

Elements of an Agreement on the Conservation of Western Palearctic Migratory Species of Wild Animals



International Union
for Conservation of Nature and Natural Resources (IUCN)
1983



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FOREWORD

One of the most important and effective activities of IUCN at international level has been its contribution to the promotion, drafting and conclusion of international conservation conventions. Examples are: the African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973), the Agreement on Conservation of Polar Bears (Oslo, 1973), the Convention on Conservation of Nature in the South Pacific (Apia, 1976), the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979) and, more recently, the draft ASEAN Agreement on the Conservation of Nature and Natural Resources.

IUCN may indeed be proud of its pioneering action in this field as this constitutes a perfect example of the contribution that international non-governmental organizations can bring to the development of international law and in particular international environmental law.

The Bonn Convention is an "umbrella convention" which calls for the conclusion of individual agreements for the conservation and management of certain migratory species or groups of species by Parties that are Range States for the species concerned. The conclusion of such agreements will, therefore, be the main task of the parties to that convention when it enters into force.

In December 1979, a technical meeting on the management of migratory waterfowl populations was convened jointly by the International Foundation for the Conservation of Game (IGF) and the International Waterfowl Research Bureau (IWRB). The meeting recommended that a working group composed of IUCN, IWRB, ICBP, and CIC be set up to prepare the ground work for an Agreement under the Bonn Convention for the Western Palearctic Region. The group was subsequently constituted and the following individuals served on it on a regular basis:

- | | |
|-----------------------|---|
| — B. des Clers | — Conseil International de la Chasse et de la Conservation du Gibier (CIC) |
| — J. Swift | — Federation of Hunting Associations of the EEC (FACE) |
| — M. Smart | — International Wildfowl Research Bureau (IWRB) |
| — A. Gammel | — International Council for Bird Preservation (ICBP) |
| — C. Imboden | — International Council for Bird Preservation (ICBP) |
| — C. de Klemm | — International Union for Conservation of Nature and Natural Resources (IUCN) |
| — F. Burhenne-Guilmin | — International Union for Conservation of Nature and Natural Resources (IUCN) |

As a contribution to the work of that group, IUCN prepared draft proposals relating to the main provisions which could be included in such an agreement. These pro-

posals were discussed by the Group and the outcome of the discussions is the subject of this publication.

It is expected that it will be possible in the future to supplement these draft proposals with examples of international management plans for certain selected species listed on the appendices to the Bonn Convention.

Our thanks go to the W.W. Brehm Fonds, which made this publication and its preparation, in as far as the work of IUCN is concerned, possible by contributing to WWF/IUCN Project No. 1971. Our thanks go also to CEPLA member C. de Klemm who was instrumental in the development of this publication.

Wolfgang E. Burhenne
Chairman
IUCN Commission on Environmental
Policy, Law and Administration
(CEPLA)

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A INTRODUCTION

1. The International Convention on the Conservation of Migratory Species of Wild Animals was concluded at Bonn on June 23rd, 1979. It has not yet entered into force.

The Convention provides a general framework for the conservation of certain migratory species or groups of species which are listed in two appendices. Appendix I lists endangered species in respect of which contracting parties are urged to take immediate and strong conservation measures to improve their conservation status. Appendix II lists "migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management as well as those which have a conservation status which would significantly benefit from the international co-operation that could be achieved by an international agreement".

As endangered species may often, in addition to the immediate measures referred to above, also benefit from international agreements, the Convention further provides that if the circumstances so warrant, a migratory species may be listed both in Appendix I and Appendix II.

The most important provisions of the Convention relate to the conclusion of the agreements mentioned above. The object of these agreements is to restore the migratory species concerned to a favourable conservation status or to maintain them in such a status. Guidelines relating to the contents of such agreements, and, in particular, to the nature and type of conservation measures they should provide for, are also included. Furthermore, the Convention lays down the principle that an agreement should, wherever possible, deal with more than one migratory species.

2. The implementation of the Bonn Convention will, therefore, for a very large part, depend on the successful conclusion of agreements for the conservation and management of the species listed in its Appendix II.

These Agreements will have to be negotiated between the parties concerned after the convention has entered into force. This will necessarily be a lengthy process as time must be allowed for their drafting, conclusion and ratification. As a result, several years may well elapse before the convention becomes really effective.

3. In December 1979, the International Foundation for the Conservation of Game and the International Waterfowl Research Bureau organized jointly a technical meeting in Paris on the subject of Western Palearctic Migratory Waterfowl. This meeting considered, *inter alia*, the matter of future international co-operation in the management of these bird populations. It felt that if some preparatory work could be undertaken by the conservation organizations concerned it could provide a useful contribution to the future development of a Western Palearctic Migratory Species Agreement by the parties to the Bonn Convention. The

meeting, therefore, adopted a recommendation (Recommendation 8) "to set up an interim working group, in consultation with the Depositary of the Bonn Convention, between IUCN, IWRB, ICBP and CIC in order to plan the groundwork for a future inter-governmental meeting which would be convened under the Convention to conclude an Agreement for the Western Palearctic Region and to make interim recommendations for concerted action".

The Interim Working Group met four times. It considered, discussed and revised draft elements of an Agreement prepared by the IUCN Environmental Law Centre. These elements which constitute an informal proposal are designed to provide a basis for further discussion as soon as formal consultations on this matter will begin.

4. The reasons for the choice of the Western Palearctic Region as the subject of this proposal for a first Agreement under the Bonn Convention are as follows:

The ecology, habitat requirements and migration routes of most western Palearctic migratory species are, by and large, better known than those of many other such species elsewhere in the world with the exception of North America.

Many migratory species, especially of waterfowl, constitute an important economic and recreational resource for the region. This resource requires careful international management if sustainable production is to be maintained.

A majority of the States that have signed the Bonn Convention are geographically situated in the Western Palearctic Region. It was felt, for those reasons, that a Western Palearctic Agreement would stand more chances of an early conclusion, satisfactory geographic coverage, and effective implementation than an agreement relating to any other region of the world.

In addition, many States in the Western Palearctic Region have acquired a wealth of information and experience in the conservation and management of wildlife which could be of direct benefit to all countries concerned if an appropriate machinery were set up for the exchange of information.

There seems to be an urgent requirement for an agreement on western Palearctic migratory species as the increasing rate of habitat destruction and other negative factors make the taking of concerted action essential.

Finally, a successful Western Palearctic Agreement would constitute a useful model for the conclusion of similar agreements in other regions.

5. It appeared clearly to the Interim Group that the implementation of a Western Palearctic Migratory Species Agreement under the Bonn Convention will necessarily require the development of co-operative links with the governing bodies and secretariats established under other international instruments dealing with certain western Palearctic migratory species or their habitats. These instruments are the Convention on the Conservation of European Wildlife and Natural Habitats (Berne, 1979), the EEC Directive on the Conservation of Wild Birds, 1979), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971), the African Convention on the Conser-

vation of Nature and Natural Resources (Algiers, 1968) and the recently concluded protocol to the Barcelona Convention Concerning Mediterranean Specially Protected Areas (Geneva, 1982). Although none of these instruments cover the full range of all the western Palearctic species listed in the appendices to the Bonn Convention, they all deal with at least some of these species over the whole or part of their range. It is therefore essential that a co-ordination mechanism be established, perhaps under the aegis of one of the bodies concerned, to avoid duplication of effort and to ensure an effective implementation of conservation and management measures through the most appropriate channels.

Such a co-ordination mechanism could either be formally institutionalized by means of a specific provision embodied in the text of the Agreement itself or gradually developed through the Secretariat under the guidance of the parties in the course of the implementation of the Agreement. The Interim Group felt that this was a matter which would best be tackled by the future parties.

B

THE WESTERN PALEARCTIC — A SHORT DESCRIPTION

Zoologists divide the world into a certain number of zoogeographical regions. Each region is characterized by its fauna, which is often very different from the fauna of other regions. The Palearctic Region comprises the northern part of the old world including the whole of Europe, Africa north of the Sahara, West Asia, and the whole of the area north of the Himalayas and the Se-Tchuan mountains, including Japan. The southern limits of the Palearctic region cannot, however, be drawn with absolute accuracy as its fauna blends into that of the adjacent regions, *i.e.* Africa south of the Sahara (the "Ethiopian" biogeographical region) and South and South-East Asia (the "Indo-Malayan" or "Oriental" region). In the West, the Palearctic Region extends to Eastern Greenland, the Azores, the Canary Islands and the Cape Verde Islands.

With the exception of a few marine species, the Palearctic species listed in Appendix II to the Bonn Convention are all species of bird. A short review of the Palearctic bird migration system seems, therefore, to be in order.

Many Palearctic species of bird are migratory, often over very long distances, and winter outside the region in tropical Africa and Asia. On the basis of their migration pattern, the region has been subdivided by ornithologists into three sub-regions: Western Palearctic, Mid-Palearctic and East Palearctic.

The East Palearctic extends from 90° east to the Pacific Ocean and the Bering Sea; most migratory birds originating from that area migrate to Southern Asia in the winter. The Mid-Palearctic ranges from 45° to 90° east. Although many birds from that area also go to Southern Asia, a considerable number winter in Africa, crossing the Indian Ocean. The West Palearctic extends from the Atlantic Ocean to 45° east. Many western Palearctic bird migrants winter in Africa south of the Sahara; others,

however, winter in Western or Southern Europe or in Northern Africa. The migration phenomenon, although it has not yet been fully understood by scientists, is certainly, in most cases at least, caused by unfavourable winter climatic conditions and by the lack of adequate food in the areas where the birds have bred during the spring.

Each species has its own feeding, nesting, concealment, and other ecological requirements and, consequently, its own specialized habitat. Without the continuous existence of such habitat, birds cannot survive. This applies not only to breeding and wintering areas but also to the staging, moulting and resting areas which they may use along their migration route.

It is clear, therefore, that if migratory bird populations are to be preserved and maintained in a favourable conservation status, their ecological requirements must be met all along their migration route through the concerted action of all their Range States. This should be the main purpose of a Western Palearctic Agreement concluded under the Bonn Convention.

The present proposed elements of an Agreement on the conservation of western Palearctic migratory species of wild animals have been prepared with this objective in mind. It is hoped that it has been adequately reflected and that the proposed draft will be of assistance to the parties to the Bonn Convention in the furtherance of their future work.

C

GENERAL OUTLINE OF THE PROPOSED DRAFT AGREEMENT

1. Scope

The proposed Agreement potentially applies to all migratory species whose range lies entirely or partly within the Western Palearctic Region. Range is understood as including the whole of the migratory route of the species concerned. As a result, the Agreement is open to all States that are Range States of these species whether or not their territory is situated in the Western Palearctic region.

2. Species Covered

Article V.3 of the Bonn Convention provides that an *Agreement* should, wherever possible, deal with more than one migratory species.

Pursuant to this Article, and in order to avoid having to conclude several separate agreements to cover different groups of western Palearctic migratory species, it was felt that all such species could be dealt with under the same agreement. This should ensure better co-ordination of conservation and management measures and lower operating costs.

As an initial step, it is provided that all western Palearctic migratory species which are listed in the appendices to the Bonn Convention shall also be listed in the appendices to the Agreement. Provision is made, however, for adding to

the latter appendices any additional western Palearctic migratory species they so wish.

3. Appendices

As in the Bonn Convention, two appendices are provided: Appendix A lists endangered western Palearctic migratory species. These include all such species already listed in Appendix I to the Bonn Convention and may include any other western Palearctic migratory species which the parties to the Agreement may wish to add. Thus, endangered western Palearctic populations of species which may not be endangered at world level may be given special protection. In respect of the endangered species to be protected under the Bonn Convention, it was felt that they could well also benefit from the conservation measures provided under the Agreement. Appendix B lists all western Palearctic migratory species mentioned in Appendix II to the Bonn Convention and may include any other such species that the parties have agreed to so list.

4. Institutions

Provision is made for the establishment of a Commission to serve as the governing body for the Agreement. The Commission is empowered to set up Recovery Committees and Management Committees to deal with particular groups of species listed in Appendix A and B respectively.

In order to ensure the best possible co-ordination between the Bonn Convention and the Agreement and to minimize costs, it is proposed that the Scientific Council and Secretariat established under the Convention should perform the same functions under the Agreement.

It is expected that the Commission will be a fairly formal body dealing mostly with general policy matters and administrative and financial questions. It would, in principle, again to save costs, meet only every three years in conjunction with the meetings of the Conference of the Parties to the Bonn Convention.

It is clear, however, that the recovery, conservation and management of migratory species require more flexible arrangements and the capability for prompt action. In addition, in view of the relatively large number and considerable diversity of species which may be covered by the Agreement, it appears that their management cannot be effectively handled by a single body and that more specialized groups composed of experts in the ecology and management of the species concerned will have to be set up. It is therefore proposed to establish Recovery Committees to improve the conservation status of species listed in Appendix A to a point such that they will no longer be in danger of extinction and Management Committees for the conservation and management of the species listed in Appendix B.

5. Functioning of Institutions

(a) A basic principle of the Agreement is that only the Range States of a particular species shall be members with full voting rights of the Recovery or Management Committee dealing with that species. Similarly, if decisions relating to a listed species are taken by the Commission, such decisions

shall require, in addition to a majority vote in the Commission, the affirmative vote of a majority of the Range States of that species.

The reason for this is to prevent a majority of non-Range States imposing a decision upon Range States. There is, however, an exception concerning Cetacea, to comply with Article V.4(f) of the Bonn Convention.

- (b) With regard to the distribution of authority and functions between the Commission and the Committees, two systems were considered, none of which appeared to be fully satisfactory.
- (1) The Commission could be the only decision-making body under the Agreement. Under such a system Committees could only make recommendations to the Commission. Advantages would be centralization of authority, good co-ordination, rational allocation of priorities and funds. Disadvantages would be a requirement for frequent meetings of the Commission, greater expenses and a certain lack of flexibility.
- (2) Recovery Committees and Management Committees could be established as decision-making bodies in respect of the species they are dealing with. This would be tantamount to developing separate sub-agreements. Advantages would be good expertise, greater flexibility, lower costs and the possibility of taking quick action. Disadvantages would be lack of co-ordination and lack of proper control by the Commission, that is to say by all the parties.
- (c) The proposed system is therefore a compromise between these two extremes. The Commission deals with all general matters and Committees clearly report to the Commission of which they are subordinate bodies. Committees, however, are entitled to adopt recovery or management plans for the species they deal with and to make direct recommendations to the parties in respect of the implementation of these plans. But the Commission has the right not to establish a Committee or to limit the powers of a Committee. In such cases, the powers which the Committee would have had, will be exercised by the Commission.

In addition, the Commission has the power to co-ordinate the work of the Committees and to review and amend recovery and management plans if two-thirds of the Range States concerned so agree (Art. XIX.5).

6. General Obligations

The Agreement contains a number of general obligations most of which are derived from the guidelines for Agreements listed in Article V of the Bonn Convention. Some of the most important ones are:

- the prohibition of the taking of and trade in all listed species except legally harvested species;
- the identification and preservation of the habitats of listed species;

- the prohibition or control of the introduction of certain species that may affect the conservation status of western Palearctic migratory species or their habitat;
- the monitoring of the conservation status of listed species;
- the designation of a national authority to implement the Agreement.

7. Habitats

Particular attention is paid to the problem of habitat preservation and particularly to the identification and listing of critical habitats, that is to say the specific sites which are regularly used for breeding, feeding, wintering or other purposes by a substantial number of animals belonging to a certain species.

It is proposed that priorities be established for the conservation of particularly important habitats and that such habitats, when they are well preserved, be designated as Western Palearctic Migratory Species Refuges as a means to draw attention to the international value of these resources and to provide an incentive for their conservation.

8. Recovery Plans and Management Plans

Perhaps one of the most important obligations under the Agreement is the requirement to develop recovery plans for Appendix A species and conservation and management plans for Appendix B species. It is emphasized (Art. XII. 4) that such plans shall constitute comprehensive statements of policies and goals which the Range States of the species concerned shall strive to implement to the best of their capability. The adoption of a plan is to be a formal act requiring a two-thirds majority from the Committee concerned.

Guidance is given on the content of recovery and management plans on the basis of Article V.5 of the Bonn Convention. Recovery Committees and Management Committees are empowered, unless the Commission decides otherwise, to make direct recommendations to parties in furtherance of the objectives of the plans. Parties have the obligation to implement these recommendations when they have been adopted by a two-thirds majority except when it would create a clear and unwarranted hardship to their people or economy (Art. XV).

9. Harvested Species

Special provisions apply to harvested species. Ideally it would have seemed preferable to empower the Commission to decide which of the species listed in Appendix B would be harvestable. In view, however, of the diversity of hunting traditions in the countries concerned, it appears that an agreement on a uniform list of harvestable species would be difficult to achieve.

As a result, a Range State remains free, subject to any other obligation under other international instruments, to authorize the harvesting of any species listed on that Appendix. Its only obligation is to make a declaration to that effect when it accedes to the Agreement or at the time a new species is listed on Appendix B. If, however, at a later time, a Range State which did not authorize the harvesting of a species decides to allow it, it may very well be that such a

decision could affect the conservation status of the species concerned. Furthermore, It will certainly entail alterations to the management plan. A procedure has, therefore, been established under this proposed Agreement, whereby: the Range State concerned must submit a statement to the appropriate Management Committee to the effect that It proposes to start harvesting a hitherto unharvested species together with a thorough appraisal of the consequences of the proposed harvesting. If the results of that appraisal clearly show that the conservation status of the species concerned may be unfavourably affected by the proposed harvesting and if the Range State concerned still wishes to initiate harvesting, it will have to refrain from doing so for a period of one year while the management plan is being reviewed and amended by the Management Committee in the light of the new situation. At the end of that period, harvesting may begin.

10. Management of Harvested Species

Provision is made for the possibility for Management Committees to take binding decisions in respect of the adjustment of certain harvesting parameters. Such decisions will only be binding on those parties which have not objected to them within a certain period. Migratory species, being common resources, it was felt that, just as in fisheries agreements, such resources should be the subject of common management with a view to maintaining or restoring maximum sustainable productivity for the benefit of all Range States. This may imply the establishment of harvesting limits consistent with breeding success, habitat availability, weather fluctuations, harvesting pressure and any other factors which must be taken into consideration to ensure that a species is maintained in a favourable conservation status.

The proposed procedure is as follows:

Proposals for management decisions are adopted by Management Committees by a two-thirds majority. During the thirty days following the adoption of the proposal, all parties that are members of the Management Committee have the right to object to the proposal. After the thirty days have expired, the proposal becomes binding upon all the parties concerned except upon those that have objected. If more than one half of all the parties that are members of the Management Committee have objected, the proposal is not considered as having been adopted and no party is therefore bound by it. In the case of emergency measures, decisions may have to be taken at very short notice and the time period of thirty days has accordingly been reduced to five days.

This type of procedure is used under many fisheries agreements and seems to operate fairly satisfactorily. It gives Governments the opportunity to review decisions before allowing them to enter into force, and also guarantees them against decisions taken in their absence, or by their own representatives when they do not have the express mandate to do so.

11. Finance

The conservation of western Paelearctic migratory species will require financial resources, particularly for the purpose of conserving and managing habitats in

the less developed Range States. For instance, certain wetlands are, in this regard, of special importance for harvested bird species and it would seem that a financial contribution to their conservation could well come from those who harvest those species or otherwise use them. This could take the form of contributions from Governments or from non-governmental organizations. It could also be institutionalized by means of a harvesting stamp or by other means.

In view of the complexity of the matter and also of its importance, since without adequate financial resources the satisfactory management of western Palearctic migratory species will not be possible, it was felt that the Commission should be given the mandate to explore these possibilities but that it would not be practical to make, at least at this stage, this form of financing mandatory by means of the insertion of a provision to that effect in the text of the proposed draft Agreement.

12. Final Clauses

The final clauses relating to the settlement of disputes, reservations, signature, ratification, acceptance or approval, accession, entry into force, denunciation and the Depositary have not been included in this draft. The corresponding provisions of the Bonn Convention, with some adaptations to meet the specific requirements of the Western Palearctic Region, may be used for that purpose. The Article on accession, in particular, will have to reflect the provision of the draft which limits accession to the Agreement to the Parties to the Bonn Convention unless the Commission has decided otherwise.

13. Range and Migration Routes of the Migratory Species Covered by the Proposed Agreement

Article V.4(b) of the Bonn Convention provides that each *Agreement* should describe the range and migration route of the migratory species covered. In view of the large number of species concerned in the Western Palearctic Region, it was felt that it would not be appropriate to incorporate such a description in the body of the Agreement but that it should rather be included in an Annex to be developed at a later stage by a small group of scientists.

D
**PROPOSED DRAFT AGREEMENT ON THE CONSERVATION
OF WESTERN PALEARCTIC MIGRATORY SPECIES
OF WILD ANIMALS**

PREAMBLE

THE CONTRACTING PARTIES,

Recalling the Preamble of the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn on 23 June 1979 to which they fully subscribe,

Further recalling the provisions of Article IV of that Convention pursuant to which the Parties thereto have accepted the obligation to endeavour to conclude *Agreements* where such *Agreements* would benefit those migratory species which are listed in Appendix II to that Convention,

Convinced that the conclusion of such an *Agreement* would benefit migratory species in the Western Palearctic Region,

Have Agreed as follows:

I

RELATION WITH MIGRATORY SPECIES CONVENTION

1. The present Agreement shall be deemed to be an *Agreement* as defined in Article I.1.(l) of the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn on 23 June 1979.
2. The Provisions of that Convention relating to an *Agreement* shall apply in respect of this Agreement.

II

INTERPRETATION

For the purpose of this Agreement:

- (a) "Convention" shall mean the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn on 23 June 1979;
- (b) "Conference of the Parties" shall mean the body referred to in Article VII of the Convention;

- (c) "Scientific Council" shall mean the body referred to in Article VIII of the Convention or, should the Conference of the Parties not approve the advisory functions of the Scientific Council in respect of this Agreement, the Scientific Committee provided for under Article VI of this Agreement;
- (d) the terms defined in Article I, sub-paragraphs 1(a) to 1(j) of the Convention shall have the same meaning in this Agreement;
- (e) "Western Palearctic Region" shall mean the area of land and sea comprised within a line drawn between the following positions:

Latitude	Longitude
85° north	30° west
85° north	[450] [60°] [90°] east
30° north	[45°] [60°] [90°] east
30° north	30° west

- (f) "Western Palearctic migratory species" shall mean any migratory species the range of which lies entirely or partly within the western Palearctic Region provided that, for the purpose of this Agreement, a separate population of a western Palearctic migratory species shall not be considered to be a western Palearctic migratory species when the range of that population lies entirely outside the Western Palearctic Region. Any reference to a western Palearctic migratory species shall be deemed to apply to the parts or products of such species and, where applicable, to its eggs and to its nests;
- (g) "harvesting" shall mean the taking of a species for commercial or sport purposes;
- (h) "harvested species" shall mean a species the harvesting of which is authorized by any one of its Range States;
- (i) "Party" shall mean a State or any regional economic integration organization constituted by sovereign States which has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this agreement for which this Agreement is in force.

III

GEOGRAPHICAL SCOPE

1. This Agreement shall be open to all [Parties to the Convention which are] Range States of any western Palearctic migratory species [listed on Appendices A or B to this Agreement], whether or not the territory of such Range States is situated in the Western Palearctic Region.
2. [After the entry into force of this Agreement, the Commission may, by a [unanimous] [three quarter majority] vote, invite any Range State of any western Palearctic migratory species, which is not a Party to the Convention, to accede to this Agreement].

IV APPENDICES

1. (a) Appendix A to this Agreement shall list all western Palearctic migratory species listed at the time of entry into force of this Agreement on Appendix I to the Convention and any other western Palearctic migratory species added to Appendix I at any time subsequently.
- (b) Appendix A to this Agreement shall also list any other western Palearctic migratory species which has been declared by the Commission, on the basis of reliable evidence, including the best scientific evidence available to the Scientific Council, to be an endangered species in the Western Palearctic Region.
- (c) A western Palearctic migratory species listed on Appendix A pursuant to subparagraph (b) of this paragraph may be removed from that Appendix where the Commission has determined that:
 - (i) reliable evidence, including the best scientific evidence available, indicates that the species is no longer endangered in the Western Palearctic Region, and
 - (ii) the species is not likely to become endangered in the Western Palearctic Region because of loss of protection due to its removal from Appendix A.
2. (a) Appendix B to this Agreement shall list all western Palearctic migratory species listed, at the time of entry into force of this Agreement, on Appendix II to the Convention, as well as any other western Palearctic migratory species added to Appendix II at any time subsequently.
- (b) Appendix B to this Agreement shall also list any other western Palearctic migratory species which would, in the opinion of the Commission, significantly benefit from the international co-operation that will be attained by this Agreement.
3. If the circumstances so warrant, a western Palearctic migratory species may be listed both in Appendix A and Appendix B.
4. A list of the Range States of the western Palearctic migratory species listed on Appendices A and B shall be kept up-to-date by the Secretariat using information it has received from the Parties and the Scientific Council.
5. The Parties shall keep the Secretariat informed as to which of the western Palearctic migratory species listed in Appendices A and B they consider they are Range States for, including provision of information on their flag vessels engaged outside national jurisdictional limits in taking the species concerned and, where possible, future plans in respect of such taking.

V ORGANIZATION

1. The Parties to this Agreement agree to establish and maintain an international organization whose object shall be to contribute, through consultation and co-operation, to the recovery, conservation and management of western Palearctic migratory species.
2. The Organization shall consist of:
 - a Commission;
 - a Scientific Council;
 - Recovery Committees and Management Committees;
 - a Secretariat.
3. The Organization shall have legal personality and shall enjoy in its relations with other international organizations and in the territories of the Parties such legal capacity as may be necessary to perform its functions and achieve its ends. The immunities and privileges which the Organization and its officers shall enjoy in the territory of a Party shall be subject to agreement between the Organization and the Party concerned.

VI COMMISSION

1. There shall be established a Western Palearctic Migratory Species Commission to assist in carrying out the aims of this Agreement, to monitor its effectiveness and to report to the Conference of the Parties.
2. Each Party shall be a member of the Commission and shall appoint to the Commission one representative who may be accompanied at any of its meetings by alternates, experts and advisers.
3. Each Commission member shall have one vote in proceedings of the Commission.

Except as otherwise provided for by this Agreement, decisions of the Commission shall be taken by a majority of the votes of all Commission members present and casting affirmative or negative votes provided that no vote shall be taken unless there is a quorum of at least one half of the Commission members.

4. The Commission shall adopt, and amend as occasion may require, rules for the conduct of its meetings and for the exercise of its functions.
5. The Depositary shall call a meeting of the Commission not later than three years after the entry into force of this Agreement.
6. Thereafter, the Secretariat shall convene ordinary meetings of the Commission at intervals of not more than three years, unless the Commission decides other-

wise, and extraordinary meetings at any time on the written request of at least one-third of the Parties. Meetings of the Commission shall be held, whenever possible, in conjunction with the meetings of the Conference of the Parties.

7. At each of its meetings, the Commission shall review the implementation of this Agreement and may, in particular:
 - (a) review and assess the conservation status of western Palearctic migratory species and of their habitats as well as the factors which may unfavourably affect that conservation status;
 - (b) review the progress made towards the conservation of western Palearctic migratory species, especially those listed in Appendices A and B and of their habitats and, in particular, the implementation of recovery plans and conservation and management plans relating to such species;
 - (c) make such provisions and provide such guidance or establish such criteria as may be necessary to enable the Scientific Council, Recovery Committees, Management Committees and the Secretariat to carry out their duties;
 - (d) review, co-ordinate and, where required, amend recovery plans and conservation and management plans relative to any species listed in the appendices to this Agreement;
 - (e) receive and consider any reports presented by any Party, the Scientific Council, any Recovery Committee, and Management Committee or the Secretariat;
 - (f) make recommendations to any Party for improving the conservation status of western Palearctic migratory species;
 - (g) establish procedures for co-ordinating action to suppress illegal taking of and trade in western Palearctic migratory species;
 - (h) make reports to the Conference of the Parties on the conservation and management of western Palearctic migratory species;
 - (i) make recommendations to the Conference of the Parties relating to amendments to the Appendices to the Convention in respect of western Palearctic migratory species;
 - (j) make recommendations to the Parties for improving the effectiveness of this Agreement; and,
 - (k) decide on any additional measure that should be taken to implement the objects of this Agreement;
 - (l) perform any other functions which may be entrusted to it by this Agreement.

VII SCIENTIFIC COUNCIL

1. Subject to the approval of this function by the Conference of the Parties, the Scientific Council shall provide advice on scientific matters pertaining to the implementation of this Agreement.
2. If the Conference of the Parties has agreed that the scientific advisory functions required for the purpose of this Agreement shall be carried out by the Scientific Council, the Commission shall enter into an arrangement with the Conference of the Parties with a view to enabling the Scientific Council to discharge its functions under this Agreement.
3. If the Conference of the Parties does not give its approval to the carrying out of this function by the Scientific Council, the Commission shall appoint a Scientific Committee to provide advice on all scientific matters pertaining to the implementation of this Agreement.
4. The Commission, any Recovery Committee, any Management Committee [or any Party] may refer to the Scientific Council any question pertaining to the scientific basis for the recovery, conservation and management of any western Palearctic migratory species listed on Appendices A or B, and of their habitats.

The Commission [or any Party] may also refer to the Scientific Council any question pertaining to the scientific basis for the listing of any western Palearctic migratory species on Appendices A or B.

5. The Commission shall determine any other function of the Scientific Council as may be required.

VIII RECOVERY COMMITTEES AND MANAGEMENT COMMITTEES

1. The Commission may establish, from amongst the Parties, Recovery Committees for the recovery of species listed on Appendix A and Management Committees for the conservation and management of species listed on Appendix B.
2. The Commission may entrust the same Recovery Committee or Management Committee with the responsibility for the recovery, conservation and management of several western Palearctic migratory species or of groups of such species.
3. The rules laid down under Article VI paragraph 3 of this Agreement in respect of the voting procedure in the Commission shall apply in respect of the adoption of recommendations or proposals by Recovery Committees or Management Committees.
4. All Parties which are Range States of the species or group of species for which a Recovery Committee or a Management Committee is responsible shall be

members of that Recovery Committee or Management Committee. All other Parties may participate in meetings of a Recovery or Management Committee as observers.

5. Parties shall endeavour to appoint as their representatives in each Recovery Committee or Management Committee persons who are specialists in the biology, ecology and conservation and, where a Management Committee deals with harvested species, in the harvesting of the species for which that Committee is responsible.
6. When the same Recovery Committee or Management Committee is responsible for several species with different ranges, Parties that are not Range States of a particular species for which that Recovery Committee or Management Committee is responsible shall have in respect of that species the status of observers and shall be entitled to participate in any discussion relating to species of which they are not Range States but not to vote.
7. Rules of procedure for Recovery Committees and Management Committees shall be adopted by the Commission.
8. The first meeting of a Recovery Committee or of a Management Committee shall be convened by the Commission. Thereafter each Recovery Committee or Management Committee shall decide the date and place of its next meeting.
9. An emergency meeting of a Recovery Committee or of a Management Committee may be convened at any time by the Secretariat provided at least one half of the Parties that are members of such Recovery Committee or Management Committee so agree.
10. Where no Recovery Committee or Management Committee has been established, the functions exercised under this Agreement by a Recovery Committee or a Management Committee shall be exercised by the Commission.
11. Each Recovery Committee or Management Committee shall have the following functions in respect of the migratory species for which it is responsible:
 - (a) to keep under review the conservation status of such species;
 - (b) to prepare, adopt, keep under review, and update, as required, recovery plans or conservation and management plans;
 - (c) to keep under review measures taken by the Range States of such species to implement such recovery plans or conservation and management plans and to improve the conservation status of these species and of their habitats;
 - (d) to report to the Commission on the conservation status of such species and on the implementation of the recovery plans and conservation and management plans relating to these species;
 - (e) to make recommendations to Parties which are Range States of such species on any measure required to maintain these species in a favourable

conservation status or to restore them to such a status, and to implement recovery plans and conservation and management plans;

- (f) in respect of harvested species, to make proposals to Parties which are Range States of such species for the purpose of modulating the harvesting of these species;
 - (g) to make recommendations to the Commission on any matter relating to the recovery, conservation or management of such species or of any other species to which these species are associated;
 - (h) any other function as may be entrusted to it under this Agreement or by the Commission.
12. The Commission may, however, at any time, decide that it shall exercise itself any particular function entrusted under this Agreement to any Recovery Committee or Management Committee in respect of any or all species for which such Recovery Committee or Management Committee is responsible and it shall, thereafter, exercise such functions until such time as it may decide to entrust them to that Recovery Committee or Management Committee. Such decisions shall be taken by a two-thirds majority which shall include a two-thirds majority of the Parties which are Range States of the species concerned. No vote shall be taken unless there is a quorum of one half of such Range States.
13. Where the functions of a Recovery Committee or of a Management Committee are exercised by the Commission pursuant to paragraphs 10 or 12 of this Article, any decision or recommendation of the Commission in the exercise of these functions shall require, in addition to the requirement of Article VI, paragraph 3, the affirmative vote of at least one half of the Parties which are Range States of the species which is the object of the decision or of the recommendation present and casting affirmative or negative votes or, where such decision or recommendation relates to the adoption of a recovery plan or of a conservation and management plan pursuant to Article XIII, or to the adoption of proposals pursuant to Article XVII, paragraph 1, the affirmative vote of at least two-thirds of such Parties; no vote shall be taken unless there is a quorum of one half of the Range States concerned.

IX SECRETARIAT

1. For the purpose of this Agreement, a Secretariat shall be established.
2. Subject to the approval of the Conference of the Parties, the Secretariat shall be provided by the Secretariat of the Convention. In such an event, the Commission shall enter into an arrangement with the Conference of the Parties with a view to enabling the Secretariat of the Convention to discharge its functions under this Agreement.
3. If the Conference of the Parties does not provide the Secretariat, the Commission shall make alternative arrangements for the Secretariat.

4. The function of the Secretariat shall be:

- (a) to arrange for and service meetings of the Commission, the Scientific Council, Recovery Committees, Management Committees or of any other bodies established under this Agreement;
- (b) to maintain and promote liaison between the Parties and with the Conference of the Parties, the standing bodies set up under other *Agreements* and other international organizations concerned with migratory species;
- (c) to obtain from any appropriate source reports and other information which will further the objects and implementation of this Agreement and to arrange for the appropriate dissemination of such information;
- (d) to invite the attention of the Commission or of any Recovery Committee or Management Committee to any matter pertaining to the objectives of this Agreement;
- (e) to prepare for the Commission reports on the work of the Secretariat and on the implementation of this Agreement;
- (f) to maintain and publish a list of Range States of all western Palearctic migratory species included in Appendices A and B;
- (g) to maintain and publish a list of the recommendations and proposals adopted by the Commission, Recovery Committees and Management Committees;
- (h) to compile and publish a list of all exceptions made to the prohibitions referred to in Article X, paragraphs (a) and (b);
- (i) to provide for the general public information concerning this Agreement and its objectives; and,
- (j) to perform any other function entrusted to it under this Agreement or by the Commission.

X

GENERAL OBLIGATIONS

Parties to this Agreement shall take all appropriate and necessary legislative and administrative measures to ensure the conservation of the western Palearctic migratory species of which they are Range States. To that effect, they shall, in particular:

- (a) prohibit the taking and the possession of and domestic or international trade in migratory species listed in Appendix A to this Agreement.

Exceptions may only be made to this prohibition for scientific purposes, for the purpose of enhancing the propagation or survival of the affected species, or where extraordinary circumstances so require. Such exceptions shall be precise

as to content and limited in space and time and shall not operate to the disadvantage of the species. Parties shall inform the Secretariat and the appropriate Recovery Committee and report to the Commission on the nature, scope and effects of these exceptions;

- (b) prohibit the taking and possession of and the domestic or international trade in the western Palearctic migratory species listed in Appendix B to this Agreement, where such species are not harvested species; specific and limited exceptions to this provision may, however, be made by Parties for scientific, educational or propagative purposes, for the purpose of protecting against injury to persons or property, or for the purpose of preserving other species provided these exceptions are precise as to content and limited in space and time and do not affect unfavourably the conservation status of the species.

Parties shall inform the Secretariat and the appropriate Management Committee and report to the Commission on the nature, scope and effects of these exceptions;

- (c) in respect of harvested species listed in Appendix B, co-operate in the taking of regulatory measures with the view to maintaining the populations of these species at an optimum level of productivity and regulate the possession of as well as the domestic or international trade in such species;
- (d) prohibit or control strictly the disturbance of breeding animals of species listed in Appendices A or B in so far as such disturbances would be significant having regard to the objectives of this Agreement;
- (e) to the maximum extent possible, take all necessary and appropriate measures to identify and preserve the habitats of the species listed in Appendices A or B from detrimental alterations, pollution and other degradation;
- (f) take all necessary measures to prohibit or control the importation, exportation and establishment in the wild of live animals and plants that may affect unfavourably the conservation status of western Palearctic migratory species or their habitats;
- (g) co-operate in the development and implementation of recovery plans relating to the species listed in Appendix A and of conservation and management plans relating to the species listed in Appendix B, and implement such recovery plans and management plans to the best of their capability;
- (h) monitor the numbers and conservation status of all western Palearctic migratory species listed in Appendices A or B in areas under their jurisdiction at any time during the migration cycle of such species and communicate the results of such monitoring to the Secretariat;
- (i) monitor the effects of harvesting on the population levels and conservation status of harvested species and communicate the result of such monitoring to the Secretariat;
- (j) collect harvesting statistics and communicate such statistics to the Secretariat on a yearly basis;

- (k) submit to the Commission at each of its sessions a report on the conservation status of all species listed in Appendices A and B of which they are Range States, and of the habitats of such species, and on the measures they have taken to maintain or improve that conservation status on the basis of the recovery plans or conservation and management plans drawn up pursuant to this Agreement;
- (l) exchange, through the Secretariat, information on any migratory species of which they are Range States, special regard being paid to the exchange of the results of research and of relevant statistics;
- (m) communicate to the Secretariat copies of their legislation and regulations pertaining to the conservation and management of western Palearctic migratory species as well as, where applicable, to the harvesting of and trade in such species;
- (n) communicate to the Secretariat any information available to them on the illegal taking of or trade in western Palearctic migratory species and on the enforcement measures they have taken to suppress such taking or trade;
- (o) designate a National Authority which shall be concerned with the implementation of this Agreement, and inform the Secretariat of such designation.

XI HABITATS

1. Each Party shall, in respect of areas under its jurisdiction, make an inventory of all sites which are of importance for the recovery of species listed in Appendix A and for the conservation and management of species listed in Appendix B.
2. On the basis of such inventories and of any other relevant information, Recovery Committees and Management Committees shall, in consultation with the Scientific Council, identify the specific sites, hereinafter referred to as critical habitats, which are regularly used for breeding, wintering, feeding or moulting or as staging or resting areas or which, in the case of mountain passes, are overflowed at low altitude, by a substantial number of animals belonging to the species for which they are responsible, at any time during the migration cycle of such species. Critical habitats shall be listed in recovery plans and conservation and management plans together with the conservation measures that may be required to maintain, improve or restore them.
3. Recovery Committees and Management Committees may make recommendations to Parties which are Range States of the western Palearctic migratory species for which they are responsible with a view to conserving, improving or restoring the habitats and, in particular, the critical habitats of those species. They may, in that respect, recommend the establishment of protected areas as well as the taking of measures designed to protect such areas against any form of degradation.

4. Recovery Committees and Management Committees shall submit periodically to the Commission the list of those critical habitats they have identified and of the measures they have recommended to ensure their conservation.
5. On the basis of such lists, the Commission, with the advice of the Scientific Council, shall determine those critical habitats which require priority attention. It may recommend to the Range States concerned to take emergency measures for the conservation of such habitats and may approve a special financial allocation for that purpose.
6. Whenever the Commission is satisfied that appropriate conservation measures have been taken in respect of any habitat, and in particular any critical habitat of a western Palearctic migratory species listed in Appendix A or Appendix B to this Agreement, it may, with the consent of the Party concerned, designate that site as a Western Palearctic Migratory Species Refuge.
7. The Commission shall define criteria and establish procedures for such designations and, in the event of a serious degradation of such habitats, for the withdrawal of such designations.

XII

RECOVERY PLANS AND CONSERVATION AND MANAGEMENT PLANS

1. Each species listed in Appendix A to this Agreement shall be the subject of a recovery plan the purpose of which shall be to improve the conservation status of the species to which it applies to a point such that the species concerned be no longer in danger of extinction.
2. Each species listed in Appendix B to this Agreement shall be the subject of a conservation and management plan the purpose of which shall be to maintain or improve the conservation status of the species to which it applies.
3. Recovery Committees and Management Committees may request the scientific council to undertake investigations and conduct field surveys relating to the biology, ecology, migrations, habitat requirements and conservation of the species for which they are responsible as well as to the factors which are or may be the cause of the unfavourable conservation status of those species and shall use the results of such investigations and surveys as a basis for the preparation and, where required, updating of recovery plans or conservation and management plans.
4. Recovery plans and conservation and management plans shall constitute comprehensive statements of policies and goals which the Range States of the species concerned shall strive to implement and achieve to the best of their capability.

XIII

ADOPTION OF RECOVERY PLANS AND OF CONSERVATION AND MANAGEMENT PLANS

1. Recovery plans and conservation and management plans, and any subsequent amendment thereto, shall be adopted by the Recovery Committee or by the Management Committees concerned by a two-thirds majority of their members.
2. Recovery plans and conservation and management plans shall be kept under constant review and updated as required by the Recovery Committees or Management Committees concerned.
3. Once adopted, recovery plans and conservation and management plans shall be widely publicized among all the persons and organizations concerned in the Range States of the species to which they apply.
4. The Secretariat shall communicate to any Recovery Committee and Management Committee any information pertaining to the preparation or contents of a recovery plan or of a conservation and management plan which may be relevant to the species for which such Recovery Committee or Management Committee is responsible. Where required, co-ordination of recovery plans or conservation and management plans shall be achieved through joint meetings of the Recovery Committees or Management Committees concerned. Joint meetings may be convened by mutual agreement between the Recovery Committees or Management Committees concerned or by the Commission.
5. At each one of its sessions, the Commission shall review and co-ordinate recovery plans and conservation and management plans and may amend any such plans provided at least two-thirds of the Parties present and voting which are Range States of the species concerned agree to such amendments.

XIV

CONTENTS OF RECOVERY PLANS AND OF CONSERVATION AND MANAGEMENT PLANS

1. Recovery plans and conservation and management plans shall, where applicable, include, *inter alia*, the following elements:
 - (a) research into the ecology and population dynamics of the migratory species concerned, with special regard to migration;
 - (b) research into migration patterns, co-ordination of ringing programmes and analysis of ringing returns;
 - (c) monitoring of the abundance, mortality, population trends and conservation status of the species concerned, identification of factors which may be harmful to that status and monitoring of the effects of such factors;

- (d) conservation and, where required and feasible, restoration of the habitats of importance in maintaining a favourable conservation status for the species concerned;
 - (e) maintenance of a network of suitable habitats appropriately disposed in relation to the migration routes;
 - (f) where it appears desirable, proposed measures for the provision of new habitats favourable to the migratory species concerned or for the reintroduction of the migratory species into favourable habitats;
 - (g) identification of activities and obstacles which hinder or impede migration and proposed measures for the elimination, to the maximum extent possible, of such activities or obstacles or for their compensation;
 - (h) identification of already introduced exotic live animal and plant species that are detrimental to the migratory species concerned or to their habitat and proposed measures for the eradication or control of such species;
 - (i) Identification of substances and of sources of substances that may be harmful to the migratory species concerned, to their habitats or to the food chain of which they form a part and proposed measures for the prevention, reduction or control of the release of such substances into the habitats of these species;
 - (j) identification of any other factors which may affect unfavourably the conservation status of the migratory species concerned and proposed measures for the elimination of these factors;
 - (k) Identification of emergency measures and procedures to be put into effect whenever, in the eventuality of the occurrence of an event of exceptional gravity for the conservation status of the migratory species concerned, conservation action needs to be considerably and rapidly strengthened.
2. In respect of harvested species, conservation and management plans shall furthermore include, *inter alia*:
- (a) yearly monitoring of the breeding success of the harvested species concerned;
 - (b) provision of statistical returns on the harvesting of the species concerned in each of its Range States where such harvesting is authorized;
 - (c) provision of information on the illegal taking or trading of the species and proposed measures to suppress such taking or trading;
 - (d) proposed measures based on sound ecological principles to control and manage the harvesting of the species concerned on a sustainable long-term basis.
3. The Commission may invite any Recovery Committee or any Management Committee to include in any of the recovery plans or conservation and management plans relating to species for which such Recovery Committee or Management

Committee is responsible any other element it deems appropriate to further the recovery or the conservation and management of such species.

XV IMPLEMENTATION OF RECOVERY PLANS AND OF CONSERVATION AND MANAGEMENT PLANS

1. Recovery Committees and Management Committees may, on the basis of the recovery plans or conservation and management plans relating to the species for which they are responsible, make to any Party which is a Range State of such species, any recommendation they deem appropriate to further the objectives of such plans.
2. Parties agree to implement recommendations made by Recovery Committees or by Management Committees in pursuance of recovery plans or of conservation and management plans where such recommendations have been adopted by a two-thirds majority except where, in the opinion of a Party, compliance with such recommendations would create a clear and unwarranted hardship to its people and economy. In such an event, the Party concerned shall inform the Commission of the reasons why it is unable to implement the recommendation.

XVI HARVESTED SPECIES

1. (a) Any Party which authorizes the harvesting of a western Palearctic migratory species listed in Appendix B at the time of the depositing of its instrument of ratification, acceptance, approval or accession to this Agreement, and which has not made a reservation in respect of that species, shall, by written notification to the Depositary, make a declaration to the effect that it authorizes such harvesting on depositing such instrument of ratification, acceptance, approval or accession.
- (b) Any Party which authorizes the harvesting of a western Palearctic migratory species which has been included into Appendix B after this Agreement has entered into force in its respect shall, by written notification to the Depositary, make a declaration to that effect:
 - in the case of a species included into Appendix B pursuant to Article XXV, paragraph 1 of this Agreement, during a period of ninety days following the notification by the Secretariat of the inclusion of that species into Appendix B;
 - in the case of a species included into Appendix B pursuant to Article XXV, paragraph 2 of this Agreement, during the period of ninety days provided for by subparagraph 2(e) of that Article.

- (c) Any Party which authorizes the harvesting of a western Palearctic migratory species listed in Appendix B to this Agreement, and which has made a reservation in respect of that species, shall, by written declaration to the Depositary, make a declaration to that effect at the time of the withdrawal of such reservation.
- (d) The provisions of Article XVII of this Agreement shall become applicable to a harvested species in respect of a Party:
- where that Party has made no reservation in respect of the inclusion of the species concerned into Appendix B, on the date at which the declaration referred to in this paragraph has been received by the Depositary, or
 - where that Party has made a reservation in respect of the inclusion of the species concerned into Appendix B, ninety days after the withdrawal of such reservation.
2. Any Party which, after this Agreement has entered into force in its respect, proposes to authorize the harvesting of a species listed in Appendix B, when such species was hitherto unharvested by it, shall carry out a thorough appraisal of the foreseeable consequences of such proposed harvesting on the conservation status of that species and on the ecosystems of which that species forms a part and shall submit such appraisal together with a declaration of its intention to initiate harvesting to the Management Committee responsible for that species.
3. Where, in the opinion of the Management Committee, such appraisal clearly establishes that the conservation status of the species concerned will not be unfavourably affected by the proposed harvesting, the Party concerned may, by written notification to the Depositary, declare that species to be a harvested species and the provisions of Article XVII shall become applicable to such species in respect of such Party on the date at which that declaration was notified.
4. Where, in the opinion of the Management Committee, it appears from the appraisal that the conservation status of the species concerned may be unfavourably affected by the proposed harvesting, the Management Committee may recommend to the Party concerned to reconsider its intention to harvest the species.
5. The Party concerned shall, within ninety days of such recommendation, notify the Secretariat of its decision.

In the event where that Party decides not to accept the recommendation, it shall not initiate harvesting of that species for a period of one year starting from the date of the notification referred to above.

During that period, the Management Committee, in consultation with the Scientific Council, shall review and, where required, amend the management plan for the species concerned in the light of the new situation and shall recommend to any Party which is a Range State of that species the taking of any measures, or make any proposals consistent with the amended management plan, proper to

compensate for the proposed new harvesting of the species. Upon the expiration of this period, the Party intending to authorize the harvesting of the species in question may, by written notification to the Depositary, declare that it has authorized the harvesting of the species and the provisions of Article XVII shall become applicable to that species in respect of that Party on the date on which that declaration was notified.

6. Any Party which has made a declaration to the effect that it has authorized the harvesting of a species listed in Appendix B, may at any time, by written notification to the Depositary, declare that it has ceased to authorize the harvesting of that species, and the provisions of Article XVII shall cease to be applicable to that species in respect of that Party on the date of such notification.
7. The Secretariat shall maintain and keep up-to-date a list of all harvested western Palearctic migratory species and of the States which harvest them and shall communicate that list and any changes thereto to all Parties.

XVII

MANAGEMENT OF HARVESTED SPECIES

1. (a) Any Management Committee may, in respect of any harvested western Palearctic migratory species for which it is responsible, make proposals to Parties which harvest such species with a view to adjusting harvesting parameters, such as the sex, size, age or numbers of animals that may be harvested, at a level such that the conservation status of the species concerned shall remain favourable.
- (b) Subject to the provisions of this Article, Parties that are Range States of a harvested species shall give effect to any such proposal which has been adopted by the Management Committee concerned by no less than a two-thirds majority of such Parties.
- (c) Any such Party may within thirty days of the date of notice of a proposal adopted under sub-paragraphs (a) and (b) above, object to it and in that event shall not be under the obligation to give effect to the proposal.
- (d) If objections to a proposal are made by more than one-half of the Parties that are Range States of the harvested species which is the subject of that proposal, all the other Parties concerned shall be relieved forthwith of any obligation to give effect to that proposal but any or all of them may nevertheless give effect to it.
- (e) Any Party which has objected to a proposal may at any time withdraw that objection and shall then, subject to the provisions of sub-paragraph (d) of this paragraph give effect to the proposal within thirty days.
- (f) The Secretariat shall notify each Party immediately upon receipt of each objection and withdrawal.

- (g) Any proposal to which sub-paragraph (a) of this paragraph applies shall, subject to the provisions of this paragraph, become binding on Parties which are Range States of the harvested species which is the subject of that proposal thirty days after the date on which the proposal was adopted.
2. Subject to Article XXIII, paragraph 2 of this Agreement, Management Committees which are responsible for harvested species shall co-operate in all matters relating to the conservation and management of such species, including the preparation of conservation and management plans, with any international agency or body technically qualified in the harvesting of these species which has been admitted as an observer.

XVIII

WARNING OF SUBSTANTIAL THREATS

Parties shall exchange information on substantial threats to western Palearctic migratory species and shall in particular provide for the immediate warning of the Secretariat and of the designated National Authorities of the Parties concerned in case of substantial anticipated or existing damage to significant numbers of animals belonging to such species or the pollution or destruction of their habitat. The Commission shall establish necessary procedures for such warnings.

XIX

EMERGENCY MEASURES

1. The Commission, in consultation with the Scientific Council and on the basis of recovery plans and conservation and management plans, shall determine emergency measures to be taken by the Parties which are Range States of species listed in Appendices A or B for the purpose of considerably and rapidly strengthening conservation action in respect of these species in the eventuality of the occurrence of an event of exceptional gravity which is likely seriously to affect the conservation status of such species.

The Commission shall, in addition, establish criteria and procedures for the implementation of such measures as well as for determining the time at which these measures shall come into effect or will cease to be in effect.

2. Where the information available to the Secretariat conclusively shows that the criteria established for the coming into effect of the emergency measures and procedures to be determined under paragraph 1 above are fulfilled, the Secretariat shall inform forthwith the Parties concerned of that fact. The measures and procedures in question shall come into effect immediately thereafter and shall remain in effect until such time as has been determined by

such procedures unless the Recovery Committee or the Management Committee concerned decides otherwise.

3. Where the emergency situation relates to a harvested species, the time periods provided for in Article XVII, paragraph 2, shall be limited to five days.

XX

PUBLIC AWARENESS

Parties shall take all appropriate measures to make the general public aware of the contents and aims of this Agreement as well as of the contents and aims of any recovery plan or of any conservation and management plan relating to western Palearctic migratory species listed in Appendices A or B of which they are Range States.

XXI

RELATIONS WITH NON-PARTIES

1. The Commission shall draw the attention of any State which is a Range State of any western Palearctic migratory species listed in Appendices A or B and which is not a Party to this Agreement to any activity undertaken in areas under its jurisdiction or by its vessels which, in the opinion of the Commission, affects the implementation of the objectives of this Agreement.
2. The Secretariat shall keep all States which are Range States of western Palearctic migratory species listed in Appendices A or B, and which are not Parties to this Agreement, informed of any decision taken by the Commission or by any Recovery Committee or Management Committee regarding any species listed in Appendices A or B of which they are Range States and, in particular, of any approved recovery plan or conservation and management plan relating to such species.
3. The Commission shall endeavour to establish close liaison with all such non-Party States and may invite any of them to attend as observer any meeting of the Commission or of any Recovery Committee or Management Committee.
4. The Commission may also request any such non-Party State to provide information to the Secretariat on any western Palearctic migratory species of which it is a Range State, and, in particular, information pertaining to ringing returns, population levels and the conservation status of the species concerned and of its habitats, and, in respect of western Palearctic migratory species which they harvest, harvesting statistics and information on harvesting regulations relating to such species.

XXII

FINANCIAL MATTERS

1. The financial resources of the Commission shall consist of contributions made by Parties according to a scale agreed by the Commission and of any other resources which may be contributed by Parties, international governmental or non-governmental organizations, national non-governmental organizations or private persons.
2. Such financial resources shall be used to cover the costs incurred by the operation of the Secretariat and the holding of meetings, to assist in financing research into and monitoring of the status of western Palearctic migratory species, to promote the conservation and, when required, the restoration of habitats, and, in particular, of critical habitats and to carry out any other action designed to restore western Palearctic migratory species to a favourable conservation status or to maintain them in such a status.
3. The Commission shall explore financing possibilities and, in particular, the possibility of instituting a western Palearctic migratory species harvesting stamp, the proceeds of which should be used as a matter of priority to assist in the conservation and management of the habitats, in particular critical habitats of harvested species, and any other possible source of financing to assist in the conservation and management of such habitats in respect of unharvested species.
4. The Commission shall establish and keep under review the financial regulations of this Agreement. It shall, at each of its ordinary meetings, adopt the budget for the next financial period.

XXIII

OBSERVERS

1. The Conference of the Parties, any standing body established pursuant to an *Agreement*, the United Nations, its specialized Agencies, the International Atomic Energy Agency as well as any State not a party to this Agreement may be represented by observers at meetings of the Commission, Recovery Committees or Management Committees.
2. Any agency or body technically qualified in protection, conservation, management, or harvesting of migratory species, in the following categories, which has informed the Secretariat of its desire to be represented at a meeting of the Commission, of a Recovery Committee or of a Management Committee by observers, shall be admitted unless at least one third of the Parties present at the meeting in question object:
 - (a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

- (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

XXIV AMENDMENT OF THE AGREEMENT

1. This Agreement may be amended at any ordinary or extraordinary meeting of the Commission.
2. Proposals for amendment may be made by any Party.
3. The text of any proposed amendment and the reasons for it shall be communicated to the Secretariat at least one hundred and fifty days before the meeting at which it is to be considered and shall promptly be communicated by the Secretariat not less than sixty days before the meeting begins. The Secretariat shall, immediately after the last day for submission of comments, communicate to the Parties all comments submitted by that day.
4. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
5. An amendment adopted shall enter into force for all Parties which have accepted it on the first day of the third month following the date on which two-thirds of the Parties have deposited an instrument of acceptance with the Depository. For each Party which deposits an instrument of acceptance after the date on which two-thirds of the Parties have deposited an instrument of acceptance, the amendment shall enter into force for that Party on the first day of the third month following the deposit of its instrument of acceptance.
6. Any Party which has become a Party to this Agreement after an amendment has entered into force in accordance with this Article shall be deemed to have accepted that amendment.

XXV AMENDMENT OF APPENDICES

1. (a) Where, after the entry into force of this Agreement, Appendices I or II to the Convention have been amended to include into any of these Appendices any additional western Palearctic migratory species, Appendices A or B of this Agreement shall be amended correspondingly.
- (b) The corresponding amendment shall come into force for all Parties which are Parties to the Convention in respect of such species, and for all Parties which

are not Parties to the Convention in respect of such species and which have not made a reservation in accordance with sub-paragraph (d) of this paragraph, ninety days after the amendment to Appendices I or II to the Convention has come into force.

- (c) The Secretariat shall notify all Parties of the adoption of any amendment to Appendices I or II to the Convention relating to the inclusion into any of these appendices of a western Palearctic migratory species as well as of the date on which that amendment will come into force.

The Secretariat shall notify the Depositary and all Parties of any amendment made to Appendices A or B pursuant to this Article.

- (d) During the period of ninety days referred to in sub-paragraph (b) of this paragraph, any Party which is not a Party to the Convention in respect of the western Palearctic migratory species which has been the object of an amendment to an Appendix to that Convention may, by notification in writing to the Depositary, make a reservation with respect to the corresponding amendment to an Appendix to this Agreement.

- (e) When a Party has made a reservation in respect of an amendment to Appendices A or B to this Agreement with respect to the inclusion into any of these Appendices of a western Palearctic migratory species in respect of which it is not a Party to the Convention and where subsequent to the making of that reservation, that Party becomes a Party to the Convention in respect of that species, the reservation shall be deemed to be withdrawn and shall cease to have effect on the date at which that Party became a Party to the Convention in respect of that species.

The Secretariat shall inform the Depositary and all Parties of any such withdrawal of a reservation and of the date on which such reservation will cease to be in effect.

- (f) In the event where a western Palearctic migratory species listed in Appendices I or II to the Convention has been deleted from any one of these Appendices by the Conference of the Parties, such species shall remain listed on the corresponding Appendix to this Agreement until it is deleted from that Appendix by the Commission according to the procedure laid down in paragraph 2 of this Article.
2. (a) Appendices A and B to this Agreement may also be amended at any ordinary or extraordinary meeting of the Commission provided that no species listed in Appendix I to the Convention shall be deleted from Appendix A and that no species listed in Appendix II to the Convention shall be deleted from Appendix B as long as such species have not been deleted from Appendix I or from Appendix II to the Convention.
 - (b) Subject to sub-paragraph 2(a) of this paragraph, proposals for amendment may be made by any Party.
 - (c) The text of any proposed amendment and the reasons for it, based on the best scientific evidence available, shall be communicated to the Secretariat

at least one hundred and fifty days before the meeting and shall promptly be communicated by the Secretariat to all Parties. Any comments on the text by the Parties shall be communicated to the Secretariat not less than sixty days before the meeting begins. The Secretariat shall, immediately after the last day for submission of comments, communicate to the Parties all comments submitted by that day.

- (d) Amendments shall be adopted by a two-thirds majority of Parties present and voting.
 - (e) An amendment to the Appendices shall enter into force for all Parties ninety days after the meeting of the Commission at which it was adopted, except for those Parties which make a reservation in accordance with sub-paragraph (f) of this paragraph.
 - (f) During the period of ninety days provided for in sub-paragraph 2(e) of this paragraph, any Party may by notification in writing to the Depositary, make a reservation with respect to the amendment.
3. A reservation to an amendment may be withdrawn by written notification to the Depositary and thereupon the amendment shall enter into force for that Party ninety days after the reservation is withdrawn.

XXVI

EFFECTS ON DOMESTIC LEGISLATION

The provisions of this Agreement shall in no way affect the rights of Parties to adopt stricter domestic measures concerning the conservation of western Palearctic migratory species listed in Appendices A and B and of their habitats or to adopt domestic measures concerning the conservation of species not listed in Appendices A and B and of their habitats.

XXVII

CETACEA

Pursuant to Article V4(f) of the Convention,

- (a) this Agreement shall be open to any State in respect of species of Cetacea;
- (b) any taking of any such species which is not permitted for that species under any other multilateral agreement shall be prohibited;
- (c) all Parties shall have the right to attend with full voting rights any meeting of the Commission, the Scientific Council, any Recovery Committee or any Management Committee dealing with species of Cetacea, to participate in the develop-

ment and adoption of any recovery plan or management plan and to vote on any recommendation or proposal relating to such species.

XXVIII RESERVATIONS

1. The provisions of this Agreement shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Article XXV.
2. Any State or any regional economic integration organization may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to the presence in either Appendix A or Appendix B to this Agreement or in both such Appendices, of any western Palearctic migratory species which is not listed at that time in Appendix I or Appendix II to the Convention or in both such Appendices.
3. Any State or any regional economic integration organization which is not, at the time of ratification, a Party to the Convention in respect of any western Palearctic migratory species listed in Appendix I or Appendix II to the Convention or in both such Appendices may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to the presence of such western Palearctic migratory species in either Appendix A or Appendix B to this Agreement or in both such Appendices.
4. A State or a regional economic integration organization which has entered a reservation according to the provisions of this Article shall not be regarded as a Party in regard of the western Palearctic migratory species which has been the subject of that reservation until ninety days after the Depositary has transmitted to the Parties notification that such reservation has been withdrawn.

E EXPLANATION OF CERTAIN INDIVIDUAL PROVISIONS

1. Article II c)

Article VIII.5(a) of the Bonn Convention provides that the Scientific Council may, if approved by the Conference of the Parties, provide scientific advice to any body set up under an *Agreement*. It is therefore expected that the Scientific Council established under the Bonn Convention will provide the scientific advice required under this Agreement. This is, however, subject to the approval of the Conference of the Parties which cannot be prejudged. It was, therefore, necessary to provide for a possible refusal by the Conference of the Parties to authorize its Scientific Council to perform this function. In such an event, a separate Scientific Committee under this Agreement would have to be set up.

2. Article II d)

This provision is merely designed to avoid repeating the definition of a certain number of terms which already appear in the Bonn Convention. These are: "Migratory species", "Conservation status of a migratory species", "Favourable conservation status", "Unfavourable conservation status", "Endangered", "Range", "Habitat", "Range State", "Taking" and "Agreement". All these terms are used in the proposed Agreement with the same meaning as in the Bonn Convention.

3. Article II e)

In order to be able to list western Palearctic migratory species the Western Palearctic Region has to be defined. There are no difficulties in determining the western and northern limits of the region. The southern boundary is constituted by the Sahara desert and can, for all practical purposes, be deemed to coincide with the 30th degree of latitude north. The eastern limit, however, may be open to interpretation. From the purely scientific point of view, the Western Palearctic only extends to 45° east, where it blends into the Mid-Palearctic which extends in turn up to 90° east (Moreau, the Palearctic-African Bird Migration Systems). It happens, however, that the breeding species in the Mid-Palearctic are nearly all the same as in the West-Palearctic and that many West-Palearctic and Mid-Palearctic breeding birds migrate to Africa whereas, on the other hand, birds breeding in the East-Palearctic, that is to say east of 90° east, nearly all migrate to southern Asia. From the point of view of populations management, therefore, it could be worthwhile to deal with the Western and Mid-Palearctic as a single unit comprising all Palearctic birds migrating to Africa. On the other hand, it could be argued that the region to be covered and, as a result, the number of prospective parties to the Agreement would be too large and that an effective operation of the Agreement would, as a consequence, be more difficult to achieve. In any event, it was felt that this would require a political decision on the part of the diplomatic conference at the time of the negotiation of the Agreement.

Several alternatives are therefore presented with regard to the eastern limit of the region:

(a) 45° east

This is in line with the scientific definition of the West-Palearctic but leaves out part of Europe.

(b) 60° east

This limit coincides with the Ural mountains, the whole of Europe would therefore be covered.

(c) 90° east

This limit would allow to cover almost all bird populations migrating to Africa.

4. Article III

The Agreement may either be open to all States or only to the parties to the Bonn Convention. Each one of these alternatives has advantages and disadvantages. A fully open Agreement would be consistent with Article V.2 of the Bonn Convention which provides that each Agreement should be open to all Range States, whether or not they are parties to the Convention, but may deter some States from acceding to that Convention, which they could feel to be of little use to them. This may result in a large number of parties to the Agreement and a much smaller number of parties to the Convention, and would undoubtedly harm the Bonn Convention. An Agreement closed to all States except those that are Parties to the Bonn Convention would prevent some States, which, for reasons of their own, may not wish to accede to the Bonn Convention, to accede to the Agreement. Furthermore, it would conflict with Article V.2 of the Convention. A compromise is therefore proposed. The Agreement should in principle be limited to the Parties to the Bonn Convention, but exceptions could be made if all the parties to the Agreement so agree.

5. Article IV

A link is established between the Bonn Convention and the Agreement in that any listing of a western Palearctic migratory species on one of the Convention appendices will automatically be reflected by the listing of the same species on the corresponding appendix to the Agreement. Parties to the Agreement are, however, free to add species to the Agreement appendices as they wish. They cannot, however, delete species from these appendices as long as they remain listed on the convention appendices.

As in the Bonn Convention, provision is made to allow for the possibility to list species on both appendices.

6. Article V

This Article is designed to give to the organization established under the Agreement the legal personality and capacity required to perform its duties. Omission of such a provision in earlier conservation treaties, in particular in CITES, has resulted in practical difficulties. Paragraph 3 of this Article is a verbatim transcription of Article II.3 of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

7. Article VI

The Bonn Convention, in Article V.4(d) refers to the requirement of establishing, if necessary, appropriate machinery to assist in carrying out the aims of an *Agreement*, to monitor its effectiveness and to prepare reports for the Conference of the Parties. The proposed Commission is, therefore, designed to achieve these purposes. The functions of the Commission are for a large part based on the provisions of Article V of the Bonn Convention. It is envisaged that the Commission will meet every three years only and that its meetings be held in conjunction with the meetings of the Conference of the Parties to the Bonn Convention. This should minimize costs as parties would normally send the same representatives to both meetings.

8. Article VII

The scientific advisory function to the Commission will normally be carried out by the Scientific Council to the Bonn Convention. This will, however, be subject to the approval of the Conference of the Parties (see explanation for Article II c) above).

The question may arise as to whether individual parties should be entitled to put questions to the Scientific Council. In the Bonn Convention, this is subject to the approval of the Conference of the Parties. It would seem, therefore, that in an Agreement under the Convention the provision of scientific advice to individual parties should be subject to the approval of the Commission. This may, however, entail considerable delays. The two alternatives have, therefore, been incorporated in the proposed draft for further discussion.

9. Article VIII

It is intended that, as a rule, the actual management of listed species will be carried out by specialized Committees. These Committees are called Recovery Committees when they deal with Appendix A Species and Management Committees if they are concerned with Appendix B Species. The name Recovery Committee is designed to emphasize the importance of eliminating the danger of extinction for Appendix A species.

The same Recovery Committee or Management Committee may naturally be responsible for several species. Thus, there could be a Committee for waders, one for ducks and geese, one for birds of prey, etc. All parties that are Range States of a species dealt with by a Committee must necessarily be members of that Committee and only Range States are entitled to vote on matters relating to that species. As a result, when a Committee is responsible for several species, its actual membership will vary according to the species being considered. Non-Range States will have the status of observers. These flexible arrangements are designed to allow Committees to deal with as many related species as possible and at the same time to avoid situations where a majority of non-Range States would dictate their views to a minority of Range States.

The main tasks of the Committees will be the preparation, adoption and implementation of recovery plans or management plans, the submission of recommendations to Range States and, in the case of harvested species, the submission of proposals for the purpose of modulating the harvesting of these species. Recovery Committees and Management Committees are established by the Commission. The Commission may, however, decide not to establish any particular Committee or to exercise itself some of the functions of a Committee such as, for instance, the adoption of a management plan or the submission of proposals relating to harvesting.

In such a case, decisions of the Commission related to the species concerned shall require not only a majority vote of Commission members but also a vote by simple majority, and in certain cases, by a two-thirds majority, on the part of the Range States of that species.

10. Article IX

In order to save on secretariat costs and to provide the best possible coordination between the Bonn Convention and the Agreement, it is proposed that secretariat services be provided by the Secretariat established under the Convention. Since, however, this is a matter which must be decided upon by the Conference of the Parties to the Convention, provision is made in paragraph 3 of this Article to empower the Commission to make alternative arrangements for the Secretariat should the Conference of the Parties decide not to provide it.

The functions of the Secretariat, as listed in paragraph 4, parallel the functions of the Convention Secretariat as laid down in Article IX of the Convention.

11. Article X

This Article lays down the general obligations of the parties under the Agreement. The most important of these obligations can be analysed as follows:

(a) *Taking*

The taking of all Appendix A species and of all Appendix B species which have not been declared harvested species is prohibited. With respect to harvested species, parties undertake to co-operate with the view to maintaining the populations of these species at an optimum level.

(b) *Possession and Domestic Trade*

The possession of and domestic trade in animals and products of Appendix A species and of unharvested Appendix B Species is likewise prohibited. As regards harvested species, possession and trade must be regulated.

(c) *International Trade*

International trade in Appendix A and unharvested Appendix B species is also prohibited. In the case of harvested species it must be regulated. These provisions go beyond the prohibitions established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in that the CITES only apply to the species listed in the CITES appendices and would not, as a result, apply to many of the species covered by the Agreement.

(d) *Habitats*

There is a general obligation to preserve the habitats of all listed species from any form of degradation.

(e) *Recovery Plans and Management Plans*

Parties must co-operate in the development and implementation of recovery plans for Appendix A species and management plans for Appendix B species.

(f) *Monitoring*

Parties must monitor the numbers and conservation status of all listed

species and the effects of harvesting on harvested species; they must collect harvesting statistics.

(g) *Alien Species*

Parties must prohibit or control the introduction of alien species that may affect unfavourably the conservation status of migratory species or their habitats.

(h) *National Authorities*

Each party must designate a national authority to implement the Agreement.

12. Article XI

Protection of habitats is recognized as the key factor for the protection of species. As regards migratory species, there is obviously a requirement to protect important habitats all along the migration route of the species from breeding areas to feeding and wintering areas. Thus, international co-operation in the preservation of habitats is essential.

Obligations of parties under the proposed Agreement include:

- (a) the making of inventories of habitats that are important for the recovery, conservation and management of listed species;
- (b) the identification of specific sites, referred to as critical habitats, which are used by a substantial number of animals belonging to listed species at any time during their migration cycle;
- (c) the preservation of these habitats from detrimental alterations, pollution and other degradation. (This obligation appears in Article X (e)).

Recovery Committees and Management Committees may make recommendations to parties with a view to conserving the habitats of listed species. They may, in particular, recommend the establishment of protected areas. They must submit periodically to the Commission a list of the critical habitats they have identified and of the conservation measures they have recommended. This should enable the Commission to obtain a comprehensive picture of the status of habitats throughout the region and to determine which habitats require priority attention. It is proposed that the Commission be empowered to allocate funds to assist parties in complying with its recommendations. It is also suggested that when appropriate conservation measures have been taken, certain habitats could be designated by the Commission as Western Palearctic Migratory Species Refuges, as a token of recognition of their international importance and of the efforts made by the parties concerned to preserve them.

13. Article XII

One of the most important provisions of the proposed draft Agreement is the requirement to prepare recovery plans and conservation and management plans. Such plans must obviously be based on the result of research. Recovery Com-

mittees and Management Committees are, therefore, empowered to request the Scientific Council to carry out the necessary investigations and field surveys.

Recovery plans and conservation and management plans should not be considered as binding instruments. They constitute, however, comprehensive statements of policies and goals which the Range States of the species concerned must strive to implement and achieve to the best of their capability.

14. Article XIII

Recovery plans and conservation and management plans, in view of their importance as policy instruments, should be adopted by as many as possible of the Range States concerned. It is, therefore, proposed that they be approved by a two-thirds majority of these States.

Once adopted, however, plans may have to be revised in the light of changing conditions, the result of new research or modifications in the status of the species concerned or of its habitat. It is, therefore, provided that recovery and management plans be kept under constant review and updated as required.

Finally, It may be necessary to co-ordinate management plans relating to related species or to species sharing the same habitats. This can be achieved by joint meetings of the Committees concerned or by the Commission.

15. Article XIV

This proposed Article describes the various factors which recovery plans and conservation and management plans must take into consideration, including research, monitoring, habitat conservation, identification of threats to the species concerned and their habitats, proposed measures to meet these threats, proposed emergency procedures and, in the case of harvested species, proposed measures to control and manage the harvesting of these species on a sustainable long-term basis.

16. Article XV

Recovery Committees and Management Committees are empowered to make recommendations to parties that are Range States of the species they are responsible for with a view to furthering the objectives of recovery plans and conservation and management plans. These recommendations can be addressed directly to the parties concerned. They do not need to be submitted first to the Commission, unless the Commission decides otherwise. When a recommendation has been adopted by a two-thirds majority of the Range States concerned, either in a Recovery or Management Committee or in the Commission, it is proposed that such States should consider the recommendation as binding except when compliance with such a recommendation would create a clear and unwarranted hardship to their people and economy.

17. Article XVI

Desirable as it may be from the point of view of conservation, it does not seem that it will be possible to reach agreement on a common list of harvestable species. It is, therefore, proposed that parties remain free to authorize the

harvesting of any Appendix B species provided they make a declaration to that effect by written notification to the Depositary.

Two situations may occur in this respect:

- A State already authorizes the harvesting of a species at the time it becomes a party to the proposed Agreement.
- A State does not authorize such harvesting but subsequently decides that it wishes to authorize it.

Harvesting already authorized.

Two cases may arise:

- (a) The species the harvesting of which is authorized is listed on Appendix B at the time a State becomes a party to the proposed Agreement:
 - (1) If that State has not entered a reservation in respect of that species, it must make a declaration to the Depositary to the effect that it authorizes the harvesting of that species on depositing its instrument of ratification, acceptance, approval or accession.
 - (2) If the State has entered a reservation in respect of that species, and subsequently decides to withdraw its reservation, it must take a similar declaration at the time of the withdrawal of that reservation.
- (b) The species the harvesting of which is authorized is added to Appendix B after a State has become a party to the proposed Agreement:
 - (1) If that State has not entered a reservation in respect of that species, it must make a declaration to the Depositary, within a certain time period, to the effect that it authorizes the harvesting of that species.
 - (2) If that State has entered a reservation in respect of that species, it must make a similar declaration at the time of the withdrawal of its reservation.

Proposed harvesting of species hitherto unharvested:

It was felt that States should remain free to decide upon becoming a party to the proposed Agreement, which should be the species the harvesting of which they would authorize. It was also considered, however, that if a State that did not authorize the harvesting of a species at the time it became a party subsequently wished to allow it, such a decision could well affect the conservation status of that species and entail alterations to its management plan.

For that reason, it is proposed to establish a procedure providing for an appraisal of the consequences of the proposed harvesting and allowing for the modification, if required, of the management plan before harvesting is initiated.

The various steps in the procedure are as follows:

- (a) The party which intends to initiate harvesting submits to the Management Committee concerned a declaration of its intention together with a

thorough appraisal of the foreseeable consequences of the proposed harvesting on the conservation status of that species and of its habitat.

- (b) The Management Committee considers the proposal.
 - (1) If it appears that the proposed harvesting will not affect unfavourably the conservation status of the species concerned, the party may, by written notification to the Depositary, declare that species to be a harvested species.
 - (2) If, on the other hand, it is the opinion of the Management Committee that the conservation status of the species may be unfavourably affected by the proposed harvesting, it may recommend to the party concerned to reconsider its proposal.
- (c) The party concerned must then decide, within a time period of 90 days, whether or not it will initiate harvesting and notify the Secretariat accordingly.
- (d) If, notwithstanding the recommendations of the Management Committee, the party concerned decides that it will initiate harvesting, it will have to refrain from doing so for a period of one year during which the Management Committee will review and, when required, amend the management plan. At the end of that period, the party concerned may notify the Depositary that it has authorized the harvesting of the species concerned.

To sum up, parties remain, here again, free to harvest any Appendix B species but they have to follow a procedure allowing for sufficient time to review and possibly amend management plans before they can initiate harvesting.

18. Article XVII

A migratory species constitutes a resource which is shared by all its Range States. If sustainable harvesting is to be achieved, concerted action is required on the part of these States to avoid over-exploitation, to determine a maximum permissible harvesting level, and, when required, to allocate national quotas. The proposed Agreement does not purport to lay down detailed regulations to that effect. It was indeed felt that the type of regulations required would vary according to the conservation status of the species and the results of research and monitoring. A procedure is therefore proposed empowering Management Committees or, if the Commission so decides, the Commission itself, to make proposals to the parties with a view to adjusting harvesting parameters at a level such that the conservation status of the species concerned will remain favourable.

This procedure is directly derived from similar procedures which have now been successfully operating for several decades under international fishery agreements where almost identical problems arise. It can be described as follows:

- (a) Proposals for the adjustment of harvesting parameters must be adopted by the competent Management Committee, or when there is no Management

Committee or when this function has been retained by the Commission, by the Commission itself.

Adoption of a proposal requires a two-thirds majority of the parties that are Range States of the species concerned.

- (b) Once adopted, a proposal becomes binding on all parties that are Range States of that species.
- (c) Any of these parties may, however, object to a proposal within thirty days of the date of its adoption; parties that have lodged an objection are not under the obligation to give effect to the proposal.
- (d) If objections to a proposal are made by more than one half of the parties concerned, all other such parties are relieved from their obligation to give effect to the proposal.
- (e) Any party that has objected to a proposal may at any time withdraw that objection.

Paragraph 2 of this Article establishes a requirement of co-operation between organizations whose members harvest migratory species, for example hunting organizations, and the Management Committees concerned. This provision is designed to ensure that these organizations be fully informed of the problems relating to the conservation of harvested species and, conversely, that harvesting interests be taken into consideration in the preparation and implementation of management plans and in the submission and adoption of binding proposals.

19. Article XVIII

This Article provides for an obligation for the parties to exchange information on substantial threats to western Palearctic migratory species of which they may have been informed. It is derived from Article V.5(b) of the Bonn Convention.

20. Article XIX

The Bonn Convention provides that "emergency procedures whereby conservation action would be considerably and rapidly strengthened when the conservation status of a migratory species is seriously affected" should be provided for in *Agreements*. In view of the difficulty to establish clear, effective, and rapid procedures to cater to the needs of the many different species listed in the Appendices it was thought that it would be better to leave it to the Commission to decide on the details of these procedures and on the measures to be taken under them. The draft Agreement therefore provides only for a framework which consists in a requirement for Management Committees to identify in management plans the type of emergency measures and procedures which are the best adapted to the species they are responsible for and a requirement for the Commission to determine on the basis of management plans, the nature of the measures that will have to be taken and to decide on the criteria and procedures required to apply these measures. When the criteria thus established are met,

the procedures and measures thus determined shall come into effect automatically subject to decisions to the contrary by the Management Committees concerned.

21. Article XX

This Article is derived from Article V.5(a) of the Bonn Convention which provides that *Agreements* should make the general public aware of their contents and aims.

22. Article XXI

It is clear that the recovery, conservation and management of migratory species can only be achieved through the fullest possible co-operation of all their Range States. Should, therefore, certain Range States of western Palearctic migratory species decide not to become a party to the proposed Agreement, the fulfillment of these objectives could be seriously jeopardized. This problem has been recognized during the negotiation of recent treaties relating to the conservation and management of other shared resources such as fisheries and, as a result, certain provisions have been adopted to endeavour to remedy this problem in a way compatible with international law and with the sovereignty of non-party States.

The provisions of Article XXI are designed to associate as closely as possible non-party States to the work of the Commissions and Recovery and Management Committees with a view to keeping them fully informed of the status of the migratory species concerned and of the conservation measures proposed and to obtaining from them any information that may be required to assist in the recovery, conservation and management of these species. The ultimate aim of these provisions is that, through this close association, non-parties will eventually be persuaded to accede to the Agreement.

Paragraph 1 of this Article is derived from Article XIX of the Convention on Future Multilateral Co-operation in the North-West Atlantic Fisheries. It empowers the Commission to draw the attention of any non-party which is a Range State of a listed species to any activity undertaken in areas under its jurisdiction or by its vessels which affects the implementation of the objectives of the Agreement.

Paragraphs 2, 3 and 4 provide for the exchange of information and empower the Commission to invite non-parties as observers to any meeting of the Commission, Recovery Committees or Management Committees.

23. Article XXII

If the proposed Agreement is to serve a useful purpose in the recovery, conservation and management of listed species, police measures such as the prohibition or control of the taking of these species or the mere establishment of protected areas will not be sufficient.

Indeed, there will be a requirement for more active measures such as research and monitoring activities and the restoration and management of suitable

habitats, in particular critical habitats. In view of the migration pattern of many western Palearctic migratory species, many of these activities will necessarily have to be carried out in some of the less developed of the Range States concerned where important bird wintering areas are located. It would seem, therefore, fair to develop some form of an internationally agreed financing scheme to assist these Range States to take the conservation measures required for the benefit of all.

It was felt, on the other hand, that this was a complex matter, with political implications, requiring thorough consideration on the part of all Range States concerned, that it would be difficult, therefore, to embody from the start in the text of the proposed Agreement any hard and fast rule relating to that matter, and that it would be preferable to give to the Commission the freedom to decide which sort of a financing scheme would be the most appropriate in the light of conservation requirements and of the political will of the parties to meet these requirements. The proposed paragraph 3 of this Article, therefore, merely gives the mandate to the Commission to explore financing possibilities and points out two possible methods which could be used separately or in combination: the establishment of a fund to which parties and non-governmental organizations could contribute, on a voluntary or compulsory basis and/or the institution of a western Palearctic migratory species stamp which could be bought by individual hunters of those species.

This list of possibilities is, of course, not exhaustive and the Commission will, no doubt, be able to examine other alternatives.

In addition, there is a requirement to finance the administrative costs incurred under the proposed Agreement such as the functioning of the Secretariat and the holding of meetings. This can be done through the usual system of national contributions according to a scale agreed upon by the Commission.

24. Article XXIII

This proposed Article lays down the rules for the admission of observers. These rules are the same as those appearing in paragraphs 8 and 9 of Article VII of the Bonn Convention. In addition, however, a special mention is made of agencies and bodies technically qualified in the harvesting of migratory species as it was thought that the representatives of hunters' organizations should have the right to participate in any discussion relating to the management of harvested species.

25. Article XXIV

Paragraphs 1 to 5 of this proposed Article are directly derived from Article X of the Bonn Convention. Paragraph 6 has been added to establish clearly that once an amendment to the Agreement has come into force any State becoming a party to the Agreement is becoming a party to the amended Agreement.

26. Article XXV

This proposed Article lays down the rules for the amendment of the appendices. Two cases have to be distinguished:

(a) *Automatic amendments to the Agreement appendices resulting from amendments to the Bonn Convention appendices:*

Parties to the Agreement which are also parties to the Convention cannot make reservations to these amendments since they had the opportunity to do so under the Convention.

Parties to the Agreement which are not parties to the Convention or which, being parties to the Convention, have entered a reservation in respect of a particular species and are therefore not considered to be parties to the Convention in regard to that species may enter reservations in respect of the listing of the species concerned on the appendices to the Agreement.

If, however, subsequently, such a party accedes to the Bonn Convention without entering a reservation in respect of that species, or having made a reservation decides to withdraw it, the reservations that had been entered by that same party with regard to that same species on the Agreement appendices will be deemed to have been automatically withdrawn. In other words, it is not possible to make a reservation on a species listed on the Agreement appendices if no similar reservation has been entered in respect of the same species on the Convention appendices.

The reason for this is that if such practices were allowed, listings under the Bonn Convention would soon become meaningless.

On the other hand, parties may, even though they have entered a reservation under the Convention, decide not to do so in respect of the same species under the Agreement.

Finally, the automatic amendment of the Agreement appendices following the amendment of the Convention appendices applies only to the addition of species. The following rules apply to deletions:

- (1) No species can be deleted from the Agreement appendices if they have not been first deleted from the corresponding Convention appendix.
- (2) When such a deletion has been effected, there is no automatic corresponding deletion from the Agreement appendices; to do so requires a decision by the Commission.

(b) *Addition or deletion of species not listed on the Convention appendices.*

Parties may also list on the Agreement appendices, and subsequently delete from these appendices, any western Palearctic migratory species other than those already listed on the appendices to the Convention. The procedure relating to such listings and delistings as well as to the entering and withdrawal of reservations are directly derived from the corresponding provisions of the Bonn Convention (Article XI).

27. Article XXVI

This proposed Article is directly derived from Article XII, paragraph 3 of the Bonn Convention.

28. Article XXVII

This provision is necessary to meet the requirements of the Bonn Convention (Art. V.4(8)) which establishes certain special rules in respect of Cetacea. The effect of this is that the membership of Recovery Committees and Management Committees dealing with Cetacea will be open to all interested parties not only to Range States and that any party may participate in any decision relating to these species.

29. Article XXVIII

This proposed Article is directly derived from Article XIV of the Bonn Convention.