 2010 only and requested the Executive Secretary, on 12 September 2011, almost two months after the 19 July 2011 evaluation, to submit a self-evaluation of the performance of the Executive Secretary for 2010 only.
30. On 8 June 2011, with the explicit approval of the President of COP 10, the Executive Secretary sought further guidance from the Executive Office of the UN Secretary General regarding a misunderstanding that a letter of the Executive Director, UNEP, dated 27 May 2011, created among the Bureau members when the former referred to an appointment of the Executive Secretary, CBD, instead of the extension of the terms of office. The guidance of the Executive Office was also sought on the authority to decide on the duration of the term of office of the Executive Secretary. It is also noted that the Executive Director had told the Executive Secretary on 4 June 2010 and reiterated on 25 February 2011 and 17 June 2011 that he was going to recommend to the Secretary General a one-year only extension of his current term without any authority from the COP in whom that authority is vested.
31. The reference to the Executive Office of the Secretary General (EOSG) for guidance on these issues is based on the mandate of the COP. Since 2000, the COP requested its President to liaise with the Secretary General on issues related to the administrative matters of the Executive Secretary.

Decision **COP V/22 (2000)** *Requests the President of the Conference of the Parties to consult with the Secretary-General of the United Nations on an assessment of the level of the post of the Executive Secretary of the Convention and report to the Bureau of the Conference of the Parties.*

Decision **COP VI/29 (2002)** *Requests the President of the Conference of the Parties to invite the Secretary-General of the United Nations to appoint the Executive Secretary at the level of Assistant Secretary-General, for a three-year term of office, starting on 1 July 2002.*

Decision **COP VII/34 (2004)** *The Conference of the Parties further invites the President of the Conference of the Parties to consult with the Executive Director of the United Nations*

Environment Programme and liaise with the Office of the Secretary-General of the United Nations on future appointments;

32. Accordingly, since 2000, the Presidents of COP 5, COP 6 and COP 7 have liaised directly with the Secretary General on issues related to the contractual arrangements of the Executive Secretary. In 2008, COP 9 President decided to liaise only with the Executive Director of UNEP on the issue of the extension of the term of office of the Executive Secretary. It is also noted that in 2008, in spite the unanimous recommendation of the Bureau of COP 9 to extend the term of office of the Executive Secretary for another three-year term, the Executive Director of UNEP decided to recommend to the Executive Office of the Secretary General a one-year extension. A further extension of the term of office of the Executive Secretary was done by the Executive Director of UNEP for a duration of two years but not by the Secretary General as should have been the case. The requests for an explanation of the change in the contractual arrangement of the Executive Secretary as mandated by COP have remained without response to date. It should be noted that COP 8 held in Curitiba in March 2006, in paragraph 13 of its decision VIII/10 noted “the need for a transparent and objective process for appointment of the Executive Secretary that involves the Conference of the Parties and its Bureau in a manner consistent with paragraph 1 of decision IV/17, which refers to consultation with the Conference of the Parties through its Bureau before appointing the Executive Secretary and to the authority of the Conference of the Parties to determine the term of office of the Executive Secretary.” The extension, one week before the end of the terms of office, of the Executive Secretary in December 2008 was not subject to a new selection process and advertisement of the post.
33. In a letter addressed to the Executive Secretary, the Executive Office of the Secretary General confirmed on 14 July 2011, among other things, the authority of the COP to decide on the duration of the term of office of the Executive Secretary. Since 2002, the duration of the term has been three years. In confirming the authority of the COP to determine term of office of the Executive Secretary, the Executive Office of the Secretary General noted the lack of clarity on procedure for extension. This letter was forwarded to the Executive Director by the Executive Secretary on 19 July 2011.
34. In interpreting the above letter from the Executive Office of the Secretary General, the Executive Director, UNEP, proposed a new selection process for an appointment which includes advertising the encumbered position of the Executive Secretary of the Convention on Biological Diversity and requesting the incumbent for the last six years to re-apply.
35. On 18 August 2011, the Executive Director sought authorization from the Bureau to proceed with the advertisement of the post and requested a response in less than 5 working days. Further, on 22 September 2011, the Executive Director, in his report to the Committee of Permanent Representative to UNEP, declared his commitment to advertise the post of the Executive Secretary, with the claim that this administrative action had the support of the Secretary General.
36. Repeated requests from the Executive Secretary of the CBD to the Executive Director of UNEP for both a copy of the letter to the Bureau regarding advertising the post and a letter which was supposed to indicate the Secretary General’s support to advertise an encumbered post have been consistently denied. Similar requests by the Bureau of COP10

to the Executive Director have also been ignored. The procedure of extension of the term of office of the Executive Secretary needs to be discussed in an open and transparent manner.

37. It is however noted that, to the knowledge of the Executive Secretary, the UN system has never advertised an encumbered post at the level of an Assistant Secretary-General for an extension and has never requested the incumbent to apply.
38. It must be noted that the lack of a definite article on the extension of the term of the Executive Secretary in the Revised Administration Arrangements, as well as on the duration of the terms of office was deleted, at the request of UNEP, on 26 October 2010, the day the Revised Administrative Arrangements was signed. The Executive Director of UNEP insisted on deleting the sentence related to the procedure of extension which was contained in all previous versions of the document. The sentence contained also the reference to the three-year duration of the terms of the office of the Executive Secretary. The Executive Secretary reluctantly accepted the deletion on the procedure of extension in his genuine desire to put an end to political crisis created with the 193 Parties as well as to the five years of difficult negotiations on the implementation of various decisions of the COP since February 2004.
39. At a meeting held in New York on 19 September 2011, the Executive Secretary reminded the Executive Director that the procedure to advertise an encumbered post and requesting the incumbent to re-apply was unprecedented and would establish a serious precedent. At that meeting, the Executive Director of UNEP stated that the post of the Executive Secretary could not be extended forever. The Executive Secretary agreed with this statement and reminded the Executive Director that the COP had not decided on the limit to the number of terms of office. The Executive Secretary suggested an amendment to the Revised Administrative Arrangements to give clarity to all these issues to be submitted for the endorsement of the eleventh meeting of COP, to be held in Hyderabad, India in October 2012. The proposal to amend the Revised Administrative Arrangements was rejected by the Executive Director. The Executive Secretary also pointed out to the Executive Director the exception he took at the wrong information his representative provided to the Committee of Permanent Representative to UNEP in Nairobi on 6 October 2010 that the appointment of the Executive Secretary in 2005 was illegal as the post had not been advertised. The appointment of the Executive Secretary in 2005 went through the due process that prevailed at that time for the appointment of Senior UN official at the level of Assistant Secretary General.
40. Following the signature in early September 2011 of the Memorandum of Understanding between UNEP and the Standing committee of CITES which had been under discussion since 1997, the Executive Secretary, on 8 September 2011, suggested to the Executive Director to initiate an amendment to the Revised Administrative Arrangements incorporating the language on extension of term of office of the Executive Secretary as well as the issue of the Programme Support Cost as has been used in the CITES agreement. This proposal which is in line with article 23 of the Revised Administrative Arrangements has been rejected.

41. The Secretary General's report on accountability (A/64/640 Section II/E/ paragraph 43(g) "Towards an accountability system in the United Nations Secretariat" documents the current process for the selection and appointment of Senior managers (Under Secretaries General/Assistant Secretaries General) and clearly states that *"For some positions, consultations with intergovernmental bodies are required and conducted accordingly."*
42. With regards to the CBD, the 14 July 2011 letter from the Executive Office of the Secretary General reaffirms the authority of the COP through its Bureau on this issue. Furthermore, Regulation 4.5 (a) of the Staff rules provides that *"Appointment of Under-Secretaries-General and of Assistant Secretaries-General shall normally be for a period of up to five years, subject to prolongation or renewal."*
43. In the absence of a clear procedure for the extension of the terms of office of the Executive Secretary in the revised Administrative Arrangements and pending an amendment to be submitted to the next conference of the Parties to be held in Hyderabad, India in October 2012, it is prudent that the relevant COP decisions and, in particular, decisions V/22; VI/29 and VII/34 remain operative and valid.
44. Based on the above and following the issues raised by the Executive Director of UNEP at the 116th meeting of the Committee of Permanent Representatives, the Executive Secretary has been compelled to seek, once again and hopefully for the last time, the guidance of the Executive Office of the Secretary General.