



MedWet

L'initiative pour les zones humides méditerranéennes
The Mediterranean Wetlands Initiative
مبادرة المناطق الرطبة المتوسطية

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Item 4 – The legal status of MedWet

Background

1. The current MedWet Coordinator, since his appointment as Secretary General of the Ramsar Convention (1995-2003), has been concerned with the legal status of MedWet, or in fact *the lack of a legal status of MedWet*. He has raised this concern on many occasions both with the MedWet/Com and with the Greek Government when the MedWet Secretariat was established in Athens.
2. So far, apart from some discussions in the MedWet Steering Group some time back, apparently MedWet members, governments and other members have been reluctant to pay attention to this question and, thus, to try to find a solution.
3. The MedWet Secretariat obtained a legal status in Greece and now in France as a non-for-profit organization whose members are a limited number of individuals, always very connected with MedWet.
4. Nevertheless, the Mediterranean Wetlands Initiative, as such, *does not have a legal status*. MedWet is in fact no more (and it could be said no less) than an informal network of governments, international organizations, and non-governmental organizations that have agreed to work together for a common cause. There is no formal legal and registered document that gives legal existence to this network.
5. The existing MedWet Terms of Reference represent a series of rules that the members of the network have adopted to facilitate their cooperation.
6. And the recognition of MedWet by Resolutions of the Conference of the Parties to the Ramsar Convention as one of its Regional Initiatives does not constitute a form of legal status.

7. It can be argued that this lack of a legal status has not prevented MedWet from operating in the regional arena and from making a useful contribution towards its main objective: to contribute to the conservation and sustainable use of Mediterranean wetlands.
8. On the other hand, however, this lack of a legal status may be at the root of MedWet ups and downs and of it, at times, perceived unclear position in the regional arena.
9. This situation has also been at the origin of some questioning from the national administrations when it comes to paying contributions to the MedWet budget.
10. It also may have implications when it comes to signing formal agreements with donors and other institutions.

Possible solutions

11. The current MedWet Coordinator has persisted in his concern about the legal status of MedWet and has sought advice from different expert institutions and individuals.
12. As a result of his enquiries, he finally requested two professors of International Public Law from the Autonomous University of Madrid, Dr. Rosa M. Fernández Egea and Dr. Esther López Barrero, to prepare a “Report on the possible international legal status of the MedWet Initiative”, which appears in Annex I.
13. Concerning the possible legal status for MedWet, the report presents the pros and cons of the following alternatives:
 - a) MedWet could become an International Governmental Organization (IGO), such the Regional Fisheries Management Organizations, the Union for the Mediterranean, the International Tropical Timber Organization, and the Inter-Parliamentary Union; or
 - b) become a *de facto* IGO, such as the Multilateral Environmental Agreements (MEAs); or
 - c) become an international non-governmental organization (INGO) such as the International Union for Conservation of Nature (IUCN), which “is constituted in accordance with Article 60 of the Swiss Civil Code as an international association of governmental and non-governmental members. Therefore it has legal personality and may perform any act in conformity with its objectives.” It should be noted that in spite of a lack of a formal “host country agreement” between IUCN and Switzerland, the Swiss government is providing to the organization the following advantages, among others:
 - i) it has provided IUCN with a headquarters building specifically built for the Union, which accommodates more than 200 employs (including the Ramsar Secretariat);
 - ii) it donates to IUCN and Ramsar the Swiss income tax paid by ALL foreign employees, which are the majority in the staff (Ramsar and IUCN staff are subject to Swiss labour laws and consequently all of them pay Swiss income tax); and

- iii) it automatically grants to Ramsar and IUCN the work and residence permits requested for all foreign staff. Once in the country, Ramsar and IUCN employees are subject to the same rights and obligations of any foreigner residing in Switzerland. They do not have any kind of diplomatic immunities.

14. The report concludes that:

“This report explored three different possible paths: becoming (i) an International Governmental Organization, (ii) a de facto International Organization or (iii) an International Non-Governmental Organization.

“These are feasible possibilities that are not only consistent with MedWet’s structure and set up, but also allow this initiative to continue to work with the Ramsar Convention in the global protection of wetlands, which is ultimately the global legal reference framework. The first step would be to find out the wishes and level of commitment of the member parties at MedWet before deciding which option to choose. If there is a strong will and solid commitment, the ideal option for endowing MedWet with an international legal status would be for it to become a regional IGO. Thus, it would be able to benefit from the international status conferred by international law to IGOs. If MedWet were to be turned into an IGO, it would acquire the capacity to participate directly in international political issues and those linked to the approval of international regulations regarding the protection of wetlands. This statute would facilitate the intervention in the countries forming part of the IGO, as well as in other States, and would provide its staff with international civil servant status, which would give them independence and protection under international law for the execution of their work.

“The steps to take to turn MedWet into an IGO are, perhaps, the most complex, because this requires the signature of two international treaties: that of the creation of the IGO, which has to be approved by the States and other members that want to join the organization, and the headquarters treaty, with the country in which the IGO’s secretariat is going to be located. The set up of the IGO, in other words the discussion of the text of the founding treaty, is the most critical action and probably the one that requires the greatest amount of effort. However, MedWet is not starting from scratch in the preparation of this document. Instead, its operation has an important history, which can serve as a perfect basis for facilitating this task.

“MedWet’s Terms of Reference can be taken as a basic skeleton for the design of the founding treaty, by expanding on them, as mentioned, in order to bring them into line with the structure required by international law for the creation of an IGO. The signature of the treaty requires the involvement of representatives of the States with the capacity for engaging the State at an international level, which entails compliance with rules of national law that can also be complex. If there were still no mature will or commitment, a proposal would be made to choose one of the other two possibilities as a solution for transition and with a view to fulfilling the final objective of constituting an IGO in the future.

“The choice of one or the other depends, once again, on the level of commitment and on the will to start up of a process of change that MedWet’s members are willing to take on. The solution that involves the simplest procedures and also gives MedWet a certain amount of visibility, in addition to the capacity for international action, is that of becoming an international NGO. As an INGO, MedWet would acquire the subjectivity necessary to intervene in international discussions on wetlands, as well as to opt for international financing projects on the environment. If MedWet were to become an INGO, it would be subject to a national law, which would mean it would have to comply with the procedures

established by this law for acquiring a legal personality and, once fulfilled, it would be granted the national legal personality of this State, although with the capacity to act at an international level, since its actions would go beyond the boundaries of the State in which it was founded. However, we understand that this solution cannot be definitive, since it is not in line with MedWet's real situation, which is that of serving as a forum for intergovernmental cooperation.

“Addressing this fact, the transitional solution most suited to MedWet's nature is the negotiation of a multilateral agreement with a view to it being considered as a de facto IGO, as in the case of the other MEAs. This solution would also involve the signing of an international treaty, with its own particular complexity. But this treaty would not create a new subject of international law, which we believe would reduce the States' reluctance to signing. It would be a treaty with material content, on the protection of wetlands, which would go hand in hand with the creation of a purely administrative organ to manage the treaty. In this respect, the international agreement could be based on MedWet's Terms of Reference and its contents should be as similar as possible to the founding treaty of an IGO in order to facilitate the future transition to a de jure NGO.

“In addition to the host State, it will also be necessary to decide whether the MedWet Secretariat will have an independent personality or whether it will be housed by a host institution. In the event of the latter, a relationship agreement will have to be entered into with the host institution, which recognizes the autonomy of the MedWet Secretariat and its legal capacity to work. Although the convenience of sharing the Ramsar Convention Secretariat's host institution may be considered (and thus facilitating the link with the Convention that gives MedWet its *raison d'être*), it is also important to bear in mind that the legal status of the host institution will determine the MedWet Secretariat's capacity for international action, as occurs with the Ramsar Convention Secretariat and IUCN.

“To sum up, in order to favour MedWet's international action and help it achieve its goals, the best solution would be to create an international governmental institution, which would incorporate the work carried out by MedWet in the past and continue it. If this step were not possible, we propose two intermediate possibilities, which would allow the organization to continue to exist and fulfil its objectives, and would facilitate the building of the consensus required for the future creation of the IGO. These two intermediate paths are: turning MedWet into an international NGO, or the signing of a multilateral agreement on wetlands, which goes hand in hand with the creation of a Secretariat and would grant MedWet the capacity to act de facto on the international arena. In other words, it would turn MedWet into a de facto IGO.”

The way forward

15. It is unlikely that the MedWet/Com 12 could arrive at a firm decision on this subject, except if it decides that the issue should be abandoned and not be further explored. The Coordinator would sincerely discourage such a decision because he is convinced that a solution to the lack of a legal status for MedWet should be found as soon as possible in order to secure a more stable situation for the Initiative.
16. Consequently, the Coordinator proposes that either the Steering Group or a Working Group established for this purpose be charged with exploring the issue further and bringing a proposal to the MedWet/Com 13 for consideration and possible adoption.

ANNEX

REPORT ON THE POSSIBLE INTERNATIONAL LEGAL STATUSES FOR THE MEDWET INITIATIVE

Contents: I. Introduction; II. Report; I.- What is MedWet?; I.1. History of MedWet: its intergovernmental character; I.2 Organic structure; I.3 Link to the Ramsar Convention: regional initiative; 2.- Possible legal statutes pertaining to the future; 2.1. Becoming an International Governmental Organization (IGO); 2.1.1. What is an IGO? Component parts; 2.1.2. International subjectivity of IGOs; 2.1.3. Steps to take in order to become an IGO; 2.1.4. Advantages and disadvantages; 2.1.5. Examples for reference purposes; 2.2. Becoming a de facto IGO; 2.2.1. What is a de facto IGO? The case of the Multilateral Environmental Agreements (MEA); 2.2.2. International subjectivity of the MEA; 2.2.3. Steps to take in order to become a de facto IGO; 2.2.4. Advantages and disadvantages; 2.2.5. Examples for reference purposes; 2.3. Becoming an International NGO; 2.3.1. What is an International NGO? Component parts; 2.3.2. International subjectivity of International NGOs; 2.3.3. Steps to take in order to become an International NGO; 2.3.4. Advantages and disadvantages; 2.3.5. Examples for reference purposes; III. Conclusions and recommendations; IV. Appendices.

I. INTRODUCTION

This report explores the different legal forms within the framework of international law that allow the Mediterranean Wetlands Initiative (MedWet) to carry out its activities and meet its conservation objectives, in a manner more consistent with its current legal status. In order to achieve this, three possibilities are explored, explaining their international legal status, the steps to follow in order to attain them, as well as the most important advantages and disadvantages to take into account. Several examples are also provided for reference purposes.

II. REPORT

I.- What is MedWet?

I.1. History of MedWet: its intergovernmental character

MedWet was created in 1991 as a mechanism for implementing the results of the International Symposium on “Managing Mediterranean Wetlands and their Birds”, at the initiative of the governments of France, Greece, Italy, Portugal and Spain, as well as the Ramsar Secretariat, the European Commission, the Tour du Valat Foundation, and the international NGOs International Waterfowl & Wetlands Research Bureau (IWRB, now Wetlands International) and WWF-International, but with a high level of intergovernmental collaboration. MedWet’s mission is “To ensure and support the effective conservation of wetlands and wise use of their resource, values and services, through local, national regional and international collaboration and implementation of activities in the Mediterranean region, within the framework of the Ramsar Convention”.

Since MedWet was established, many governments in the Mediterranean Basin have shown interest and collaborated with the initiative. In 1993, the 5th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands (COP5) welcomed this regional collaboration activity and encouraged other countries in the Mediterranean Basin to join the initiative (Recommendation 5.14, June 1993). At the beginning (1993-1996), the MedWet project involved Spain, France, Greece, Italy and Portugal and was financed by the European Community. In the second part of the project (1996-1998), it was extended to include Albania, Algeria, Croatia, Morocco and Tunisia.

MedWet not only includes governments but also international organizations, private organizations and other bodies involved in the conservation of Mediterranean wetlands. The Initiative is currently composed of 26 states and one self-governing body (the Palestinian Authority) in the Mediterranean Basin, 5 international organizations, 5 NGOs, 5 Wetland Centres and 2 members with voice but without vote:

- 26 States: Albania, Algeria, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Jordan, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Portugal, Serbia, Slovenia, Spain, Syrian Arab Republic, The FYR of Macedonia, Tunisia, Turkey,
- Palestinian Authority
- International organizations/institutions: the Barcelona Convention, the Berne Convention, the European Commission, the Ramsar Convention, the United Nations Development Programme
- Wetland centres: Agenzia Regionale per la Protezione Ambientale della Toscana; Greek Biotope Wetland Centre, Portuguese Wetland Centre; Station Biologique de la Tour du Valat; Centro Español de Humedales
- NGOs (partners of the Ramsar Convention): BirdLife International; International Union for Conservation of Nature (IUCN); International Water Management Institute (IWMI); Wetlands International; WWF International
- Honorary members: Dr. Luc Hoffmann and Mr. Thymio Papayannis

1.2 Organic structure

The different organs of the MedWet Initiative are: the Mediterranean Wetlands Committee (MedWet/Com), the MedWet Secretariat, the MedWet Steering Group – MedWet/SG) and the MedWet Scientific and Technical Network, in addition to working groups created ad hoc by the MedWet/Com.

The MedWet/Com is the main decision-making body of MedWet and is made up of all the initiative's members. In it, the strategic guidelines for MedWet's actions are approved, decisions regarding the admission of new members are made, new organs or working groups are created, budgets are approved, etc. Decisions are generally made by consensus. It normally meets every 18 months. It sends periodic reports to the Ramsar COP on the fulfilment of the Ramsar Convention objectives in its region. Its establishment was approved at the 7th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands (COP7) "as a forum for collaboration on wetland issues in the Mediterranean and as a advisor of the Convention in this region" and it was entrusted with the task of monitoring the implementation of the Ramsar Convention in this region (Resolution VII.22 on the "Collaborative structure for Mediterranean wetlands", 1999). In 1996, a MedWet Coordinator was appointed, who was in charge of the Secretariat at the Greek Biotope/Wetland Centre (EKBY), whose headquarters were initially in Thessaloniki (Greece) with funds provided by the governments of France, Greece and Spain and from two organizations (Station Biologique de la Tour du Valat and WWF International). In 2002, the MedWet Secretariat was moved to Athens, where it remained until 2014, the year in which it was transferred to the Tour du Valat Research Centre in Arles, (France) where it remains today. The creation of the Secretariat gave new impetus to the work carried out by this initiative, which started to hold annual MedWet/Com meetings. The MedWet Steering Group is in charge of the management of the organization in the periods between MedWet/Com meetings. It has the authority to adopt operative decisions and solve any problems that arise in connection with the implementation of MedWet/Com's decisions. It is a body with a limited composition (9 members: 3 member states, 3 alternate states and 2 representatives of NGOs and wetland centres), named by and dependent on MedWet/Com. The MedWet Scientific and Technical Network is made up of representatives of all the Mediterranean wetland centres that make up MedWet/Com, and draws up scientific and technical reports.

1.3 Link with the Ramsar Convention: regional initiative

Regional cooperation is an effective means of promoting and applying the objectives of the Convention, which has given rise to the establishment and development of formally established regional cooperation mechanisms known as “Regional initiatives”. The regional initiatives are of great value to the Ramsar Convention since they “are intended as operational means to provide effective support for an improved implementation of the Convention and its Strategic Plan in specific geographic regions, through international cooperation on wetland-related issues of common concern” (Resolution XII.8, COP12, 2015). Among the targets included in the Ramsar Strategic Plan 2016-2024 is number 15, which states that: “Ramsar Regional Initiatives with the active involvement and support of the Parties in each region are reinforced and developed into effective tools to assist in the full implementation of the Convention.” The Strategic Plan itself states that: “The Ramsar Regional Initiatives are effective mechanisms to promote and support regional and bilateral cooperation, capacity-building, technology and knowledge exchanges, wetland related information, communications and mobilization of financial resources for activities on the ground.”

At present, 68% of the Parties have participated in the development and application of a Regional Initiative within the framework of the Convention, with a total of 15 regional initiatives having been supported (four regional centres and eleven regional networks) during the 2012-2015 three-year period. The existing regional initiatives are: BlackSeaWet; CREHO; CARIWET; RAMCEA; Carpathian Wetland Initiative (CWI); RRC-CWA; RRC-EA; East Asian-Australasian Pathway; High Andean Wetlands; Mangroves and Coral Reefs Initiatives; MedWet; NigerWet; Nile Wet; NorBalWet; La Plata River Basin; and WACOWet. The MedWet Initiative was formally recognized as a Ramsar Convention Initiative in 1999 with the approval of the creation of the MedWet/Com, recognizing it as a forum for collaboration on wetland issues in the Mediterranean Basin (COP7 Resolution VII.22). Three years later, at COP8 (2002), a Resolution on Regional Initiatives was adopted (Resolution VIII.30), in which, in addition to reiterating its importance in the promotion of the Convention’s objectives and the execution of the Strategic Plan, the first Guidelines were adopted for the development of the Regional Initiatives within the framework of the Ramsar Convention. The model to follow is precisely MedWet, as the original initiative.

Thus, all regional initiatives must conform to operational guidelines that specify how they should be created and function in order to obtain Ramsar’s support. The Operational Guidelines 2013-2015 for Regional Initiatives in the framework of the Convention on Wetlands (Decision SC46-28 of the Standing Committee, 2013) are currently in force. In line with the Operational Guidelines, Regional Initiatives must submit regular reports on the activities carried out and their compliance with the objectives to the Ramsar Secretariat, so that the latter can inform the Standing Committee and the Ramsar COP on their progress.

Despite the valuable work the Regional Initiatives carry out to meet the Ramsar objectives, and the fact that they have to send progress reports to the Ramsar Secretariat on their activities, it is curious that the Ramsar Convention appears very keen to keep the Regional Initiatives separate from its institutional structure and its budget. They state that a “Regional Initiative is not and cannot act as a regional office of the Convention”, encouraging them to adopt their own specific logo and website (Point 7). This insistence in ensuring that the Regional Initiatives should not be confused with Ramsar’s institutional structure is very clear in several of the questions in a questionnaire that the Regional Initiatives had to fill in and attach their reports for the period 2012/2013. The Operational Guidelines for 2013-2015 are the object of review within the Standing Committee, and a draft version of the Operational Guidelines for 2016-2024 has already been drawn up. The latter maintains the idea that Regional Initiatives cannot form part of the Ramsar Secretariat and that they must establish their own legal entity separate from Ramsar, clarifying their independence, status and role (Point 17). When a Ramsar Regional Initiative is hosted by a national or international institution, a relationship agreement with the institution must be signed, which guarantees the specific legal status of the initiative and its operational independence from the host institution (Point 19). However, the draft revised Guidelines introduce several new issues regarding the legal status of the

Regional Initiatives, since, in addition to requiring a legal status according to suitable provisions in the national law of a host country in the longer term, they may obtain international legal status, and the Ramsar Secretariat would provide support for this (Point 18). If the Draft Revised Operational Guidelines 2016-2024 are adopted, we understand that the options proposed here for MedWet would be compatible with their status as a Regional Initiative. With regard to funding, they will have to try to be self-sufficient and generate their own resources. In the current Operational Guidelines, financial support from Ramsar is to be provided during the first six years at the very most (Point 30). The Draft Revised Operational Guidelines simply state that start-up funding for Ramsar Regional Initiatives will be provided “during a limited period of time” (Point 14). Finally, it should be noted that the link between MedWet and the Ramsar Convention goes beyond that of the former being the first Regional Initiative. In fact, the Ramsar Convention was one of the founding members and driving forces behind the initiative, and the Ramsar Secretariat participates in MedWet’s organic structure. Thus, the Ramsar Secretariat is also a permanent observer in the MedWet Steering Group.

2.- Possible legal statuses pertaining to the future

2.1. Becoming an International Governmental Organization (IGO)

2.1.1. What is an IGO? Component parts

An International Governmental Organization (IGO) is a voluntary association composed of member states, or of States and other intergovernmental organizations. IGOs are established by an international treaty with a stable, independent institutional structure, capable of expressing the IGO’s legal will independent of its members, and which is governed by public international law. Listed below are the basic elements required for the creation of an IGO:

a) It is established through an international treaty. Generally, IGOs have an international treaty that determines their actions and their presence in the international scene. This founding treaty must establish the functions that the IGO will carry out and determine its basic institutional structure (both the organs and decision-making systems). It also usually includes the recognition of the organization’s international personality. The signing of an international treaty requires the states and the interested IGOs to intervene. They can do this through persons with the capacity for binding the State or the IGOs in the international arena. Moreover, normally it is the parliaments or the IGO’s plenary organs which approve the incorporation of international treaties that create new IGOs, which implies knowledge of the whole State or the IGO, and an assumption of commitments with regard to the new subject of international law.

b) The members must be States, or other subjects of public international law. This element allows IGOs to be differentiated from international NGOs. In any case, it should be noted that although most of the members are States and IGOs, the participation of other subjects of international law is also permitted.

c) It must have a stable institutional structure, independent of its members. This element allows IGOs to be distinguished from International Conferences, which lack a stable structure, or organs created by international treaties for the management of the latter, but which lack the independence of the members that created them (for example, originally the COP of multilateral environmental treaties). The stable, independent organizational structure, in addition to allowing for the fulfilment of the purposes for which the IGO was created, reinforces the organization’s independent legal personality with regard its members, since it is through this structure that the IGO’s decisions are made and managed. This structure’s modus operandi is distanced from its members’ wishes and reflects the opinion of the newly created organization.

d) It must have a different international legal personality from that of its members. The recognition of an independent personality, distinct from that of its members, implies that the organization's capacity to be subject to rights and obligations is recognized. One of the fundamental rights is that of being able to make decisions in the corresponding organ, as determined by the founding treaty. Normally, the organs capable of making binding decisions are the plenary organs, in which all full members of the organization can participate.

e) It must be established under public international law. The international treaty that establishes the IGO must be subject to and comply with public international law. On the one hand, this implies that the founding treaty must comply with the rule of international treaties (Vienna Convention on the Law of Treaties adopted in 1969) and, on the other, that the IGO's activities in general will be regulated in accordance with the rules of public international law – for example, with regard to the recognition of its international subjectivity, its participation in the creation of international norms, its relationship with other subjects of international law, etc. The signing of an international treaty for the creation of an IGO presupposes the application of public international law. It is only not applied when the treaty expressly eliminates the application of this legal system.

2.1.2. International subjectivity of IGOs

The compliance with the requirements cited in the previous section for the creation of an IGO, involves the appearance of a new subject of public international law. On the one hand, the acquisition of international subjectivity allows this new subject to be differentiated from other possible subjects that act in the international arena, and, on the other, it provides a series of rights and obligations, which are automatically linked to international subjectivity. Addressing the first issue, the transformation of MedWet into an IGO would imply that it would be differentiated from other subjects that participate in the international arena, and international NGOs in particular. International NGOs do not carry out “governmental” tasks, in other words their action does not fall within the fulfilment of public duties; moreover, their founding document is not an international treaty and their operations are not regulated by the rules of public international law. Subjects of international law are entitled to a certain amount of participation and, therefore, certain international subjectivity, but they cannot participate in the international area as subjects with full rights. With regards rights and obligations, if MedWet becomes an IGO, on the international area it would acquire the powers held by IGOs, which are principally:

- The right to become a party to the creation of international rules, within its area of competence. More specifically, it could sign international treaties (*Jus tractaruum* – treaty-making power), as long as they form part of its functions, or it could participate in the creation of international customs, or adopt binding decisions that are applied in the States or other IGOs that are its members.
- The right that enables its staff members to have international civil servant status.
- The right to send and receive diplomatic missions (*Jus missionis*). Its civil servants will be recognized as having the status of international civil servant and, as such, will be able to represent the organization before other subjects of international law. Similarly, other subjects of international law would be able to send their representatives to the MedWet IGO. In both cases, the formalities regarding diplomatic missions that are regulated by international rules would have to be fulfilled.
- The right to file international lawsuits. One of the powers related to international subjectivity is the possibility of filing international lawsuits, in the fora in which the IGO has competence for this matter. And, similarly, they can be sued at an international level.
- The right to take legal action within the sphere of the national law of its member states (for example, contracting, renting property, registering patents, suing in national courts, etc.). With regard to the non-member states, generally this capacity is also recognized, since the international legal personality permits the IGO to work at a national law level. It is very rare and unusual for an IGO's capacity not to be recognized by non-member states of this organization.

- To enjoy certain privileges (for example, to be exempt from direct taxation and from customs duty) and immunities, such as immunity from jurisdiction. Equally, the IGO's international subjectivity implies the assumption of international and national obligations. The international obligations include, for example, the fact that IGOs can receive international legal proceedings/claims. They must also comply with the laws and regulations of the State in which their headquarters are located, as well as the other States in which they carry out their activities, notwithstanding the privileges and immunities that the IGO and its workers benefit from.

2.1.3. Steps to take in order to become an IGO

MedWet should adopt the following procedure in order to become an IGO:

1°.- Make the decision to become an IGO at MedWet/Com, and also to dissolve the French non-profit association.

2°.- Call an International Conference, attended by representatives of all those that want to be members of the new IGO and are authorized to bind the State or subject of international law they represent. Discuss the text of what would be the founding treaty of the IGO. (This step, the discussion of the text, could be carried out at MedWet/Com in the notice period for the International Conference, but it is the members of the future IGO who have to approve the international treaty)

3°.- Once a consensus has been reached on the founding treaty, it is signed by the representatives and sent to the member States, or to the subject they represent, for its ratification.

4°.- Once the IGO has been approved, a headquarters agreement must be signed with the State in which its secretariat is going to be established.

In order to turn MedWet into an IGO, it should be borne in mind that the current statutes of the French NGO cannot be reused because, on the one hand, they do not correspond to the reality of the organization and, on the other, if the aim is for MedWet to become an IGO, these statutes do not contain all the aspects that are usually included in an IGO's founding treaty. Along these lines, MedWet's Terms of Reference are better adapted to the usual contents of IGO's founding treaties, and also correspond to MedWet's real contents. So, this text could be used, if several clauses on the following issues were added:

a) Clauses on members: details should be given on who can be members and with what rights, as well as on the procedure to adopt in order to become a member, and the termination of this status. IGOs admit the following types of members: full members, partial members, associate members and observers. Full members are those that participate directly in the organization, and thus they have a series of individual and collective rights and obligations that are more extensive than those corresponding to the other members of the IGO. For example, the right to participate in decision-making by other organs in accordance with the founding treaty, and the obligation to make an economic contribution to the maintenance of the IGO. In order to be a full member, it is necessary to have international expertise in the sphere in which the IGO operates. The associate members are the IGO's participants who have the most limited rights of intervention in the latter. For example, although their right to vote is not generally recognized, they are allowed to participate in the IGO's organs, with the right to make proposals in the latter; they generally have the same financial positions as full members. Partial members intervene in the organization as full members in some organs, but remain mere observers in others. Observers participate in the IGO with voice but without vote. They are generally very active members, who transmit ideas, but whose recognized intervention in the IGO is very limited; some participate in all the organs and others in only a few of them, depending on the participation allowed by the IGO.

In the membership section, in addition to the types of member, the founding treaty should contain the procedure(s) required to become a member, which in some cases is limited to a single

procedure. Moreover, those who participate in the IGO's creation procedure should also be recognized as members. An article should also be included on the loss of membership status, either of the member's own accord or due to a sanction.

b) The institutional structure and the decision-making processes. The founding treaty should contain the basic institutional structure. In other words, the network of organs that manage the competences attributed to the organization. Equally, it should contain the mechanisms that will be used in these organs to adopt decisions. The institutional structure should be in line with the competences attributed to the organization. It must have political organs in which binding decisions are made, and administrative organs, for management, which can also include a supervisory organ or a consultative technical organ in their institutional framework. In this respect, MedWet's current structure, which appears in the Terms and Reference, corresponds to the basic structure of an IGO. It has a decision-making body (MedWet/Com) and a management body (MedWet Steering Group), an advisory technical body (MedWet Scientific and Technical Network) as well as a Secretariat, which carries out the administrative functions. A written record would have to be made of the decision-making system, establishing the main decision-making mechanism, which could perfectly easily be the consensus, the mechanism that is applied in practice, and several secondary mechanisms (simple or enhanced majorities) to avoid deadlock.

c) The founding treaty reform procedure. It is important that the treaty itself establishes the procedure required to reform its contents.

d) The financing of the IGO. It will be interesting that, even if to a limited extent, the founding treaty contemplates the organization's financing system, recording the possible sources of finance, the organ in charge of approving the annual budget and the management of the latter. Usually, the IGO's sources of finance are basically the regular, obligatory contributions by its members, voluntary contributions, donations and the income received from the services provided by the organization itself. In any case, it is important to point out that all issues that do not appear in the founding treaty will be resolved through the application of the general theory of public international law.

2.1.4. Advantages and disadvantages

The advantages of becoming an IGO include on the one hand that of attaining greater cooperation for the defence of wetlands, given that the participation in an IGO involves a firm commitment by the governments of all the member States in fulfilling the IGO's objectives. On the other hand, having an international legal personality involves a greater presence on the international arena and participation with more rights in this legal sphere. States generally argue that the greatest disadvantage of participating in an IGO is the economic cost of the latter. Another disadvantage that it often pointed out is that the IGO can "impose" binding decisions on issues that may not interest the States in political terms. This objection is usually resolved with the inclusion of an exemption clause in the founding treaties.

2.1.5. Examples for reference purposes

1) Regional Fisheries Management Organizations (RFMOs)

These are international organizations dedicated to the sustainable management of fishery resources in international waters or of straddling stocks, created within the framework of the FAO (Article XIV of the FAO Constitution). These are just a few of the examples of IGOs dedicated to environmental protection.

They are made up of coastal States in a specific area, as well as other parties that may have some interest in the resources involved. Not all of them have the same status. Instead, the latter is adapted to their geographic circumstances and priorities (similar to what occurs with the Ramsar "Regional Initiatives"). Some have a merely consultative character, but others can make binding decisions for their members on fisheries management (they can determine catch limits – Total

Allowable Catches [TACs] – the technical measures adopted for fishing and the means of controlling fishing activities). They can also conduct scientific research work, create expertise or external cooperation.

Within the Mediterranean area there is the General Fisheries Commission for the Mediterranean (GFCM). It started its activities in 1952 and became a Commission in 1997 when the international agreement for its establishment came into force (see its founding treaty, Appendix 3b). The main objective of the GFCM is to promote the development, conservation, rational management and best utilization of living marine resources as well as the sustainable development of aquaculture in the Mediterranean, the Black Sea and connecting waters. It is composed of 24 members (23 member countries and the European Union), which finance the IGO. The membership is open to the Mediterranean coastal States and regional organizations as well as to third-party States whose vessels engage in fishing in its area of application. With regard to its organizational structure, the Commission is the decision-making body that represents all members and meets annually. It has a Secretariat based at its headquarters in Rome, as well as several committees (the Scientific Advisory Committee, the Committee on Aquaculture, the Compliance Committee, and the Committee of Administration and Finance). There is also a Bureau that is made up of one representative of each of the bodies and manages strategic orientations for the Commission and Secretariat (it acts like a standing committee). The Commission has the authority to adopt binding recommendations for fisheries conservation and management in its area of application and plays a critical role in fisheries governance in the region.

2) The Union for the Mediterranean (UfM)

The Union for the Mediterranean (UfM) is a multilateral association or partnership that has the aim of promoting stability and prosperity throughout the Mediterranean region, through the implementation of specific projects in six priority areas: water and environment, transport and urban development, business development, energy, higher education and research and social and civil affairs. UfM was launched as a continuation of the Barcelona Process, whose aquis supports it, raising the political level of the relations between participating States. It is currently made up of 43 countries from Europe and the Mediterranean Basin (including all the EU Member States), but it also has institutional partnerships to ensure the implementation of its activities and projects, of partnership promoters and financial partnerships, which are responsible for providing financial support for the projects. The UfM does not have its own budget for funding projects. Instead, it mobilizes private funds, investment and development banks, and other international organizations. Its organic structure includes Senior Civil Servants, the body responsible for guaranteeing the fulfilment of the directive from the Summit of Heads of State and Government, and the various sectorial Ministerial Conferences, the Joint Standing Committee, based in Brussels, which provides support and assistance to the Senior Civil Servants' meetings, taking charge of their preparation, and ensuring they are monitored properly; a Co-Presidency, responsible for calling and presiding over ministerial summits, meetings of Senior Civil Servants and the Joint Standing Committee, which deal with all aspects of the initiative; and a Secretariat based in Barcelona, in charge of the identification, promotion and coordination of regional projects that pursue UfM's objectives. It is interesting to note that the headquarters agreement between Spain and the UfM Secretariat sets out that the Secretariat has an autonomous status and its own legal personality for the exercise of its activities, as well as its statute, the privileges and immunities of the Secretariat and its international staff (see the headquarters agreement, Appendix 3d). This was established by the mandate of Article 12 and following of the Marseille Declaration of 2008, which gave rise to the UfM and acts as a founding treaty. However, Article 13 of the Marseille Declaration also specifies that "the mandate of the Secretariat is of a technical nature, whilst the political mandate related to all aspects of the initiative remains the responsibility of the Ministers of Foreign Affairs and Senior Officials." This example could serve as a reference for MedWet, although its objectives and activities are more ambitious and have political support of the highest level. Nevertheless, it would be possible to consider the possibility that MedWet could form a project financed by the UfM, given that its work falls within the scope of the protection of the environment and water, which is one of the priority lines of funding.

3) The International Tropical Timber Organization (ITTO)

The International Tropical Timber Organization (ITTO) is an IGO promoting the conservation and sustainable management, use and trade of tropical forest resources. It has 72 member states divided into two groups: producers and consumers of tropical timber. It was established under the auspices of the United Nations in 1986 and is currently governed by the International Tropical Timber Agreement (ITTA) of 2006 (see Appendix 3c), which acts as the founding treaty of this IGO. Therefore, it is one of the few cases of IGOs that are based on a multilateral environmental agreement.

It is a sui generis IGO since, on the one hand it regulates the tropical timber trade and industry and, on the other, it deals with the sustainable management of these natural resources. It prepares international guidelines to promote sustainable forest management and conservation and helps tropical member countries to adapt the guidelines to their local circumstances through projects that the ITTO itself administers and finances.

With regard to its institutional structure, the ITTO's governing body is the International Tropical Timber Council, which is composed of all the IGO's member states.

The Council is supported by four committees, which are open to all members and observers (economic information and market intelligence; reforestation and forest management; forestry industry and finance and administration) and a series of groups of experts who assess project proposals from a technical point of view. It also has a Secretariat based in Yokohama (Japan), headed by an Executive Director who is responsible to the Council for the administration and operation of the decisions adopted by the Council. The IGO has regional offices in Latin American and Africa to assist with project monitoring and other duties.

4) The Inter-Parliamentary Union (IPU):

The Inter-Parliamentary Union (IPU) is an international organization established in 1889. The organization started out as a private association in which representatives of different national parliaments participated, and later became an international organization. There are currently 166 Members (States) and 10 Associate Members. The parliaments of international organizations, for example the European Parliament, are associate members. Its headquarters are currently in Geneva. It signed a headquarters agreement with Switzerland in 1971, with similar conditions to United Nations organizations (see headquarters agreement, Appendix 2c). Its founding treaty is brief, with 30 articles, and describes its legal personality, mission and objectives, headquarters, institutional structure, as well as the reform procedures for the treaty itself.

IPU's main objective is to act as a focal point for worldwide interparliamentary dialogue and to work for peace and cooperation among peoples as well as for the establishment of representative democracies. The title of its current strategic plan is "Better parliaments, stronger democracies". It collaborates closely with the United Nations in its objectives and mission.

Its basic institutional structure, which is set out in the Statutes (founding treaty, see Appendix 3a) is simple. It has four organs: the Assembly, the Governing Council, the Executive Committee and the Secretariat. The first two organs are plenary, whilst the Executive Committee is an organ with a limited composition. The Assembly has the capacity to make binding decisions for its members. In addition to these organs, geopolitical groups can be formed. From an economic point of view, the organization is basically funded by contributions from its members, including both obligatory and voluntary payments. Its financial rules include the possibility of receiving other contributions and even income for work carried out.

2.2. Becoming a de facto IGO

2.2.1 What is a de facto IGO?: the case of the Multilateral Environmental Agreements (MEAs)

The global environment is protected by the well-known Multilateral Environmental Agreements (MEAs). These are Agreements signed by a large number of States, which generally deal with one specific environmental problem such as climate change, biodiversity, the ozone layer, etc. The Ramsar Convention is one of them, and its objective is to safeguard one specific ecosystem: wetlands.

With regard to their international legal status, MEAs are in a grey area between IGOs and international institutions. This does not mean that they are not of international importance, since in practice they act as international organizations and have the following features in common with IGOs:

- 1) They have a founding treaty, which is the international convention or MEA.
- 2) Their parties are basically States, although they differ from IGOs in that the States are “parties” or “contracting parties” to the agreement and not “members’ because there is no IGO as such.
- 3) They have the capacity to create permanent organs and organic structures, such as plenary and decision-making organs (Conference of the Parties or COP), Secretariats, Steering Committees, Technical Review Committees, Subsidiary Bodies, etc.
- 4) They create international law: the COP generally have the capacity to adopt binding decisions for the contracting States, and also introduce amendments to the founding treaty and adopt rules for the application of the latter. In fact, the MEAs are not static agreements but rather a process for the creation of law, and are constantly evolving.

Therefore, the MEAs, like the IGOs, are forms of international cooperation based on an international agreement that have at least one organ (the COP) with its own will and separate from the States parties, which is established in line with international law. Moreover, they generally have the capacity to create other organs (Secretariat, committees, etc.), rules of procedure and budgets, as well as to draw up substantive obligations and control their fulfilment, and to reach an international agreement with other MEAs or States, etc. All these elements have led to a great deal of the internationalist doctrine maintaining that it constitutes a new type of IGO: a *de facto* IGO.

2.2.2. International subjectivity of MEAs

MEAs themselves are not subjects of international law that can act internally in a State, or externally with other subjects of international law (States or international organizations). They are not IGOs, at the very most they can be seen as *de facto* or *sui generis* International Organizations (IOs). For this reason, and given that the parties did not want to create an IO but instead opted for “institutional economy”, it is important to be cautious when applying international regulations on IGOs automatically. However, the MEAs’ organs do have a certain capacity for the action required to carry out their functions and thus fulfil the MEAs’ objectives. It is for this reason that, when the MEA’s legal personality is considered, it is done by looking at the organs rather than the agreement. Of all the organs created by the MEA, the one that has the greatest visibility and requires a physical headquarters is the Secretariat. The Secretariat symbolizes the institutionalization of the MEA at an international level. The debate on the MEA’s legal status, therefore, is focused on the legal status of its Secretariat. When it comes to determining the MEA’s Secretariat’s capacity for action, in the first place it is important to study the MEA itself and the competences that it grants the Secretariat. In many cases, these competences involve the capacity to work, not only at a domestic level (in the country where they have their headquarters) but also at an international level. An example of the latter is if coordination work between the MEA’s organs is planned. Thus, the Secretariat can have legal capacity to reach contractual and administrative agreements that allow it to carry out its functions, in accordance with what is specified in the Convention text (for example, this is the case of the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, or the United Nations Convention to Combat Desertification). Similarly, the delimitation of the Secretariat’s competences can be established in a decision made by the COP to the Convention.

However, the Secretariat is going to need the following two international instruments: the headquarters agreement with the host country and the relationship agreement with the IGO or host institution.

Starting with the last of them, the relationship agreement with the host institution, the general rule in the case of MEAs is to have an international institution that serves as headquarters for their Secretariat, in the case of MEAs that have become established as independent institutions (this would be the case of the OSPAR Commission, see below). Generally, they are the United Nations Environment Programme (UNEP) or the Food and Agriculture Organization of the United Nations (FAO), the international institutions that host the MEAs' Secretariats, although there are some special cases such as the Ramsar Convention whose Secretariat is located in the headquarters of an international NGO (the International Union for Conservation of Nature, IUCN), as explained below.

The headquarters do not have to be in the country where UNEP's host institution has its headquarters. In fact, most MEAs for which UNEP is the host institution do not have their headquarters in Nairobi (where UNEP's headquarters are located), but rather in other places (for example in Bonn in the case of the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification, but the Montreal Protocol on Substances That Deplete the Ozone Layer, on the other hand, does have its headquarters in Nairobi). A relationship agreement with a host institution can serve to save operating, administrative and labour costs that the institution faces and can also allow the MEA to benefit from the host institution's experience. In exchange, the MEA can pay a sum agreed on with the institution for the services rendered. It is also common for the host institution to have power of decision-making regarding the appointment of the General Secretary of the MEA's Secretariat and also to control the budget and the hiring of staff. The host institution is the one that, in principle, has the legal capacity to work, but an agreement can be reached regarding the delegation of competences in favour of the Secretariat, as occurred in the case of the Ramsar Convention (see delegation agreement, Appendix 4a). The second important international instrument for checking the MEA Secretariat's legal capacity is the headquarters agreement with the State in which the Secretariat is going to be located. In the case of the MEA, this Convention is usually also signed by the institution that hosts its Secretariat, giving rise to a tripartite agreement (see the example of a tripartite agreement, Appendix 4b). Similarly, the headquarters agreement can establish both the domestic competences (in the countries where the headquarters are located) and the international competences of the MEA's Secretariat. In some cases, a complementary agreement is signed with the host country, as occurred with the Convention on the Conservation of Migratory Species. The decision to choose a given country for the headquarters is usually made within the COP, as the MEA's plenary and decision-making body. Generally, the most generous offer made by one of the contracting States is chosen. Thus, it is recommendable for the MEA's legal capacity (or that of its Secretariat) to be expressly recognized in the Convention, in a resolution by one of the MEA's decision-making bodies (for example the COP), in the headquarters agreement with the host country or in the relationship agreement with the host institution. If this does not happen, questions may be asked about whether its capacity should be affirmed in line with the theory of implicit powers, used to determine the IGO's competencies. In this respect, not only should the will of the parties in the Convention be interpreted, but also the practice followed in the MEA's own development. Thus, in general, the international practice reveals that the MEA's Secretariat has the legal capacity to work, since it has been entering into contracts for goods and services and acting in the international arena for years. Moreover, the fact that the Secretariat can sign a relationship agreement with an institution or a headquarters agreement on behalf of the MEA is indicative of its capacity to work in the international arena (treaty-making power). However, it does not automatically benefit from the rights and capacities granted to the subjects of international law, as in the case of the IGOs.

Ultimately, it can be affirmed that MEA Secretariat has the legal capacity to work at a domestic level and it has a certain capacity to work at an international level in a manner similar to but not the same as an IGO.

2.2.3. Steps to take in order to become a de facto IGO

The steps that have to be taken to ensure MedWet can be considered a de facto IGO, like the other MEAs, are similar to those that have to be taken for the founding of an IGO, although with less institutional commitment by the States:

1°.- Agree on the adoption and signature of an international agreement for the management of Mediterranean wetlands, thereby creating a small management structure, which has the necessary competences for the management of the new agreement. At the same time, the decision would be made to dissolve the French association and pass over the management of the agreement to the established structure.

2°.- Call an International Conference in which representatives of the States wishing to negotiate a multilateral, regional agreement on wetlands take part. The representatives of the States must have the capacity to bind the State or subject of international law they represent at an international level. Discuss the text of what would be the future regional MEA. The multilateral agreement should be as similar as possible to an IGO's founding treaty, in order to facilitate its subsequent consideration as a de facto IGO. In this respect, as occurs with the creation of an IGO, MedWet's Terms of Reference may be a good starting point (see above).

3°.- Once a consensus has been reached on the text for the new MEA, it is signed by the representatives and sent to the member States, or to the subject they represent, for its ratification.

4°.- Decide whether the MEA's Secretariat will be autonomous and independent, in which case it will be necessary to sign a headquarters agreement with the State in which its Secretariat is to be established. If, on the other hand, it is decided that the Secretariat is to be hosted by an international institution or an international organization, a relationship agreement will have to be signed with this institution or organization. In the case of the latter, it is recommendable for the agreement to specify clearly the powers and competences the institution or organization hosting the Secretariat will have with regard to the composition and functioning of the latter.

2.2.4. Advantages and disadvantages

One of the reasons why the States chose to enter into a MEA with an organic structure instead of creating a traditional IGO is that the economic costs that the contracting States have to take on are lower. In particular, this concerns the costs of maintaining its structure, rent, and financial and accounting services, as well as the labour and social security costs for the people who make up the Secretariat. These costs are lower when the Secretariat is hosted by an existing institution.

In the case of a de facto IGO, it can also be stated that the States party to the MEA are involved in and firmly committed to the latter's objectives. The decisions adopted by their COP also bind the States parties, as if they were laws derived from the organs of an IGO.

However, the major disadvantage is that under the current state of international law there are still doubts regarding the international legal status of MEAs, channelled through their Secretariats, which are the visible and permanent organs of this agreement. Since their international subjectivity is doubtful, the capacity to assume rights or obligations (for example, in the sphere of international responsibility) is not clear. In this respect, they would be more present in the political than in the legal arena. Moreover, in the end, the capacity to act at a national level (in the State where their headquarters are located) and at an international level, will depend on what is specified by the MEA itself, as well as the headquarters agreement with the country in which the Secretariat is located and, where appropriate, on the relationship agreement with the institution or organization that hosts the Secretariat.

2.2.5. Examples for reference purposes

1) The Ramsar Convention

The Ramsar Convention, the international agreement that hosts MedWet, is one of the oldest MEAs, since it was negotiated in the 1960s between countries and NGOs that wished to prevent wetlands being lost or degraded. It was adopted in the city of Ramsar (Iran) in 1971 and came into force in 1975. Like many other MEAs, it has a COP, a decision-making body that brings together representatives of all the States parties every 3 years. The Standing Committee meets once a year and acts within the framework of the decisions adopted by the COP. It also has two advisory bodies – the Scientific and Technical Review Panel and the Communication, Education, Participation and Awareness Oversight Panel – responsible for drawing up the technical guidelines that help the Standing Committee and the COP formulate their policies. Finally, there is a Secretariat, which is responsible for the Convention's administrative activities.

As occurs with the other MEAs, when it comes to establishing its legal status and capacity to act as a body nationally and internationally, it is important to address what is established into the Convention itself, but also the headquarters agreement with the host country and the relationship agreement with the host institution. However, the Ramsar Convention has a unique feature whereby its Secretariat is located within an international non-governmental organization, the International Union for Conservation of Nature (IUCN). Under Article 8 of the Ramsar Convention, the continuing Bureau duties are performed by IUCN, with the Ramsar Convention Bureau being established formally in this organization in 1987, as an integrated "unit" within IUCN, funded from the Ramsar Convention budget (COP3, Resolution 3.1). In Resolution IX.10 of COP9 (2005), it was decided that, in its external relations, the Ramsar Bureau may use the descriptor "the Ramsar Secretariat" and not the Ramsar Bureau.

Thus, the Ramsar Convention did not provide for its Secretariat having an independent legal personality separate from IUCN, the institution that was to take charge at least formally of the administrative tasks that correspond to the Secretariat. This was amended in subsequent resolutions by the Conference of the Parties. Therefore, in COP4 (1990), it was decided to transform the Bureau into an independent unit, despite its being located within the IUCN headquarters. In this respect, the Secretary General of the Ramsar Convention was given responsibility for the administration and all matters concerning the operation of Ramsar that did not require the exercise of a legal personality. For these latter matters, the formal responsibility was to rest with the

Director General of IUCN. The practical operation was unsatisfactory, so the issue was finally resolved with a delegation of authority to the Ramsar Convention Secretariat by the Director General of IUCN in a document signed 28 January 1993 between IUCN and Ramsar (see delegation agreement, Appendix 4a). Through this agreement, the Secretariat was able to take charge of paying employees' salaries and signing contracts for goods and supplies. With regard to its international legal personality, it is closely linked to that of IUCN, which is not an IGO and therefore has many limitations. For example, IUCN does not have a headquarters agreement with Switzerland, the country in which its headquarters are located, since it is not an IGO, and this also applies to the Ramsar Convention. The issue of the Ramsar Convention's legal personality and that of its main organs (Secretariat) has been a cause for concern for years. It was a subject discussed within the Standing Committee, as requested by the COP9 (2005) in its Resolution IX.10. In 2008, the Standing Committee issued an interesting document (Decision SC36-15) for discussion at the COP10. It explained some of the difficulties arising from the situation in which IUCN hosts the Secretariat and considers several solutions, including becoming established as an independent IGO or becoming dependent on UNEP. This subject was discussed again at the COP11 (Bucharest, 2012) where there was a debate on the need to change IUCN's forum for UNEP, which some parties were demanding. However, after the discussion it was decided with a certain degree of consensus that IUCN would continue to be the institution that would host the Ramsar Secretariat.

At present, the Ramsar Secretariat has very extensive powers of control, not only for receiving information and reports from the States parties, but also for carrying out in situ visits. It can also sign Memoranda of Understanding (MOU) with different environmental groups in order to apply specific objectives of the Convention (Resolution VII.3, 1999). These elements show that the Ramsar Convention has legal capacity through its Secretariat, although it does not act as a traditional subject of international law. In order to do this, it would have to fulfil the following conditions: 1) have a founding treaty; 2) have an independent secretariat; and 3) be registered as a separate entity. It is precisely the third element that it does not fulfil, because it would need to be recognized by Switzerland in order to do this. Along these lines, it should be borne in mind that not even IUCN, the international NGO that hosts its Secretariat, has international legal status. For this reason, there is no headquarters agreement between Switzerland and IUCN either.

2) Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA)

This is a regional MEA, signed within the framework of the Convention on the Conservation of Migratory Species (CMS). It has a series of bodies, similar to those most MEAs have: the Meeting of the Parties (MOP), which is its main decision-making body (Article VI of the AEWA Agreement); a Technical Committee; a Standing Committee and a Secretariat. The AEWA Secretariat is a body separate from the CMS Secretariat, but it is administered by UNEP and its headquarters are in Bonn, Germany. Under Article VIII of the AEWA Agreement, the Agreement's Secretariat has the following functions: (i) to arrange and service the sessions of the Meeting of the Parties as well as the meetings of the Technical Committee and the Standing Committee; to execute the decisions addressed to it by the Meeting of the Parties; (iii) to promote and coordinate research and conservation projects; (iv) to promote the exchange of information between the Parties; and (v) to collaborate with IGOs and NGOs. (These functions are very extensive and practically identical to those carried out by the CMS Secretariat itself. It should be noted that, in addition to the administrative work, the AEWA Secretariat is responsible for keeping in constant contact with the CMS Secretariat and, when necessary, with other MEA Secretariats that may affect the material area of the AEWA Agreement, including the Ramsar Secretariat (Article IX of the AEWA Agreement). The relationship between the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the AEWA Agreement, which share objectives and headquarters, could serve as an example for the relationship that could be created between the Ramsar Convention and a possible multilateral MedWet agreement.

3) Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)

The Convention was signed in Paris on 22 September 1992, as the result of the merging and updating of two previous conventions: the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft and the Paris Convention for the Prevention of Marine Pollution from Land-Based Sources. Its objective is to conserve marine ecosystems, human health and, when possible, to restore marine areas that have been affected negatively by human activities through protection and the prevention and elimination of pollution. Its Contracting Parties are 15 Governments – Belgium, Denmark, Finland, France, Germany, Ireland, Iceland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom – plus the European Union. Its organic structure includes the OSPAR Commission, which is the main decision-making body. It is made up of representatives of the contracting States. It also has a Secretariat that administers the work under the Convention, coordinates the work carried out by the contracting parties and runs the formal meeting schedule of OSPAR. The Secretariat is not hosted by any institution and its headquarters are in London.

It is an example of a MEA whose main body, the OSPAR Commission, has a recognized legal personality for acting, due to the headquarters agreement with the UK Government, as well as rights, privileges and immunities similar to those granted to IGOs (see headquarters agreement, Appendix 4c).

2.3. Becoming an International NGO

2.3.1. What is an International NGO? Component parts

A non-governmental organization (NGO) is an organization created on the basis of a private initiative and subject to a national law, whose objectives are of public interest. When the composition of this organization is international, in other words when it is made up of members in different countries, and its activity is transnational, it is described as an International Non-Governmental Organizations (INGO). Although there are many different types of INGOs, with regard to their form and purpose they share the following characteristics:

1) They were created by an act of private legislation, in other words an agreement subject to a national law. Usually, the legal form they adopt is that of a non-profit association or a foundation. They do not require an international treaty to become established, and therefore their constitution is simpler than that of IGOs.

Once the requirements set out by private law for its creation have been met, a new subject of law is created, with an independent legal personality and the capacity to be responsible for the actions it undertakes.

2) Its composition is of a private character. In most cases, the physical or legal persons that participate in it do so as individuals. It is common to find mixed INGOs, in other words where the composition includes some private members of some government authorities that are subject to public law. In these cases, in view of other requirements such as the constitution or the independence of the governments' actions, a study is made of whether they are considered an INGO and not an NGO, although in most of these situations the organization is classified as an INGO.

3) They are subjects independent of the government authorities. Closely linked to the requirement regarding their composition, the eminently private participation in INGOs implies that their lines of action do not depend on the positions maintained by the governments. In this respect, although public bodies participate in the organization, the INGOs' decisions must correspond to what all their members decide, something that may or may not coincide with the political positions held by the governments of the public bodies that participate in the INGO.

4) They have a stable, permanent, democratic organization. The act of private law that creates them must contain Statutes that include the stable organizational structure, which allows the INGO to develop its principles, the organs it is made up of, the composition of these organs, its competences and the procedures for electing its members, the decision-making procedures and the organization's headquarters. This allows INGOs to be differentiated from informal networks, non-institutionalized social movements, etc. In some areas, such as that of the United Nations, INGOs are required to have a democratic internal functioning.

5) Their composition is international. In other words, they are made up of physical and legal persons of different nationalities. This feature is important because it allows international NGOs to be differentiated from national ones.

6) Their interests are focused on the achievement of licit, non-profit objectives that are of public interest. In order to classify them, it is essential that they are non-profit, in other words that they do not distribute their profits to their members. This requirement allows INGOs to be distinguished from other private subjects, such as transnational companies that participate in the international arena.

7) Their activity is transnational. In other words, they are active in several States. The number of States required in order for the activity to be considered transnational is not clear. In accordance

with the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations of 1991 (Agreement adopted by the members states of the Council of Europe), it is sufficient for it to carry out activities in at least two States that are parties to the Convention. The Union of International Associations requires the activity to be carried out in at least three countries. Moreover, INGOs can create headquarters in different States and act as a federation of NGOs, or else they can choose to have a single headquarters and request recognition in the other States in which they carry out their activity.

2.3.2. International subjectivity of International NGOs

As we pointed out in the previous section, the creation of an INGO is based on compliance with the requirements that a national law sets out for the creation of the private organization (usually a non-profit association or a foundation). The legal personality of this new subject is linked to this act of creation. This means that what is created is a new subject of internal law, a private legal person, which will have the nationality of the State in which the statutory headquarters are established. This new subject of private law will be assigned the rights and obligations set out by the law corresponding to its nationality for the type of organization. In this respect, for INGOs sharing their own nationality, the States will recognize the capacity required for the fulfilment of their objectives (they can enter into different types of contract – for work, rental, sales, the provision of services, etc. – they can participate in public grant calls, they must present the tax documentation requested of them, etc.). In order to act in other States that do not correspond to their own nationality, if the INGO does not have a headquarters in that country, generally they have to request the recognition of their personality. The recognition procedure is a process that is subject to the national law of each State. The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations of 1991 tried to eliminate the internal barriers established in national laws regarding this particular issue by establishing in its Article 2.1 that the personality and capacity assigned to an INGO in a State party to the Convention will be recognized by all the other States parties. Once the recognition has been obtained, this new subject of law will be granted the rights and obligations that these State legal systems accord to foreign legal persons. The fact that their subjectivity is national does not prevent the INGOs having a certain presence at a national level, which is recognized by the States and by other IGOs. It cannot be stated that they have full international subjectivity because for example they cannot participate with voice and vote in the creation of international rules, but it cannot be denied that their presence and social clout grants them a certain degree of subjectivity, and it is recognized by International States and Organizations, making them recipients of rights and allowing them some participation at an international level. In this respect, the INGOs can participate in International Conferences, normally with voice but without vote; they can also form part of various IGO bodies, with the same participation having voice but not vote; in brief, they participate in the process of creating international rules, they receive them and can report non-compliance with these rules to international fora, when they are granted this right. Similarly, in this respect they are taken into account as experts in the subject they are competent in within specific fora, for example systems for resolving international disputes, and they are asked for – or allowed to present – technical reports on certain international issues.

2.3.3. Steps to take in order to become an International NGO

MedWet has a private basis (French association), which can act as the foundation for creating an INGO. The current statutes do not correspond to MedWet's reality, so they will have to be reformed in order to adjust them more closely to reality and to give them the capacity to obtain international recognition as an INGO. In this respect, MedWet's current Terms of Reference correspond more closely to the possible new statutes of an INGO. These include the organization's mission and objectives, as well as the organizational structure. The sections missing from the agreement with the

national legislation under whose umbrella it is founded should also be added. From a comparative perspective with national legislations, it can be said that they should include the organization's

funding and headquarters in the part referring to members (who can be members, different types of member, whether there are any members, and the procedure to follow to obtain this status). In the new statutes it should say that it is a non-profit association that has members of different nationalities and that it carries out its activities in the Mediterranean Basin, in other words in different countries, in order to facilitate later international recognition and actions for the organization (see an example of a statute, Appendix 5a).

More specifically, the following steps must be taken in order to turn into an INGO:

1°.- Transform the current statutes. The current Terms of Reference can be used as a basis for preparing the new document.

2°.- Approve them through MedWet/Com. At this meeting, it would also be advisable for it to be decided whether activities should be carried out in the different States requesting recognition or by creating federated headquarters.

3°.- Deposit them in the corresponding public register in France (if the aim is to maintain the headquarters there), or in a public register corresponding to the location where the headquarters are to be located. The deposit for the creation of a new association or for the reform of the existing one can involve the payment of a small public tax.

4°.- Once the new association has been approved, the recognition of the activity in the States in which activities are carried out must be requested, so that its INGO status is recognized, or the network of federated associations should be created. From a formal point of view, the main disadvantage that MedWet may find when turning into an INGO is that it is mainly an intergovernmental cooperation forum. Although its members are not only States, it is true that the governmental members of the organization have a great influence on the INGO's decisions. For this reason, it would be necessary to justify that its decisions are adopted independently and outside of the governments of the States in which they participate. Moreover, becoming an INGO can also be geared towards serving as a temporary consensual solution, whilst the MedWet member States decide to take steps to allow for the creation of an IGO.

2.3.4. Advantages and disadvantages

Being an International NGO would give MedWet international visibility since, as explained above, although the legal personality is national, being an INGO confers certain international rights, for example allowing for participation in international fora with voice, and in some of them with vote too, or permitting access to international public grants. In this respect, with regard to funding, an International NGO has access to more sources of finance than an IGO, which ultimately depends on the contributions made by its member States.

In addition to their members' fees, INGOs have other income that they can receive via grants or public tenders they submit offers for, both national in the countries where they are present, or international. As for the disadvantages, since they do not have an international public personality, they cannot participate fully in the creation of international rules. Their staff do not have the status of international civil servants either, and they are subject to the labour regulations in force in the country where the INGO's headquarters are located or where they are carrying out their activities.

2.3.5. Examples for reference purposes

1) IUCN

It is a transnational NGO or "global environmental organization", as it defines itself. However, its Statutes clearly state its private legal status, in accordance with Swiss legislation ("is constituted in accordance with Article 60 of the Swiss Civil Code as an international association of governmental and non-governmental members"; see IUCN Statutes, Appendix 4a). It is a sui generis example of an INGO since it has a large number of governmental members, although they are mainly the ministries

of the environment of various countries. MedWet is a similar case. Its projection and visibility in the international arena are enormous. It is the only environmental INGO with the status of permanent observer for the United Nations General Assembly and has official relations with a large number of IGOs and international institutions such as the Council of Europe, FAO, UNEP, UNESCO, the Organization of American States, World Intellectual Property Organization and the World Meteorological Organization, etc. The role it plays in influencing MEAs' negotiations and participating in international conferences on the environment is well known. Due to its organizational structure, its great international projection and Statutes that could serve as the founding treaty of an IGO, IUCN is sometimes confused with a real IGO. Nevertheless, it is registered as an international association in accordance with the Swiss Civil Code and has not signed a headquarters agreement with Switzerland. This has not prevented one State (Kenya) recognizing its privileges and immunities as being those that correspond to an IGO.

IUCN's example is also pertinent because, as mentioned above, it hosts the Ramsar Convention Secretariat. We might ask whether, if MedWet were to become an MEA, IUCN would host its Secretariat too. However, the limitations created by the fact that IUCN is not an IGO should be taken into account.

2) BirdLife International

It is a global partnership made up of civil society organizations, national NGOs from 120 countries. The organization was founded in 1922 as the International Council for Bird Preservation (ICBP), created in order to stop the illegal bird trade. Its first actions were related to this objective. In 1948, ICBP became a founding member of IUCN and took on the responsibility of collecting data on the status of birds. One of ICBP's fundamental tasks was that of promoting the signature of international treaties such as the Convention on the Conservation of Migratory Species of Wild Animals as well as the Birds and Habitats Directive. The success of the initiative and the evolution of society itself led to the ICBP becoming the BirdLife partnership in 1993. This change of name and legal structure gave the association fresh impetus, and it expanded farther across the globe, with the number of members and scope of action both increasing.

Its main mission is to protect birds by supporting local, regional, national and international actions. Today, by increasing the number of its members, BirdLife can offer protection to many bird reserves. The association's objectives are:

- To prevent extinctions in the wild.
- To conserve and where possible improve the conservation status of all bird species.
- To conserve the sites and habitats important for birds and other biodiversity.
- To sustain the vital ecological systems that underpin human livelihoods, and enrich the quality of people's lives.
- To empower people and contribute to the alleviation of poverty, and strive to ensure sustainability in the use of natural resources.

In terms of the organization, BirdLife International's global headquarters are located in the United Kingdom. These headquarters, BirdLife International's global office, together with 6 regional coordination offices throughout the world, are known as the "BirdLife International Secretariat". The NGOs that make up the partnership retain their independence and are managed in an autonomous manner. In fact, many of the NGOs that make up this partnership have their own individual national identity and a great reputation outside of BirdLife. The partnership represents its members worldwide and works to achieve its objectives at a multilateral level. BirdLife has been recognized by both governments and international organizations as an interlocutor, which allows it to influence multilateral, regional and national environmental policies.

3) MED Forum

It is an organization that brings together NGOs in the Mediterranean Basin, which promote ecology and sustainable development. It was created in 1995 in Barcelona, the city in which it established its headquarters, in response to the demand by numerous NGOs in the Mediterranean Basin, which attended the III Mediterranean Environmental Forum. The organization is made up of 66 NGOs from 19 countries on the two shores of the Mediterranean (Albania, Algeria, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Malta, Monaco, Morocco, Palestine, Slovenia, Spain, Tunisia, and Turkey) and 3 adjacent countries (Jordan, Mauritania and Portugal). Its main mission is to defend and protect the environment within the framework of the sustainable development of the Mediterranean region. In order to achieve this, it favours intercultural dialogue and collaboration between the two shores of the Mediterranean. In order to fulfil this mission, it focuses on four types of activity: representing Mediterranean NGOs in international fora, organizing NGO meetings, carrying out cooperation projects related to sustainable development, and raising public awareness. From an organizational point of view, the NGOs that participate in MED Forum retain their independence and collaborate in order to attain MED Forum's goals.

III. CONCLUSIONS AND RECOMMENDATIONS

This report explored three different possible paths: becoming (i) an International Governmental Organization (IGO), (ii) a de facto International Organization or (iii) an International Non-Governmental Organization (INGO).

These are feasible possibilities that are not only consistent with MedWet's structure and set up, but also allow this initiative to continue to work with the Ramsar Convention in the global protection of wetlands, which is ultimately the global legal reference framework.

The first step would be to find out the wishes and level of commitment of the MedWet member parties before deciding which option to choose. If there is a strong will and solid commitment, the ideal option for endowing MedWet with an international legal status would be for it to become a regional IGO. Thus, it would be able to benefit from the international status conferred by international law to IGOs.

If MedWet were to be turned into an IGO, it would acquire the capacity to participate directly in international political issues and those linked to the approval of international regulations regarding the protection of wetlands. This statute would facilitate the intervention in the countries forming part of the IGO, as well as in other States, and would provide its staff with international civil servant status, which would give them independence and protection under international law for the execution of their work.

The steps to take to turn MedWet into an IGO are, perhaps, the most complex, because this requires the signature of two international treaties: a) that of the creation of the IGO, which has to be approved by the States and other members that want to join the organization; and b) the headquarters treaty, with the country in which the IGO's secretariat is going to be located. The set up of the IGO --in other words the discussion of the text of the founding treaty-- is the most critical action and probably the one that requires the greatest amount of effort. However, MedWet is not starting from scratch in the preparation of this document. Instead, its operation has an important history, which can serve as a perfect basis for facilitating this task. MedWet's Terms of Reference can be taken as a basic skeleton for the design of the founding treaty, by expanding on them, as mentioned, in order to bring them into line with the structure required by international law for the creation of an IGO.

The signature of the treaty requires the involvement of representatives of the States with the capacity for engaging the State at an international level, which entails compliance with rules of

national law that can also be complex. If there were still no mature will or commitment, a proposal would be made to choose one of the other two possibilities as a solution for transition and with a view to fulfilling the final objective of constituting an IGO in the future.

The choice of one or the other depends, once again, on the level of commitment and on the will to start up of a process of change that MedWet's members are willing to take on. The solution that involves the simplest procedures and also gives MedWet a certain amount of visibility, in addition to the capacity for international action, is that of becoming an international NGO. As an INGO, MedWet would acquire the subjectivity necessary to intervene in international discussions on wetlands, as well as to opt for international financing projects on the environment. If MedWet were to become an INGO, it would be subject to a national law, which would mean it would have to comply with the procedures established by this law for acquiring a legal personality and, once fulfilled, it would be granted the national legal personality of this State, although with the capacity to act at an international level, since its actions would go beyond the boundaries of the State in which it was founded.

However, we understand that this solution cannot be definitive, since it is not in line with MedWet's real situation, which is that of serving as a forum for intergovernmental cooperation. Addressing this fact, the transitional solution most suited to MedWet's nature is the negotiation of a multilateral agreement with a view to it being considered as a de facto IGO, as in the case of the other MEAs. This solution would also involve the signing of an international treaty, with its own particular complexity. But this treaty would not create a new subject of international law, which we believe would reduce the States' reluctance to signing. It would be a treaty with material content, on the protection of wetlands, which would go hand in hand with the creation of a purely administrative organ to manage the treaty. In this respect, the international agreement could be based on MedWet's Terms of Reference and its contents should be as similar as possible to the founding treaty of an IGO in order to facilitate the future transition to a de jure IGO.

In addition to the host State, it will also be necessary to decide whether the MedWet Secretariat will have an independent personality or whether it will be housed by a host institution. In the event of the latter, a relationship agreement will have to be entered into with the host institution, which recognizes the autonomy of the MedWet Secretariat and its legal capacity to work. Although the convenience of sharing the Ramsar Convention Secretariat's host institution may be considered (and thus facilitating the link with the Convention that gives MedWet its *raison d'être*), it is also important to bear in mind that the legal status of the host institution will determine the MedWet Secretariat's capacity for international action, as occurs with the Ramsar Convention Secretariat and IUCN.

To sum up, in order to favour MedWet's international action and help it achieve its goals, the best solution would be to create an international governmental institution, which would incorporate the work carried out by MedWet in the past and continue it. If this step were not possible, we propose two intermediate possibilities, which would allow the organization to continue to exist and fulfil its objectives, and would facilitate the building of the consensus required for the future creation of the IGO. These two intermediate paths are: 1) turning MedWet into an international NGO; or 2) the signing of a multilateral agreement on wetlands, which goes hand in hand with the creation of a Secretariat and would grant MedWet the capacity to act de facto on the international arena. In other words, it would turn MedWet into a de facto IGO.

Signed:

Rosa M. Fernández Egea, PhD in Public International Law, UAM

IV. APPENDICES [not distributed with this MedWet/Com I2 document]

Appendix 1: Summary table

Appendix 3: Examples of headquarters agreements between an NGO/International institution and the State in which its Secretariat is located:

2a – 1954 Headquarters agreement between France and UNESCO

2b – 2010 Headquarters agreement between Spain and UfM

2c – 1971 Headquarters agreement between Switzerland and the IPU

Appendix 3: Examples of IGO founding treaties:

3a – IPU's 1976 Founding treaty

3b – 1949 Founding treaty for the General Fisheries Commission for the Mediterranean

3c – 2006 International Tropical Timber Agreement

Appendix 4: Examples of relationship agreements between an MEA, the international host institution and the headquarters State:

4a – Relationship agreement between Ramsar and IUCN of 2009 and Delegation of powers of 1993

4b – Tripartite headquarters agreement between Germany, the United Nations and the Secretariat of the UN Convention to Combat Desertification of 1998

4c – Headquarters agreement between the United Kingdom and the OSPAR Commission of 1999

Appendix 5: Examples of INGO statutes:

5a – Model statute according to Swiss Law

5b – IUCN Statutes of 1996